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AGREEMENT AND PLAN OF MERGER (this “Agreement”) dated as of May 2, 2010 among UAL Corporation, a Delaware corporation (“United”), Continental Airlines, Inc., a Delaware corporation (“Continental”), and JT Merger Sub Inc., a Delaware corporation and wholly-owned subsidiary of United (“Merger Sub”).

Commented [DCT1]: QUESTION: What legal effect does a merger have on two companies? (Hint: See [Tex. Bus. Org. Code § 10.008.](#))

Commented [DCT2]: QUESTION: Why a “merger sub”? (Hint: Look up [reverse triangular merger.](#))

WHEREAS the respective Boards of Directors of United and Continental deem it advisable and in the best interests of each corporation and its respective stockholders that United and Continental engage in a “merger of equals” business combination in order to advance the long-term strategic business interests of each of United and Continental;

WHEREAS the respective Boards of Directors of United and Continental have determined that such “merger of equals” business combination shall be effected pursuant to the terms of this Agreement through the Merger (as defined in [Section 1.1](#));

WHEREAS the respective Boards of Directors of United, Continental and Merger Sub have approved this Agreement and determined that the terms of this Agreement are in the respective best interests of United, Continental or Merger Sub, as the case may be, and their respective stockholders;

WHEREAS the respective Boards of Directors of Continental and Merger Sub have declared the advisability of this Agreement and recommended adoption of this Agreement by their respective stockholders;

WHEREAS for U.S. Federal income Tax purposes, it is intended that (a) the Merger qualify as a “reorganization” within the meaning of Section 368(a) of the Internal Revenue Code of 1986, as amended (the “Code”) (such Tax treatment being referred to as the “Intended Tax Treatment”), (b) this Agreement be, and is hereby, adopted as a “plan of reorganization” for purposes of Sections

354 and 361 of the Code and (c) United, Continental and Merger Sub each be a “party to the reorganization” within the meaning of Section 368(b) of the Code; and

WHEREAS United, Continental and Merger Sub desire to make certain representations, warranties, covenants and agreements in connection with the Merger and also to prescribe various conditions to the Merger.

NOW, THEREFORE, in consideration of the foregoing, the parties hereto agree as follows:

ARTICLE I THE MERGER

1.1 The Merger. On the terms and subject to the conditions set forth in this Agreement, and in accordance with the General Corporation Law of the State of Delaware (the “Delaware Law”), on the Closing Date, Merger Sub shall be merged with and into Continental (the “Merger”). At the Effective Time, the separate corporate existence of Merger Sub shall cease and Continental shall continue as the surviving corporation in the Merger (the “Surviving Corporation”). As a result of the Merger, Continental shall become a wholly-owned subsidiary of United.

Commented [DCT3]: This is a [reverse triangular merger](#).

Commented [DCT4]: The key result.

1.2 Closing. The closing (the “Closing”) of the Merger shall take place at the offices of Cravath, Swaine & Moore LLP, Worldwide Plaza, 825 Eighth Avenue, New York, New York 10019 at 10:00 a.m., Eastern time, on a date to be specified by United and Continental, which shall be no later than the second Business Day following the satisfaction or (to the extent permitted by Law) waiver by the party or parties entitled to the benefits thereof of the conditions set forth in Article VII (other than those conditions that by their nature are to be satisfied at the Closing, but subject to the satisfaction or (to the extent permitted by Law) waiver of those conditions), or at such other place, time and date as shall be agreed in writing between United and Continental; provided, however, that, if any of the conditions set forth in Article VII is not satisfied or (to the extent permitted by Law) waived on such second Business Day, then the Closing shall take place on the first Business Day on which

all such conditions shall have been satisfied or (to the extent permitted by Law) waived. The date on which the Closing occurs is referred to in this Agreement as the “Closing Date.”

1.3 Effective Time. Subject to the provisions of this Agreement, as soon as practicable on the Closing Date, the parties shall file with the Secretary of State of the State of Delaware the Certificate of Merger and the Restated Charter, in each case in such form as required by, and executed and acknowledged in accordance with, the relevant provisions of the Delaware Law, and, as soon as practicable on or after the Closing Date, shall make all other filings required under the Delaware Law or by the Secretary of State of the State of Delaware in connection with the Merger. The Merger shall become effective at the time that the certificate of merger relating to the Merger (the “Certificate of Merger”) has been duly filed with the Secretary of State of the State of Delaware, or at such later time as United and Continental shall agree and specify in the Certificate of Merger (the time the Merger becomes effective being the “Effective Time”). The Restated Charter shall be filed with the Secretary of State of the State of Delaware immediately prior to the filing of the Certificate of Merger and shall become effective at the Effective Time.

Commented [DCT5]: This filing is what makes the merger effective.

QUESTION: If you wanted to be a language vigilante, how could this phrasing be tightened up?

1.4 Effects. The Merger shall have the effects set forth in this Agreement and Section 259 of the Delaware Law.

1.5 Certificates of Incorporation and By-Laws.

(a) Surviving Corporation Certificate of Incorporation and By-Laws. The certificate of incorporation of Continental, as in effect immediately prior to the Effective Time, shall be amended and restated at the Effective Time to read in the form of Exhibit A and, as so amended and restated, such certificate of incorporation shall be the certificate of incorporation of the Surviving Corporation until thereafter changed or amended as provided therein or by applicable Law. The by-laws of Continental shall be amended and restated at the Effective Time to be the same as the by-laws of Merger Sub as in effect immediately prior to the Effective Time, until thereafter changed or amended as provided therein or by applicable Law.

Commented [DCT6]: Continental’s articles of incorporation and bylaws are replaced by those more suitable to a wholly-owned subsidiary.

(b) United Certificate of Incorporation and By-Laws. Subject to receipt of the United Charter Stockholder Approval, the United Charter (as in effect immediately prior to the Effective Time), shall be amended and restated as of the Effective Time to read in the form of Exhibit B-1 (the “Restated Charter”) and, as so amended and restated, such certificate of incorporation shall be the certificate of incorporation of United until thereafter changed or amended as provided therein or by applicable Law. The Restated Charter shall provide, among other things, that the name of United shall be changed at the Effective Time to “United Continental Holdings, Inc.” The United Bylaws, as in effect immediately prior to the Effective Time, shall be amended and restated as of the Effective Time to read in the form of Exhibit B-2 and, as so amended and restated, such by-laws shall be the by-laws of United until thereafter changed or amended as provided therein or by applicable Law (the “United-Continental Bylaws”).

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1.6 Alternative Structure. The parties agree to cooperate reasonably in the consideration of alternative structures to implement the transactions contemplated by this Agreement that are mutually agreeable to Continental and United, but only with respect to any such alternative structure that does not (a) impose any material delay on, or condition to, the consummation of the Merger, (b) adversely affect any of the parties hereto or either United’s or Continental’s stockholders or (c) result in additional liability to the directors or officers of United or Continental.

Commented [DCT7]: QUESTION: How enforceable in court is this section likely to be?

ARTICLE II

EFFECT ON CAPITAL STOCK; EXCHANGE OF CERTIFICATES

2.1 Effect on Capital Stock. (a) At the Effective Time, by virtue of the Merger and without any action on the part of United, Continental, Merger Sub or the holder of any shares of Continental Common Stock or any shares of capital stock of Merger Sub:

(i) Capital Stock of Merger Sub. Each share of Common Stock, par value \$0.01 per share, of Merger Sub (the “Merger Sub Common Stock”) issued and

outstanding immediately prior to the Effective Time shall be converted into one fully paid and nonassessable share of common stock, par value \$0.01 per share, of the Surviving Corporation.

(ii) Cancellation of Treasury Stock. Each share of Class B Common Stock, par value \$0.01 per share, of Continental (such shares, the “Continental Common Stock”), issued and outstanding immediately prior to the Effective Time that is owned by Continental and each share of Continental Common Stock issued and outstanding immediately prior to the Effective Time that is owned by United or Merger Sub shall no longer be outstanding and shall automatically be canceled and shall cease to exist, and no consideration shall be delivered in exchange therefor.

(iii) Conversion of Continental Common Stock. Subject to Section 2.2(e), each share of Continental Common Stock issued and outstanding immediately prior to the Effective Time (other than shares to be canceled in accordance with Section 2.1(a)(ii)), shall be converted into the right to receive 1.05 (the “Exchange Ratio”) fully paid and nonassessable shares of Common Stock, par value \$0.01 per share, of United (the “United Common Stock,” and such shares of United Common Stock into which shares of Continental Common Stock are converted pursuant to this Section 2.1(a)(iii), the “Merger Consideration”).

All shares of Continental Common Stock converted pursuant to this Section 2.1(a)(iii), when so converted, shall no longer be outstanding and shall automatically be canceled and shall cease to exist, and each holder of a certificate that immediately prior to the Effective Time represented any such shares of Continental Common Stock (each such certificate, whether represented in certificated or non-certificated book-entry form, to the extent applicable, a “Certificate”) shall cease to have any rights with respect thereto, except the right to receive the Merger Consideration and any cash in lieu of fractional shares of United Common Stock to be paid in consideration therefor in accordance with Section 2.2(e) and any dividends or other distributions to which holders become entitled upon the surrender of such Certificate in accordance with Section 2.2(c), without interest.

Commented [DCT8]: Look up [treasury stock](#) – it “goes away” as a result of the merger.

(b) Certain Adjustments. If, between the date of this Agreement and the Effective Time (and as permitted by Article V), the outstanding shares of United Capital Stock or Continental Common Stock shall have been changed into a different number of shares or a different class of shares by reason of any stock dividend, subdivision, reorganization, reclassification, recapitalization, stock split, reverse stock split, combination or exchange of shares, or any similar event shall have occurred, then the Merger Consideration shall be appropriately and proportionately adjusted to provide to the holders of United Capital Stock and the holders of Continental Common Stock the same economic effect as contemplated by this Agreement prior to such event.

2.2 Exchange of Certificates.

(a) Exchange Agent. Prior to the Effective Time, United and Continental shall appoint a commercial bank or trust company to be mutually agreed upon to act as exchange agent (the “Exchange Agent”) for the delivery of the Merger Consideration. At or prior to the Effective Time, United shall deposit with the Exchange Agent, for the benefit of the holders of Certificates, for exchange in accordance with this Article II through the Exchange Agent, certificates representing the shares of United Common Stock to be delivered as the Merger Consideration (such certificates, whether represented in certificated or non-certificated book-entry form, to the extent applicable, the “United Common Certificates”). In addition, United shall deposit with the Exchange Agent, from time to time as needed, cash sufficient to make payments in lieu of fractional shares pursuant to Section 2.2(e) and to pay any dividends or other distributions which holders of Certificates have the right to receive pursuant to Section 2.2(c). All such United Common Certificates and cash deposited with the Exchange Agent pursuant to this Section 2.2(a) is hereinafter referred to as the “Exchange Fund.”

Commented [DCT9]: This is how the “mechanics” of exchanging share certificates is handled. It’s a non-trivial chore.

(b) Exchange Procedures. As soon as reasonably practicable after the Effective Time, United shall cause the Exchange Agent to mail to each holder of record of a Certificate whose shares were converted pursuant to Section 2.1(a)(iii) into the right to receive the Merger Consideration

(i) a letter of transmittal in customary form as reasonably agreed by the parties which (A) shall specify that delivery shall be effected, and risk of loss and title to the Certificates shall pass, only upon delivery of the Certificates to the Exchange Agent and (B) shall have such other provisions as United and Continental may reasonably specify and

(ii) instructions for effecting the surrender of the Certificates in exchange for the Merger Consideration.

Upon proper surrender of a Certificate to the Exchange Agent, together with such letter of transmittal, duly completed and validly executed in accordance with the instructions thereto, and such other documents as may reasonably be required by the Exchange Agent, the holder of such Certificate shall be entitled to receive in exchange therefor a United Common Certificate representing that number of whole shares of United Common Stock that such holder has the right to receive in respect of the aggregate number of shares of Continental Common Stock previously represented by such Certificate pursuant to Section 2.1 and a check representing cash in lieu of fractional shares that the holder has the right to receive pursuant to Section 2.2(e) and in respect of any dividends or other distributions that the holder has the right to receive pursuant to Section 2.2(c), and the Certificate so surrendered shall immediately be canceled.

In the event of a transfer of ownership of Continental Common Stock that is not registered in the transfer records of Continental, a United Common Certificate representing the proper number of shares of United Common Stock pursuant to Section 2.1 and a check representing cash in lieu of fractional shares that the holder has the right to receive pursuant to Section 2.2(e) and in respect of any dividends or other distributions that the holder has the right to receive pursuant to Section 2.2(c) may be delivered to a transferee if the Certificate representing such Continental Common Stock is presented to the Exchange Agent, accompanied by all documents required to evidence and effect such transfer and by evidence that any applicable transfer Taxes have been paid.

Commented [DCT10]: COMMENT: This is a good way to phrase an obligation being "imposed" on a non-party.

Until surrendered as contemplated by this Section 2.2, each Certificate shall be deemed at any time after the Effective Time to represent only the right to receive upon such surrender the Merger Consideration that the holder of such Certificate has the right to receive in respect of such Certificate pursuant to Section 2.1 (and cash in lieu of fractional shares pursuant to Section 2.2(e) and in respect of any dividends or other distributions pursuant to Section 2.2(c)).

No interest shall be paid or shall accrue on the cash payable upon surrender of any Certificate.

(c) Treatment of Unexchanged Shares. No dividends or other distributions declared or made with respect to United Common Stock with a record date after the Effective Time shall be paid to the holder of any unsurrendered Certificate with respect to the shares of United Common Stock deliverable upon surrender thereof, and no cash payment in lieu of fractional shares shall be paid to any such holder pursuant to Section 2.2(e), until the surrender of such Certificate in accordance with this Article II.

Subject to escheat or other applicable Law, following surrender of any such Certificate, there shall be paid to the holder of the Certificate, without interest,

(i) at the time of such surrender, the amount of any cash payable in lieu of a fractional share of United Common Stock that such holder has the right to receive pursuant to Section 2.2(e) and the amount of dividends or other distributions with a record date after the Effective Time theretofore paid with respect to such number of whole shares of United Common Stock that such holder has the right to receive pursuant to Section 2.1(a)(iii), and

(ii) at the appropriate payment date, the amount of dividends or other distributions with a record date after the Effective Time but prior to such surrender and a payment date subsequent to such surrender payable with respect to such number of whole shares of United Common Stock that such holder has the right to receive pursuant to Section 2.1(a)(iii).

(d) No Further Ownership Rights in Continental Common Stock. The shares of United Common Stock delivered and cash paid in accordance with the

terms of this Article II upon conversion of any shares of Continental Common Stock shall be deemed to have been delivered and paid in full satisfaction of all rights pertaining to such shares of Continental Common Stock.

From and after the Effective Time,

(i) all holders of Certificates shall cease to have any rights as stockholders of Continental other than the right to receive the Merger Consideration and any cash in lieu of fractional shares of United Common Stock to be paid in consideration therefor in accordance with Section 2.2(e) and any dividends or other distributions that holders have the right to receive upon the surrender of such Certificate in accordance with Section 2.2(c), without interest, and

(ii) the stock transfer books of Continental shall be closed with respect to all shares of Continental Common Stock outstanding immediately prior to the Effective Time.

From and after the Effective Time, there shall be no further registration of transfers on the stock transfer books of the Surviving Corporation of shares of Continental Common Stock that were outstanding immediately prior to the Effective Time.

If, after the Effective Time, any Certificates formerly representing shares of Continental Common Stock are presented to the Surviving Corporation, United or the Exchange Agent for any reason, such Certificates shall be canceled and exchanged as provided in this Article II.

(e) No Fractional Shares. No fractional shares of United Common Stock shall be issued in connection with the Merger, no certificates or scrip representing fractional shares of United Common Stock shall be delivered upon the conversion of Continental Common Stock pursuant to Section 2.1, and such fractional share interests shall not entitle the owner thereof to vote or to any other rights of a holder of United Common Stock.

Notwithstanding any other provision of this Agreement, each holder of shares of Continental Common Stock converted pursuant to the Merger who would otherwise have been entitled to receive a fraction of a share of United Common Stock (after aggregating all shares represented by the Certificates delivered by such holder) shall receive, in lieu thereof and upon surrender of such holder's

Certificates, cash (without interest) in an amount equal to such fractional amount multiplied by

(x) if the United Common Stock is listed on the NASDAQ at the Effective Time, the NASDAQ Official Closing Price of United Common Stock (as reported in The Wall Street Journal (Northeast edition) or, if not reported therein, in another authoritative source mutually selected by United and Continental) or

(y) if the United Common Stock is listed on the NYSE at the Effective Time, the last reported sale price of United Common Stock, as reported on the NYSE Composite Transactions Tape (as reported in The Wall Street Journal (Northeast edition) or, if not reported therein, in another authoritative source mutually selected by United and Continental),

in each case on the first trading day immediately following the date on which the Effective Time occurs.

(f) Termination of Exchange Fund. Any portion of the Exchange Fund (including any interest or other amounts received with respect thereto) that remains unclaimed by, or otherwise undistributed to, the holders of Certificates for 180 days after the Effective Time shall be delivered to United, upon demand, and any holder of Certificates who has not theretofore complied with this Article II shall thereafter look only to United for satisfaction of its claim for Merger Consideration, any cash in lieu of fractional shares and any dividends and distributions which such holder has the right to receive pursuant to this Article II.

(g) No Liability. None of United, Continental, Merger Sub or the Exchange Agent shall be liable to any Person in respect of any portion of the Exchange Fund or the Merger Consideration delivered to a public official pursuant to any applicable abandoned property, escheat or similar Law.

Notwithstanding any other provision of this Agreement, any portion of the Merger Consideration or the cash to be paid in accordance with this Article II that remains undistributed to the holders of Certificates as of the second anniversary of the Effective Time (or immediately prior to such earlier date on which the Merger Consideration or such cash would otherwise escheat to or become the property of any Governmental Entity), shall, to the extent permitted by applica-

ble Law, become the property of United, free and clear of all claims or interest of any Person previously entitled thereto.

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(h) Investment of Exchange Fund. The Exchange Agent shall invest any cash in the Exchange Fund as directed by United on a daily basis, provided that, subject to Section 2.2(g), no such investment or losses will affect the cash payable to holders of Certificates.

Any interest or other amounts received with respect to such investments shall be paid to United.

(i) Withholding Rights. Each of United and the Exchange Agent (without duplication) shall be entitled to deduct and withhold from the consideration otherwise payable to any holder of a Certificate pursuant to this Agreement such amounts as may be required to be deducted and withheld with respect to the making of such payment under applicable Tax Law.

Any amounts so deducted, withheld and paid over to the appropriate taxing authority shall be treated for all purposes of this Agreement as having been paid to the holder of the Certificate in respect of which such deduction or withholding was made.

(j) Lost Certificates. If any Certificate shall have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the Person claiming such Certificate to be lost, stolen or destroyed and, if required by United, the posting by such Person of a bond, in such reasonable amount as United may direct, as indemnity against any claim that may be made against it with respect to such Certificate, the Exchange Agent (or, if subsequent to the termination of the Exchange Fund and subject to Section 2.2(g), United) shall deliver, in exchange for such lost, stolen or destroyed Certificate, the Merger Consideration, any cash in lieu of fractional shares and any dividends and distributions deliverable in respect thereof pursuant to this Agreement.

ARTICLE III

**REPRESENTATIONS AND WARRANTIES OF UNITED AND MERGER
SUB**

Except as disclosed in the disclosure letter (the “United Disclosure Schedule”) delivered by United to Continental prior to the execution of this Agreement (which letter sets forth items of disclosure with specific reference to the particular Section or subsection of this Agreement to which the information in the United Disclosure Schedule relates) or in the United SEC Reports filed and publicly available prior to the date of this Agreement, United and Merger Sub hereby represent and warrant to Continental as follows:

3.1 Corporate Organization.

(a) United.

(i) United is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware.

United has the corporate power and authority to own or lease all of its properties and assets and to carry on its business as it is now being conducted, and is duly licensed or qualified to do business in each jurisdiction in which the nature of the business conducted by it or the character or location of the properties and assets owned or leased by it makes such licensing or qualification necessary,

except where the failure to be so licensed or qualified would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on United.

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(ii) True and complete copies of the Restated Certificate of Incorporation of United, as amended through, and as in effect as of, the date of this Agreement (the “United Charter”), and the Amended and Restated Bylaws of United, as amended through, and as in effect as of, the date of this Agreement (the “United Bylaws”), have previously been made available to Continental.

Commented [DCT11]: COMMENT: Look at Article IV to see what the contract provisions look like in their original form.

COMMENT: These reps and warranties seem to be largely reciprocated.

Commented [DCT12]: This entire section is qualified by the disclosure letter.

Commented [DCT13]: COMMENT: Note the use of both “represent” and “warrant.”

Commented [DCT14]: “Material Adverse Effect” is a common usage; in this Agreement, it’s [defined in Article 9](#).

(iii) Each United Subsidiary

(i) is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization,

(ii) is duly licensed or qualified to do business in each jurisdiction in which the nature of the business conducted by it or the character or location of the properties and assets owned or leased by it makes such licensing or qualification necessary, and

(iii) has all requisite corporate power and authority to own or lease its properties and assets and to carry on its business as now conducted,

except for such variances from the matters set forth in any of clauses (i), (ii) or (iii) as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on United.

(b) Merger Sub.

(i) True and complete copies of the certificate of incorporation and by-laws of Merger Sub, each as in effect as of the date of this Agreement, have previously been made available to Continental.

(ii) Merger Sub is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware.

Except as contemplated by this Agreement, Merger Sub does not hold and has not held any material assets or incurred any material liabilities, and has not carried on any business activities other than in connection with the Merger and the other transactions contemplated by this Agreement.

The authorized capital stock of Merger Sub consists of 1,000 shares of Merger Sub Common Stock, all of which have been duly issued, are fully paid and nonassessable and are owned directly by United free and clear of any Liens.

3.2 Capitalization.

(a) Authorized and Issued Shares.

(i) As of the date of this Agreement, the authorized United capital stock consists of

(A) 1,000,000,000 shares of United Common Stock, of which, as of the close of business on April 29, 2010 (such date and time, the “Measurement Date”), 168,276,876 shares were issued and outstanding (including the United Reserve Shares), of which 274,767 were United Restricted Shares,

(B) 250,000,000 shares of Preferred Stock (the “Serial Preferred Stock”), of which, as of the Measurement Date, zero shares were issued and outstanding,

(C) one share of Class Pilot MEC Junior Preferred Stock (the “Class Pilot MEC Preferred Stock”), of which, as of the Measurement Date, one share was issued and outstanding, and

(D) one share of Class IAM Junior Preferred Stock (the “Class IAM Preferred Stock,” and, collectively with the Serial Preferred Stock and the Class Pilot MEC Preferred Stock, the “United Preferred Stock,” and together with the United Common Stock, “United Capital Stock”), of which, as of the Measurement Date, one share was issued and outstanding.

As of the Measurement Date, 1,097,693 shares of United Capital Stock were held in United’s treasury.

As of the Measurement Date, no shares of United’s capital stock or other voting securities of or equity interests in United were issued, reserved for issuance or outstanding except as set forth in this Section 3.2(a)(i).

All of the issued and outstanding shares of United Capital Stock are and, at the time of issuance, all such shares that may be issued as Merger Consideration or upon the exercise or vesting of, or pursuant to, United Stock Options and United Stock-Based Awards or upon the conversion of United’s 5% Senior Convertible Notes due 2021 (the “O’Hare Notes”) issued pursuant to the Indenture dated as of February 1, 2006, between United and Bank of New York Trust Company, N.A., as trustee, as amended to the date of this Agreement (the “O’Hare Notes

Commented [DCT15]: QUESTION: Any thoughts about what this might be? (Hint: Take a peek at Part II, sections 1 and 8.1, of <http://goo.gl/JPPRD>, but don’t bother reading in detail unless you’re interested.)

Indenture”), United’s 4.5% Senior Limited Subordinated Convertible Notes due 2021 (the “Labor Notes”) issued pursuant to the Indenture dated as of July 25, 2006, between United and Bank of New York Trust Company, N.A., as trustee, as amended to the date of this Agreement (the “Labor Notes Indenture”), or United’s 6% Senior Convertible Notes due 2029 (the “United 6% Convertible Notes”) issued pursuant to the Indenture dated as of October 7, 2009, between United and Bank of New York Trust Company, N.A., as trustee, as amended from the date of this Agreement (the “United 6% Convertible Notes Indenture”), will be, duly authorized and validly issued and fully paid, nonassessable and not subject to or issued in violation of any purchase option, call option, right of first refusal, preemptive right, subscription right or any similar right under any provision of the Delaware Law, the United Charter, the United Bylaws or any contract to which United is a party or by which it is otherwise bound.

From and after the Measurement Date through the date of this Agreement, United has not issued any capital stock or voting securities or other equity interests other than the issuance of United Capital Stock upon the exercise or vesting of, or pursuant to, United Stock Options and United Stock-Based Awards outstanding as of the Measurement Date and in accordance with their respective terms in effect at such time or upon the conversion of the O’Hare Notes, Labor Notes or United 6% Convertible Notes, in each case outstanding as of the Measurement Date and in accordance with their terms in effect at such time.

(ii) As of the date of this Agreement, except for this Agreement, United Stock Options, rights under United Stock-Based Awards, the O’Hare Notes, the O’Hare Notes Indenture, the Labor Notes, the Labor Notes Indenture, the United 6% Convertible Notes and the United 6% Convertible Notes Indenture, there are not issued, reserved for issuance or outstanding, and there are not any outstanding obligations of United or any United Subsidiary to issue, deliver or sell, or cause to be issued, delivered or sold, any Equity Equivalents of United or any United Subsidiary.

Except for Forfeitures and Cashless Settlements in connection with the United Reserve Shares, United Restricted Shares, United Stock Options and United Stock-Based Awards, there are not any outstanding obligations of United or any

of the United Subsidiaries to directly or indirectly redeem, repurchase or otherwise acquire any shares of capital stock or voting securities of, other equity interests in or Equity Equivalents of United or any United Subsidiary.

Neither United nor any of the United Subsidiaries is party to any voting agreement with respect to the voting of any capital stock or voting securities of, or other equity interests in, United.

United has delivered or made available to Continental true and complete copies of (A) the O'Hare Notes Indenture, (B) the Labor Notes Indenture and (C) the United 6% Convertible Notes Indenture.

The consummation of the Merger and the other transactions contemplated hereby or taken in contemplation of this Agreement will not, as of the Effective Time, result in a material breach of any contract that is referenced in Section 3.2(a)(ii) of the United Disclosure Schedule.

(b) As of the date of this Agreement, no bonds, debentures, notes or other indebtedness of United having the right to vote on any matters on which stockholders may vote (“United Voting Debt”) are issued or outstanding.

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(c) All of the issued and outstanding shares of capital stock or other equity ownership interests of each “significant subsidiary” (as such term is defined under Regulation S-X of the U.S. Securities and Exchange Commission (the “SEC”)) of United are owned by United, directly or indirectly, free and clear of any material liens, pledges, charges and security interests and similar encumbrances, other than for Taxes that are not yet due (“Liens”),

and free of any restriction on the right to vote, sell or otherwise dispose of such capital stock or other equity ownership interest (other than restrictions under applicable securities Laws),

and all of such shares or equity ownership interests are duly authorized and validly issued and are fully paid, nonassessable and free of preemptive rights.

Commented [DCT16]: Note how the section number in the United Disclosure Schedule is the same as the section number in the agreement.

Except for the capital stock or other equity ownership interests of the United Subsidiaries, as of the date of this Agreement, United does not beneficially own directly or indirectly any capital stock, membership interest, partnership interest, joint venture interest or other equity interest in any Person that constitutes a Substantial Investment.

As used in this Agreement,

(i) “Subsidiary,” when used with respect to either party, means any corporation, partnership, limited liability company or other organization, whether incorporated or unincorporated,

(A) of which such party or any other Subsidiary of such party is a general partner (excluding partnerships, the general partnership interests of which held by such party or any Subsidiary of such party do not have a majority of the voting interests in such partnership) or

(B) a majority of the securities or other interests of which having by their terms ordinary voting power to elect a majority of the Board of Directors or others performing similar functions with respect to such corporation or other organization is directly or indirectly owned or controlled by such party or by any one or more of its Subsidiaries, or by such party and one or more of its Subsidiaries,

(ii) the term “Subsidiaries” means more than one such Subsidiary,

(iii) the terms “United Subsidiary” and “Continental Subsidiary” will mean any direct or indirect Subsidiary of United or Continental, respectively, and

(iv) “Substantial Investment,” when used with respect to either party, means a stock or other equity investment having a fair market value or book value in excess of \$25 million, directly or indirectly, in any Person.

3.3 Authority; No Violation.

(a) United has full corporate power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby and to perform its obligations hereunder.

The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly approved by the Board of Directors of United (the “United Board”).

The United Board has determined that this Agreement and the transactions contemplated hereby are in the best interests of United and its stockholders,

has approved and declared advisable this Agreement and the Restated Charter, recommended that its stockholders vote in favor of the adoption of the Restated Charter and approval of the issuance by United of United Common Stock as Merger Consideration (the “Share Issuance”) and

has directed that the Restated Charter and the Share Issuance be submitted to United’s stockholders for a vote at a duly held meeting of such stockholders for such purposes (the “United Stockholders Meeting”).

Except

(i) solely in the case of the Restated Charter, for the adoption of the Restated Charter by the affirmative vote of the holders of a majority of the outstanding shares of United Common Stock, Class Pilot MEC Preferred Stock and Class IAM Preferred Stock, voting together as a single class, entitled to vote on such adoption (the “United Charter Stockholder Approval”),

(ii) solely in the case of the Share Issuance, for approval of the Share Issuance by the affirmative vote of the holders of a majority of the shares of United Common Stock, Class Pilot MEC Preferred Stock and Class IAM Preferred Stock, represented in person or by proxy at the United Stockholders Meeting, voting together as a single class, as required by Rule 5635(a) of the NASDAQ Manual (the “United Share Issuance Stockholder Approval,” and, together with the United Charter Stockholder Approval, the “United Stockholder Approvals”) and

Commented [DCT17]: QUESTION: What would Tina Stark have to say about this part of Section 3.3(a)? (See Stark p. 20.3.2 on pp. 228-29)

(iii) solely in the case of the Merger, for the adoption of this Agreement by United as the sole stockholder of Merger Sub,

no other corporate proceedings on the part of United or any other vote by the holders of any class or series of United Capital Stock are necessary to approve or adopt this Agreement or to consummate the transactions contemplated hereby (except for the filing of the appropriate merger documents and the Restated Charter as required by the Delaware Law).

This Agreement has been duly and validly executed and delivered by United and (assuming due authorization, execution and delivery by the other parties hereto) constitutes the valid and binding obligation of United, enforceable against United in accordance with its terms (except as may be limited by bankruptcy, insolvency, moratorium, reorganization or similar Laws affecting the rights of creditors generally and the availability of equitable remedies).

Without limiting the generality of the foregoing, at the Effective Time, the United Board shall have adopted a resolution that the Continental Directors who are elected to the United Board at the Effective Time in accordance with Section 6.11(c) will be deemed to be “continuing directors” of United.

(b) Neither the execution and delivery of this Agreement by United and Merger Sub nor the consummation by United and Merger Sub of the transactions contemplated hereby, nor compliance by United and Merger Sub with any of the terms or provisions of this Agreement, will

(i) assuming (solely in the case of the Restated Charter and the Share Issuance) that the United Stockholder Approvals are obtained, violate any provision of the United Charter or the United Bylaws or result in a Prohibited Transfer (as defined in the Restated Certificate of Incorporation of United, as in effect immediately prior to the Effective Time) or

(ii) assuming that the consents, approvals and filings referred to in Section 3.4 are duly obtained and/or made,

(A) violate any order, injunction or decree issued by any court or agency of competent jurisdiction or other legal restraint or prohibition (an “Injunction”)

or, assuming (solely in the case of the Restated Charter and Share Issuance) that the United Stockholder Approvals are obtained, any statute, code, ordinance, rule, regulation, judgment, order, writ or decree applicable to United, any of the United Subsidiaries or any of their respective properties or assets or

(B) violate, conflict with, result in a breach of any provision of or the loss of any benefit under, constitute a default (or an event which, with notice or lapse of time, or both, would constitute a default) under, result in the termination of or a right of termination or cancelation under, accelerate the performance required by, or result in the creation of any Lien upon any of the respective properties or assets of United or any of the United Subsidiaries under, any of the terms, conditions or provisions of any note, bond, mortgage, indenture, deed of trust, United License, license, lease, agreement or other instrument or obligation to which United or any of the United Subsidiaries is a party, or by which they or any of their respective properties or assets may be bound or affected, except, in the case of clause (ii), for such violations, conflicts, breaches, defaults, terminations, rights of termination or cancelation, accelerations or Liens that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on United.

Without limiting the generality of the foregoing, as of the date of this Agreement, United is not a party to, or subject to, any standstill agreement or similar agreement that restricts any Person from engaging in negotiations or discussions with United or from acquiring, or making any tender offer or exchange offer for, any equity securities issued by United or any United Voting Debt.

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(c) Merger Sub has full corporate or other requisite power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby.

The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly approved by the Board of Directors of Merger Sub.

The Board of Directors of Merger Sub has determined that this Agreement and the transactions contemplated hereby are in the best interests of Merger Sub and

Commented [DCT18]: COMMENT: This paragraph has financial covenants in mind.

Commented [DCT19]: COMMENT: This is a lesson-learned from [Penzoil v. Texaco](#) in the mid-1980s, which among other things supposedly made Joe Jamail a billionaire; see also [this case brief](#).

its sole stockholder, has approved this Agreement, recommended that its sole stockholder vote in favor of the adoption of this Agreement and directed that this Agreement be submitted to its sole stockholder for adoption.

Except, solely in the case of the Merger, for the adoption of this Agreement by United as the sole stockholder of Merger Sub, no other corporate proceeding on the part of Merger Sub is necessary to approve or adopt this Agreement or to consummate the transactions contemplated hereby (except for the filing of the appropriate merger documents as required by Delaware Law).

This Agreement has been duly and validly executed and delivered by Merger Sub and (assuming due authorization, execution and delivery by the other parties hereto) constitutes the valid and binding obligation of Merger Sub enforceable against Merger Sub in accordance with its terms (except as may be limited by bankruptcy, insolvency, moratorium, reorganization or similar Laws affecting the rights of creditors generally and the availability of equitable remedies).

3.4 Consents and Approvals. Except for

(a) any application, filing or submission required to be made and any consent, approval, authorization or authority required to be made or obtained under Title 49 of the United States Code or under any regulation, rule, order, notice or policy of the U.S. Federal Aviation Administration (the “FAA”), the U.S. Department of Transportation (the “DOT”), the Federal Communications Commission (the “FCC”) and the U.S. Department of Homeland Security (the “DHS”), including the U.S. Transportation Security Administration (the “TSA”),

(b) the filing with the SEC of a Joint Proxy Statement in definitive form relating to the United Stockholders Meeting and the Continental Stockholders Meeting (the “Joint Proxy Statement”) and of a registration statement on Form S-4 in which the Joint Proxy Statement will be included as a prospectus (the “Form S-4”), and declaration of effectiveness of the Form S-4, and the filing with the SEC of such reports under, and such other compliance with, the Securities Exchange Act of 1934, as amended (the “Exchange Act”), and the Securities Act and the rules and regulations thereunder,

Commented [DCT20]: QUESTION: What are at least THREE ways in which this Section 3.4 might be rewritten / restructured to make it more understandable? [DCT TO SHOW HIS REWRITE]

(c) the filing of the Merger Certificate and the Restated Charter with the Delaware Secretary of State pursuant to Delaware Law and with the relevant authorities in other jurisdictions in which United is qualified to do business,

(d) any notices or filings under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the “HSR Act”), or any notices, filings or approvals under any other applicable competition, merger control, antitrust or similar Law or regulation,

(e) such filings and approvals as are required to be made or obtained under the securities or “Blue Sky” laws of various states in connection with the Share Issuance,

(f) any consent, approval, order, authorization, authority, transfer, waiver, disclaimer, registration, declaration or filing required to be made or obtained from any other Governmental Entity that regulates any aspect of airline operations or business, including environmental (e.g. , noise, air emissions and water quality), aircraft, air traffic control and airport communications, agricultural, export/import, immigration and customs,

(g) any filings required under the rules and regulations of the Nasdaq Stock Market, Inc. (the “NASDAQ”), and

(h) such other consents, approvals, orders, authorizations, registrations, declarations, transfers, waivers, disclaimers, and filings the failure of which to be obtained or made would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on United,

no consents, approvals of, filings or registrations with, or orders, authorizations or authority of any federal, state, local or foreign government, court of competent jurisdiction, administrative agency, commission or other governmental authority or instrumentality (each, a “Governmental Entity”) are necessary in connection with

(i) the execution and delivery by United and Merger Sub of this Agreement and

(ii) the consummation of the Merger and the other transactions contemplated by this Agreement.

Commented [DCT21]: QUESTION: Is this an appropriate rep for United to be making?

3.5 Reports. United and each of the United Subsidiaries have timely filed all submissions, reports, registrations, schedules, forms, statements and other documents, together with any amendments required to be made with respect thereto, that they were required to file since January 1, 2009 with (i) the FAA, (ii) the DOT, (iii) the SEC, (iv) any state or other federal regulatory authority (other than any taxing authority, which is covered by Section 3.10) and (v) any foreign regulatory authority (other than any taxing authority, which is covered by Section 3.10) (collectively, “Regulatory Agencies”), and have paid all fees and assessments due and payable in connection therewith, except in each case where the failure to file such report, registration, schedule, form, statement or other document, or to pay such fees and assessments, would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on United.

No publicly available final registration statement, prospectus, report, form, schedule or definitive proxy statement filed since January 1, 2009 by United with the SEC pursuant to the Securities Act of 1933, as amended (the “Securities Act”), or the Exchange Act (collectively, the “United SEC Reports”), as of the date of such United SEC Report, contained any untrue statement of a material fact or omitted to state any material fact required to be stated therein or necessary in order to make the statements made therein, in light of the circumstances in which they were made, not misleading,

except that information as of a later date (but before the date of this Agreement) will be deemed to modify information as of an earlier date.

Since January 1, 2009, as of their respective dates, all United SEC Reports complied in all material respects with the applicable requirements of the Securities Act, the Exchange Act, the Sarbanes-Oxley Act of 2002, as amended (the “Sarbanes-Oxley Act”) and the rules and regulations thereunder with respect thereto.

3.6 Financial Statements.

(a) United has previously made available to Continental copies of (i) the consolidated balance sheet of United and the United Subsidiaries as of December 31, 2008 and 2009, and the related consolidated statements of operations, comprehensive income (loss), cash flows and stockholders’ equity for each of the three

years in the period ended December 31, 2009, as reported in United's Annual Report on Form 10-K for the fiscal year ended December 31, 2009, including any amendments thereto filed with the SEC prior to the Measurement Date, filed with the SEC under the Exchange Act, accompanied by the audit report of Deloitte & Touche LLP, the independent registered public accounting firm with respect to United for such periods (such balance sheets and statements, the "Audited United Financial Statements"), and

(ii) the unaudited consolidated balance sheet of United and the United Subsidiaries as of March 31, 2010 and the related consolidated statements of operations, comprehensive income (loss), cash flows and stockholders' equity for the three-month periods ended March 31, 2009 and 2010, as reported in United's Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2010, including any amendments thereto filed with the SEC prior to the Measurement Date (such balance sheets and statements, the "Unaudited United Financial Statements" and, together with the Audited United Financial Statements, the "United Financial Statements").

The consolidated balance sheets of United (including the related notes, where applicable) included in the United Financial Statements fairly present in all material respects the consolidated financial position of United and the United Subsidiaries as of the dates thereof,

and the other financial statements included in the United Financial Statements (including the related notes, where applicable) fairly present in all material respects the results of the consolidated operations and changes in stockholders' equity and cash flows of United and the United Subsidiaries for the respective fiscal periods therein set forth,

subject, in the case of the Unaudited United Financial Statements, to normal year-end audit adjustments that are immaterial in nature and in amounts consistent with past experience;

each of such statements (including the related notes, where applicable) complies in all material respects with the published rules and regulations of the SEC with respect thereto;

and each of the United Financial Statements (including the related notes, where applicable) has been prepared in all material respects in accordance with gener-

Commented [DCT22]: COMMENT: This is a crucial rep.

ally accepted accounting principles in the United States (“GAAP”) consistently applied during the periods involved,

except, in each case, as indicated in such statements or in the notes thereto.

To United’s knowledge, there is no applicable accounting rule, consensus or pronouncement that has been adopted by the SEC, the Financial Accounting Standards Board, the Emerging Issues Task Force or any similar body as of, but is not in effect as of, the date of this Agreement that, if implemented, would reasonably be expected to have a Material Adverse Effect on United

(it being agreed that for purposes of this Section 3.6(a), effects resulting from or arising in connection with the matters set forth in clause (vi) of the definition of the term “Material Adverse Effect” shall not be excluded in determining whether a Material Adverse Effect on United would reasonably be expected to occur).

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(b) Except for those liabilities that are reflected or reserved against on the United Financial Statements, and for liabilities incurred in the ordinary course of business consistent with past practice since March 31, 2010, since such date,

neither United nor any of the United Subsidiaries has incurred any liability of any nature whatsoever (whether absolute, accrued, contingent or otherwise and whether due or to become due and including any off-balance sheet loans, financings, indebtedness, make-whole or similar liabilities or obligations) that would, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on United.

3.7 Brokers’ Fees. None of United, any United Subsidiary or any of their respective officers or directors has employed any broker or finder or incurred any liability for any broker’s fees, commissions or finder’s fees in connection with the Merger or related transactions contemplated by this Agreement, other than Goldman, Sachs & Co. and J.P. Morgan Securities Inc., each of which firms United retained pursuant to an engagement letter.

United has delivered to Continental true and complete copies of such engagement letters under which any fees or expenses are payable and all indemnifica-

Commented [DCT23]: COMMENT: Sometimes brokers can come out of the woodwork with their hands out.

tion and other agreements related to the engagement of the Persons to whom such fees are payable.

3.8 Absence of Certain Changes or Events.

(a) Since March 31, 2010, no event or events or development or developments have occurred that have had or would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on United.

Commented [DCT24]: COMMENT: This is sort of a catch-all rep. The March 31 date is presumably the reporting date of United's most recent 10-Q quarterly report filed with the SEC.

(b) Except in connection with the execution and delivery of this Agreement and the transactions contemplated by this Agreement, from March 31, 2010 through the date of this Agreement, United and the United Subsidiaries have carried on their respective businesses in all material respects in the ordinary course.

Commented [DCT25]: "In all material respects" leaves room to argue.

3.9 Legal Proceedings.

(a) None of United or any of the United Subsidiaries is a party to any, and there are no pending or, to United's knowledge, threatened, legal, administrative, arbitral or other proceedings, claims, actions or governmental or regulatory investigations or reviews of any nature against United or any of the United Subsidiaries, except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on United.

Commented [DCT26]: This could be turned into a list.

(b) There is no Injunction, judgment or regulatory restriction imposed upon United, any of the United Subsidiaries or the assets of United or any of the United Subsidiaries that would, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on United.

3.10 Taxes and Tax Returns.

(a) Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on United:

(i) United and the United Subsidiaries have timely filed, taking into account any extensions, all Tax Returns required to be filed by them (all such returns being

accurate and complete) and have paid all Taxes required to be paid by them other than Taxes that are not yet due or that are being contested in good faith in appropriate proceedings;

(ii) there are no Liens for Taxes on any assets of United or the United Subsidiaries;

(iii) no deficiency for any Tax has been asserted or assessed by a Tax authority against United or any of the United Subsidiaries which deficiency has not been paid or is not being contested in good faith in appropriate proceedings;

(iv) United and the United Subsidiaries have provided adequate reserves in their financial statements for any Taxes that have not been paid; and

(v) neither United nor any of the United Subsidiaries is a party to or is bound by any Tax sharing, allocation or indemnification agreement or arrangement (other than such an agreement or arrangement exclusively between or among United and the United Subsidiaries).

(b) Within the past five years, neither United nor any of the United Subsidiaries has been a “distributing corporation” or a “controlled corporation” in a distribution intended to qualify for tax-free treatment under Section 355 of the Code.

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(c) United is not aware of any fact or circumstance that would reasonably be expected to prevent the Merger from qualifying as a “reorganization” within the meaning of Section 368(a) of the Code.

(d) Neither United nor any of the United Subsidiaries has been a party to a transaction that, as of the date of this Agreement, constitutes a “listed transaction” for purposes of Section 6011 of the Code and applicable U.S. Treasury Regulations thereunder (or a similar provision of state law).

(e) No disallowance of a deduction under Section 162(m) or Section 280G of the Code, or imposition of an excise tax under Section 4999 of the Code, for any amount paid or payable by United or any of the United Subsidiaries as em-

ployee compensation, whether under any contract, plan, program or arrangement, understanding or otherwise, would, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on United, either as a result of the Merger or otherwise.

(f) Section 3.10(f) of the United Disclosure Schedule sets forth

(i) the amount on December 31, 2009 (and determined based on information available as of the date of this Agreement) of net operating losses, capital losses and alternative minimum tax credits and other credits of the consolidated group of which United is the common parent for Federal income Tax purposes,

(ii) dates of expiration of such items and

(iii) any limitations on such items.

As of the date of this Agreement, neither United nor any United Subsidiary has undergone an ownership change (within the meaning of Section 382(g)(1) of the Code) since February 1, 2006.

(g) As used in this Agreement, the term “Tax” or “Taxes” means

(i) all federal, state, local and foreign income, excise, gross receipts, gross income, ad valorem, profits, gains, property, capital, sales, transfer, use, payroll, employment, severance, withholding, duties, intangibles, franchise, environmental, stamp, disability, escheat, production, value-added, occupancy, backup withholding and other taxes, or other like charges, levies or like assessments imposed by a Governmental Entity, together with all penalties and additions to tax and interest thereon and

(ii) any liability for Taxes described in clause (i) under Treasury Regulation Section 1.1502-6 (or any similar provision of state, local or foreign Law),

and the term “Tax Return” means any return, filing, report, questionnaire, information statement or other document (including elections, declarations, disclosures, schedules, estimates and information returns) required or permitted to be filed, including any amendments that may be filed, for any taxable period with any Tax authority (whether or not a payment is required to be made with respect to such filing).

Commented [DCT27]: COMMENT: This is an example of an inline definition. It's a good idea to have it together with the substantive provisions to which it relates. BUT, the definitions section should have a cross-reference.

3.11 Employee Benefit Plans.

Commented [DCT28]: COMMENT: This should be broken up with bullets for greater readability.

(a) As used herein, “ United Benefit Plan ” shall mean each material benefit or compensation plan, program, fund, contract, arrangement or agreement, including any material bonus, incentive, deferred compensation, vacation, stock purchase, stock option, severance, employment, golden parachute, retention, salary continuation, change of control, retirement, pension, profit sharing or fringe benefit plan, program, fund, contract, arrangement or agreement of any kind (whether written or oral, tax-qualified or non-tax qualified, funded or unfunded, foreign or domestic, active, frozen or terminated) and any related trust, insurance contract, escrow account or similar funding arrangement, that is maintained or contributed to by United or any United Subsidiary (or required to be maintained or contributed to by United or any United Subsidiary) for the benefit of current or former directors, officers or employees of, or consultants to, United or any of the United Subsidiaries or with respect to which United or any of the United Subsidiaries may, directly or indirectly, have any liability, as of the date of this Agreement.

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(b) As of the date of this Agreement, United has heretofore made available to Continental true and complete copies of

(i) each written United Benefit Plan,

(ii) the most recent actuarial report for each United Benefit Plan (if applicable),

(iii) the most recent determination letter from the Internal Revenue Service (“ IRS ”) (if applicable) for each United Benefit Plan,

(iv) the current summary plan description of each United Benefit Plan that is subject to the Employee Retirement Income Security Act of 1974, as amended (“ ERISA ”), together with each summary of material modifications,

(v) a copy of the description of each United Benefit Plan not subject to ERISA that is currently provided to participants in such plan,

(vi) the most recent annual report for each United Benefit Plan (if applicable) (excluding the Schedule SSA),

(vii) each trust agreement, group annuity contract and insurance contract relating to any United Benefit Plan and

(viii) a summary of the material terms of each unwritten United Benefit Plan.

(c) Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on United,

(i) each of the United Benefit Plans has been operated and administered in compliance with its terms and applicable Law, including ERISA and the Code,

(ii) each of the United Benefit Plans intended to be “qualified” within the meaning of Section 401(a) of the Code is so qualified, and

there are no existing circumstances or any events that have occurred that would reasonably be expected to adversely affect the qualified status of any such United Benefit Plan, and

each such plan has a favorable determination letter from the IRS to the effect that it is so qualified or the applicable remedial amendment period has not expired and,

if the letter for such plan is not current, such plan is the subject of a timely request for a current favorable determination letter or the applicable remedial amendment period has not expired,

(iii) with respect to each United Benefit Plan that is subject to Title IV of ERISA and that is not a multiemployer plan within the meaning of Section 3(37) of ERISA,

the present value (as defined under Section 3(27) of ERISA) of accumulated benefit obligations under such United Benefit Plan,

based upon the actuarial assumptions used for funding purposes in the most recent actuarial report prepared by such United Benefit Plan’s actuary with respect to such United Benefit Plan,

did not, as of such valuation date, exceed the then current value (as defined under Section 3(26) of ERISA) of the assets of such United Benefit Plan allocable to such accrued benefits,

no liability to the Pension Benefit Guaranty Corporation (“PBGC”) has been incurred (other than with respect to required premium payments),

no notice of intent to terminate has been given under Section 4041 of ERISA, no termination proceeding has been instituted by the PBGC under Section 4042 of ERISA,

there has been no event or condition that presents a significant risk of termination,

funding requirements under Section 302 of ERISA have been met and,

within the six-year period preceding the date of this Agreement, no reportable event, within the meaning of Section 4043 of ERISA (for which notice or disclosure requirements have not been waived), has been incurred,

(iv) no United Benefit Plan that is an employee welfare benefit plan (including any plan described in Section 3(1) of ERISA, a “Welfare Plan”) provides benefits coverage, including death or medical benefits coverage (whether or not insured), with respect to current or former employees or directors of United or the United Subsidiaries beyond their retirement or other termination of service, other than

(A) coverage mandated by applicable Law,

(B) benefits the full cost of which is borne by such current or former employee or director (or his or her beneficiary),

(C) coverage through the last day of the calendar month in which retirement or other termination of service occurs,

(D) medical expense reimbursement accounts,

(E) death benefit or retirement benefits under any “employee pension benefit plan,” as that term is defined in Section 3(2) of ERISA, or

(F) deferred compensation benefits accrued as liabilities on the books of United,

(v) no liability under Title IV of ERISA has been incurred by United, the United Subsidiaries or any trade or business, whether or not incorporated, all of which together with United would be deemed a “single employer” within the meaning of Section 414(b), 414(c), 414(m) or 414 (o) of the Code or Section 4001(b) of ERISA (a “United ERISA Affiliate”), that has not been satisfied in full, and no condition exists that presents a material risk to United, the United Subsidiaries or any United ERISA Affiliate of incurring a liability thereunder,

(vi) no United Benefit Plan is a “multiemployer plan” (as such term is defined in Section 3(37) of ERISA),

(vii) none of United or any of the United Subsidiaries nor, to United’s knowledge, any other Person, including any fiduciary, has engaged in a transaction in connection with which United, the United Subsidiaries or any United Benefit Plan would reasonably be expected to be subject to either a civil penalty assessed pursuant to Section 409 or 502(i) of ERISA or a Tax imposed pursuant to Section 4975 or 4976 of the Code,

(viii) to United’s knowledge, there are no pending, threatened or anticipated claims (other than routine claims for benefits) by, on behalf of or against any of the United Benefit Plans or any trusts, insurance contracts, escrow accounts or similar funding arrangements related thereto,

(ix) all contributions or other amounts required to be paid by United or the United Subsidiaries as of the Effective Time with respect to each United Benefit Plan in respect of the current and previous five plan years have been paid in accordance with Section 412 or Section 430 of the Code, as applicable, and for the same period any material expense incurred with respect to a United Benefit Plan has been accrued in accordance with GAAP,

(x) since December 31, 2009, no United Benefit Plan has been amended or modified in any material respect or adopted or terminated,

(xi) there is no judgment, Injunction, rule or order of any Governmental Entity or arbitrator outstanding against or in favor of any United Benefit Plan or any fiduciary thereof (other than rules of general applicability),

(xii) there are no pending or, to United’s knowledge, threatened audits or investigations by any Governmental Entity or any other matter pending before any Governmental Entity (other than routine filings and ruling requests) involving any United Benefit Plan,

(xiii) no event has occurred, and to United’s knowledge, there exists no circumstances with respect to a United Benefit Plan that would reasonably be expected to subject United or any of the United Subsidiaries to liability under ERISA, the Code or other applicable Law,

(xiv) with respect to any United Benefit Plan or any multiemployer plan within the meaning of Section 3(37) of ERISA, maintained by or participated in by United or any of the United Subsidiaries within the six-year period preceding the date of this Agreement, no withdrawal liability, within the meaning of Section 4201 of ERISA, has been incurred, which liability has not been satisfied and

(xv) each United Benefit Plan that is an employee welfare benefit plan (including any such United Benefit Plan covering retirees or other former employees) may be amended or terminated without material liability to United and the United Subsidiaries on or at any time after the Effective Time.

(d) Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on United,

neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated by this Agreement will (either alone or in conjunction with any other event)

(i) result in any payment or benefit (including severance, retention, stay-put, change in control, unemployment compensation, “excess parachute payment” (within the meaning of Section 280G of the Code), tax gross-up, forgiveness of indebtedness or otherwise) becoming due to any director, officer or employee of, or any consultant to, United or any of the United Subsidiaries from United or any of the United Subsidiaries under any United Benefit Plan or otherwise,

(ii) increase any amounts or benefits otherwise payable or due to any such Person under any United Benefit Plan or otherwise, or

Commented [DCT29]: COMMENT: Tax consequences often dictate how an agreement is structured. Senior executive “influencers” are often keenly interested in their personal tax consequences.

Commented [DCT30]: QUESTION: Executive compensation agreements sometimes require the company to pay the executive additional cash to cover any federal income tax payment the executive will have to make.

(iii) result in any acceleration of the time of payment or vesting of, or any requirement to fund or secure, any such amounts or benefits (including any United Stock Option or United Stock-Based Award) or result in any breach of or default under any United Benefit Plan.

Commented [DCT31]: Some stock-option agreements — especially for senior executives — include accelerated vesting upon a change of control.

(e) Neither United nor any United Subsidiary has liability or obligations, including under or on account of a United Benefit Plan, arising out of United’s or one of the United Subsidiaries’ hiring of persons to provide services to United or one of the United Subsidiaries and treating such persons as consultants or independent contractors and not as employees,

Commented [DCT32]: This is the “Microsoft problem.”

except where such liability or obligation would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on United.

(f) Neither United nor any of the United Subsidiaries has unfunded liabilities with respect to any United Benefit Plan that is a “pension plan” (within the meaning of Section 3(2) of ERISA)

that covers current or former non-U.S. employees of United or any of the United Subsidiaries

that, if required to be immediately funded, would, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on United.

(g) Neither United, nor any of the United Subsidiaries, nor any United ERISA Affiliate, nor any of the United Benefit Plans, nor any trust created thereunder, nor, to United’s knowledge, any trustee or administrator thereof, has engaged in a prohibited transaction (within the meaning of Section 406 of ERISA and Section 4975 of the Code) in connection with which United, any of the United Subsidiaries or any of the United Benefit Plans that would, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on United.

Commented [DCT33]: ERISA can be complicated.

(h) With respect to any employee pension benefit plan, within the meaning of Section 3(2) of ERISA, that is not a United Benefit Plan, but that is sponsored, maintained or contributed to, or has been sponsored, maintained or contributed to within the six-year period preceding the Effective Time by any United ERISA Affiliate, except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on United, (i) no withdrawal liability, within the meaning of Section 4201 of ERISA, has been incurred, which withdrawal liability has not been satisfied, (ii) no liability to the PBGC has been incurred by a United ERISA Affiliate, which liability has not been satisfied, (iii) no violation of funding requirements under Section 302 of ERISA has been incurred, and (iv) all contributions (including installments) required by Section 302 of ERISA have been timely made.

Commented [DCT34]: PBGC = Pension Benefit Guaranty Corporation.

(i) None of United, any of the United Subsidiaries or any United ERISA Affiliate is a party to any agreement with the PBGC respecting any United Benefit Plan or respecting any employee pension benefit plan, within the meaning of Section 3(2) of ERISA, that is not a United Benefit Plan, which agreement contains obligations or covenants respecting United, any of the United Subsidiaries or any United ERISA Affiliate that continue beyond the date of this Agreement.

(j) As of the date of this Agreement, none of United, any of the United Subsidiaries or any United ERISA Affiliate has received a notice from the PBGC that United is in material breach of its obligations to the PBGC pursuant to the Global Settlement Agreement.

3.12 Labor and Employment Matters. As of the date of this Agreement, Section 3.12 of the United Disclosure Schedule sets forth a true and complete list of collective bargaining or other labor union contracts applicable to any domestic employees of United or any of the United Subsidiaries. As of the date hereof, there is no strike, work stoppage or lockout by or with respect to any employee of United, except where such strike, work stoppage or lockout, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect on United. As of the date hereof, (i) neither United nor any of the United Subsidiaries has breached or otherwise failed to comply with any provision of any collective bargaining or other labor union contract applica-

ble to any employees of United or any of the United Subsidiaries and (ii) there are no written grievances or written complaints outstanding or, to United's knowledge, threatened against United or any of the United Subsidiaries under any such contract except for any breaches, failures to comply, grievances or complaints that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on United. United has made available to Continental and its representatives true and complete copies of all contracts set forth in Section 3.12 of the United Disclosure Schedule, including all amendments applicable to such contracts.

3.13 Internal Control. United and the United Subsidiaries have designed and maintain a system of internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) of the Exchange Act) sufficient to provide reasonable assurances regarding the reliability of financial reporting. United (i) has designed and maintains disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) of the Exchange Act) to ensure that all information required to be disclosed by United in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms and is accumulated and communicated to United's management as appropriate to allow timely decisions regarding required disclosure and (ii) has disclosed, based on its most recent evaluation of its disclosure controls and procedures and internal control over financial reporting prior to the date of this Agreement, to United's auditors and the audit committee of the United Board (A) any significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting that are reasonably likely to adversely affect in any material respect United's ability to record, process, summarize and report financial information and (B) any fraud, whether or not material, that involves management or other employees who have a significant role in United's internal control over financial reporting. Since December 31, 2009, none of United, United's independent accountants, the United Board or the audit committee of the United Board has received any oral or written notification of any matter set forth in the preceding clause (A) or (B).

Commented [DCT35]: Internal controls requirements come from the Sarbanes-Oxley Act and its implementing regulations.

3.14 Compliance with Laws; Licenses. (a) The businesses of each of United and the United Subsidiaries have been conducted in compliance with all federal, state, local or foreign laws, statutes, ordinances, rules, regula-

tions, judgments, orders, Injunctions, arbitration awards, agency requirements, licenses and permits of all Governmental Entities (each, a “Law” and collectively, “Laws”), all applicable operating certificates, air carrier obligations, airworthiness directives (“ADs”), Federal Aviation Regulations (“FARs”) and any other rules, regulations, directives, orders and policies of the FAA, DOT, DHS, FCC, TSA and any other Governmental Entity, except where the failure to so comply would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on United. No investigation or review by any Governmental Entity with respect to United or any of the United Subsidiaries is pending or, to United’s knowledge, threatened, nor has any Governmental Entity indicated an intention to conduct the same, except for any such investigations or reviews that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on United. Each of United and the United Subsidiaries has all governmental permits, authorizations, waivers, licenses, franchises, variances, exemptions, orders, operating certificates, Slots and air service designations issued or granted by a Governmental Entity and all other authorizations, consents, certificates of public convenience and/or necessity and approvals issued or granted by a Governmental Entity (collectively, “Licenses” and the terms “United Licenses” and “Continental Licenses” will mean Licenses of United or any of the United Subsidiaries or Continental or any of the Continental Subsidiaries, respectively) necessary to conduct its business as presently conducted, except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on United.

Commented [DCT36]: “The feds” aren’t knocking at the door
....

(b) United and each of the United Subsidiaries are in compliance with (i) their respective obligations under each of the United Licenses and (ii) the rules and regulations of the Governmental Entity issuing such United Licenses, except, in either case, for such failures to be in compliance as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on United. There is not pending or, to United’s knowledge, threatened by or before the FAA, DOT or any other Governmental Entity any material proceeding, notice of violation, order of forfeiture or complaint or investigation against United or any of the United Subsidiaries relating to any of the United Licenses, except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on United. The actions of the applica-

ble Governmental Entities granting all United Licenses have not been reversed, stayed, enjoined, annulled or suspended, and there is not pending or, to United's knowledge, threatened, any material application, petition, objection or other pleading with the FAA, DOT or any other Governmental Entity that challenges or questions the validity of or any rights of the holder under any United License, in each case, except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on United.

3.15 Certain Contracts. (a) As of the date of this Agreement, neither United nor any of the United Subsidiaries is a party to or bound by any contract, arrangement, commitment or understanding (whether written or oral) (i) that is a "material contract" (as such term is defined in Item 601(b)(10) of SEC Regulation S-K) to be performed after the date of this Agreement that has not been filed or incorporated by reference in the United SEC Reports filed prior to the date of this Agreement,

(ii) other than the collective bargaining agreements and other contracts set forth in Section 3.12 of the United Disclosure Schedule, that materially restricts the conduct of any material line of business by United or upon consummation of the Merger will materially restrict the ability of United and any of the United Subsidiaries to engage in any line of business material to United, or to United's knowledge, Continental,

(iii) that is a joint venture, partnership, business alliance (excluding information technology contracts), code sharing, capacity purchase, pro-rate or frequent flyer agreement (including all material amendments to each of the foregoing agreements) the termination, cancellation or breach of which would reasonably be expected to have a Material Adverse Effect on United or a Material Adverse Effect on Continental or

(iv) pursuant to which any Indebtedness of United or any of the United Subsidiaries is outstanding or may be incurred (except for such Indebtedness the aggregate principal amount of which does not exceed \$25 million) that has not been filed or incorporated by reference in the United SEC Reports filed prior to the date of this Agreement.

Commented [DCT37]: [Material contracts definition](#)

(b) Each contract, arrangement, commitment or understanding (i) of the type described in clauses (i) - (iii) of Section 3.15(a), whether or not set forth in the United Disclosure Schedule, or (ii) filed as an exhibit to the United SEC Reports, is referred to as a “United Contract,” and neither United nor any of the United Subsidiaries knows of, or has received notice of, any violation of any United Contract by any of the other parties thereto that would, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on United.

(c) With such exceptions that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on United,

(i) each United Contract is valid and binding on United or the applicable United Subsidiary, as applicable, and is in full force and effect, except to the extent it has previously expired in accordance with its terms,

(ii) United and each of the United Subsidiaries have performed all obligations required to be performed by it to date under each United Contract, and

(iii) no event or condition exists that constitutes or, after notice or lapse of time or both, will constitute, a default on the part of United or any of the United Subsidiaries under any such United Contract or give any other party to any United Contract the right to terminate or cancel such contract.

(d) Neither United nor any of the United Subsidiaries is party to, or otherwise bound by, any agreement with the PBGC the terms or conditions of which would prohibit or prevent the Continental Benefit Plans from being maintained after the Effective Time in the manner contemplated in Section 6.12 of this Agreement.

3.16 Environmental Liability

(a) Permits and Authorizations. Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on

Commented [DCT38]: COMMENT: The cost of cleaning up environmental problems that were created decades before can sometimes be imposed on the current owners.

United, each of United and the United Subsidiaries possesses all material Environmental Permits necessary to conduct its businesses and operations as currently conducted.

(b) Compliance. Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on United, each of United and the United Subsidiaries is in compliance with all applicable Environmental Laws and all Environmental Permits, and neither United nor any United Subsidiary has received any

(A) communication from any Governmental Entity or other person that alleges that United or any United Subsidiary has violated or is liable under any Environmental Law or

(B) written request for material information pursuant to Section 104(e) of the U.S. Comprehensive Environmental Response, Compensation and Liability Act or similar state statute concerning the disposal of Hazardous Materials.

(c) Environmental Claims. There are no Environmental Claims

A) pending or, to United's knowledge, threatened against United or any of the United Subsidiaries or

(B) to United's knowledge, pending or threatened against any person whose liability for any Environmental Claim United or any of the United Subsidiaries has retained or assumed, either contractually or by operation of law,

in each case other than Environmental Claims that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on United.

Neither United nor any of the United Subsidiaries has contractually retained or assumed any liabilities or obligations that would reasonably be expected to provide the basis for any Environmental Claim that would, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on United.

(d) Releases. To United's knowledge, there have been no Releases of any Hazardous Materials that would reasonably be expected to form the basis of any Environmental Claim that would, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on United.

(e) Definitions.

(A) "Environmental Claims" means any and all administrative, regulatory or judicial actions, orders, decrees, suits, demands, demand letters, directives, claims, Liens, investigations, proceedings or notices of noncompliance or violation by any Governmental Entity or other person alleging potential responsibility or liability (including potential responsibility or liability for costs of enforcement, investigation, cleanup, governmental response, removal or remediation, for natural resources damages, property damage, personal injuries or penalties or for contribution, indemnification, cost recovery, compensation or injunctive relief) arising out of, based on or related to (x) the presence, Release or threatened Release of, or exposure to, any Hazardous Materials at any location, whether or not owned, operated, leased or managed by United and the United Subsidiaries or by Continental and the Continental Subsidiaries, as applicable, or (y) circumstances forming the basis of any violation or alleged violation of any Environmental Law or Environmental Permit.

(B) "Environmental Laws" means all domestic or foreign (whether national, federal, state, provincial or otherwise) laws, rules, regulations, orders, decrees, common law, judgments or binding agreements issued, promulgated or entered into by or with any Governmental Entity relating to pollution or protection of the environment (including ambient air, surface water, groundwater, soils or subsurface strata) or protection of human health as it relates to the environment, including laws and regulations relating to Releases or threatened Releases of Hazardous Materials or otherwise relating to the generation, manufacture, processing, distribution, use, treatment, storage, transport, handling of or exposure to Hazardous Materials.

(C) “ Environmental Permits ” means all permits, licenses, registrations and other authorizations required under applicable Environmental Laws.

(D) “ Hazardous Materials ” means all hazardous, toxic, explosive or radioactive substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos-containing material, polychlorinated biphenyls (“ PCBs ”) or PCB-containing materials or equipment, radon gas, infectious or medical wastes and all other substances or wastes of any nature regulated pursuant to any Environmental Law.

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(E) “ Release ” means any release, spill, emission, leaking, dumping, injection, pouring, deposit, disposal, discharge, dispersal, leaching or migration into the environment (including ambient air, surface water, groundwater, land surface or subsurface strata) or within any building, structure, facility or fixture.

3.17 State Takeover Laws. The United Board has approved this Agreement and the transactions contemplated hereby and has adopted all other such resolutions, in each case as required to render inapplicable to such agreements and transactions Delaware Law Section 203, and,

to United’s knowledge, there are no other similar “takeover” or “interested stockholder” Laws applicable to the transactions contemplated by this Agreement (any such Laws, “ Takeover Statutes ”).

3.18 United Information. The information relating to United and the United Subsidiaries that is provided by United or its representatives for inclusion in the Joint Proxy Statement and the Form S-4, or in any other document filed with any other Regulatory Agency in connection with the transactions contemplated by this Agreement, will not

(i) in the case of the Form S-4, at the time the Form S-4 is filed with the SEC, at any time it is amended or supplemented or at the time it is declared effective under the Securities Act, and

(ii) in the case of the Joint Proxy Statement, at the date it is first mailed to each of United's and Continental's stockholders or at the time of each of the United Stockholders Meeting and the Continental Stockholders Meeting,

contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances in which they are made, not misleading.

The Form S-4 and the Joint Proxy Statement (except for such portions thereof that relate only to Continental or any of the Continental Subsidiaries) will comply in all material respects with the provisions of the Securities Act, the Exchange Act and the rules and regulations thereunder.

3.19 Affiliate Transactions. As of the date of this Agreement, there are no transactions, contracts, arrangements, commitments or understandings between United or any of the United Subsidiaries, on the one hand, and any of United's affiliates (other than wholly-owned United Subsidiaries), on the other hand, that would be required to be disclosed by United under Item 404 of Regulation S-K under the Securities Act (the "United S-K 404 Arrangements").

Commented [DCT39]: See [Item 404 of Regulation S-K](#)

3.20 Aircraft. (a) Section 3.20(a)(i) of the United Disclosure Schedule sets forth a true and complete list of (i) all aircraft operated under the operating certificate of United or any of the United Subsidiaries and (ii) all aircraft owned or leased by United or any of the United Subsidiaries, in each case as of March 31, 2010 (collectively, the "United Aircraft"), including a description of the type and manufacturer serial number of each such aircraft. Section 3.20(a)(ii) of the United Disclosure Schedule sets forth a true and complete list, as of the date of this Agreement, containing all United Contracts (other than (x) existing aircraft leases or (y) contracts that may be terminated or canceled by United or any of the United Subsidiaries without incurring any penalty or other material liability except for the forfeiture of any previously made prepayment or deposit) pursuant to which United or any of the United Subsidiaries has a binding obligation to purchase or lease aircraft, including the manufacturer and model of all aircraft subject to such United Contract, the nature of the purchase or lease obligation (*i.e.*, firm commitment, subject to reconfirmation or otherwise)

and the anticipated year of delivery of each aircraft of such United Contract. Except as identified in writing by United to Continental prior to the date of this Agreement, United has delivered or made available to Continental redacted (as to pricing and other commercially sensitive terms) copies of all United Contracts listed on Section 3.20(a)(ii) of the United Disclosure Schedule, including all amendments, modifications and supplements thereto.

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(b) Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on United:

(i) each United Aircraft has a validly issued, current individual aircraft FAA Certificate of Airworthiness with respect to such United Aircraft and all requirements for the effectiveness of such FAA Certificate of Airworthiness have been satisfied;

(ii) other than any grounded United Aircraft, each United Aircraft's structure, systems and components are functioning in accordance with their respective intended uses as set forth in any applicable FAA-approved maintenance program (or are in the process of repair or maintenance), including any applicable manuals, technical standard orders or parts manufacturing approval certificates, and all grounded United Aircraft are being stored in accordance with any applicable FAA-approved maintenance program;

(iii) all deferred maintenance items and temporary repairs with respect to each such United Aircraft have been or will be made materially in accordance with any applicable FAA-approved maintenance programs;

(iv) each United Aircraft is properly registered on the FAA aircraft registry;

(v) neither United nor any of the United Subsidiaries is a party to any interchange or pooling agreements with respect to its United Aircraft, other than parts pooling agreements in the ordinary course of business; and

(vi) neither United nor any of the United Subsidiaries has retained any maintenance obligations with respect to any United Aircraft that has been leased by United or any United Subsidiary to a third party lessee.

(c) Section 3.20(c)(i) of the United Disclosure Schedule sets forth a true and complete list, as of March 31, 2010, of all aircraft operated on behalf of United pursuant to a capacity purchase or pro-rate agreement (a “United Contract Flight Agreement”), including a description of the operator, type and number of each such aircraft and any minimum utilization requirements applicable to such aircraft. Section 3.20(c)(ii) of the United Disclosure Schedule sets forth a true and complete list, as of the date of this Agreement, containing all United Contract Flight Agreements. Except as identified in writing by United to Continental prior to the date of this Agreement, United has delivered or made available to Continental redacted (as to pricing and other commercially sensitive terms) copies of all United Contract Flight Agreements listed on Section 3.20(c)(ii) of the United Disclosure Schedule, including all amendments thereto.

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(d) Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on United, to United’s knowledge, as of the date of this Agreement, there is no ongoing strike, work stoppage or lockout by or with respect to any employee of any counterparty to a United Contract Flight Agreement.

3.21 United Slots and Operating Rights. Section 3.21 of the United Disclosure Schedule sets forth a true, correct and complete list of all takeoff and landing slots, operating authorizations from the FAA or any other Governmental Entity and other similar designated takeoff and landing rights used or held by United and the United Subsidiaries (the “United Slots”) on the date of this Agreement at any domestic or international airport and such list shall indicate any United Slots that have been permanently allocated to another air carrier and in which United and the United Subsidiaries hold only temporary use rights. Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on United, (i) United and the United Subsidiaries have complied in all material respects with the requirements of the

regulations issued under the FAA and any other Laws with respect to the United Slots, (ii) neither United nor any of the United Subsidiaries has received any notice of any proposed withdrawal of the United Slots by the FAA or any other Governmental Entity, (iii)(A) the United Slots have not been designated for the provision of essential air service under the regulations of the FAA, were not acquired pursuant to 14 C.F.R. Section 93.219 and have not been designated for international operations, as more fully detailed in 14 C.F.R. Section 93.217 and (B) to the extent covered by 14 C.F.R. Section 93.227 or any order, notice or requirement of the FAA or any other Governmental Entity, United and the United Subsidiaries have used the United Slots (or the United Slots have been used by other operators) either at least 80% of the maximum amount that each United Slot could have been used during each full reporting period (as described in 14 C.F.R. Section 93.227(i) or any such order, notice or requirement) or such greater or lesser amount of minimum usage as may have been required to protect such United Slot's authorization from termination or withdrawal under regulations or waivers established by any Governmental Entity or airport authority, (iv) all reports required by the FAA or any other Governmental Entity relating to the United Slots have been filed in a timely manner and (v) neither United nor any of the United Subsidiaries has agreed to any future United Slot slide, United Slot trade (except for seasonal swaps), United Slot purchase, United Slot sale, United Slot exchange, United Slot lease or United Slot transfer of any of the United Slots that has not been consummated or otherwise reflected on Section 3.21 of the United Disclosure Schedule.

3.22 Intellectual Property.

(a) To United's knowledge, the conduct of the business as currently conducted by United and the United Subsidiaries does not infringe, misappropriate or otherwise violate the Intellectual Property Rights of any third Person, and

in the three-year period immediately preceding the date of this Agreement there has been no such claim, action or proceeding asserted or, to United's knowledge, threatened against United or any of the United Subsidiaries or any indemnitee thereof, except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on United.

Commented [DCT40]: Note the knowledge qualifier for this rep.

There is no claim, action or proceeding asserted or, to United's knowledge, threatened against United or any of the United Subsidiaries or any indemnitee thereof concerning the ownership, validity, registerability, enforceability, infringement, use or licensed right to use any Intellectual Property Rights claimed to be owned or held by United or any of the United Subsidiaries or used or alleged to be used in the business of United or any of the United Subsidiaries, except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on United.

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(b) The computer software and databases (including source code, object code and all related documentation) (the "Computer Software"), computers, firmware, middleware, servers, workstations, routers, hubs, switches, data communications lines and all other information technology equipment and elements and all associated documentation (collectively, with Computer Software, the "IT Assets") of United and the United Subsidiaries

(i) operate and perform in accordance with their documentation and functional specifications and otherwise as required by United and the United Subsidiaries for the operation of their respective businesses and

(ii) have not malfunctioned or failed within the three-year period immediately preceding the date of this Agreement,

except, in the case of clauses (i) and (ii), as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on United.

United and the United Subsidiaries have implemented and maintained for the three-year period immediately preceding the date of this Agreement reasonable and sufficient backup and disaster recovery technology consistent with industry practices,

except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on United.

Commented [DCT41]: Business continuity planning can be crucial.

3.23 Major United Airports. As of the date of this Agreement, no airport authority at Chicago O’Hare International Airport, Denver International Airport, Los Angeles International Airport, San Francisco International Airport or Washington Dulles International Airport (each such airport, a “Major United Airport”) has taken or, to United’s knowledge, threatened to take any action that would reasonably be expected to materially interfere with the ability of United and the United Subsidiaries to conduct their respective operations at any Major United Airport in the same manner as currently conducted in all material respects.

3.24 Foreign Corrupt Practices Act. Except for such matters as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on United, as of the date of this Agreement:

(a) United and the United Subsidiaries have developed and implemented a compliance program that includes corporate policies and procedures designed to ensure compliance with the Foreign Corrupt Practices Act, as amended (the “Foreign Corrupt Practices Act”).

(b) In connection with United’s and the United Subsidiaries’ compliance with the Foreign Corrupt Practices Act, there have been no voluntary disclosures under the Foreign Corrupt Practices Act.

(c) No Governmental Entity has notified United or any of the United Subsidiaries in writing of any actual or alleged violation or breach of the Foreign Corrupt Practices Act.

(d) Neither United nor any of the United Subsidiaries has undergone or is undergoing any audit, review, inspection, investigation, survey or examination of records, in each case conducted by a Governmental Entity and relating to United’s or the United Subsidiaries’ compliance with the Foreign Corrupt Practices Act,

Commented [DCT42]: FCPA violations can be disruptive (and can lead to jail time).

and to United's knowledge, there is no basis for any such audit, review, inspection, investigation, survey or examination of records by a Governmental Entity.

(e) Neither United nor any of the United Subsidiaries has been or is now under any administrative, civil or criminal charge or indictment or, to United's knowledge, investigation, alleging noncompliance with the Foreign Corrupt Practices Act, nor, to United's knowledge, is there any basis for any such charge, indictment or investigation.

(f) Neither United nor any of the United Subsidiaries has been or is now a party to any administrative or civil litigation alleging noncompliance with the Foreign Corrupt Practices Act, nor, to United's knowledge, is there any basis for any such proceeding.

3.25 U.S. Citizen; Air Carrier. United's primary Subsidiary, United Air Lines, Inc., is a "citizen of the United States" as defined in the Federal Aviation Act and is an "air carrier" within the meaning of such Act operating under certificates issued pursuant to such Act (49 U.S.C. Sections 41101-41112).

3.26 Fairness Opinions. Prior to the execution of this Agreement, United has received the oral opinion (to be confirmed in writing) of each of Goldman, Sachs & Co. and J.P. Morgan Securities Inc. to the effect that, as of the date thereof and based upon and subject to the matters and limitations set forth in such written opinions, the Exchange Ratio is fair from a financial point of view to United.

Such opinions have not been amended or rescinded as of the date of this Agreement.

Copies of the written opinions of each of Goldman, Sachs & Co. and J.P. Morgan Securities Inc. will be delivered to Continental for informational purposes only promptly following receipt thereof by United.

Commented [DCT43]: Big M&A deals almost always entail getting – and paying dearly for – fairness opinions from investment banks.

ARTICLE IV
REPRESENTATIONS AND WARRANTIES OF CONTINENTAL

Except as disclosed in the disclosure letter (the “Continental Disclosure Schedule”) delivered by Continental to United prior to the execution of this Agreement (which letter sets forth items of disclosure with specific reference to the particular Section or subsection of this Agreement to which the information in the Continental Disclosure Schedule relates) or in the Continental SEC Reports filed and publicly available prior to the date of this Agreement, Continental hereby represents and warrants to United and Merger Sub as follows:

4.1 Corporate Organization. (a) Continental is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware. Continental has the corporate power and authority to own or lease all of its properties and assets and to carry on its business as it is now being conducted, and is duly licensed or qualified to do business in each jurisdiction in which the nature of the business conducted by it or the character or location of the properties and assets owned or leased by it makes such licensing or qualification necessary, except where the failure to be so licensed or qualified would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Continental.

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(b) True and complete copies of the Amended and Restated Certificate of Incorporation of Continental, as amended through, and as in effect as of, the date of this Agreement (the “Continental Charter”), and the Amended and Restated Bylaws of Continental, as amended through, and as in effect as of, the date of this Agreement (the “Continental Bylaws”), have previously been made available to United.

(c) Each Continental Subsidiary (i) is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization, (ii) is duly licensed or qualified to do business in each jurisdiction in which the nature of the business conducted by it or the character or location of the properties and assets owned or leased by it makes such licensing or qualification necessary and (iii)

has all requisite corporate power and authority to own or lease its properties and assets and to carry on its business as now conducted, except for such variances from the matters set forth in any of clauses (i), (ii) or (iii) as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Continental.

4.2 Capitalization.

(a) Authorized and Issued Shares.

(i) As of the date of this Agreement, the authorized Continental capital stock consists of (A) 400,000,000 shares of Continental Common Stock, of which, as of the Measurement Date, 139,707,205 shares were issued and outstanding, none of which were Continental Restricted Shares, and (B) 10,000,000 shares of Continental preferred stock, of which, as of the Measurement Date, zero shares of Continental Series A Junior Participating Preferred Stock (the “Continental Preferred Stock,” and together with the Continental Common Stock, “Continental Capital Stock”) were issued and outstanding. As of the Measurement Date, no shares of Continental Capital Stock were held in Continental’s treasury. As of the Measurement Date, no shares of Continental’s capital stock or other voting securities of or equity interests in Continental were issued, reserved for issuance or outstanding except as set forth in this Section 4.2(a)(i). All of the issued and outstanding shares of Continental Capital Stock are and, at the time of issuance, all such shares that may be issued upon the exercise or vesting of, or pursuant to, Continental Stock Options or Continental Stock-Based Awards or upon the conversion of the Continental Convertible Notes, Continental Convertible Debentures, Continental 2015 Convertible Notes, TIDES or Continental Convertible Common Securities will be, duly authorized and validly issued and fully paid, nonassessable and not subject to or issued in violation of any purchase option, call option, right of first refusal, preemptive right, subscription right or any similar right under any provision of the Delaware Law, the Continental Charter, the Continental Bylaws or any contract to which Continental is a party or by which it is otherwise bound. From and after the Measurement Date through the date of this Agreement, Continental has not issued any capital stock or voting securities or other equity interests other than the issuance of Continental Capital Stock upon the exercise or vesting

of, or pursuant to, Continental Stock Options and Continental Stock-Based Awards outstanding as of the Measurement Date and in accordance with their respective terms in effect at such time or upon the conversion of the Continental Convertible Notes, Continental Convertible Debentures, Continental 2015 Convertible Notes, Continental's 6% Convertible Preferred Securities Term Income Deferrable Equity Securities (the "TIDES") issued pursuant to the Amended and Restated Declaration of Trust dated as of November 10, 2000 of Continental Airlines Finance Trust II, as amended to the date of this Agreement (the "Continental TIDES Declaration of Trust") or the 6% Convertible Common Securities of Continental Airlines Finance Trust II, issued pursuant to the Continental TIDES Declaration of Trust (the "Continental Convertible Common Securities"), in each case outstanding as of the Measurement Date and in accordance with their terms in effect at such time.

(ii) As of the date of this Agreement, except for Continental Stock Options, rights under the Continental Stock-Based Awards, the Continental Convertible Notes, the Continental Convertible Notes Indenture, the Continental 2015 Convertible Notes, the Continental 2015 Convertible Notes Indenture, the TIDES, the Continental Convertible Common Securities, the Continental TIDES Declaration of Trust, the Continental Convertible Debentures, the Continental Convertible Debentures Indenture and this Agreement, there are not issued, reserved for issuance or outstanding, and there are not any outstanding obligations of Continental or any Continental Subsidiary to issue, deliver or sell, or cause to be issued, delivered or sold, any Equity Equivalents of Continental or any Continental Subsidiary. Except for Forfeitures and Cashless Settlements in connection with the Continental Stock-Based Awards, the Continental Stock Options and rights under the Continental SPP, there are not any outstanding obligations of Continental or any of the Continental Subsidiaries to directly or indirectly redeem, repurchase or otherwise acquire any shares of capital stock or voting securities of, other equity interests in or Equity Equivalents of Continental or any Continental Subsidiary. Neither Continental nor any of the Continental Subsidiaries is party to any voting agreement with respect to the voting of any capital stock or voting securities of, or other equity interests in, Continental. Continental has delivered or made available to United true and complete copies of (A) the Continental Convertible Notes Indenture, (B) the Continental

2015 Convertible Notes Indenture, (C) the Continental TIDES Declaration of Trust and (D) the Continental Convertible Debentures Indenture.

(b) As of the date of this Agreement, no bonds, debentures, notes or other indebtedness of Continental having the right to vote on any matters on which stockholders may vote (“Continental Voting Debt”) are issued or outstanding.

(c) All of the issued and outstanding shares of capital stock or other equity ownership interests of each “significant subsidiary” (as such term is defined under Regulation S-X of the SEC) of Continental are owned by Continental, directly or indirectly, free and clear of any Liens and free of any restriction on the right to vote, sell or otherwise dispose of such capital stock or other equity ownership interest (other than restrictions under applicable securities Laws), and all of such shares or equity ownership interests are duly authorized and validly issued and are fully paid, nonassessable and free of preemptive rights. Except for the capital stock or other equity ownership interests of the Continental Subsidiaries, as of the date of this Agreement, Continental does not beneficially own directly or indirectly any capital stock, membership interest, partnership interest, joint venture interest or other equity interest in any Person that constitutes a Substantial Investment.

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4.3 Authority; No Violation.

(a) Continental has full corporate power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby and to perform its obligations hereunder. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly approved by the Board of Directors of Continental (the “Continental Board”). The Continental Board has determined that this Agreement and the transactions contemplated hereby are in the best interests of Continental and its stockholders, has approved and declared advisable this Agreement and recommended that its stockholders vote in favor of the adoption of this Agreement and has directed that this Agreement be submitted to Continental’s stockholders for adoption at a duly held meeting of such stockholders for such

purpose (the “Continental Stockholders Meeting”). Except, solely in the case of the Merger, for the adoption of this Agreement by the affirmative vote of the holders of a majority of the outstanding shares of Continental Common Stock at the Continental Stockholders Meeting (the “Continental Stockholder Approval”), no other corporate proceedings on the part of Continental or any other vote by the holders of any class or series of Continental Capital Stock are necessary to approve or adopt this Agreement or to consummate the transactions contemplated hereby (except for the filing of the appropriate merger documents as required by the Delaware Law). This Agreement has been duly and validly executed and delivered by Continental and (assuming due authorization, execution and delivery by the other parties hereto) constitutes the valid and binding obligation of Continental, enforceable against Continental in accordance with its terms (except as may be limited by bankruptcy, insolvency, moratorium, reorganization or similar Laws affecting the rights of creditors generally and the availability of equitable remedies).

(b) Neither the execution and delivery of this Agreement by Continental nor the consummation by Continental of the transactions contemplated hereby, nor compliance by Continental with any of the terms or provisions of this Agreement, will (i) assuming (solely in the case of the Merger) that the Continental Stockholder Approval is obtained, violate any provision of the Continental Charter or the Continental Bylaws or (ii) assuming that the consents, approvals and filings referred to in Section 4.4 are duly obtained and/or made, (A) violate any Injunction or, assuming (solely in the case of the Merger) that the Continental Stockholder Approval is obtained, any statute, code, ordinance, rule, regulation, judgment, order, writ or decree applicable to Continental, any of the Continental Subsidiaries or any of their respective properties or assets or (B) violate, conflict with, result in a breach of any provision of or the loss of any benefit under, constitute a default (or an event which, with notice or lapse of time, or both, would constitute a default) under, result in the termination of or a right of termination or cancelation under, accelerate the performance required by, or result in the creation of any Lien upon any of the respective properties or assets of Continental or any of the Continental Subsidiaries under, any of the terms, conditions or provisions of any note, bond, mortgage, indenture, deed of trust, Continental License, license, lease, agreement or other instrument or obligation to which Continental or any of the Continental Subsidiaries is a party, or by which they or any of their respective properties or assets may be bound or af-

ected, except, in the case of clause (ii), for such violations, conflicts, breaches, defaults, terminations, rights of termination or cancelation, accelerations or Liens that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Continental. Without limiting the generality of the foregoing, as of the date of this Agreement, Continental is not a party to, or subject to, any standstill agreement or similar agreement that restricts any Person from engaging in negotiations or discussions with Continental or from acquiring, or making any tender offer or exchange offer for, any equity securities issued by Continental or any Continental Voting Debt.

4.4 Consents and Approvals. Except for (a) any application, filing or submission required to be made and any consent, approval, authorization or authority required to be made or obtained under Title 49 of the United States Code or under any regulation, rule, order, notice or policy of the FAA, the DOT, the FCC and the DHS, including the TSA, (b) the filing with the SEC of the Joint Proxy Statement and the Form S-4 in which the Joint Proxy Statement will be included as a prospectus, and declaration of effectiveness of the Form S-4, and the filing with the SEC of such reports under, and such other compliance with, the Exchange Act and the Securities Act and the rules and regulations thereunder, (c) the filing of the Merger Certificate with the Delaware Secretary of State pursuant to Delaware Law and with the relevant authorities in other jurisdictions in which Continental is qualified to do business, (d) any notices or filings under the HSR Act, or any notices, filings or approvals under any other applicable competition, merger control, antitrust or similar Law or regulation, (e) such filings and approvals as are required to be made or obtained under the securities or “Blue Sky” laws of various states in connection with the Share Issuance, (f) any consent, approval, order, authorization, authority, transfer, waiver, disclaimer, registration, declaration or filing required to be made or obtained from any other Governmental Entity that regulates any aspect of airline operations or business, including environmental (*e.g.* , noise, air emissions and water quality), aircraft, air traffic control and airport communications, agricultural, export/import, immigration and customs, (g) any filings required under the rules and regulations of the New York Stock Exchange (the “NYSE”), and (h) such other consents, approvals, orders, authorizations, registrations, declarations, transfers, waivers, disclaimers, and filings the failure of which to be obtained or

made would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Continental, no consents, approvals of, filings or registrations with, or orders, authorizations or authority of any Governmental Entity are necessary in connection with (i) the execution and delivery by Continental of this Agreement and (ii) the consummation of the Merger and the other transactions contemplated by this Agreement.

4.5 Reports. Continental and each of the Continental Subsidiaries have timely filed all submissions, reports, registrations, schedules, forms, statements and other documents, together with any amendments required to be made with respect thereto, that they were required to file since January 1, 2009 with the Regulatory Agencies, and have paid all fees and assessments due and payable in connection therewith, except in each case where the failure to file such report, registration, schedule, form, statement or other document, or to pay such fees and assessments, would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Continental. No publicly available final registration statement, prospectus, report, form, schedule or definitive proxy statement filed since January 1, 2009 by Continental with the SEC pursuant to the Securities Act or the Exchange Act (collectively, the “Continental SEC Reports”), as of the date of such Continental SEC Report, contained any untrue statement of a material fact or omitted to state any material fact required to be stated therein or necessary in order to make the statements made therein, in light of the circumstances in which they were made, not misleading, except that information as of a later date (but before the date of this Agreement) will be deemed to modify information as of an earlier date. Since January 1, 2009, as of their respective dates, all Continental SEC Reports complied in all material respects with the applicable requirements of the Securities Act, the Exchange Act, the Sarbanes-Oxley Act and the rules and regulations thereunder with respect thereto.

4.6 Financial Statements. (a) Continental has previously made available to United copies of (i) the consolidated balance sheet of Continental and the Continental Subsidiaries as of December 31, 2008 and 2009, and the related consolidated statements of operations, comprehensive income (loss), cash flows and stockholders' equity for each of the three years in the period ended December 31, 2009, as reported in Continental's Annual Report on Form 10-K

for the fiscal year ended December 31, 2009, including any amendments thereto filed with the SEC prior to the Measurement Date, filed with the SEC under the Exchange Act, accompanied by the audit report of Ernst & Young LLP, the independent registered public accounting firm with respect to Continental for such periods (such balance sheets and statements, the “Audited Continental Financial Statements”), and (ii) the unaudited consolidated balance sheet of Continental and the Continental Subsidiaries as of March 31, 2010 and the related consolidated statements of operations, and condensed cash flows for the three-month periods ended March 31, 2010 and 2009, as reported in Continental’s Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2010, including any amendments thereto filed with the SEC prior to the Measurement Date (such balance sheets and statements, the “Unaudited Continental Financial Statements” and, together with the Audited Continental Financial Statements, the “Continental Financial Statements”). The consolidated balance sheets of Continental (including the related notes, where applicable) included in the Continental Financial Statements fairly present in all material respects the consolidated financial position of Continental and the Continental Subsidiaries as of the dates thereof, and the other financial statements included in the Continental Financial Statements (including the related notes, where applicable) fairly present in all material respects the results of the consolidated operations and changes in stockholders’ equity and cash flows of Continental and the Continental Subsidiaries for the respective fiscal periods therein set forth, subject, in the case of the Unaudited Continental Financial Statements, to normal year-end audit adjustments that are immaterial in nature and in amounts consistent with past experience; each of such statements (including the related notes, where applicable) complies in all material respects with the published rules and regulations of the SEC with respect thereto; and each of the Continental Financial Statements (including the related notes, where applicable) has been prepared in all material respects in accordance with GAAP consistently applied during the periods involved, except, in each case, as indicated in such statements or in the notes thereto. To Continental’s knowledge, there is no applicable accounting rule, consensus or pronouncement that has been adopted by the SEC, the Financial Accounting Standards Board, the Emerging Issues Task Force or any similar body as of, but is not in effect as of, the date of this Agreement that, if implemented, would reasonably be expected to have a Material Adverse Effect on Continental (it being agreed that for purposes of this Section 4.6(a), effects resulting from or arising in connection with the matters set forth in clause (vi) of

the definition of the term “Material Adverse Effect” shall not be excluded in determining whether a Material Adverse Effect on Continental would reasonably be expected to occur).

(b) Except for those liabilities that are reflected or reserved against on the Continental Financial Statements, and for liabilities incurred in the ordinary course of business consistent with past practice since March 31, 2010, since such date, neither Continental nor any of the Continental Subsidiaries has incurred any liability of any nature whatsoever (whether absolute, accrued, contingent or otherwise and whether due or to become due and including any off-balance sheet loans, financings, indebtedness, make-whole or similar liabilities or obligations) that would, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Continental.

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4.7 Brokers’ Fees. None of Continental, any Continental Subsidiary or any of their respective officers or directors has employed any broker or finder or incurred any liability for any broker’s fees, commissions or finder’s fees in connection with the Merger or related transactions contemplated by this Agreement, other than Lazard Frères & Co. LLC and Morgan Stanley & Co. Incorporated, each of which firms Continental retained pursuant to an engagement letter. Continental has delivered to United true and complete copies of such engagement letters under which any fees or expenses are payable and all indemnification and other agreements related to the engagement of the Persons to whom such fees are payable.

4.8 Absence of Certain Changes or Events. (a) Since March 31, 2010, no event or events or development or developments have occurred that have had or would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on Continental.

(b) Except in connection with the execution and delivery of this Agreement and the transactions contemplated by this Agreement, from March 31, 2010 through the date of this Agreement, Continental and the Continental Sub-

sidiaries have carried on their respective businesses in all material respects in the ordinary course.

4.9 Legal Proceedings. (a) None of Continental or any of the Continental Subsidiaries is a party to any, and there are no pending or, to Continental's knowledge, threatened, legal, administrative, arbitral or other proceedings, claims, actions or governmental or regulatory investigations or reviews of any nature against Continental or any of the Continental Subsidiaries, except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Continental.

(b) There is no Injunction, judgment or regulatory restriction imposed upon Continental, any of the Continental Subsidiaries or the assets of Continental or any of the Continental Subsidiaries that would, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Continental.

4.10 Taxes and Tax Returns. (a) Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Continental: (i) Continental and the Continental Subsidiaries have timely filed, taking into account any extensions, all Tax Returns required to be filed by them (all such returns being accurate and complete) and have paid all Taxes required to be paid by them other than Taxes that are not yet due or that are being contested in good faith in appropriate proceedings; (ii) there are no Liens for Taxes on any assets of Continental or the Continental Subsidiaries; (iii) no deficiency for any Tax has been asserted or assessed by a Tax authority against Continental or any of the Continental Subsidiaries which deficiency has not been paid or is not being contested in good faith in appropriate proceedings; (iv) Continental and the Continental Subsidiaries have provided adequate reserves in their financial statements for any Taxes that have not been paid; and (v) neither Continental nor any of the Continental Subsidiaries is a party to or is bound by any Tax sharing, allocation or indemnification agreement or arrangement (other than such an agreement or arrangement exclusively between or among Continental and the Continental Subsidiaries).

(b) Within the past five years, neither Continental nor any of the Continental Subsidiaries has been a “distributing corporation” or a “controlled corporation” in a distribution intended to qualify for tax-free treatment under Section 355 of the Code.

(c) Continental is not aware of any fact or circumstance that would reasonably be expected to prevent the Merger from qualifying as a “reorganization” within the meaning of Section 368(a) of the Code.

(d) Neither Continental nor any of the Continental Subsidiaries has been a party to a transaction that, as of the date of this Agreement, constitutes a “listed transaction” for purposes of Section 6011 of the Code and applicable U.S. Treasury Regulations thereunder (or a similar provision of state law).

(e) No disallowance of a deduction under Section 162(m) or Section 280G of the Code, or imposition of an excise tax under Section 4999 of the Code, for any amount paid or payable by Continental or any of the Continental Subsidiaries as employee compensation, whether under any contract, plan, program or arrangement, understanding or otherwise, would, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Continental, either as a result of the Merger or otherwise.

(f) Section 4.10(f) of the Continental Disclosure Schedule sets forth (i) the amount on December 31, 2009 (and determined based on information available as of the date of this Agreement) of net operating losses, capital losses and alternative minimum tax credits and other credits of the consolidated group of which Continental is the common parent for Federal income Tax purposes, (ii) dates of expiration of such items and (iii) any limitations on such items. As of the date of this Agreement, neither Continental nor any Continental Subsidiary has undergone an ownership change (within the meaning of Section 382(g)(1) of the Code) since April 27, 1993.

4.11 Employee Benefit Plans. (a) As used herein, “Continental Benefit Plan” shall mean each material benefit or compensation plan, program, fund, contract, arrangement or agreement, including any material bonus, incentive, deferred compensation, vacation, stock purchase, stock option, severance,

employment, golden parachute, retention, salary continuation, change of control, retirement, pension, profit sharing or fringe benefit plan, program, fund, contract, arrangement or agreement of any kind (whether written or oral, tax-qualified or non-tax qualified, funded or unfunded, foreign or domestic, active, frozen or terminated) and any related trust, insurance contract, escrow account or similar funding arrangement, that is maintained or contributed to by Continental or any Continental Subsidiary (or required to be maintained or contributed to by Continental or any Continental Subsidiary) for the benefit of current or former directors, officers or employees of, or consultants to, Continental or any of the Continental Subsidiaries or with respect to which Continental or any of the Continental Subsidiaries may, directly or indirectly, have any liability, as of the date of this Agreement.

(b) As of the date of this Agreement, Continental has heretofore made available to United true and complete copies of (i) each written Continental Benefit Plan, (ii) the most recent actuarial report for each Continental Benefit Plan (if applicable), (iii) the most recent determination letter from the IRS (if applicable) for each Continental Benefit Plan, (iv) the current summary plan description of each Continental Benefit Plan that is subject to ERISA, together with each summary of material modifications, (v) a copy of the description of each Continental Benefit Plan not subject to ERISA that is currently provided to participants in such plan, (vi) the most recent annual report for each Continental Benefit Plan (if applicable) (excluding the Schedule SSA), (vii) each trust agreement, group annuity contract and insurance contract relating to any Continental Benefit Plan and (viii) a summary of the material terms of each unwritten Continental Benefit Plan.

(c) Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Continental, (i) each of the Continental Benefit Plans has been operated and administered in compliance with its terms and applicable Law, including ERISA and the Code, (ii) each of the Continental Benefit Plans intended to be “qualified” within the meaning of Section 401(a) of the Code is so qualified, and there are no existing circumstances or any events that have occurred that would reasonably be expected to adversely

affect the qualified status of any such Continental Benefit Plan, and each such plan has a favorable determination letter from the IRS to the effect that it is so qualified or the applicable remedial amendment period has not expired and, if the letter for such plan is not current, such plan is the subject of a timely request for a current favorable determination letter or the applicable remedial amendment period has not expired, (iii) with respect to each Continental Benefit Plan that is subject to Title IV of ERISA and that is not a multiemployer plan within the meaning of Section 3(37) of ERISA, the present value (as defined under Section 3(27) of ERISA) of accumulated benefit obligations under such Continental Benefit Plan, based upon the actuarial assumptions used for funding purposes in the most recent actuarial report prepared by such Continental Benefit Plan's actuary with respect to such Continental Benefit Plan, did not, as of such valuation date, exceed the then current value (as defined under Section 3(26) of ERISA) of the assets of such Continental Benefit Plan allocable to such accrued benefits, no liability to the PBGC has been incurred (other than with respect to required premium payments), no notice of intent to terminate has been given under Section 4041 of ERISA, no termination proceeding has been instituted by the PBGC under Section 4042 of ERISA, there has been no event or condition that presents a significant risk of termination, funding requirements under Section 302 of ERISA have been met and, within the six-year period preceding the date of this Agreement, no reportable event, within the meaning of Section 4043 of ERISA (for which notice or disclosure requirements have not been waived), has been incurred, (iv) no Continental Benefit Plan that is a Welfare Plan provides benefits coverage, including death or medical benefits coverage (whether or not insured), with respect to current or former employees or directors of Continental or the Continental Subsidiaries beyond their retirement or other termination of service, other than (A) coverage mandated by applicable Law, (B) benefits the full cost of which is borne by such current or former employee or director (or his or her beneficiary), (C) coverage through the last day of the calendar month in which retirement or other termination of service occurs, (D) medical expense reimbursement accounts, (E) death benefit or retirement benefits under any "employee pension benefit plan," as that term is defined in Section 3(2) of ERISA, or (F) deferred compensation benefits accrued as liabilities on the books of Continental, (v) no liability under Title IV of ERISA has been incurred by Continental, the Continental Subsidiaries or any trade or business, whether or not incorporated, all of which together with Continental would be deemed a "single employer" within the meaning of Section 414(b), 414(c), 414(m) or 414 (o) of the

Code or Section 4001(b) of ERISA (a “ Continental ERISA Affiliate ”), that has not been satisfied in full, and no condition exists that presents a material risk to Continental, the Continental Subsidiaries or any Continental ERISA Affiliate of incurring a liability thereunder, (vi) no Continental Benefit Plan is a “multiemployer plan” (as such term is defined in Section 3(37) of ERISA), (vii) none of Continental or any of the Continental Subsidiaries nor, to Continental’s knowledge, any other Person, including any fiduciary, has engaged in a transaction in connection with which Continental, the Continental Subsidiaries or any Continental Benefit Plan would reasonably be expected to be subject to either a civil penalty assessed pursuant to Section 409 or 502(i) of ERISA or a Tax imposed pursuant to Section 4975 or 4976 of the Code, (viii) to Continental’s knowledge, there are no pending, threatened or anticipated claims (other than routine claims for benefits) by, on behalf of or against any of the Continental Benefit Plans or any trusts, insurance contracts, escrow accounts or similar funding arrangements related thereto, (ix) all contributions or other amounts required to be paid by Continental or the Continental Subsidiaries as of the Effective Time with respect to each Continental Benefit Plan in respect of the current and previous five plan years have been paid in accordance with Section 412 or Section 430 of the Code, as applicable, and for the same period any material expense incurred with respect to a Continental Benefit Plan has been accrued in accordance with GAAP, (x) since December 31, 2009, no Continental Benefit Plan has been amended or modified in any material respect or adopted or terminated, (xi) there is no judgment, Injunction, rule or order of any Governmental Entity or arbitrator outstanding against or in favor of any Continental Benefit Plan or any fiduciary thereof (other than rules of general applicability), (xii) there are no pending or, to Continental’s knowledge, threatened audits or investigations by any Governmental Entity or any other matter pending before any Governmental Entity (other than routine filings and ruling requests) involving any Continental Benefit Plan, (xiii) no event has occurred, and to Continental’s knowledge, there exists no circumstances with respect to a Continental Benefit Plan that would reasonably be expected to subject Continental or any of the Continental Subsidiaries to liability under ERISA, the Code or other applicable Law, (xiv) with respect to any Continental Benefit Plan or any multiemployer plan within the meaning of Section 3(37) of ERISA, maintained by or participated in by Continental or any of the Continental Subsidiaries within the six-year period preceding the date of this Agreement, no withdrawal liability, within the meaning of Section 4201 of ERISA, has been incurred, which liability has

not been satisfied and (xv) each Continental Benefit Plan that is an employee welfare benefit plan (including any such Continental Benefit Plan covering retirees or other former employees) may be amended or terminated without material liability to Continental and the Continental Subsidiaries on or at any time after the Effective Time.

(d) Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Continental, neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated by this Agreement will (either alone or in conjunction with any other event) (i) result in any payment or benefit (including severance, retention, stay-put, change in control, unemployment compensation, “excess parachute payment” (within the meaning of Section 280G of the Code), tax gross-up, forgiveness of indebtedness or otherwise) becoming due to any director, officer or employee of, or any consultant to, Continental or any of the Continental Subsidiaries from Continental or any of the Continental Subsidiaries under any Continental Benefit Plan or otherwise, (ii) increase any amounts or benefits otherwise payable or due to any such Person under any Continental Benefit Plan or otherwise, or (iii) result in any acceleration of the time of payment or vesting of, or any requirement to fund or secure, any such amounts or benefits (including any Continental Stock Option or Continental Stock-Based Award) or result in any breach of or default under any Continental Benefit Plan.

(e) Neither Continental nor any Continental Subsidiary has liability or obligations, including under or on account of a Continental Benefit Plan, arising out of Continental’s or one of the Continental Subsidiaries’ hiring of persons to provide services to Continental or one of the Continental Subsidiaries and treating such persons as consultants or independent contractors and not as employees, except where such liability or obligation would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Continental.

(f) Neither Continental nor any of the Continental Subsidiaries has unfunded liabilities with respect to any Continental Benefit Plan that is a “pension plan” (within the meaning of Section 3(2) of ERISA) that covers current or former non-U.S. employees of Continental or any of the Continental Subsidiaries that, if required to be immediately funded, would, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Continental.

(g) Neither Continental, nor any of the Continental Subsidiaries, nor any Continental ERISA Affiliate, nor any of the Continental Benefit Plans, nor any trust created thereunder, nor, to Continental’s knowledge, any trustee or administrator thereof, has engaged in a prohibited transaction (within the meaning of Section 406 of ERISA and Section 4975 of the Code) in connection with which Continental, any of the Continental Subsidiaries or any of the Continental Benefit Plans that would, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Continental.

(h) With respect to any employee pension benefit plan, within the meaning of Section 3(2) of ERISA, that is not a Continental Benefit Plan, but that is sponsored, maintained or contributed to, or has been sponsored, maintained or contributed to within the six-year period preceding the Effective Time by any Continental ERISA Affiliate, except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Continental, (i) no withdrawal liability, within the meaning of Section 4201 of ERISA, has been incurred, which withdrawal liability has not been satisfied, (ii) no liability to the PBGC has been incurred by a Continental ERISA Affiliate, which liability has not been satisfied, (iii) no violation of funding requirements under Section 302 of ERISA has been incurred, and (iv) all contributions (including installments) required by Section 302 of ERISA have been timely made.

(i) None of Continental, any of the Continental Subsidiaries or any Continental ERISA Affiliate is a party to any agreement with the PBGC respecting any Continental Benefit Plan or respecting any employee pension benefit plan, within the meaning of Section 3(2) of ERISA, that is not a Continental Benefit Plan, which agreement contains obligations or covenants respecting Continental, any of the Continental Subsidiaries or any Continental ERISA Affiliate that continue beyond the date of this Agreement.

4.12 Labor and Employment Matters. As of the date of this Agreement, Section 4.12 of the Continental Disclosure Schedule sets forth a true and complete list of collective bargaining or other labor union contracts applicable to any domestic employees of Continental or any of the Continental Subsidiaries. As of the date hereof, there is no strike, work stoppage or lockout by or with respect to any employee of Continental, except where such strike, work stoppage or lockout, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect on Continental. As of the date hereof, (i) neither Continental nor any of the Continental Subsidiaries has breached or otherwise failed to comply with any provision of any collective bargaining or other labor union contract applicable to any employees of Continental or any of the Continental Subsidiaries and (ii) there are no written grievances or written complaints outstanding or, to Continental's knowledge, threatened against Continental or any of the Continental Subsidiaries under any such contract except for any breaches, failures to comply, grievances or complaints that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Continental. Continental has made available to United and its representatives true and complete copies of all contracts set forth in Section 4.12 of the Continental Disclosure Schedule, including all amendments applicable to such contracts.

4.13 Internal Control. Continental and the Continental Subsidiaries have designed and maintain a system of internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) of the Exchange Act) sufficient to provide reasonable assurances regarding the reliability of financial reporting. Continental (i) has designed and maintains disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) of the Exchange Act) to ensure that all information required to be disclosed by Continental in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms and is accumulated and communicated to Continental's management as appropriate to allow timely decisions regarding required disclosure and (ii) has disclosed, based on its most recent evaluation of its disclosure controls and pro-

cedures and internal control over financial reporting prior to the date of this Agreement, to Continental's auditors and the audit committee of the Continental Board (A) any significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting that are reasonably likely to adversely affect in any material respect Continental's ability to record, process, summarize and report financial information and (B) any fraud, whether or not material, that involves management or other employees who have a significant role in Continental's internal control over financial reporting. Since December 31, 2009, none of Continental, Continental's independent accountants, the Continental Board or the audit committee of the Continental Board has received any oral or written notification of any matter set forth in the preceding clause (A) or (B).

4.14 Compliance with Laws; Licenses. (a) The businesses of each of Continental and the Continental Subsidiaries have been conducted in compliance with all Laws, all applicable ADs, FARs and any other rules, regulations, directives, orders and policies of the FAA, DOT, DHS, FCC, TSA and any other Governmental Entity, except where the failure to so comply would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Continental. No investigation or review by any Governmental Entity with respect to Continental or any of the Continental Subsidiaries is pending or, to Continental's knowledge, threatened, nor has any Governmental Entity indicated an intention to conduct the same, except for any such investigations or reviews that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Continental. Continental and each of the Continental Subsidiaries has all Continental Licenses necessary to conduct its business as presently conducted, except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Continental.

(b) Continental and each of the Continental Subsidiaries are in compliance with (i) their respective obligations under each of the Continental Licenses and (ii) the rules and regulations of the Governmental Entity issuing such Continental Licenses, except, in either case, for such failures to be in compliance as

would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Continental. There is not pending or, to Continental's knowledge, threatened by or before the FAA, DOT or any other Governmental Entity any material proceeding, notice of violation, order of forfeiture or complaint or investigation against Continental or any of the Continental Subsidiaries relating to any of the Continental Licenses, except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Continental. The actions of the applicable Governmental Entities granting all Continental Licenses have not been reversed, stayed, enjoined, annulled or suspended, and there is not pending or, to Continental's knowledge, threatened, any material application, petition, objection or other pleading with the FAA, DOT or any other Governmental Entity that challenges or questions the validity of or any rights of the holder under any Continental License, in each case, except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Continental.

4.15 Certain Contracts. (a) As of the date of this Agreement, neither Continental nor any of the Continental Subsidiaries is a party to or bound by any contract, arrangement, commitment or understanding (whether written or oral) (i) that is a "material contract" (as such term is defined in Item 601(b)(10) of SEC Regulation S-K) to be performed after the date of this Agreement that has not been filed or incorporated by reference in the Continental SEC Reports filed prior to the date of this Agreement, (ii) other than the collective bargaining agreements and other contracts set forth in Section 4.12 of the Continental Disclosure Schedule, that materially restricts the conduct of any material line of business by Continental or upon consummation of the Merger will materially restrict the ability of Continental and any of the Continental Subsidiaries to engage in any line of business material to Continental, or to Continental's knowledge, United, (iii) that is a joint venture, partnership, business alliance (excluding information technology contracts), code sharing, capacity purchase, pro-rate or frequent flyer agreement (including all material amendments to each of the foregoing agreements) the termination, cancellation or breach of which would reasonably be expected to have a Material Adverse Effect on United or a Material Adverse Effect on Continental or (iv) pursuant to which any Indebtedness of Continental or any of the Continental Subsidiaries is outstanding or may be incurred (except for such Indebtedness the aggregate principal amount of which

does not exceed \$25 million) that has not been filed or incorporated by reference in the Continental SEC Reports filed prior to the date of this Agreement.

(b) Each contract, arrangement, commitment or understanding (i) of the type described in clauses (i) – (iii) of Section 4.15(a), whether or not set forth in the Continental Disclosure Schedule, or (ii) filed as an exhibit to the Continental SEC Reports, is referred to as a “Continental Contract,” and neither Continental nor any of the Continental Subsidiaries knows of, or has received notice of, any violation of any Continental Contract by any of the other parties thereto that would, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Continental.

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(c) With such exceptions that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Continental,

(i) each Continental Contract is valid and binding on Continental or the applicable Continental Subsidiary, as applicable, and is in full force and effect, except to the extent it has previously expired in accordance with its terms,

(ii) Continental and each of the Continental Subsidiaries have performed all obligations required to be performed by it to date under each Continental Contract, and

(iii) no event or condition exists that constitutes or, after notice or lapse of time or both, will constitute, a default on the part of Continental or any of the Continental Subsidiaries under any such Continental Contract or give any other party to any Continental Contract the right to terminate or cancel such contract.

4.16 Environmental Liability.

(a) Permits and Authorizations. Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Continental, each of Continental and the Continental Subsidiaries possesses all material Environmental Permits necessary to conduct its businesses and operations as currently conducted.

(b) Compliance. Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Continental, each of Continental and the Continental Subsidiaries is in compliance with all applicable Environmental Laws and all Environmental Permits, and neither Continental nor any Continental Subsidiary has received any (A) communication from any Governmental Entity or other person that alleges that Continental or any Continental Subsidiary has violated or is liable under any Environmental Law or (B) written request for material information pursuant to Section 104(e) of the U.S. Comprehensive Environmental Response, Compensation and Liability Act or similar state statute concerning the disposal of Hazardous Materials.

(c) Environmental Claims. There are no Environmental Claims (A) pending or, to Continental's knowledge, threatened against Continental or any of the Continental Subsidiaries or (B) to Continental's knowledge, pending or threatened against any person whose liability for any Environmental Claim Continental or any of the Continental Subsidiaries has retained or assumed, either contractually or by operation of law, in each case other than Environmental Claims that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Continental. Neither Continental nor any of the Continental Subsidiaries has contractually retained or assumed any liabilities or obligations that would reasonably be expected to provide the basis for any Environmental Claim that would, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Continental.

(d) Releases. To Continental's knowledge, there have been no Releases of any Hazardous Materials that would reasonably be expected to form the basis of any Environmental Claim that would, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Continental.

4.17 State Takeover Laws. The Continental Charter contains a provision expressly electing not to be governed by Section 203 of Delaware Law, and, to Continental's knowledge, there are no other Takeover Statutes.

4.18 Continental Information. The information relating to Continental and the Continental Subsidiaries that is provided by Continental or its representatives for inclusion in the Joint Proxy Statement and the Form S-4, or in any other document filed with any other Regulatory Agency in connection with the transactions contemplated by this Agreement, will not (i) in the case of the Form S-4, at the time the Form S-4 is filed with the SEC, at any time it is amended or supplemented or at the time it is declared effective under the Securities Act, and (ii) in the case of the Joint Proxy Statement, at the date it is first mailed to each of United's and Continental's stockholders or at the time of each of the United Stockholders Meeting and the Continental Stockholders Meeting, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances in which they are made, not misleading. The Form S-4 and the Joint Proxy Statement (except for such portions thereof that relate only to United or any of the United Subsidiaries) will comply in all material respects with the provisions of the Securities Act, the Exchange Act and the rules and regulations thereunder.

4.19 Affiliate Transactions. As of the date of this Agreement, there are no transactions, contracts, arrangements, commitments or understandings between Continental or any of the Continental Subsidiaries, on the one hand, and any of Continental's affiliates (other than wholly-owned Continental Subsidiaries), on the other hand, that would be required to be disclosed by Continental under Item 404 of Regulation S-K under the Securities Act (the "Continental S-K 404 Arrangements").

4.20 Aircraft. (a) Section 4.20(a)(i) of the Continental Disclosure Schedule sets forth a true and complete list of (i) all aircraft operated under the operating certificate of Continental or any of the Continental Subsidiaries and (ii) all aircraft owned or leased by Continental or any of the Continental Subsidiaries, in each case as of March 31, 2010 (collectively, the "Continental Aircraft"), including a description of the type and manufacturer serial number of each such aircraft. Section 4.20(a)(ii) of the Continental Disclosure Schedule sets forth a true and complete list, as of the date of this Agreement, containing all Continental Contracts (other than (x) existing aircraft leases or (y) contracts that may be terminated or canceled by Continental or any of the Continental Subsidiaries without incurring any penalty or other material liability except for

the forfeiture of any previously made prepayment or deposit) pursuant to which Continental or any of the Continental Subsidiaries has a binding obligation to purchase or lease aircraft, including the manufacturer and model of all aircraft subject to such Continental Contract, the nature of the purchase or lease obligation (*i.e.*, firm commitment, subject to reconfirmation or otherwise), the anticipated year of delivery of each aircraft of such Continental Contract. Except as identified in writing by Continental to United prior to the date of this Agreement, Continental has delivered or made available to United redacted (as to pricing and other commercially sensitive terms) copies of all Continental Contracts listed on Section 4.20(a)(ii) of the Continental Disclosure Schedule, including all amendments, modifications and supplements thereto.

(b) Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Continental:

(i) each Continental Aircraft has a validly issued, current individual aircraft FAA Certificate of Airworthiness with respect to such Continental Aircraft and all requirements for the effectiveness of such FAA Certificate of Airworthiness have been satisfied;

(ii) other than any grounded Continental Aircraft, each Continental Aircraft's structure, systems and components are functioning in accordance with their respective intended uses as set forth in any applicable FAA-approved maintenance program (or are in the process of repair or maintenance), including any applicable manuals, technical standard orders or parts manufacturing approval certificates, and all grounded Continental Aircraft are being stored in accordance with any applicable FAA-approved maintenance program;

(iii) all deferred maintenance items and temporary repairs with respect to each such Continental Aircraft have been or will be made materially in accordance with any applicable FAA-approved maintenance programs;

- (iv) each Continental Aircraft is properly registered on the FAA aircraft registry;
- (v) neither Continental nor any of the Continental Subsidiaries is a party to any interchange or pooling agreements with respect to its Continental Aircraft, other than parts pooling agreements in the ordinary course of business; and
- (vi) neither Continental nor any of the Continental Subsidiaries has retained any maintenance obligations with respect to any Continental Aircraft that has been leased by Continental or any Continental Subsidiary to a third party lessee.
- (c) Section 4.20(c)(i) of the Continental Disclosure Schedule sets forth a true and complete list, as of March 31, 2010, of all aircraft operated on behalf of Continental pursuant to a capacity purchase or pro-rate agreement (a “Continental Contract Flight Agreement”), including a description of the operator, type and number of each such aircraft and any minimum utilization requirements applicable to such aircraft. Section 4.20(c)(ii) of the Continental Disclosure Schedule sets forth a true and complete list, as of the date of this Agreement, containing all Continental Contract Flight Agreements. Except as identified in writing by Continental to United prior to the date of this Agreement, Continental has delivered or made available to United redacted (as to pricing and other commercially sensitive terms) copies of all Continental Contract Flight Agreements listed on Section 4.20(c)(ii) of the United Disclosure Schedule, including all amendments thereto.
- (d) Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Continental, to Continental’s knowledge, as of the date of this Agreement, there is no ongoing strike, work stoppage or lockout by or with respect to any employee of any counterparty to a Continental Contract Flight Agreement.

4.21 Continental Slots and Operating Rights. Section 4.21 of the Continental Disclosure Schedule sets forth a true, correct and complete list of all takeoff and landing slots, operating authorizations from the FAA or any

other Governmental Entity and other similar designated takeoff and landing rights used or held by Continental and the Continental Subsidiaries (the “Continental Slots” and together with the United Slots, the “Slots”) on the date of this Agreement at any domestic or international airport and such list shall indicate any Continental Slots that have been permanently allocated to another air carrier and in which Continental and the Continental Subsidiaries hold only temporary use rights. Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Continental, (i) Continental and the Continental Subsidiaries have complied in all material respects with the requirements of the regulations issued under the FAA and any other Laws with respect to the Continental Slots, (ii) neither Continental nor any of the Continental Subsidiaries has received any notice of any proposed withdrawal of the Continental Slots by the FAA or any other Governmental Entity, (iii)(A) the Continental Slots have not been designated for the provision of essential air service under the regulations of the FAA, were not acquired pursuant to 14 C.F.R. Section 93.219 and have not been designated for international operations, as more fully detailed in 14 C.F.R. Section 93.217 and (B) to the extent covered by 14 C.F.R. Section 93.227 or any order, notice or requirement of the FAA or any other Governmental Entity, Continental and the Continental Subsidiaries have used the Continental Slots (or the Continental Slots have been used by other operators) either at least 80% of the maximum amount that each Continental Slot could have been used during each full reporting period (as described in 14 C.F.R. Section 93.227(i) or any such order, notice or requirement) or such greater or lesser amount of minimum usage as may have been required to protect such Continental Slot’s authorization from termination or withdrawal under regulations or waivers established by any Governmental Entity or airport authority, (iv) all reports required by the FAA or any other Governmental Entity relating to the Continental Slots have been filed in a timely manner and (v) neither Continental nor any of the Continental Subsidiaries has agreed to any future Continental Slot slide, Continental Slot trade (except for seasonal swaps), Continental Slot purchase, Continental Slot sale, Continental Slot exchange, Continental Slot lease or Continental Slot transfer of any of the Continental Slots that has not been consummated or otherwise reflected on Section 4.21 of the Continental Disclosure Schedule.

4.22 Intellectual Property.

(a) To Continental's knowledge, the conduct of the business as currently conducted by Continental and the Continental Subsidiaries does not infringe, misappropriate or otherwise violate the Intellectual Property Rights of any third Person, and in the three-year period immediately preceding the date of this Agreement there has been no such claim, action or proceeding asserted or, to Continental's knowledge, threatened against Continental or any of the Continental Subsidiaries or any indemnitee thereof, except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Continental. There is no claim, action or proceeding asserted or, to Continental's knowledge, threatened against Continental or any of the Continental Subsidiaries or any indemnitee thereof concerning the ownership, validity, registerability, enforceability, infringement, use or licensed right to use any Intellectual Property Rights claimed to be owned or held by Continental or any of the Continental Subsidiaries or used or alleged to be used in the business of Continental or any of the Continental Subsidiaries, except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Continental.

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(b) The IT Assets of Continental and the Continental Subsidiaries (i) operate and perform in accordance with their documentation and functional specifications and otherwise as required by Continental and the Continental Subsidiaries for the operation of their respective businesses and (ii) have not malfunctioned or failed within the three-year period immediately preceding the date of this Agreement, except, in the case of clauses (i) and (ii), as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Continental. Continental and the Continental Subsidiaries have implemented and maintained for the three-year period immediately preceding the date of this Agreement reasonable and sufficient backup and disaster recovery technology consistent with industry practices except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Continental.

4.23 Major Continental Airports. As of the date of this Agreement, no airport authority at George Bush Intercontinental Airport, Hopkins In-

ternational Airport or Newark Liberty International Airport (each such airport, a “Major Continental Airport”) has taken or, to Continental’s knowledge, threatened to take any action that would reasonably be expected to materially interfere with the ability of Continental and the Continental Subsidiaries to conduct their respective operations at any Major Continental Airport in the same manner as currently conducted in all material respects.

4.24 Foreign Corrupt Practices Act. Except for such matters as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Continental, as of the date of this Agreement:

(a) Continental and the Continental Subsidiaries have developed and implemented a compliance program that includes corporate policies and procedures designed to ensure compliance with the Foreign Corrupt Practices Act.

(b) In connection with Continental’s and the Continental Subsidiaries’ compliance with the Foreign Corrupt Practices Act, there have been no voluntary disclosures under the Foreign Corrupt Practices Act.

(c) No Governmental Entity has notified Continental or any of the Continental Subsidiaries in writing of any actual or alleged violation or breach of the Foreign Corrupt Practices Act.

(d) Neither Continental nor any of the Continental Subsidiaries has undergone or is undergoing any audit, review, inspection, investigation, survey or examination of records, in each case conducted by a Governmental Entity and relating to Continental’s or the Continental Subsidiaries’ compliance with the Foreign Corrupt Practices Act, and to Continental’s knowledge, there is no basis for any such audit, review, inspection, investigation, survey or examination of records by a Governmental Entity.

(e) Neither Continental nor any of the Continental Subsidiaries has been or is now under any administrative, civil or criminal charge or indictment or, to

Continental's knowledge, investigation, alleging noncompliance with the Foreign Corrupt Practices Act, nor, to Continental's knowledge, is there any basis for any such charge, indictment or investigation.

(f) Neither Continental nor any of the Continental Subsidiaries has been or is now a party to any administrative or civil litigation alleging noncompliance with the Foreign Corrupt Practices Act, nor to Continental's knowledge, is there any basis for any such proceeding

4.25 U.S. Citizen; Air Carrier. Continental is a "citizen of the United States" as defined in the Federal Aviation Act and is an "air carrier" within the meaning of such Act operating under certificates issued pursuant to such Act (49 U.S.C. Sections 41101-41112).

4.26 Fairness Opinions. Prior to the execution of this Agreement, Continental has received the oral opinion (to be confirmed in writing) of each of Lazard Frères & Co. LLC and Morgan Stanley & Co. Incorporated to the effect that, as of the date thereof and based upon and subject to the matters and limitations set forth in such written opinions, the Exchange Ratio is fair from a financial point of view to the holders of Continental Common Stock. Such opinions have not been amended or rescinded as of the date of this Agreement. Copies of the written opinions of each of Lazard Frères & Co. LLC and Morgan Stanley & Co. Incorporated will be delivered to United for informational purposes only promptly following receipt thereof by Continental.

ARTICLE V

COVENANTS RELATING TO CONDUCT OF BUSINESS

5.1 Conduct of Businesses Prior to the Effective Time. During the period from the date of this Agreement to the Effective Time,

except as expressly contemplated or permitted by this Agreement (including by Section 5.2 or Section 5.3 below, as applicable),

except as specifically set forth in Section 5.1 of the United Disclosure Schedule and the Continental Disclosure Schedule and

Commented [DCT44]: COMMENT: These covenants are not unlike the ones we looked at in the revolving finance agreement.

except with the prior written consent of the other party (which shall not be unreasonably withheld, conditioned or delayed),

as applicable (in each case subject to Section 6.8),

each of United and Continental will, and will cause each of its respective Subsidiaries to

(i) conduct its business in the ordinary course in all material respects,

(ii) use reasonable best efforts to maintain and preserve intact its business organization and advantageous business relationships and retain the services of its officers and key employees, and

(iii) take no action that would prohibit or materially impair or delay the ability of either United or Continental to obtain any necessary approvals of any Regulatory Agency or other Governmental Entity (other than approvals relating to Taxes, which are governed by Section 6.8) required for the transactions contemplated hereby or to consummate the transactions contemplated hereby.

Commented [DCT45]: “Reasonable best efforts” – what is that?

Notwithstanding the foregoing provisions of this Section 5.1,

(i) neither party will take any action prohibited by Section 5.2 or Section 5.3, as applicable, in order to satisfy such party’s obligations under this Section 5.1 and

(ii) each party shall be deemed not to have failed to satisfy its obligations under this Section 5.1 to the extent such failure resulted, directly or indirectly, from such party’s failure to take any action prohibited by Section 5.2 or Section 5.3, as applicable.

5.2 United Forbearances. During the period from the date of this Agreement to the Effective Time, except as set forth in the United Disclosure Schedule (subject to Section 6.8) and except as required by Law or the rules and regulations of the SEC or the NASDAQ or as expressly contemplated or permitted by this Agreement, United will not, and will not permit any of the

United Subsidiaries to, without the prior written consent of Continental (which shall not be unreasonably withheld, conditioned or delayed):

(a) incur any Indebtedness, or make any loan or advance other than any of the following:

(i) Indebtedness incurred in the ordinary course of business consistent with past practice, it being acknowledged that any financing (including any sale-leaseback transaction) of aircraft or equipment used in the operations of United or the United Subsidiaries, including engines, spare parts, simulators, technology, gates, routes, slots, tangible property and ground equipment (and any renewal or refinancing thereof) shall be deemed to be in the ordinary course;

(ii) Indebtedness that does not exceed \$300 million in the aggregate;

(iii) refinancings, prepayments, repurchases and redemptions in the ordinary course of business consistent with past practice of any Indebtedness outstanding as of the date this Agreement or permitted to be incurred under this Agreement;

(iv) employee loans or advances made in the ordinary course of business consistent with past practice; or

(v) loans or advances made between United and any of the wholly-owned United Subsidiaries or between wholly-owned United Subsidiaries;

(b) adjust, split, combine or reclassify any of United's capital stock;

(c) make, declare or pay any dividend, or make any other distribution on, or directly or indirectly redeem, purchase or otherwise acquire, any shares of its capital stock or other voting securities or equity interests or any securities or obligations convertible (whether currently convertible or convertible only after the passage of time or the occurrence of certain events) into or exchangeable for any shares of its capital stock or other voting securities or equity interests, except (i) dividends paid by any of the wholly-owned United Subsidiaries to United or to

any of its wholly-owned Subsidiaries, (ii) dividends paid on, or conversion of, United Preferred Stock outstanding on the date of this Agreement in accordance with the certificate of designation for such United Preferred Stock, and (iii) Forfeitures and Cashless Settlements in connection with United Reserve Shares, United Restricted Shares, United Stock-Based Awards and United Stock Options; provided, however, for the avoidance of doubt, Section 5.2(c) of the Agreement shall not be construed as prohibiting United from repaying, prepaying, redeeming, purchasing or acquiring Indebtedness that is issued by either United or any of the United Subsidiaries and that is not convertible into or exchangeable for any shares of capital stock or other voting securities or equity interests;

(d) grant any stock appreciation right or any right to acquire any shares of its capital stock, voting securities or equity interests or any long-term cash incentive award, other than (i)(A) in connection with regular grants of stock options, restricted stock, other stock-based awards or long-term incentive awards under United Stock Plans by United to its or the United Subsidiaries' directors or employees, (B) grants to newly-hired employees of United and the United Subsidiaries, (C) to respond to offers of employment by third parties or (D) grants in connection with promotions of employees of United and the United Subsidiaries and (ii) as required by the terms of employment agreements with United or any of the United Subsidiaries as in effect on the date of this Agreement; provided, however, that any grants made pursuant to clause (i) or (ii) of this Section 5.2(d) shall be made in accordance with Section 5.2(d) of the United Disclosure Schedule;

(e) issue, deliver, sell, grant, pledge or otherwise encumber or subject to any Lien (i) any additional shares of capital stock or other voting securities or equity interests of United or any United Subsidiary or any United Voting Debt, (ii) any securities convertible into or exchangeable for, or any warrants or options or other rights to acquire, any such shares of capital stock, voting securities or other equity interests or United Voting Debt, or (iii) any rights that are linked in any way to the price of any capital stock of, or to the value of or of any part of, or to any dividends or distributions paid on any capital stock of, United or

any United Subsidiary, except (A) pursuant to the exercise of United Stock Options or the satisfaction of any United Stock-Based Awards, in each case, outstanding as of the date of this Agreement or issued thereafter in compliance with this Agreement, (B) grants of United Stock Options or United Stock-Based Awards in accordance with Section 5.2(d), (C) upon the conversion of convertible securities outstanding as of the date of this Agreement, (D) for issuances by a wholly-owned United Subsidiary of such Subsidiary's capital stock to United or another wholly-owned United Subsidiary, (E) for issuances from the New United Stock Reserve (as defined in the United Plan of Reorganization) as required under the United Plan of Reorganization, (F) any issuances, deliveries, sales, grants, pledges or other encumbrances or Liens described on Section 5.2(e) of the United Disclosure Schedule and (G) any other issuances or sales of interests of the type described in clauses (i) through (iii), the gross proceeds of which do not exceed \$200 million in the aggregate, provided that such issuances or sales under this clause (G) shall be subject to clauses (x) and (y) (and the second sentence of) Item 1 in Section 5.2(e) of the United Disclosure Schedule; provided, however, that no such issuance and sale (or any marketing with respect to an anticipated sale) otherwise permitted by clause (G) may occur prior to the United Stockholders Meeting;

(f) except as otherwise provided by any other provision of this Agreement, increase, decrease, change or exchange any United Preferred Stock for a different number or kind of shares or securities as a result of a reorganization, recapitalization, reclassification, stock dividend, stock split, reverse stock split or other similar change in capitalization, in each case other than as required by the terms thereof as in effect on the date of this Agreement;

(g) other than as required to comply with applicable Law or a United Benefit Plan as in effect on the date of this Agreement or collective bargaining or similar labor union or other agreement as in effect on the date of this Agreement, the existence of which does not breach this Agreement, and except as expressly permitted under Section 5.2(d),

(i) increase the wages, salaries, compensation, bonus, pension, or other benefits or perquisites payable to any officer or employee, other than such increases in the ordinary course of business consistent with past practice,

(ii) grant or increase any severance, change in control, termination or similar compensation or benefits payable to any officer or employee, except with respect to new hires and to employees in connection with promotions or to respond to offers of employment by third parties,

(iii) adopt, enter into, terminate or amend in any material respect any United Benefit Plan, other than the entry into of employment agreements with newly hired or promoted employees in the ordinary course of business consistent with past practice,

(iv) make any change to the policies or work rules applicable to any group of employees or labor union,

(v) except for the provision of indemnification pursuant to indemnification agreements in effect on the date of this Agreement, enter into any United S-K 404 Arrangement, other than in connection with the appointment or election of new directors or the hiring or promotion of new officers in the ordinary course of business,

(vi) accelerate the time of payment or vesting of, or the lapsing of restrictions with respect to, or fund or otherwise secure the payment of, any compensation or benefits under any United Benefit Plan or

(vii) adopt, enter into, terminate or amend in any material respect any collective bargaining or similar labor union agreement;

provided, however, that the taking of actions that are contrary to the provisions set forth in clauses (i) through (vi) will not be deemed a violation of this Section 5.2(g) unless

(A) the aggregate dollar amount of United's obligations resulting from all such actions taken specifically to retain employees after the date hereof is reasonably expected to exceed after the date hereof the applicable amount set forth in Section 5.2(g) of the United Disclosure Schedule or

(B) the aggregate dollar amount of United's obligations resulting from any other actions not of the type described in subclause (A) is reasonably expected to exceed annually the applicable amount set forth in Section 5.2(g) of the United Disclosure Schedule, determined net of

Commented [DCT46]: "Aggregate dollar amount" – don't want to be nickel-and-diming each other.

any cost savings (1) resulting from changes to compensation or benefits following the date of this Agreement and (2) that would reasonably be expected to be realized within 12 months after the Effective Date;

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(h) sell, transfer, mortgage, encumber or otherwise dispose of any of its properties or assets that are material to United and the United Subsidiaries, taken as a whole, in any transaction or series of transactions, to any Person other than United or a United Subsidiary, or cancel, release or assign to any such Person any indebtedness or any claims held by United or any United Subsidiary, in each case that is material to United and the United Subsidiaries, taken as a whole,

other than in the ordinary course of business consistent with past practice

(it being acknowledged that encumbrances securing Indebtedness permitted pursuant to this Agreement, dispositions of surplus aircraft, engines, flight simulators and spare parts and the termination of leases relating to surplus aircraft and engines (including mainline and regional aircraft) shall each be deemed to be in the ordinary course)

and other than such sales, transfers, mortgages, encumbrances, other dispositions, cancelations, releases, or assignments, the proceeds of which are not used in violation of Section 5.2(c);

(i) enter into any new line of business that is material to United and the United Subsidiaries, taken as a whole;

(j) settle any material claim, action or proceeding, except settlements (i) in the ordinary course of business or (ii) to the extent subject to and not materially in excess of reserves set forth on the consolidated balance sheet of United and its Subsidiaries dated March 31, 2010 that relate to matters being settled existing as of such date in accordance with GAAP;

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(k) other than in the ordinary course of business consistent with past practice, directly or indirectly make, or agree to directly or indirectly make any acquisition or investment either by merger, consolidation, purchase of stock or securities, contributions to capital, property transfers, or by purchase of any property or assets of any other Person, or make any capital expenditures, in each case other than (i) investments in wholly-owned United Subsidiaries, (ii) acquisitions of or improvements to assets used in the operations of United and the United Subsidiaries in the ordinary course of business, (iii) short-term investments of cash in marketable securities in the ordinary course of business, (iv) capital expenditures disclosed in the capital plans for 2010 and 2011 provided to Continental prior to the date of this Agreement (provided that United shall be permitted to re allocate all or any portion of any capital expenditures set forth in its 2010 capital plan to its 2011 capital plan and, without duplication, all or any portion of any capital expenditures set forth in its 2011 capital plan to its 2010 capital plan) *plus* capital expenditures (other than with respect to the purchase or lease of aircraft or engines) in any year that do not in the aggregate exceed 10% of the aggregate amount set forth in the capital budget set forth in Section 5.2(k) of the United Disclosure Schedule in respect of such year *plus* capital expenditures relating to in-flight internet access, and (v) acquisitions of properties or assets that are not material to United and the United Subsidiaries, taken as a whole;

(l) except as otherwise provided by any other provision of this Agreement, (i) amend the United Charter or the United Bylaws, (ii) amend the similar organizational documents of any United Subsidiary in a manner that would reasonably be expected to have a Material Adverse Effect on United, or (iii) otherwise take any action to exempt any Person (other than Continental or the Continental Subsidiaries), or any action taken by any such Person, from any Takeover Statute or similarly restrictive provisions of its organizational documents;

(m) take any action that is intended or would reasonably be expected to result in any of the conditions to the Merger set forth in Article VII not being satisfied, except as may be required by applicable Law;

(n) enter into or amend any contract or take any other action if such contract, amendment or action

(A) would reasonably be expected to impair in any material respect the ability of United, the United Subsidiaries, Continental and the Continental Subsidiaries to conduct their respective businesses after the Effective Time in the same manner as currently conducted,

(B) would limit in any material respect the ability of the Combined Company to enter into joint ventures, partnerships, business alliances or code sharing agreements with any other Person following the Effective Time or

(C) would reasonably be expected to prevent or materially impede, interfere with, hinder or delay the consummation of the Merger or the other transactions contemplated by this Agreement or adversely affect in a material respect the expected benefits (taken as a whole) of the Merger, in each case except as required by applicable Law;

provided, however, that notwithstanding anything to the contrary contained in this Agreement, United shall be permitted to enter into joint ventures, partnerships, business alliances, revenue sharing agreements or code sharing agreements (including adding new code share partners),

in each case only with one or more other airlines,

and to take any actions reasonably necessary in connection therewith,

in each case in a manner consistent with the collective bargaining agreements listed on Section 3.12 of the United Disclosure Schedule;

Commented [DCT47]: Don't want one of the marger partners getting itself into labor troubles before the closing.

(o) implement or adopt any material change in its tax accounting or financial accounting policies, practices or methods, other than as may be required by applicable Law, GAAP or regulatory guidelines;

(p) enter into or amend any material contract to the extent the consummation of the Merger or compliance by United with the provisions of this Agreement would reasonably be expected to violate, conflict with, result in a breach of any provision of or the loss of any benefit under, constitute a default (or an event which, with notice or lapse of time, or both, would constitute a default) under, result in the termination or cancellation under, accelerate the performance required by, or result in the creation of any Lien upon any of the respective properties or assets of United or any of the United Subsidiaries under, any provision of such contract or amendment;

(q) agree or commit or resolve to take any of, or participate in any negotiations or discussions with any other Person regarding any of, the actions prohibited by this Section 5.2; provided, however, that this Section 5.2(q) shall not prohibit United or any United Subsidiary from participating in any discussions or negotiations with any labor union to the extent United or any United Subsidiary is required to do so under applicable Law;

(r) cancel, terminate or amend any binding financing commitment to fund the acquisition by United or any of the United Subsidiaries of the aircraft covered under each of the United Contracts set forth on Section 3.20(a)(ii) of the United Disclosure Schedule unless, in the case of any cancellation or termination of such financing commitment, (i) it is replaced by another financing with substantially equivalent (or more favorable) terms and in an amount not less than the amount of such commitment or (ii) in return therefor, United receives equivalent value from the manufacturer of the applicable aircraft;

(s) enter into (i) any aircraft purchase agreement or (ii) any amendment to an existing aircraft purchase agreement, in either case, for the placement of an order for any aircraft that, as of the date hereof, is not either a firm order aircraft or an option or purchase right aircraft shown in the table at the end of Section 3.20(a)(ii) of the United Disclosure Schedule; or

(t) enter into or amend any capacity purchase or similar agreement, as a result of which the aggregate number of aircraft subject to all of United's capacity purchase or similar agreements would exceed the number of aircraft listed in Section 3.20(c)(i) of the United Disclosure Schedule (excluding the number

of such aircraft that are subject to pro-rate agreements) by more than 25 aircraft, to the extent such agreement or amendment would be following the Effective Time (it being acknowledged that entering into, amending or terminating any capacity purchase or similar agreement in any respect, so long as the numerical limits set forth in this Section 5.2(t) are not thereby exceeded, shall be deemed to be in the ordinary course).

5.3 Continental Forbearances. During the period from the date of this Agreement to the Effective Time, except as set forth in the Continental Disclosure Schedule (subject to Section 6.8) and except as required by Law or the rules and regulations of the SEC or the NYSE or as expressly contemplated or permitted by this Agreement, Continental will not, and will not permit any of the Continental Subsidiaries to, without the prior written consent of United (which shall not be unreasonably withheld, conditioned or delayed):

(a) incur any Indebtedness, or make any loan or advance other than any of the following:

(i) Indebtedness incurred in the ordinary course of business consistent with past practice, it being acknowledged that any financing (including any sale-leaseback transaction) of aircraft or equipment used in the operations of Continental or the Continental Subsidiaries, including engines, spare parts, simulators, technology, gates, routes, slots, tangible property and ground equipment (and any renewal or refinancing thereof) shall be deemed to be in the ordinary course;

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(ii) Indebtedness that does not exceed \$300 million in the aggregate;

(iii) refinancings, prepayments, repurchases and redemptions in the ordinary course of business consistent with past practice of any Indebtedness outstanding as of the date this Agreement or permitted to be incurred under this Agreement;

(iv) employee loans or advances made in the ordinary course of business consistent with past practice; or

(v) loans or advances made between Continental and any of the wholly-owned Continental Subsidiaries or between wholly-owned Continental Subsidiaries;

(b) adjust, split, combine or reclassify any of Continental's capital stock;

(c) make, declare or pay any dividend, or make any other distribution on, or directly or indirectly redeem, purchase or otherwise acquire, any shares of its capital stock or other voting securities or equity interests or any securities or obligations convertible (whether currently convertible or convertible only after the passage of time or the occurrence of certain events) into or exchangeable for any shares of its capital stock or other voting securities or equity interests, except (i) dividends paid by any of the wholly-owned Continental Subsidiaries to Continental or to any of its wholly-owned Subsidiaries and (ii) Forfeitures and Cashless Settlements in connection with Continental Stock-Based Awards and Continental Stock Options; provided, however, for the avoidance of doubt, Section 5.3(c) of the Agreement shall not be construed as prohibiting Continental from repaying, prepaying, redeeming, purchasing or acquiring Indebtedness that is issued by either Continental or any of the Continental Subsidiaries and that is not convertible into or exchangeable for any shares of capital stock or other voting securities or equity interests;

(d) grant any stock appreciation right or any right to acquire any shares of its capital stock, voting securities or equity interests or any long-term cash incentive award, other than (i)(A) in connection with regular grants of stock options, restricted stock, other stock-based awards or long-term incentive awards under Continental Stock Plans by Continental to its or the Continental Subsidiaries' directors or employees, (B) grants to newly-hired employees of Continental and the Continental Subsidiaries, (C) to respond to offers of employment by third parties or (D) grants in connection with promotions of employees of Continental and the Continental Subsidiaries, (ii) as required by the terms of the 2004 Employee Stock Purchase Plan (the "Continental SPP"), as in effect on the date of this Agreement, and (iii) pursuant to employment agreements with Continen-

tal or any of the Continental Subsidiaries as in effect on the date of this Agreement; provided, however, that any grants made pursuant to clause (i) or (iii) of this Section 5.3(d) shall be made in accordance with Section 5.3(d) of the Continental Disclosure Schedule;

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(e) issue, deliver, sell, grant, pledge or otherwise encumber or subject to any Lien (i) any additional shares of capital stock or other voting securities or equity interests of Continental or any Continental Subsidiary or any Continental Voting Debt, (ii) any securities convertible into or exchangeable for, or any warrants or options or other rights to acquire, any such shares of capital stock, voting securities or other equity interests or Continental Voting Debt, or (iii) any rights that are linked in any way to the price of any capital stock of, or to the value of or of any part of, or to any dividends or distributions paid on any capital stock of, Continental or any Continental Subsidiary, except (A) pursuant to the exercise of Continental Stock Options or the satisfaction of any Continental Stock-Based Awards, in each case, outstanding as of the date of this Agreement or issued thereafter in compliance with this Agreement, (B) grants of Continental Stock Options or Continental Stock-Based Awards in accordance with Section 5.3(d), (C) pursuant to the Continental SPP, as in effect on the date of this Agreement, (D) upon the conversion of convertible securities outstanding as of the date of this Agreement, (E) for issuances by a wholly-owned Continental Subsidiary of such Subsidiary's capital stock to Continental or another wholly-owned Continental Subsidiary; (F) any issuances, deliveries, sales, grants, pledges or other encumbrances or Liens described on Section 5.3(e) of the Continental Disclosure Schedule and (G) any other issuances or sales of interests of the type described in clauses (i) through (iii), the gross proceeds of which do not exceed \$200 million in the aggregate so long as no such other issuance or sale results, provided that such issuances or sales under this clause (G) shall be subject to clauses (x) and (y) (and clauses (i) and (ii)) of Item 1 in Section 5.3(e) of the Continental Disclosure Schedule; provided, however, that no such issuance and sale (or any marketing with respect to an anticipated sale) otherwise permitted by clause (G) may occur prior to the Continental Stockholders Meeting;

(f) except as otherwise provided by any other provision of this Agreement, increase, decrease, change or exchange any Continental Preferred Stock for a different number or kind of shares or securities as a result of a reorganization, recapitalization, reclassification, stock dividend, stock split, reverse stock split or other similar change in capitalization, in each case other than as required by the terms thereof as in effect on the date of this Agreement;

(g) other than as required to comply with applicable Law or a Continental Benefit Plan as in effect on the date of this Agreement or collective bargaining or similar labor union or other agreement as in effect on the date of this Agreement, the existence of which does not breach this Agreement, and except as expressly permitted under Section 5.3(d), (i) increase the wages, salaries, compensation, bonus, pension, or other benefits or perquisites payable to any officer or employee, other than such increases in the ordinary course of business consistent with past practice, (ii) grant or increase any severance, change in control, termination or similar compensation or benefits payable to any officer or employee, except with respect to new hires and to employees in connection with promotions or to respond to offers of employment by third parties, (iii) adopt, enter into, terminate or amend in any material respect any Continental Benefit Plan, other than the entry into of employment agreements with newly hired or promoted employees in the ordinary course of business consistent with past practice, (iv) make any change to the policies or work rules applicable to any group of employees or labor union, (v) except for the provision of indemnification pursuant to indemnification agreements in effect on the date of this Agreement, enter into any Continental S-K 404 Arrangement, other than in connection with the appointment or election of new directors or the hiring or promotion of new officers in the ordinary course of business, (vi) accelerate the time of payment or vesting of, or the lapsing of restrictions with respect to, or fund or otherwise secure the payment of, any compensation or benefits under any Continental Benefit Plan or (vii) adopt, enter into, terminate or amend in any material respect any collective bargaining or similar labor union agreement; provided, however, that the taking of actions that are contrary to the provisions set forth in clauses (i) through (vi) will not be deemed a violation of this Section 5.3(g) unless (A) the aggregate dollar amount of Continental's obligations resulting from all such actions taken specifically to retain employees after the date hereof is reasonably expected to exceed after the date hereof the applicable amount set forth in Section 5.3(g) of the Continental Disclosure Schedule or (B) the aggregate

dollar amount of Continental's obligations resulting from any other actions not of the type described in subclause (A) is reasonably expected to exceed annually the applicable amount set forth in Section 5.3(g) of the Continental Disclosure Schedule, determined net of any cost savings (1) resulting from changes to compensation or benefits following the date of this Agreement and (2) that would reasonably be expected to be realized within 12 months after the Effective Date;

(h) sell, transfer, mortgage, encumber or otherwise dispose of any of its properties or assets that are material to Continental and the Continental Subsidiaries, taken as a whole, in any transaction or series of transactions, to any Person other than Continental or a Continental Subsidiary, or cancel, release or assign to any such Person any indebtedness or any claims held by Continental or any Continental Subsidiary, in each case that is material to Continental and the Continental Subsidiaries, taken as a whole, other than in the ordinary course of business consistent with past practice (it being acknowledged that encumbrances securing Indebtedness permitted pursuant to this Agreement, dispositions of surplus aircraft, engines, flight simulators and spare parts and the termination of leases relating to surplus aircraft and engines (including mainline and regional aircraft) shall each be deemed to be in the ordinary course) and other than such sales, transfers, mortgages, encumbrances, other dispositions, cancelations, releases, or assignments, the proceeds of which are not used in violation of Section 5.3(c);

(i) enter into any new line of business that is material to Continental and the Continental Subsidiaries, taken as a whole;

(j) settle any material claim, action or proceeding, except settlements (i) in the ordinary course of business or (ii) to the extent subject to and not materially in excess of reserves set forth on the consolidated balance sheet of Continental and its Subsidiaries dated March 31, 2010 that relate to matters being settled existing as of such date in accordance with GAAP;

(k) other than in the ordinary course of business consistent with past practice, directly or indirectly make, or agree to directly or indirectly make any ac-

acquisition or investment either by merger, consolidation, purchase of stock or securities, contributions to capital, property transfers, or by purchase of any property or assets of any other Person, or make any capital expenditures, in each case other than (i) investments in wholly-owned Continental Subsidiaries, (ii) acquisitions of or improvements to assets used in the operations of Continental and the Continental Subsidiaries in the ordinary course of business, (iii) short-term investments of cash in marketable securities in the ordinary course of business, (iv) capital expenditures disclosed in the capital plans for 2010 and 2011 provided to United prior to the date of this Agreement (provided that Continental shall be permitted to re allocate all or any portion of any capital expenditures set forth in its 2010 capital plan to its 2011 capital plan and, without duplication, all or any portion of any capital expenditures set forth in its 2011 capital plan to its 2010 capital plan) *plus* capital expenditures (other than with respect to the purchase or lease of aircraft or engines) in any year that do not in the aggregate exceed 10% of the aggregate amount set forth in the capital budget set forth in Section 5.3(k) of the Continental Disclosure Schedule in respect of such year *plus* capital expenditures relating to in-flight internet access, and (v) acquisitions of properties or assets that are not material to Continental and the Continental Subsidiaries, taken as a whole;

(l) except as otherwise provided by any other provision of this Agreement, (i) amend the Continental Charter or the Continental Bylaws, (ii) amend the similar organizational documents of any Continental Subsidiary in a manner that would reasonably be expected to have a Material Adverse Effect on Continental or (iii) otherwise take any action to exempt any Person (other than United or the United Subsidiaries), or any action taken by any such Person, from any Takeover Statute or similarly restrictive provisions of its organizational documents;

(m) take any action that is intended or would reasonably be expected to result in any of the conditions to the Merger set forth in Article VII not being satisfied, except as may be required by applicable Law;

(n) enter into or amend any contract or take any other action if such contract, amendment or action (A) would reasonably be expected to impair in any material respect the ability of United, the United Subsidiaries, Continental and the Continental Subsidiaries to conduct their respective businesses after the Effective Time in the same manner as currently conducted, (B) would limit in any material respect the ability of the Combined Company to enter into joint ventures, partnerships, business alliances or code sharing agreements with any other Person following the Effective Time or (C) would reasonably be expected to prevent or materially impede, interfere with, hinder or delay the consummation of the Merger or the other transactions contemplated by this Agreement or adversely affect in a material respect the expected benefits (taken as a whole) of the Merger, in each case except as required by applicable

Law; provided, however, that notwithstanding anything to the contrary contained in this Agreement, Continental shall be permitted to enter into joint ventures, partnerships, business alliances, revenue sharing agreements or code sharing agreements (including adding new code share partners), in each case only with one or more other airlines, and to take any actions reasonably necessary in connection therewith, in each case in a manner consistent with the collective bargaining agreements listed on Section 4.12 of the Continental Disclosure Schedule;

(o) implement or adopt any material change in its tax accounting or financial accounting policies, practices or methods, other than as may be required by applicable Law, GAAP or regulatory guidelines;

(p) enter into or amend any material contract to the extent the consummation of the Merger or compliance by Continental with the provisions of this Agreement would reasonably be expected to violate, conflict with, result in a breach of any provision of or the loss of any benefit under, constitute a default (or an event which, with notice or lapse of time, or both, would constitute a default) under, result in the termination or cancelation under, accelerate the performance required by, or result in the creation of any Lien upon any of the respective properties or assets of Continental or any of the Continental Subsidiaries under, any provision of such contract or amendment;

(q) agree or commit or resolve to take any of, or participate in any negotiations or discussions with any other Person regarding any of, the actions prohibited by this Section 5.3; provided, however, that this Section 5.3(q) shall not prohibit Continental or any Continental Subsidiary from participating in any discussions or negotiations with any labor union to the extent Continental or any Continental Subsidiary is required to do so under applicable Law;

(r) cancel, terminate or amend any binding financing commitment to fund the acquisition by Continental or any of the Continental Subsidiaries of the aircraft covered under each of the Continental Contracts set forth on Section 4.20(a)(ii) of the Continental Disclosure Schedule unless, in the case of any cancellation or termination of such financing commitment, (i) it is replaced by another financing with substantially equivalent (or more favorable) terms and in an amount not less than the amount of such commitment or (ii) in return therefor, Continental receives equivalent value from the manufacturer of the applicable aircraft;

(s) enter into (i) any aircraft purchase agreement or (ii) any amendment to an existing aircraft purchase agreement, in either case, for the placement of an order for any aircraft that, as of the date hereof, is not either a firm order aircraft or an option or purchase right aircraft shown in the table at the end of Section 4.20(a)(ii) of the Continental Disclosure Schedule; or

(t) enter into or amend any capacity purchase or similar agreement, as a result of which the aggregate number of aircraft subject to all of Continental's capacity purchase or similar agreements would exceed the number of aircraft listed in Section 4.20(c)(i) of the Continental Disclosure Schedule (excluding the number of such aircraft that are subject to pro-rate agreements) by more than 25 aircraft, to the extent such agreement or amendment would be following the Effective Time (it being acknowledged that entering into, amending or terminating any capacity purchase or similar agreement in any respect, so long as the numerical limits set forth in this Section 5.3(t) are not thereby exceeded, shall be deemed to be in the ordinary course).

5.4 Control of Other Party's Business. Nothing contained in this Agreement will give United, directly or indirectly, the right to control Continental or any of the Continental Subsidiaries or direct the business or operations of Continental or any of the Continental Subsidiaries prior to the Effective Time.

Commented [DCT48]: This is intended to forestall potential "gun-jumping" problems under the [Hart-Scott-Rodino Act](#).

Nothing contained in this Agreement will give Continental, directly or indirectly, the right to control United or any of the United Subsidiaries or direct the business or operations of United or any of the United Subsidiaries prior to the Effective Time.

Prior to the Effective Time, each of United and Continental will exercise, consistent with the terms and conditions of this Agreement, complete control and supervision over its respective operations and the operations of its respective Subsidiaries.

Nothing in this Agreement, including any of the actions, rights or restrictions set forth herein, will be interpreted in such a way as to place Continental or United in violation of any rule, regulation or policy of any Regulatory Agency or applicable Law.

5.5 No Solicitation.

Commented [DCT49]: This is a form of "deal protection" provision.

(a) United will not, and will cause the United Subsidiaries and each officer or director of United or any United Subsidiary not to, and will use its reasonable best efforts to cause each controlled Affiliate and any employee, agent, consultant or representative (including any financial or legal advisor or other representative) of United, any of the United Subsidiaries or any such controlled Affiliate not to,

Commented [DCT50]: "Reasonable best efforts" again

and on becoming aware of it will use its best efforts to stop any such Person from continuing to,

directly or indirectly,

(i) solicit, initiate or knowingly encourage or facilitate (including by way of furnishing information) or take any other action designed to facilitate any inquiries or proposals regarding,

or that would reasonably be expected to lead to,

any merger, share exchange, consolidation, sale of assets, sale of shares of capital stock (including by way of a tender offer or exchange offer) or similar transactions involving United or any of the United Subsidiaries that, if consummated, would constitute a Competing Transaction

(any of the foregoing inquiries or proposals being referred to herein as a “ United Acquisition Proposal ”),

(ii) solicit, initiate, knowingly encourage or participate in any discussions or negotiations regarding, or furnish to any Person any information in connection with, or otherwise cooperate in any way with, or knowingly facilitate in any way any effort by, any Person in connection with, any United Acquisition Proposal, or

(iii) enter into any letter of intent, memorandum of understanding, agreement in principle, acquisition agreement, merger agreement, option agreement, joint venture agreement, partnership agreement or other agreement regarding, or that is intended to result in, or would reasonably be expected to lead to, any United Acquisition Proposal (a “ United Acquisition Agreement ”).

(b) Continental will not, and will cause the Continental Subsidiaries and each officer or director of Continental or any Continental Subsidiary not to, and will use its reasonable best efforts to cause each controlled Affiliate and any employee, agent, consultant or representative (including any financial or legal advisor or other representative) of Continental, any of the Continental Subsidiaries or any such controlled Affiliate not to, and on becoming aware of it will use its best efforts to stop any such Person from continuing to, directly or indirectly, (i) solicit, initiate or knowingly encourage or facilitate (including by way of furnishing information) or take any other action designed to facilitate any inquiries or proposals regarding, or that would reasonably be expected to lead to, any merger, share exchange, consolidation, sale of assets, sale of shares of capital stock (including by way of a tender offer or exchange

offer) or similar transactions involving Continental or any of the Continental Subsidiaries that, if consummated, would constitute a Competing Transaction (any of the foregoing inquiries or proposals being referred to herein as a “Continental Acquisition Proposal” and, together with any United Acquisition Proposal, each an “Acquisition Proposal”), (ii) solicit, initiate, knowingly encourage or participate in any discussions or negotiations regarding, or furnish to any Person any information in connection with, or otherwise cooperate in any way with, or knowingly facilitate in any way any effort by, any Person in connection with, any Continental Acquisition Proposal, or (iii) enter into any letter of intent, memorandum of understanding, agreement in principle, acquisition agreement, merger agreement, option agreement, joint venture agreement, partnership agreement or other agreement regarding, or that is intended to result in, or would reasonably be expected to lead to, any Continental Acquisition Proposal (a “Continental Acquisition Agreement”).

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(c) As used in this Agreement, “Competing Transaction” means, with respect to United or Continental, as the case may be (for this purpose, the “Target Party”), any of

(i) a transaction, including any tender offer, exchange offer or share exchange,

pursuant to which any third Person (or group) other than the other party to this Agreement (the “Non-Target Party”) or such third Person’s Affiliates, or the stockholders of such third Person,

directly or indirectly,

acquires or would acquire beneficial ownership (as defined in Rule 13d-3 under the Exchange Act)

of 10% or more of the outstanding shares of common stock of the Target Party or of the outstanding voting power of the Target Party

(or options, rights or warrants to purchase, or securities convertible into or exchangeable for, such common stock or other securities representing such voting power),

whether from the Target Party or pursuant to a tender offer or exchange offer or otherwise,

(ii) a merger, share exchange, consolidation or business combination

pursuant to which any third Person or group of Persons (other than the Non-Target Party or its Affiliates) party thereto, or the stockholders of such third Person or Persons,

beneficially owns or would beneficially own 10% or more of the outstanding shares of common stock or the outstanding voting power of the Target Party,

or, if applicable, any surviving entity or the parent entity resulting from any such transaction, immediately upon consummation thereof,

(iii) a recapitalization of Target Party or any of its Subsidiaries or any transaction similar to a transaction referred to in clause (ii) above involving the Target Party or any of its Subsidiaries

pursuant to which any third Person or group of Persons (other than the Non-Target Party or its Affiliates) party thereto, or its stockholders, beneficially owns or would beneficially own 10% or more of the outstanding shares of common stock or the outstanding voting power of the Target Party or such Subsidiary

or, if applicable, the parent entity resulting from any such transaction immediately upon consummation thereof or

(iv) any transaction pursuant to which any third Person or group of Persons (other than the Non-Target Party or its Affiliates)

directly or indirectly

(including by way of merger, consolidation, share exchange, other business combination, partnership, joint venture or otherwise)

acquires or would acquire control of assets

(including for this purpose the equity securities of, or other ownership interest in, Subsidiaries of the Target Party and se-

curities of the entity surviving any merger or business combination involving any of the Subsidiaries of the Target Party)

of the Target Party or any of its Subsidiaries representing 10% or more of consolidated revenues, net income, EBITDAR for the last 12 full calendar months or the fair market value of all the assets of the Target Party and its Subsidiaries, taken as a whole, immediately prior to such transaction;

provided, however, that no transaction involving solely the acquisition of capital stock or assets of any United Subsidiary by United, or of any Continental Subsidiary by Continental, will be deemed to be a Competing Transaction.

Wherever the term “group” is used in this Agreement, it used as defined in Rule 13d-3 under the Exchange Act.

(d) **The Target Party will notify** the Non-Target Party promptly (but in no event later than 24 hours) after receipt of

any Acquisition Proposal, or

any material modification of or material amendment to any Acquisition Proposal, or

any inquiry or request for non-public information relating to the Target Party or any of its Subsidiaries or

for access to the properties, books or records of the Target Party or any of its Subsidiaries

by any Person that is reasonably likely to lead to or contemplate an Acquisition Proposal.

Such notice to the Non-Target Party will be made orally and in writing and will indicate the identity of the Person or Persons making the Acquisition Proposal or inquiry or requesting non-public information or access to the properties, books or records of the Target Party or any of its Subsidiaries, and a copy of the Acquisition Proposal or, if not in writing, a written summary in reasonable detail of

Commented [DCT51]: Notification requirement

the material terms of any such Acquisition Proposal, inquiry or request or modification or amendment to an Acquisition Proposal.

The Target Party will

(i) keep the Non-Target Party fully informed, on a current basis, of any material changes in the status of, and any material changes or modifications in the terms of, any such Acquisition Proposal, inquiry or request and, if requested by the Non-Target Party, counsel for the Target Party will consult with counsel for the Non-Target Party once per day, at mutually agreeable times, regarding such status and any such changes or modifications, and

(ii) provide to the Non-Target Party as soon as practicable after receipt or delivery thereof with copies of all correspondence and other written material sent or provided to the Target Party from any third party in connection with any Acquisition Proposal or sent or provided by the Target Party to any third party in connection with any Acquisition Proposal;

provided, however, that any material written material or material correspondence will be sent or provided pursuant to clause (ii) within 24 hours after receipt or delivery thereof.

Neither United nor Continental will enter into any agreement on or after the date hereof that would prevent such party from providing any information required by this Section 5.5 to the other party.

Commented [DCT52]: No NDA in this area.

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(e) Notwithstanding anything to the contrary in this Section 5.5, at any time prior to obtaining the United Stockholder Approvals or the Continental Stockholder Approval, as applicable,

Commented [DCT53]: "Fiduciary out"

the Target Party may furnish or cause to be furnished information to, and enter or cause to be entered into discussions with, and only with, a Person (and its representatives) who has made a bona fide written Acquisition Proposal

that was not solicited on or after the date of this Agreement

and that did not otherwise result from a breach of Section 5.5(a) or Section 5.5(b), as applicable,

if the Target Party's Board of Directors (the "Target Board") has

(i) determined in good faith (after consultation with its outside legal counsel and financial advisor or advisors) that

(A) such Acquisition Proposal constitutes or is reasonably likely to lead to a Superior Proposal and

(B) the failure to enter into discussions regarding the Acquisition Proposal would be a breach of its fiduciary duties under applicable Law,

(ii) provided at least five Business Days' notice to the Non-Target Party of its intent to furnish information to or enter into discussions with such Person in accordance with this Section 5.5(e), and

(iii) obtained from such Person an executed confidentiality agreement containing terms that are determined in good faith by the Target Party to be substantially similar to and not less favorable to the Target Party in the aggregate than those contained in the Confidentiality Agreement

(it being understood that such confidentiality agreement and any related agreements will not include any provision calling for any exclusive right to negotiate with such Person or having the effect of prohibiting the Target Party from satisfying its obligations under this Agreement.

Unless such information has been previously provided to the Non-Target Party, all information that is provided by the Target Party to the Person making such Acquisition Proposal will be provided to the Non-Target Party.

During the five Business Day period set forth in clause (ii) above, the Non-Target Party will have the right to make a presentation to the Target Board.

(f) As used in this Agreement, "Superior Proposal" means a bona fide written Acquisition Proposal made by a third Person (or group of Persons) to consummate a merger, consolidation, business combination or other similar transaction involving the Target Party pursuant to which the stockholders of the Target Party immediately preceding such transaction would hold less than 65%

of the outstanding shares of common stock of, or less than 65% of the outstanding voting power of, the Target Party, any surviving entity or the parent entity resulting from any such transaction immediately upon consummation thereof that the Target Board (after consultation with its outside legal counsel and its financial advisor or advisors) determines in good faith to be more favorable to the Target Party's stockholders than the Merger, taking into account all relevant factors, including value and other financial considerations, legal and regulatory considerations and any conditions to, and expected timing and risks of, completion, as well as any changes to the terms of the Merger proposed by the Non-Target Party in response to such Superior Proposal.

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(g) Except as permitted by this Section 5.5(g), neither the Target Board nor any committee thereof will

(i) withdraw or modify in a manner adverse to the Non-Target Party the recommendation, approval or declaration of advisability by the Target Board, or any such committee, of this Agreement, the Restated Charter and the transactions contemplated by this Agreement, including the Merger,

(ii) recommend, approve or declare advisable the approval or adoption of any Acquisition Proposal, or

(iii) resolve, agree or propose publicly to take any such actions (each such action set forth in this sentence of this Section 5.5(g) being referred to herein as an "Adverse Recommendation Change")

or approve, adopt or recommend, or cause or permit the Target Party to enter into, or resolve, agree or propose publicly to do so with respect to, any United Acquisition Agreement (in the case of United) or Continental Acquisition Agreement (in the case of Continental) (other than a confidentiality agreement as referred to in Section 5.5(e)).

Notwithstanding anything to the contrary in this Section 5.5, if, at any time prior to obtaining the United Stockholder Approvals or the Continental Stockholder Approval, as applicable, the Target Board, in the exercise of its fiduciary duties, determines in good faith, after consultation with outside legal counsel and finan-

cial advisor or advisors, that to do otherwise would be a breach of its fiduciary duties under applicable Law, then the Target Board may make an Adverse Recommendation Change;

provided, however, that the Target Board may only make an Adverse Recommendation Change if

(A) the Target Party has provided written notice to the Non-Target Party (a “Notice of Adverse Recommendation Change”) advising the Non-Target Party that the Target Board intends to take such action,

(B) if any Acquisition Proposal has been made prior to the date of the Notice of Adverse Recommendation Change (regardless of whether such Acquisition Proposal is a Superior Proposal), the Notice of Adverse Recommendation Change specifies the material terms and conditions of such Acquisition Proposal, identifying the Person or Persons making such Acquisition Proposal and including a copy of the most current version of the agreement or proposal (if in writing) relating to such Acquisition Proposal,

(C) at least five Business Days have elapsed following the Non-Target Party’s receipt of such Notice of Adverse Recommendation Change (it being understood that any amendment or modification to any Acquisition Proposal that is the basis for such proposed action shall require a new Notice of Adverse Recommendation Change and a new five Business Day period) and

(D) if requested by the Non-Target Party, the Target Party has negotiated in good faith with the Non-Target Party during such five Business Day period (as extended pursuant to clause (C)) with respect to any changes to this Agreement proposed by the Non-Target Party during such period.

In determining whether to give a Notice of Adverse Recommendation Change or make an Adverse Recommendation Change, the Target Board shall take into account any changes to the terms of this Agreement proposed by the Non-Target Party.

The Target Party will not submit to the vote of its stockholders any Acquisition Proposal, or, except as permitted herein, propose to do so.

(h) (i) Nothing contained in this Section 5.5 will prohibit the Target Party or its Subsidiaries from taking and disclosing to its stockholders a position required by Rule 14e-2(a) or Rule 14d-9 promulgated under the Exchange Act and (ii) no disclosure that the United Board or the Continental Board may determine (after consultation with counsel) that it or United or Continental, as applicable, is required to make under applicable Law will constitute a violation of this Agreement; provided, however, that in any event neither the United Board nor the Continental Board shall make an Adverse Recommendation Change except in accordance with Section 5.5(g). Any disclosure by the Target Party relating to an Acquisition Proposal shall be deemed to be an Adverse Recommendation Change by the Target Party unless the Target Board reaffirms its recommendation and declaration of advisability with respect to this Agreement in such disclosure.

(i) Each of United and Continental and their respective Subsidiaries will immediately cease and cause to be terminated any existing discussions or negotiations with any Persons (other than the other party to this Agreement) conducted heretofore with respect to any Acquisition Proposal, and will use reasonable best efforts to cause all Persons, other than the other party hereto, who have been furnished confidential information regarding such party in connection with the solicitation of or discussions regarding an Acquisition Proposal within the 12 months prior to the date of this Agreement promptly to return or destroy such information.

(j) It is understood that any violation of the restrictions set forth in this Section 5.5 by any director, officer, employee, controlled Affiliate, agent or representative (including financial or legal advisor or other retained representative) of either party or any of its Subsidiaries or controlled Affiliates will be deemed to be a breach of this Section 5.5 by such party.

ARTICLE VI
ADDITIONAL AGREEMENTS

6.1 Preparation of the Form S-4 and the Joint Proxy Statement: Stockholders Meetings. (a) As promptly as practicable following the date of this Agreement, Continental and United shall jointly prepare and cause to be filed with the SEC the Joint Proxy Statement, and Continental and United shall jointly prepare and cause to be filed with the SEC the Form S-4, in which the Joint Proxy Statement will be included as a prospectus, and each of Continental and United shall use its reasonable best efforts to have the Form S-4 declared effective under the Securities Act as promptly as practicable after such filing. Each of United and Continental shall furnish all information concerning such Person and its Affiliates to the other, and provide such other assistance, as may be reasonably requested in connection with the preparation, filing and distribution of the Form S-4 and Joint Proxy Statement. The Form S-4 and Joint Proxy Statement shall include all information reasonably requested by such other party to be included therein. Each of United and Continental shall promptly notify the other upon the receipt of any comments from the SEC or any request from the SEC for amendments or supplements to the Form S-4 or Joint Proxy Statement and shall provide the other with copies of all correspondence between it and its Representatives, on one hand, and the SEC, on the other hand. Each of United and Continental shall use its reasonable best efforts to respond as promptly as practicable to any comments from the SEC with respect to the Form S-4 or Joint Proxy Statement. Notwithstanding the foregoing, prior to filing the Form S-4 (or any amendment or supplement thereto) or mailing the Joint Proxy Statement (or any amendment or supplement thereto) or responding to any comments of the SEC with respect thereto, each of United and Continental (i) shall provide the other an opportunity to review and comment on such document or response (including the proposed final version of such document or response) and (ii) shall include in such document or response all comments reasonably proposed by the other. Each of United and Continental shall advise the other, promptly after receipt of notice thereof, of the time of effectiveness of the Form S-4, the issuance of any stop order relating thereto or the suspension of the qualification of United Common Stock constituting Merger Consideration for offering or sale in any jurisdiction, and each of United and Continental shall use its reasonable best efforts to have any such stop order or suspension lifted, reversed or otherwise terminated. United shall also take any other action (other

than qualifying to do business in any jurisdiction in which it is not now so qualified) required to be taken under the Securities Act, the Exchange Act, any applicable foreign or state securities or “Blue Sky” laws and the rules and regulations thereunder in connection with the Merger, the issuance of the Merger Consideration and the issuance of United Common Stock under the Continental Stock Plans. Continental shall furnish all information concerning Continental and the holders of the Continental Common Stock and rights to acquire Continental Common Stock pursuant to the Continental Stock Plans as may be reasonably requested in connection with any such action.

(b) If, prior to the Effective Time, any event occurs with respect to Continental or any Continental Subsidiary, or any change occurs with respect to other information supplied by Continental for inclusion in the Joint Proxy Statement or the Form S-4, which is required to be described in an amendment of, or a supplement to, the Joint Proxy Statement or the Form S-4, Continental shall promptly notify United of such event, and Continental and United shall cooperate in the prompt filing with the SEC of any necessary amendment or supplement to the Joint Proxy Statement and the Form S-4 and, as required by Law, in disseminating the information contained in such amendment or supplement to Continental’s stockholders and United’s stockholders. Nothing in this Section 6.1(b) shall limit the obligations of any party under Section 6.1(a).

(c) If prior to the Effective Time, any event occurs with respect to United or any United Subsidiary, or any change occurs with respect to other information supplied by United for inclusion in the Joint Proxy Statement or the Form S-4, which is required to be described in an amendment of, or a supplement to, the Joint Proxy Statement or the Form S-4, United shall promptly notify Continental of such event, and United and Continental shall cooperate in the prompt filing with the SEC of any necessary amendment or supplement to the Joint Proxy Statement and the Form S-4 and, as required by Law, in disseminating the information contained in such amendment or supplement to Continental’s stockholders and United’s stockholders. Nothing in this Section 6.1(c) shall limit the obligations of any party under Section 6.1(a).

(d) Continental shall, as soon as practicable following the date of this Agreement, duly call, give notice of, convene and hold the Continental Stockholders Meeting. Continental shall use its reasonable best efforts to (i) cause the Joint Proxy Statement to be mailed to Continental's stockholders and to hold the Continental Stockholders Meeting as soon as practicable after the Form S-4 is declared effective under the Securities Act and (ii) solicit the Continental Stockholder Approval. Continental shall, through the Continental Board, recommend to its stockholders that they give the Continental Stockholder Approval and shall include such recommendation in the Joint Proxy Statement, except to the extent that the Continental Board shall have made a Continental Adverse Recommendation Change as permitted by Section 5.5(g). Continental agrees that its obligations pursuant to this Section 6.1 shall not be affected by the commencement, public proposal, public disclosure or communication to Continental of any Continental Acquisition Proposal or by the making of any Continental Adverse Recommendation Change by the Continental Board except to the extent (and only to the extent) expressly stated herein to the contrary.

(e) United shall, as soon as practicable following the date of this Agreement, duly call, give notice of, convene and hold the United Stockholders Meeting. United shall use its reasonable best efforts to (i) cause the Joint Proxy Statement to be mailed to United's stockholders as promptly as practicable after the Form S-4 is declared effective under the Securities Act and to hold the United Stockholders Meeting as soon as practicable after the Form S-4 becomes effective and (ii) solicit the United Stockholder Approvals. United shall, through the United Board, recommend to its stockholders that they give the United Stockholder Approvals and shall include such recommendation in the Joint Proxy Statement, except to the extent that the United Board shall have made a United Adverse Recommendation Change as permitted by Section 5.5(g). United agrees that its obligations pursuant to this Section 6.1 shall not be affected by the commencement, public proposal, public disclosure or communication to United of any United Acquisition Proposal or by the making of any United Adverse Recommendation Change by the United Board except to the extent (and only to the extent) expressly stated herein to the contrary.

6.2 Access to Information; Confidentiality. Upon reasonable notice and subject to applicable Law, each of Continental and United shall, and shall cause each of its respective Subsidiaries to, afford to the other party and to the Representatives of such other party reasonable access during the period prior to the Effective Time to all their respective properties, books, contracts, commitments, personnel and records and, during such period, each of Continental and United shall,

Commented [DCT54]: This is for "due diligence."

and shall cause each of its respective Subsidiaries to, furnish promptly to the other party

(a) a copy of each report, schedule, registration statement and other document filed by it during such period pursuant to the requirements of federal or state securities Laws or federal or state Laws applicable to certificated air carriers (other than such documents that such party is not permitted to disclose under applicable Law) and

(b) all other information concerning its business, properties and personnel as such other party may reasonably request;

provided, however, that either party may withhold any document or information

(i) that is subject to the terms of a confidentiality agreement with a third party entered into prior to the date of this Agreement or entered into after the date of this Agreement in the ordinary course of business (provided that the withholding party shall use its reasonable best efforts to obtain the required consent of such third party to such access or disclosure),

(ii) the disclosure of which would violate any Law or fiduciary duty (provided that the withholding party shall use its reasonable best efforts to make appropriate substitute arrangements to permit reasonable disclosure not in violation of any Law or fiduciary duty) or

(iii) that is subject to any attorney-client privilege (provided that the withholding party shall use its reasonable best efforts to allow for such

Commented [DCT55]: COMMENT: Always, ALWAYS keep privilege in the back of your mind when providing a client's information to a third party.

access or disclosure to the maximum extent that does not result in a loss of attorney-client privilege).

Furthermore, the parties acknowledge that with respect to the “Highly Sensitive Information” (as defined in the Confidentiality Agreement), the Confidentiality Agreement imposes additional restrictions as to the manner in which such information will be exchanged by the parties.

If any material is withheld by such party pursuant to the proviso to the preceding sentence, such party shall inform the other party as to the general nature of what is being withheld.

Without limiting the generality of the foregoing, each of United and Continental shall, within two Business Days of request by the other party therefor, provide to such other party the information described in Rule 14a-7(a)(2)(ii) under the Exchange Act and any information to which a holder of United Common Stock or Continental Common Stock, as applicable, would be entitled under Section 220 of the Delaware Law (assuming such holder met the requirements of such section).

All information exchanged pursuant to this Section 6.2 shall be subject to the confidentiality agreement dated April 12, 2010 between Continental and United (the “Confidentiality Agreement”).

The parties agree that the Confidentiality Agreement supersedes that certain confidentiality agreement dated April 15, 2008 between Continental and United (the “Prior Confidentiality Agreement”)

and that any information constituting “Evaluation Material” under and as defined in the Prior Confidentiality Agreement shall, from and after the date of this Agreement, be deemed “Evaluation Material” under and as defined in, and subject to the terms of, the Confidentiality Agreement.

6.3 Required Actions. (a) Each of the parties shall take, or cause to be taken, all actions, and do, or cause to be done, and assist and cooperate with the other parties in doing, all things necessary to consummate and make

effective, as soon as reasonably possible, the Merger and the other transactions contemplated by this Agreement in accordance with the terms hereof; provided, however, that nothing in this Section 6.3 shall prohibit either party from taking any action expressly contemplated by Section 5.5.

(b) In connection with and without limiting Section 6.3(a), United and the United Board and Continental and the Continental Board shall (x) take all action necessary to ensure that no Takeover Statute or similar statute or regulation is or becomes applicable to this Agreement or any transaction contemplated by this Agreement and (y) if any Takeover Statute or similar statute or regulation becomes applicable to this Agreement or any transaction contemplated by this Agreement, take all action necessary to ensure that the Merger and the other transactions contemplated by this Agreement may be consummated as promptly as practicable on the terms contemplated by this Agreement.

(c) In connection with and without limiting Section 6.3(a), promptly following the execution and delivery by the parties of this Agreement United and Continental shall provide all necessary notices, applications and requests to, and enter into discussions with, the Governmental Entities from whom Consents or nonactions are required to be obtained in connection with the consummation of the Merger and the other transactions contemplated by this Agreement in order to obtain all such required Consents or nonactions from such Governmental Entities and eliminate each and every other impediment that may be asserted by such Governmental Entities, in each case with respect to the Merger, so as to enable the Closing to occur as soon as reasonably practicable.

To the extent necessary in order to accomplish the foregoing, United and Continental shall jointly propose, negotiate, commit to and effect, by consent decree, hold separate order or otherwise, the sale, divestiture or disposition of, or prohibition or limitation on, (A) the ownership or operation by United, Continental or any of their respective Subsidiaries of any portion of the business, properties or assets of United, Continental or any of their respective Subsidiaries, (B) the ability of United to acquire or hold, or exercise full right of ownership of, any shares of the capital stock of the United Subsidiaries or Continental or the Continental Subsidiaries, including the right to vote, or (C) United or any of its Subsidiaries effectively controlling the business or operations of United and the United Subsidiaries or Continental and the Continental Subsidiaries;

provided, however, that neither Continental nor United shall be required pursuant to this Section 6.3(c) to propose, commit to or effect any action that is not conditioned upon the consummation of the Merger.

If the actions taken by Continental and United pursuant to the immediately preceding sentence do not result in the conditions set forth in Section 7.1(d) and (f) being satisfied, then each of Continental and United shall jointly (to the extent practicable) initiate and/or participate in any proceedings, whether judicial or administrative, in order to (i) oppose or defend against any action by any Governmental Entity to prevent or enjoin the consummation of the Merger or any of the other transactions contemplated by this Agreement and (ii) take such action as necessary to overturn any regulatory action by any Governmental Entity to block consummation of the Merger or any of the other transactions contemplated by this Agreement, including by defending any suit, action or other legal proceeding brought by any Governmental Entity in order to avoid the entry of, or to have vacated, overturned or terminated, including by appeal if necessary, any Injunction resulting from any suit, action or other legal proceeding that would cause any condition set forth in Section 7.1(d) or (f) not to be satisfied, provided that Continental and United shall cooperate with one another in connection with, and shall jointly control, all proceedings related to the foregoing.

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(d) In connection with and without limiting the generality of the foregoing, each of Continental and United shall:

(i) make or cause to be made, in consultation and cooperation with the other and as promptly as practicable after the date of this Agreement (but in any event, with respect to clause (A) below, within five Business Days following the date of this Agreement, and with respect to clause (B) below, at a time necessary to ensure that the EU Extension Date occurs prior to the Latest Possible End Date), (A) an appropriate filing of a Notification and Report Form pursuant to the HSR Act relating to the Merger, (B) all appropriate filings required pursuant to European Community Council Regulation No. 139/2004 (the “EU Merger Regulation”), and (C) all other necessary registrations, declarations, notices and

filings relating to the Merger with other Governmental Entities under any other antitrust, competition, trade regulation or similar Laws;

(ii) use its reasonable best efforts to furnish to the other all assistance, cooperation and information required for any such registration, declaration, notice or filing and in order to achieve the effects set forth in Section 6.3(c);

(iii) give the other reasonable prior notice of any such registration, declaration, notice or filing and, to the extent reasonably practicable, of any communication with any Governmental Entity regarding the Merger (including with respect to any of the actions referred to in Section 6.3(c)), and permit the other to review and discuss in advance, and consider in good faith the views of, and secure the participation of, the other in connection with, any such registration, declaration, notice, filing or communication;

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(iv) respond as promptly as practicable under the circumstances to any inquiries received from any Governmental Entity or any other authority enforcing applicable antitrust, competition, trade regulation or similar Laws for additional information or documentation in connection with antitrust, competition, trade regulation or similar matters;

(v) without limiting the generality of Section 6.3(d)(iv), (A) use its reasonable best efforts to achieve Substantial Compliance as promptly as practicable with any request for additional information or documentary material issued by a Governmental Entity under 15 U.S.C. Sect. 18a(e) and in conjunction with the transactions contemplated by this Agreement (a “Second Request”), (B) certify Substantial Compliance with any Second Request as promptly as practicable after the date of such Second Request, but in no event later than September 30, 2010, (C) take all actions necessary to assert, defend and support its certification of Substantial Compliance with such Second Request and (D) not extend any waiting period under the HSR Act or enter into any agreement with such Governmental Entities or other authorities to delay, or otherwise not to consummate as soon as practicable, any of the transactions contemplated by this Agreement except with the prior written consent of the other parties hereto,

which consent may be withheld in the sole discretion of the non-requesting party; and

(vi) unless prohibited by applicable Law or by the applicable Governmental Entity, (A) to the extent reasonably practicable, not participate in or attend any meeting, or engage in any substantive conversation with any Governmental Entity in respect of the Merger (including with respect to any of the actions referred to in Section 6.3(c)) without the other, (B) to the extent reasonably practicable, give the other reasonable prior notice of any such meeting or conversation, (C) in the event one party is prohibited by applicable Law or by the applicable Governmental Entity from participating or attending any such meeting or engaging in any such conversation, keep such party reasonably apprised with respect thereto, (D) cooperate in the filing of any substantive memoranda, white papers, filings, correspondence or other written communications explaining or defending this Agreement and the Merger, articulating any regulatory or competitive argument, and/or responding to requests or objections made by any Governmental Entity, and (E) furnish the other party with copies of all correspondence, filings and communications (and memoranda setting forth the substance thereof) between it and its Affiliates and their respective Representatives on the one hand, and any Governmental Entity or members of any Governmental Entity's staff, on the other hand, with respect to this Agreement and the Merger.

Commented [DCT56]: "Don't talk to anyone in the government without having us in on the conversation."

(e) Notwithstanding anything else contained herein, the provisions of this Section 6.3 shall not be construed to require United or any United Subsidiary or Continental or any Continental Subsidiary to undertake any efforts or to take any action if the taking of such efforts or action is or would reasonably be expected to result (after giving effect to any reasonably expected proceeds of any divestiture or sale of assets) in a Material Adverse Effect on either United or Continental, as applicable.

(f) Continental shall give prompt notice to United, and United shall give prompt notice to Continental, of (i) any representation or warranty made by it contained in this Agreement that is qualified as to materiality becoming untrue or inaccurate in any respect or any such representation or warranty that is not so qualified becoming untrue or inaccurate in any material respect or (ii) the failure

Commented [DCT57]: "Keep us informed of any change to the reps and warranties."

by it to comply with or satisfy in any material respect any covenant, condition or agreement to be complied with or satisfied by it under this Agreement;

provided, however, that no such notification shall affect the representations, warranties, covenants or agreements of the parties or the conditions to the obligations of the parties under this Agreement;

provided further, that a failure to comply with this Section 6.3(f) will not constitute the failure of any condition set forth in Article VII to be satisfied unless the underlying inaccuracy or breach would independently result in the failure of a condition set forth in Article VII to be satisfied.

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(g) Immediately following the execution and delivery of this Agreement by each of the parties hereto, United, as sole stockholder of Merger Sub, will adopt this Agreement.

(h) Each of Continental and United shall use its reasonable best efforts to cause the United Common Stock to be listed on either the NASDAQ or the NYSE, as reasonably agreed upon by Continental and United, after the Effective Time and to cause the trading symbol for the United Common Stock on such exchange after the Effective Time to be the trading symbol reasonably agreed upon by Continental and United.

6.4 Stock Plans. (a) Prior to the Effective Time, the Continental Board (or, if appropriate, any committee thereof administering the Continental Stock Plans) shall adopt such resolutions or take such other actions as may be required to effect the following:

(i) except as provided in Section 6.4(a)(iii), adjust the terms of all outstanding Continental Stock Options to provide that, at the Effective Time, each Continental Stock Option outstanding immediately prior to the Effective Time, whether vested or unvested, shall be deemed to constitute an option to acquire, on the same terms and conditions as were applicable under such Continental Stock Option, a number of shares of United Common Stock (rounded down to

Commented [DCT58]: Merging the employee and executive stock plans is an important chore.

the nearest whole share) equal to the product of (x) the number of shares of Continental Common Stock subject to such Continental Stock Option multiplied by (y) the Exchange Ratio, at an exercise price per share of United Common Stock (rounded up to the nearest whole cent) equal to quotient of (x) the exercise price per share of Continental Common Stock under such Continental Stock Option divided by (y) the Exchange Ratio (each, a “Continental Rollover Option”); provided, however, that in the case of any option to which Section 421 of the Code applies by reason of its qualification under either Section 422 or 424 of the Code, the option price, the number of shares purchasable pursuant to such option and the terms and conditions of exercise of such option shall be determined in order to comply with Section 424(a) of the Code;

(ii) adjust the terms of all outstanding Continental Stock-Based Awards (other than Continental Stock Options and Cash-Settled Profit-Based RSU Awards), if any, to provide that, at the Effective Time, such Continental Stock-Based Awards outstanding immediately prior to the Effective Time shall be converted into shares of United Common Stock or other compensatory awards denominated in shares of United Common Stock subject to a risk of forfeiture to, or right of repurchase by, United (each, a “Converted Continental Stock-Based Award”), with the same terms and conditions as were applicable under such Continental Stock-Based Awards, except to the extent otherwise required by the terms of such Continental Stock-Based Awards or pursuant to any Continental Benefit Plan or employment agreement as in effect as of the date of this Agreement, and each holder of Continental Stock-Based Awards shall be entitled to receive a number of Converted Continental Stock-Based Awards equal to the product of (x) the number of Continental Stock-Based Awards held by such holder immediately prior to the Effective Time and (y) the Exchange Ratio;

(iii) (1) no less than 5 days prior to the Effective Time, (A) cause the then-current purchase period under the Continental SPP to end and use the accumulated funds thereunder to acquire shares of Continental Common Stock in accordance with the terms of the Continental SPP, (B) ensure that the shares of Continental Common Stock so purchased are treated in accordance with Article II in the same manner as other outstanding shares of Continental Common Stock

issued and outstanding immediately prior to the Effective Time and (C) ensure that no new options to acquire shares of Continental Common Stock are granted under the Continental SPP thereafter and (2) terminate the Continental SPP as of the Effective Time;

(iv) make such other changes to the Continental Stock Plans as it deems appropriate to give effect to the Merger (subject to the approval of United, which shall not be unreasonably withheld, conditioned or delayed); and

(v) ensure that, after the Effective Time, no Continental Stock Options or Continental Stock-Based Awards may be granted under any Continental Stock Plans and that from and after the Effective Time awards under the Continental Stock Plans shall be granted with respect to United Common Stock.

(b) At the Effective Time, and subject to compliance by Continental with Section 6.4(a), United shall assume all the obligations of Continental under the Continental Stock Plans, each outstanding Continental Stock Option, each outstanding Continental Stock-Based Award and the agreements evidencing the grants thereof. As soon as practicable after the Effective Time, United shall deliver to the holders of Continental Stock Options and Continental Stock-Based Awards appropriate notices setting forth such holders' rights pursuant to the respective Continental Stock Plans, and the agreements evidencing the grants of such Continental Stock Options and Continental Stock-Based Awards shall continue in effect on the same terms and conditions (subject to the adjustments required by this Section 6.4 after giving effect to the Merger).

(c) United shall take all corporate action necessary to reserve for issuance a sufficient number of shares of United Common Stock for delivery upon exercise of the Continental Rollover Options and Converted Continental Stock-Based Awards assumed in accordance with this Section 6.4. As soon as reasonably practicable after the Effective Time, United shall file a registration statement on Form S-8 (or any successor or other appropriate form) with respect to the shares of United Common Stock subject to such Continental Rollover Options and Converted Continental Stock-Based Awards and shall use its reasonable best efforts to maintain the effectiveness of such registration statement or registration statements (and maintain the current status of the prospectus or pro-

spectuses contained therein) for so long as such Continental Rollover Options and Converted Continental Stock-Based Awards remain outstanding.

6.5 Actions with Respect to Certain Continental

Debt. (a) United and Continental shall enter into a supplemental indenture in respect of the 5% Convertible Notes due 2023 (the “Continental Convertible Notes”) issued pursuant to the Indenture dated as of June 10, 2003, between Continental and Bank One, N.A., as trustee, as amended to the date of this Agreement (the “Continental Convertible Notes Indenture”) containing the provisions required by the Continental Convertible Notes Indenture, including a provision that, at the Effective Time, (i) each outstanding Continental Convertible Note shall no longer be convertible into shares of Continental Common Stock and shall be convertible solely into the number of shares of United Common Stock that the holder of such Continental Convertible Note would have received pursuant to the Merger if such holder had converted such Continental Convertible Note immediately before the Effective Time and (ii) United assumes all the obligations of Continental under the Continental Convertible Notes, any coupons appertaining thereto and the Continental Convertible Notes Indenture.

(b) United and Continental shall enter into a supplemental indenture in respect of the 6% Convertible Junior Subordinated Debentures due 2030 (the “Continental Convertible Debentures”) issued pursuant to the Indenture dated as of November 10, 2000, between Continental and Wilmington Trust Company, as trustee, as amended to the date of this Agreement (the “Continental Convertible Debentures Indenture”) containing the provisions required by the Continental Convertible Debentures Indenture, including a provision that, at the Effective Time, (i) each outstanding Continental Convertible Debenture shall no longer be convertible into shares of Continental Common Stock and shall be convertible solely into a number of shares of United Common Stock that the holder of such Continental Convertible Debenture would have received pursuant to the Merger if such holder had converted such Continental Convertible Debenture immediately before the Effective Time and (ii) United assumes the due and punctual payment of principal and interest on the Continental Convertible De-

ventures and the performance or observance of every covenant of the Continental Convertible Debentures Indenture to be performed or observed on the part of Continental.

(c) United and Continental shall enter into a supplemental indenture in respect of the 4.5% Convertible Notes due 2015 (the “Continental 2015 Convertible Notes”) issued pursuant to the Indenture dated as of December 11, 2009, between Continental and The Bank of New York Mellon Trust Company, N.A., as trustee, as amended to the date of this Agreement (the “Continental 2015 Convertible Notes Indenture”) containing the provisions required by the Continental 2015 Convertible Notes Indenture, including a provision that, at the Effective Time, (i) each outstanding Continental 2015 Convertible Note shall no longer be convertible into shares of Continental Common Stock and shall be convertible solely into the number of shares of United Common Stock that the holder of such Continental 2015 Convertible Note would have received pursuant to the Merger if such holder had converted such Continental 2015 Convertible Note immediately before the Effective Time and (ii) United assumes all the obligations of Continental under the Continental 2015 Convertible Notes, any coupons appertaining thereto and the Continental 2015 Convertible Notes Indenture.

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6.6 Indemnification and Directors and Officers Insurance

(a) United agrees that all rights to indemnification, advancement of expenses and exculpation from liabilities for acts or omissions occurring prior to the Effective Time now existing in favor of the current or former directors or officers of Continental and its respective Subsidiaries (each, an “Indemnified Party”) shall be assumed by United and shall survive the Merger and continue in full force and effect in accordance with their terms.

(b) At or prior to the Effective Time, United shall purchase a “tail” directors’ and officers’ liability insurance policy for Continental and its current and former directors and officers who are currently covered by the directors’ and officers’ liability insurance coverage currently maintained by Continental in a form reasonably acceptable to Continental that shall provide Continental and such directors and officers with coverage for six years following the Effective

Commented [DCT59]: Directors and officers will DEFINITELY be keeping one eye peeled for their own personal interests, including especially making sure that D&O coverage continues.

Commented [DCT60]: “Tail” coverage extends the coverage of a “claims made” insurance policy.

Commented [DCT61]: Six years is probably tied to the maximum statute of limitations for most causes of action.

Time of not less than the existing coverage and have other terms not less favorable to the insured persons than the directors' and officers' liability insurance coverage currently maintained by Continental;

provided, however, that in no event will United be required to expend for any year of such six-year period an amount in excess of 250% of the annual aggregate premiums currently paid by United for such insurance (the "Maximum Premium").

Commented [DCT62]: But there's a cap on how much the acquirer has to pay for tail coverage.

United shall maintain such policy in full force and effect, and continue to honor the obligations thereunder.

If such insurance coverage cannot be obtained at all, or can only be obtained at an annual premium in excess of the Maximum Premium, United will cause to be maintained the most advantageous policies of directors' and officers' insurance obtainable for an annual premium equal to the Maximum Premium.

(c) The provisions of this Section 6.6 will survive the Effective Time and are intended to be for the benefit of, and will be enforceable by, each Indemnified Party and his or her heirs and representatives.

United will pay or cause to be paid (as incurred) all expenses, including reasonable fees and expenses of counsel, that an Indemnified Party may incur in enforcing the indemnity and other obligations provided for in this Section 6.6 (subject to reimbursement if the Indemnified Party is subsequently determined not to be entitled to indemnification under Section 6.6(a)).

Commented [DCT63]: So if a former Continental director gets sued by a shareholder, but has to hire a lawyer and file suit to get her D&O coverage to pay for the defense, then United will pay the former director's legal fees for suing to get the coverage payment. (This is not an unheard-of situation.)

(d) If United or any of its successors or assigns (i) consolidates with or merges into any other Person and is not the continuing or surviving corporation or entity of such consolidation or merger or (ii) transfers or conveys all or substantially all of its properties and assets to any Person, then, and in each such case, to the extent necessary, proper provision will be made so that the successors and assigns of United, as the case may be, will assume the obligations set forth in this Section 6.6.

6.7 Fees and Expenses. (a) Except as provided in this Section 6.7, all costs and expenses incurred in connection with this Agreement and the transactions contemplated by this Agreement will be paid by the party incurring

such expense; provided, however, that United and Continental shall share equally (i) all fees and expenses in relation to the printing and filing of the Form S-4 and the printing, filing and distribution of the Joint Proxy Statement and (ii) any filing fees required in connection with the Merger pursuant to the HSR Act or any other competition Law, other than, in the case of clause (i) or clause (ii), attorneys' and accountants' fees and expenses.

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(b) In the event that this Agreement is terminated:

Commented [DCT64]: Here's some what-if thinking.

(i) by United pursuant to Section 8.1(h);

(ii) by Continental or United pursuant to Section 8.1(d) and (x) a proposal for a Competing Transaction has been made to Continental or its stockholders or such a proposal (whether or not conditional) or an intention to make such a proposal has been publicly announced or has otherwise become publicly known after the date of this Agreement and prior to the Continental Stockholders Meeting, and (y) (1) within 12 months after such termination, Continental or any of its Subsidiaries enters into any definitive agreement providing for a Competing Transaction or (2) (A) within 12 months after such termination, any Person commences a tender offer or exchange offer with respect to Continental (or any successor to Continental or any parent of Continental) and (B) within 24 months after such termination a Competing Transaction is consummated; provided, however, for purposes of this clause (ii), unless a Competing Transaction described in clauses (x) and (y) is made and consummated by the same Person (or any Affiliate thereof), any reference in the definition of Competing Transaction to 10% shall be deemed to be a reference to 35%; or

(iii) by Continental or United pursuant to Section 8.1(e) and (x) a proposal for a Competing Transaction has been made to Continental or its stockholders or such a proposal (whether or not conditional) or an intention to make such a proposal has been publicly announced or has otherwise become publicly known after the date of this Agreement and prior to the End Date, (y) the Continental Stockholders Meeting did not occur at least 5 Business Days prior to the End Date and (z) (1) within 12 months after such termination, Continental or any of

its Subsidiaries enters into any definitive agreement providing for a Competing Transaction or (2) (A) within 12 months after such termination, any Person commences a tender offer or exchange offer with respect to Continental (or any successor to Continental or any parent of Continental) and (B) within 24 months after such termination a Competing Transaction is consummated; provided, however, for purposes of this clause (iii), unless a Competing Transaction described in clauses (x) and (y) is made and consummated by the same Person (or any controlled Affiliate thereof), any reference in the definition of Competing Transaction to 10% shall be deemed to be a reference to 35%;

then, Continental will pay United a fee equal to \$175,000,000 (the “Termination Fee”), by wire transfer of same day funds to an account designated by United, in the case of a termination referred to in Section 6.7(b)(ii) or Section 6.7(b)(iii), upon the earliest to occur of the events referred to in Section 6.7(b)(ii)(y) or Section 6.7(b)(iii)(z), as applicable, and in the case of a termination by United referred to in Section 6.7(b)(i), within two Business Days after such termination .

Commented [DCT65]: Break-up fee

(c) In the event that this Agreement is terminated:

(i) by Continental pursuant to Section 8.1(i);

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(ii) by United or Continental pursuant to Section 8.1(c) and (x) a proposal for a Competing Transaction has been made to United or its stockholders or such a proposal (whether or not conditional) or an intention to make such a proposal has been publicly announced or has otherwise become publicly known after the date of this Agreement and prior to the United Stockholders Meeting, and (y) (1) within 12 months after such termination, United or any of its Subsidiaries enters into any definitive agreement providing for a Competing Transaction or (2) (A) within 12 months after such termination, any Person commences a tender offer or exchange offer with respect to United (or any successor to United or any parent of United) and (B) within 24 months after such termination a Competing Transaction is consummated; provided, however, for purposes of this clause (ii), unless a Competing Transaction described in clauses

(x) and (y) is made and consummated by the same Person (or any controlled Affiliate thereof), any reference in the definition of Competing Transaction to 10% shall be deemed to be a reference to 35%; or

(iii) by United or Continental pursuant to Section 8.1(e) and (x) a proposal for a Competing Transaction has been made to United or its stockholders or such a proposal (whether or not conditional) or an intention to make such a proposal has been publicly announced or has otherwise become publicly known after the date of this Agreement and prior to the End Date, (y) the United Stockholders Meeting did not occur at least 5 Business Days prior to the End Date and (z) (1) within 12 months after such termination, United or any of its Subsidiaries enters into any definitive agreement providing for a Competing Transaction or (2) (A) within 12 months after such termination, any Person commences a tender offer or exchange offer with respect to United (or any successor to United or any parent of United) and (B) within 24 months after such termination a Competing Transaction is consummated; provided, however, for purposes of this clause (iii), unless a Competing Transaction described in clauses (x) and (y) is made and consummated by the same Person (or any controlled Affiliate thereof), any reference in the definition of Competing Transaction to 10% shall be deemed to be a reference to 35%;

then, United will pay Continental the Termination Fee, by wire transfer of same day funds to an account designated by Continental, in the case of termination referred to in Section 6.7(c)(ii) or (iii), upon the earliest to occur of the events referred to in Section 6.7(c)(ii)(y) or Section 6.7(c)(iii)(z), as applicable, and in the case of termination by Continental referred to in Section 6.7(c)(i), within two Business Days after such termination.

(d) Each party acknowledges that the agreements contained in this Section 6.7 are an integral part of the transactions contemplated by this Agreement and that, without these agreements, the other party would not enter into this Agreement. Accordingly, if a party fails promptly to pay the amounts due pursuant to this Section 6.7 and, in order to obtain such payment, the other party commences a suit that results in a judgment against the non-paying party for the amounts set forth in this Section 6.7, the non-paying party will pay to the other party interest, from the date such payment was required to be made, on the amounts set

forth in this Section 6.7 at a rate per annum equal to the three-month LIBOR (as reported in The Wall Street Journal (Northeast edition) or, if not reported therein, in another authoritative source selected by the party entitled to such amounts) on the date such payment was required to be made (or if no quotation for three-month LIBOR is available for such date, on the next preceding date for which such a quotation is available) plus 250 basis points. The parties acknowledge and agree that the Termination Fee shall not constitute either a penalty or liquidated damages, and the right of a party to receive, or the receipt of, the Termination Fee shall not limit or otherwise affect such party's right to specific performance as provided in Section 9.10, such party's rights as set forth in Section 8.2 or Section 9.7 or any other remedies that may be available for breaches of this Agreement, including breaches of Section 5.5 of this Agreement.

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Commented [DCT66]: A "basis point" is 1% of 1%, that is, one one-hundredth of 1%. So, 250 basis points = 2.5 percentage points.

6.8 Certain Tax Matters. (a) United and Continental shall each use its reasonable best efforts to cause the Merger to qualify for the Intended Tax Treatment, including (i) not taking any action that such party knows would reasonably be expected to prevent such qualification and (ii) executing such amendments to this Agreement as may be reasonably required in order to obtain such qualification (it being understood that no party will be required to agree to any such amendment). For Federal income Tax purposes, each of United, Continental and Merger Sub will report the Merger and the other transactions contemplated by this Agreement in a manner consistent with such qualification.

(b) United and Continental shall each use its reasonable best efforts to obtain the Tax opinions described in Sections 7.2(c) and 7.3(c), including by causing its officers to execute and deliver to the law firms delivering such Tax opinions certificates substantially in the form attached hereto as Exhibits C-2 and D-2 at such time or times as may reasonably be requested by such law firms, including at the time the Form S-4 is filed and at the Closing Date. Each of United, Continental and Merger Sub shall use its reasonable best efforts not to take or cause to be taken any action that would cause to be untrue (or fail to take or cause not to be taken any action which inaction would cause to be untrue) any of the representations included in the certificates described in this Section 6.8. It

is understood and agreed that the parties' right to take any action disclosed in Sections 5.1, 5.2 or 5.3 of the United Disclosure Schedule or the Continental Disclosure Schedule, as applicable, will be subject to and subordinate to the parties' respective obligations under this Section 6.8.

6.9 Transaction Litigation. Continental shall give United the opportunity to participate in the defense or settlement of any stockholder litigation against Continental and/or its directors relating to the Merger and the other transactions contemplated by this Agreement,

and no such settlement shall be agreed to without the prior written consent of United, which consent shall not be unreasonably withheld, conditioned or delayed.

United shall give Continental the opportunity to participate in the defense or settlement of any stockholder litigation against United and/or its directors relating to the Merger and the other transactions contemplated by this Agreement,

and no such settlement shall be agreed to without the prior written consent of Continental, which consent shall not be unreasonably withheld, conditioned or delayed.

For purposes of this paragraph, "participate" means that the non-litigating party will be kept apprised of proposed strategy and other significant decisions with respect to the litigation by the litigating party (to the extent the attorney-client privilege between the litigating party and its counsel is not undermined or otherwise affected), and the non-litigating party may offer comments or suggestions with respect to the litigation but will not be afforded any decision making power or other authority over the litigation except for the settlement consent set forth above.

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6.10 Section 16 Matters. Prior to the Effective Time, United, Continental and Merger Sub each shall take all such steps as may be required to cause (a) any dispositions of Continental Common Stock (including derivative securities with respect to Continental Common Stock) resulting from the Merger and the other transactions contemplated by this Agreement, by each individual

Commented [DCT67]: The securities plaintiffs' bar can usually be counted on to file suit whenever a merger is announced. [The Continental-United merger was no exception.](#)

who will be subject to the reporting requirements of Section 16(a) of the Exchange Act with respect to Continental immediately prior to the Effective Time to be exempt under Rule 16b-3 promulgated under the Exchange Act and (b) any acquisitions of United Common Stock (including derivative securities with respect to United Common Stock) resulting from the Merger and the other transactions contemplated by this Agreement, by each individual who may become subject to the reporting requirements of Section 16(a) of the Exchange Act with respect to United to be exempt under Rule 16b-3 promulgated under the Exchange Act.

6.11 Governance Matters.

(a) Non-Executive Chairman. United shall take all necessary action to cause, effective at the Effective Time, Glenn F. Tilton to be elected as non-executive Chairman of the United Board unless he is not the Chief Executive Officer of United immediately prior to the Effective Time.

If Mr. Tilton is not the Chief Executive Officer of United immediately prior to the Effective Time, then United shall select his replacement, subject to the concurrence of Continental acting in good faith, after receiving the recommendation of the Corporate Governance and Social Responsibility Committee of the Continental Board, which will consider such replacement in good faith, and each of United and Continental shall take all action necessary to cause such replacement to be elected non-executive Chairman of the United Board effective at the Effective Time.

Furthermore, if such a replacement occurs, then, where applicable, any references in this Agreement or the United-Continental Bylaws to Mr. Tilton shall instead be to such replacement. On December 31, 2012, or the date that is two years after the Effective Time, whichever is later, Mr. Tilton shall cease to serve as the non-executive Chairman.

(b) Chief Executive Officer. United shall take all action necessary to cause, effective at the Effective Time, Jeffery A. Smisek to be elected the Chief Executive Officer of United unless he is not the Chief Executive Officer of Continental immediately prior to the Effective Time. If Mr. Smisek is not the Chief

Commented [DCT68]: Smisek became CEO

Executive Officer of Continental immediately prior to the Effective Time, then Continental shall select his replacement, subject to the concurrence of United acting in good faith, after receiving the recommendation of the Nominating/Governance Committee of the United Board, which will consider such replacement in good faith, and each of United and Continental shall take all action necessary to cause such replacement to be elected Chief Executive Officer of United effective at the Effective Time. Furthermore, if such a replacement occurs, then, where applicable, any references in this Agreement or the United-Continental Bylaws to Mr. Smisek shall instead be to such replacement.

On December 31, 2012, or the date that is two years after the Effective Time, whichever is later, Mr. Smisek will also become Chairman of the United Board; provided, however, if Mr. Tilton ceases to serve as non-executive Chairman prior to such date, then Mr. Smisek will become Chairman of the United Board on such earlier date.

(c) Board of Directors. United shall take all necessary action to cause, effective at the Effective Time, (i) the size of the United Board to be increased so as to consist of 16 members and (ii) the United Board to be comprised of (A) six Independent United Directors selected by United, (B) Mr. Tilton, (C) six Independent Continental Directors selected by Continental, (D) Mr. Smisek and (E) the two Union Directors.

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(d) Committees. United shall take all necessary action to cause, effective at the Effective Time:

(i) the United Board to have six board committees: the Executive Committee, the Nominating/Governance Committee, the Compensation Committee, the Finance Committee, the Audit Committee, and the Public Responsibility Committee;

(ii) the Executive Committee to be comprised of Mr. Tilton, Mr. Smisek and the then chair of each of the Nominating/Governance Committee, Compens-

sation Committee, Finance Committee and the Audit Committee and to be chaired by Mr. Tilton;

(iii) the Finance Committee to be comprised of Mr. Tilton, Mr. Smisek and equal numbers of Independent United Directors selected by United and Independent Continental Directors selected by Continental;

(iv) each of the Nominating/Governance Committee, Compensation Committee and the Audit Committee to be comprised of equal numbers of Independent United Directors selected by United and Independent Continental Directors selected by Continental;

(v) an Independent United Director selected by United to chair the Nominating/Governance Committee;

(vi) an Independent Continental Director selected by Continental to chair the Compensation Committee;

(vii) either an Independent United Director selected by United or an Independent Continental Director selected by Continental to chair the Finance Committee;

(viii) (A) an Independent Continental Director selected by Continental to chair the Audit Committee, if an Independent United Director is selected to chair the Finance Committee, and (B) an Independent United Director selected by United to chair the Audit Committee, if an Independent Continental Director is selected to chair the Finance Committee;

(ix) the Public Responsibility Committee to be comprised of two Independent United Directors selected by United, two Independent Continental Directors selected by Continental and the two Union Directors; and

(x) one Independent United Director selected by United and one Independent Continental Director selected by Continental to co-chair the Public Responsibility Committee.

(e) Integration.

(i) Subject to applicable Law, prior to the Effective Time, United and Continental shall cause Mr. Tilton and Mr. Smisek, respectively, to engage in planning for an integration process with respect to the businesses of United and Continental, including selecting from the management ranks of United and Continental in an equitable and balanced manner those managers who will hold the key management positions in United following the Effective Time. The announcement of such key management positions shall be made shortly before the Effective Time.

(ii) In order to facilitate the integration of the operations of United and Continental and their respective Subsidiaries and to permit the coordination of their related operations on a timely basis, and in an effort to accelerate to the earliest time practicable following the Effective Time the realization of synergies, operating efficiencies and other benefits expected to be realized by the parties as a result of the transactions contemplated by this Agreement, prior to the Effective Time, United and Continental shall establish a committee to be co-chaired by the chief executive officers of each of United and Continental and with such other members as they shall mutually agree, which committee shall have responsibility for coordinating and directing the efforts of the parties with respect to (A) the integration of operations and fleet plan of United and Continental and their respective Subsidiaries, (B) obtaining the required consents and approvals from Governmental Entities as contemplated by Section 6.3, (C) communications, public relations and investor relations strategy and approach of the parties regarding the Merger and the other transactions contemplated hereby (other than any party's actions in respect of a United Acquisition Proposal or a Continental Acquisition Proposal, respectively, a Competing Transaction in respect of either United or Continental or an Adverse Recommendation Change by either the United Board or the Continental Board, respectively) and (D) other business and operational matters, including the financing needs of United and Continental and their Subsidiaries following the Effective Time, to the extent

not in violation of Applicable Laws, including laws regarding the exchange of information and other laws regarding competition.

(f) Headquarters. Following the Effective Time, the corporate headquarters and related corporate functions for United (which will be located in the United Building), as well as airline operations (which will be located in the Willis Tower), will be in Chicago, Illinois.

Commented [DCT69]: Many Houstonians think politics was involved in this decision.

In addition, United will maintain a significant presence in Houston, Texas. United and Continental shall cause Mr. Tilton and Mr. Smisek, respectively, to determine, prior to the Effective Time, the specific business functions to be located in Houston, Texas following the Effective Time.

The non-executive Chairman will have his office at the corporate headquarters in Chicago, Illinois, and the Chief Executive Officer will maintain an office in each of Chicago, Illinois and Houston, Texas.

It is intended that a majority of the in-person meetings of the United Board in each calendar year shall be held in the Greater Chicago Metropolitan Area.

6.12 Employee Matters.

(a) During the period from the Closing Date until the six-month anniversary thereof, United shall, or shall cause its Subsidiaries to, provide to each Person who is employed by Continental or United or any of their respective Subsidiaries immediately prior to the Effective Time, except with respect to any such employees who are represented for purposes of collective bargaining pursuant to the provisions of the Railway Labor Act, as amended (the “Continuing Employees”), compensation (including base salary and incentive and bonus opportunities, but excluding equity-based compensation) and benefits (including vacation, paid time-off and severance) that are not materially less favorable (taken as a whole) than those provided to the Continuing Employees immediately prior to the Effective Time.

(b) The service of each Continuing Employee with Continental or United or any of their respective Subsidiaries (or any predecessor employer) prior to the Effective Time shall be treated as service with United and its Subsidiaries for purposes of each United Benefit Plan (including vacation, paid time-off and severance plans) in which such Continuing Employee participates after the Effective Time, including for purposes of eligibility, vesting and benefit levels and accruals (other than defined benefit pension plan accruals).

(c) Following the Effective Time, for purposes of each United Benefit Plan in which any Continuing Employee or his or her eligible dependents is eligible to participate after the Effective Time, United shall, or shall cause its Subsidiaries to, (i) waive any pre-existing condition, exclusion, actively-at-work requirement or waiting period to the extent such condition, exclusion, requirement or waiting period was satisfied or waived under the comparable Continental Benefit Plan as of the Effective Time (or, if later, any applicable plan transaction date) and (ii) provide full credit for any co-payments, deductibles or similar payments made or incurred prior to the Effective Time for the plan year in which the Effective Time (or such transition date) occurs.

(d) United shall, and shall cause its Subsidiaries to, honor, in accordance with its terms, each Continental Benefit Plan and all obligations thereunder, including any rights or benefits arising as a result of the transactions contemplated by this Agreement (either alone or in combination with any other event), and United hereby acknowledges that the consummation of the Merger constitutes a change of control or change in control, as the case may be, for all purposes under such Continental Benefit Plans.

(e) Nothing in this Agreement shall be construed as requiring United or any of its Subsidiaries to employ any Continuing Employee for any length of time following the Closing Date. Except as provided in Section 6.13, nothing in this Agreement, express or implied, shall be construed to prevent United or any of its Subsidiaries from (i) terminating, or modifying the terms of employment of, any Continuing Employee following the Closing Date or (ii) terminating or modifying to any extent any Continental Benefit Plan, United Benefit Plan or any other employee benefit plan, program, agreement or arrangement that United or any of its Subsidiaries may establish or main-

tain; provided, however, that to the extent that, and for so long as, a Continuing Employee remains employed by United or any of its Subsidiaries during the six-month period following the Closing, the compensation and benefits payable to such employee during such period shall be subject to Section 6.12(a). Nothing in this Agreement shall be construed as an amendment to any United Benefit Plan or Continental Benefit Plan or any other compensation and benefit plans maintained for or provided to directors, officers or employees of United or Continental prior to or following the Effective Time.

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6.13 Collective Bargaining Agreement Commitments.

United hereby acknowledges that it has received copies of all of Continental's collective bargaining agreements listed in Section 4.12 of the Continental Disclosure Schedule, and all amendments thereto (the "Continental CBAs"), as well as copies of letters or employee materials relating to business combination consequences that Continental has sent or provided to certain groups of its employees that are not covered by collective bargaining agreements (the "Continental Non-Union Employee Letters"). Annex B sets forth certain sections of the Continental CBAs and the Non-Union Employee Letters regarding successor transactions, including those sections listed under the heading "Commitments" (the "Continental Employee Commitments") and under the heading "Irrevocable Commitments" (the "Irrevocable Continental Employee Commitments"). Each of United and Continental hereby agrees, and will cause its Subsidiaries to agree, to abide by the terms of the Continental Employee Commitments, as applicable, and each of United and Continental hereby irrevocably agrees, and will cause its Subsidiaries to agree, irrevocably to abide by the terms of the Irrevocable Continental Employee Commitments with respect to the operations and employees of Continental, Merger Sub and the Surviving Corporation.

ARTICLE VII
CONDITIONS PRECEDENT

7.1 Conditions to Each Party's Obligation To Effect the Merger. The respective obligations of the parties to effect the Merger shall be sub-

ject to the satisfaction, or waiver by each of the parties, at or prior to the Effective Time of the following conditions:

- (a) United Stockholder Approvals. The United Stockholder Approvals shall have been obtained.

- (b) Continental Stockholder Approval. The Continental Stockholder Approval shall have been obtained.

- (c) Listing. The shares of United Common Stock to be issued in the Merger shall have been authorized for listing on the NYSE or NASDAQ, as reasonably agreed upon by United and Continental, subject to official notice of issuance.

- (d) Regulatory Approvals. (i) The waiting period applicable to the consummation of the Merger under the HSR Act shall have expired or been earlier terminated, (ii) any approval or authorization required to be obtained from the FAA, DOT and any other Governmental Entity for the consummation of the Merger shall have been obtained, and (iii) any approval required to be obtained under any foreign antitrust, competition or similar Laws, in each case in connection with the consummation of the Merger and the transactions contemplated by this Agreement, shall have been obtained, except for those, in the case of clauses (ii) or (iii), the failure of which to obtain would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on United or a Material Adverse Effect on Continental.

- (e) Form S-4. The Form S-4 shall have become effective under the Securities Act, and no stop order suspending the effectiveness of the Form S-4 shall have been issued and no proceedings for that purpose shall have been initiated or be threatened by the SEC.

- (f) No Injunctions or Restraints; Illegality. No material Injunction preventing the consummation of the Merger or any of the other transactions con-

templated by this Agreement shall be in effect. No material statute, rule, regulation or Injunction shall have been enacted, entered, promulgated or enforced by any Governmental Entity that prohibits or makes illegal consummation of the Merger.

7.2 Conditions to Obligations of United. The obligation of United to effect the Merger is also subject to the satisfaction, or waiver by United, at or prior to the Effective Time of the following conditions:

(a) Representations and Warranties.

(i) Each of the representations and warranties (other than as set forth in Sections 4.2(a) and (b) and 4.8(a)) of Continental set forth in this Agreement shall be true and correct on the date of this Agreement, and as of the Closing Date, as if made at and as of such date (except to the extent expressly made as of an earlier date, in which case as of such date),

except where the failure of such representations and warranties to be so true and correct (without giving effect to any limitation as to “materiality” or “Material Adverse Effect” set forth therein), individually or in the aggregate, has not had, and would not reasonably be expected to have, a Material Adverse Effect on Continental,

Commented [DCT70]: Note this carve-out

(ii) the representations and warranties of Continental set forth in Sections 4.2(a) and (b) shall be true and correct in all material respects on the date of this Agreement, and as of the Closing Date, as if made at and as of such date (except to the extent expressly made as of an earlier date, in which case as of such date) and

Commented [DCT71]: Note the absence of a “No Material Effect” carve-out

(iii) the representations and warranties of Continental set forth in Section 4.8(a) shall be true and correct on the date of this Agreement, and as of the Closing Date, as if made at and as of such date, and United shall have received a certificate signed on behalf of Continental by the Chief Executive Officer or the Chief Financial Officer of Continental to the foregoing effects.

Commented [DCT72]: These reps and warranties require a bring-down certificate

(b) Performance of Obligations of Continental. Continental shall have performed in all material respects all material obligations required to be performed by it under this Agreement at or prior to the Closing Date, and United

shall have received a certificate signed on behalf of Continental by the Chief Executive Officer or the Chief Financial Officer of Continental to such effect.

(c) United Tax Opinion. United shall have received an opinion of Cravath, Swaine & Moore LLP, or such other reputable Tax counsel reasonably satisfactory to United, substantially in the form attached hereto as Exhibit C-1, on the basis of certain facts, representations and assumptions set forth in such opinion, dated as of the date on which the Form S-4 is filed and as of the Closing Date, to the effect that (i) the Merger will be treated for Federal income Tax purposes as a “reorganization” within the meaning of Section 368(a) of the Code and (ii) United, Continental and Merger Sub will each be a “party to the reorganization” with respect to the Merger. In rendering such opinion, such advisor shall be entitled to rely upon representations of officers of Continental, Merger Sub and United made in the form attached hereto as Exhibit C-2.

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7.3 Conditions to Obligations of Continental. The obligation of Continental to effect the Merger is also subject to the satisfaction, or waiver by Continental, at or prior to the Effective Time, of the following conditions:

(a) Representations and Warranties. (i) Each of the representations and warranties (other than as set forth in Sections 3.2(a) and (b) and 3.8(a)) of United set forth in this Agreement shall be true and correct on the date of this Agreement, and as of the Closing Date, as if made at and as of such date (except to the extent expressly made as of an earlier date, in which case as of such date), except where the failure of such representations and warranties to be so true and correct (without giving effect to any limitation as to “materiality” or “Material Adverse Effect” set forth therein), individually or in the aggregate, has not had, and would not reasonably be expected to have, a Material Adverse Effect on United, (ii) the representations and warranties of United set forth in Sections 3.2(a) and (b) shall be true and correct in all material respects on the date of this Agreement, and as of the Closing Date, as if made at and as of such date (except to the extent expressly made as of an earlier date, in which case as of such date) and (iii) the representations and warranties of United set forth in Section 3.8(a) shall be true and correct on the date of this Agreement, and as

of the Closing Date, as if made at and as of such date, and Continental shall have received a certificate signed on behalf of United by the Chief Executive Officer or the Chief Financial Officer of United to the foregoing effects.

(b) Performance of Obligations of United. United shall have performed in all material respects all material obligations required to be performed by it under this Agreement at or prior to the Closing Date, and Continental shall have received a certificate signed on behalf of United by the Chief Executive Officer or the Chief Financial Officer of United to such effect.

(c) Continental Tax Opinion. Continental shall have received an opinion of Jones Day, or such other reputable Tax counsel reasonably satisfactory to Continental, substantially in the form attached hereto as Exhibit D-1, on the basis of certain facts, representations and assumptions set forth in such opinion, dated as of the date on which the Form S-4 is filed and as of the Closing Date, to the effect that (i) the Merger will be treated for Federal income Tax purposes as a “reorganization” within the meaning of Section 368(a) of the Code and (ii) United, Continental and Merger Sub will each be a “party to the reorganization” with respect to the Merger. In rendering such opinion, such advisor shall be entitled to rely upon representations of officers of Continental, Merger Sub and United made substantially in the form attached hereto as Exhibit D-2.

ARTICLE VIII TERMINATION AND AMENDMENT

8.1 Termination. This Agreement may be terminated at any time prior to the Effective Time, whether before or after receipt of the United Stockholder Approvals or the Continental Stockholder Approval, by action taken or authorized by the Board of Directors of the terminating party or parties:

(a) by mutual consent of United and Continental in a written instrument, if the Board of Directors of each so determines;

(b) by either the United Board or the Continental Board if any Governmental Entity of competent jurisdiction shall have issued a final and nonappealable order permanently enjoining or otherwise prohibiting the consummation of the transactions contemplated by this Agreement, except that no party may terminate this Agreement pursuant to this Section 8.1(b) if such party's breach of its obligations under this Agreement proximately contributed to the occurrence of such order;

(c) by either the United Board or the Continental Board if the United Stockholder Approvals shall not have been obtained at a United Stockholders Meeting or any adjournment or postponement thereof at which the vote was taken;

(d) by either the United Board or the Continental Board if the Continental Stockholder Approval shall not have been obtained at a Continental Stockholders Meeting or any adjournment or postponement thereof at which the vote was taken;

(e) by either the United Board or the Continental Board if the Merger shall not have been consummated on or before December 31, 2010, subject to extension by the mutual agreement of United and Continental (the "End Date"); provided, however, that (i) the End Date (A) shall be automatically extended until the later to occur of the EU Extension Date and the Domestic Regulatory Extension Date and (B) shall be extended to the Substantial Compliance Extension Date (if later than the latest of the dates set forth in clause (A) above) at the election of a party that has previously certified its Substantial Compliance at or prior to the time of such election and (ii) notwithstanding any extension provided for in Section 8.1(e)(i), the End Date shall not be extended to any date that is later than September 30, 2011 (the "Latest Possible End Date"); provided further, however, that no party may terminate this Agreement pursuant to this Section 8.1(e) if such party's breach of its obligations under this Agreement proximately contributed to the failure of the Closing to occur by the End Date;

(f) by the United Board if there shall have been a breach of any of the covenants or agreements or any inaccuracy of any of the representations or war-

warranties set forth in this Agreement on the part of Continental, which breach or inaccuracy, either individually or in the aggregate, would result in, if occurring or continuing on the Closing Date, the failure of the conditions set forth in Section 7.2(a) or (b), unless such failure is reasonably capable of being cured, and Continental is continuing to use its reasonable best efforts to cure such failure, by the End Date;

(g) by the Continental Board if there shall have been a breach of any of the covenants or agreements or any inaccuracy of any of the representations or warranties set forth in this Agreement on the part of United, which breach or inaccuracy, either individually or in the aggregate, would result in, if occurring or continuing on the Closing Date, the failure of the conditions set forth in Section 7.3(a) or (b), unless such failure is reasonably capable of being cured, and United is continuing to use its reasonable best efforts to cure such failure, by the End Date;

(h) by the United Board in the event of an Adverse Recommendation Change by Continental; or

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(i) by the Continental Board in the event of an Adverse Recommendation Change by United.

8.2 Effect of Termination. In the event of termination of this Agreement by either United or Continental in accordance with Section 8.1, this Agreement shall forthwith become void and have no effect, and none of United, Continental, any of their respective Subsidiaries or Affiliates or any of the officers or directors of any of the foregoing shall have any liability of any nature whatsoever under this Agreement, or in connection with the transactions contemplated by this Agreement,

except that

(i) Sections 3.7, 4.7 and 6.7, Article IX (other than Section 9.13) and the last sentence of Section 6.2 as well as the Confidentiality Agreement shall survive any termination of this Agreement and

(ii) notwithstanding any termination or any contrary provision contained in this Agreement, neither United nor Continental shall be relieved or released from liability for damages of any kind, including consequential damages and any other damages (whether or not communicated or contemplated at the time of execution of this Agreement) and including as damages the value lost by stockholders based on the consideration that would otherwise have been paid and the benefits that would have accrued arising out of, any

(a) knowing material breach of any of its representations and warranties in this Agreement or

(b) deliberate material breach of any covenant of this Agreement.

No party claiming that such breach occurred will have any duty or otherwise be obligated to mitigate any such damages.

For purposes of this Section 8.2,

(i) a “knowing” breach of a representation and warranty shall be deemed to have occurred only if an executive officer of the other party had actual knowledge of such breach as of the date hereof

(without any independent duty of investigation or verification other than an actual reading of the representations and warranties as they appear in this Agreement by the other party’s chief executive officer and chief legal officer and an actual reading by other executive officers of such party of the representations and warranties included in this Agreement on subjects relevant to the areas as to which they have direct managerial oversight responsibility)

and

(ii) a “deliberate” breach of any covenant shall be deemed to have occurred only if the other party took or failed to take action with actual

Commented [DCT73]: “Knowing” brings up the problem of “when does a corporation have knowledge?”

knowledge that the action so taken or omitted to be taken constituted a breach of such covenant.

For purposes of this Section 8.2, an “executive officer” shall have the meaning given to the term “officer” in Rule 16a-1(f) under the Exchange Act.

8.3 Amendment. Subject to compliance with applicable Law, this Agreement may be amended by United, Merger Sub and Continental, by action taken or authorized by their respective Boards of Directors, at any time before or after the Continental Stockholder Approval, the approval of United as stockholder of Merger Sub (the “Merger Sub Stockholder Approval”) or the United Stockholder Approvals; provided, however, that after the Continental Stockholder Approval or either of the United Stockholder Approvals, there may not be, without further approval of the stockholders of Continental or United, any amendment of this Agreement that changes the amount or the form of the consideration to be delivered under this Agreement to the holders of Continental Common Stock, or which by applicable Law otherwise requires the further approval of such stockholders. This Agreement may not be amended except by an instrument in writing signed on behalf of each of the parties.

8.4 Extension; Waiver. At any time prior to the Effective Time, United (on behalf of itself and Merger Sub) and Continental may, to the extent legally allowed, (a) extend the time for the performance of any of the obligations or other acts of the other party, (b) waive any inaccuracies in the representations and warranties contained in this Agreement, and (c) waive compliance with any of the agreements or conditions contained in this Agreement. Any agreement on the part of a party to any such extension or waiver will be valid only if set forth in a written instrument signed by an authorized officer on behalf of such party, but such extension or waiver or failure to insist on strict compliance with an obligation, covenant, agreement or condition will not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

ARTICLE IX
GENERAL PROVISIONS

9.1 Nonsurvival of Representations and Warranties. None of the representations, warranties, covenants and agreements in this Agreement or in any instrument delivered pursuant to this Agreement shall survive the Effective Time; provided, however, that this Section 9.1 shall not limit any covenant or agreement of the parties which by its terms contemplates performance after the Effective Time.

9.2 Notices. Except as otherwise expressly provided for in Section 5.5(d) of this Agreement, all notices, requests, claims, demands and other communications under this Agreement shall be in writing and shall be deemed given upon receipt by the parties at the following addresses (or at such other address for a party as shall be specified by like notice):

(a) if to United or Merger Sub, to

United
77 W. Wacker Dr.
Chicago, Illinois 60601
Phone: (312) 997-8000
Facsimile: (312) 997-8180

Attention: General Counsel

with a copy to:

Cravath, Swaine & Moore LLP
Worldwide Plaza
825 Eighth Avenue
New York, New York 10019
Phone: (212) 474-1000
Facsimile: (212) 474-3700

Attention: Scott A. Barshay, Esq.
George E. Zobitz, Esq.

(b) if to Continental, to

Continental, Inc.
1600 Smith Street, HQSEO
Houston, Texas 77002
Phone: (713) 324-5207
Facsimile: (713) 324-1230

Attention: General Counsel

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with a copy to:

Jones Day
717 Texas Ave., Suite 3300
Houston, Texas 77002
Phone: (832) 239-3939
Facsimile: (832) 239-3600

Attention: J. Mark Metts, Esq.
Robert A. Profusek, Esq.

Vinson & Elkins L.L.P.
1001 Fannin, Suite 2500
Houston, Texas 77002
Phone: (713) 758-2222
Facsimile: (713) 615-5967

Attention: Kevin P. Lewis, Esq.

Commented [DCT74]: A copy to counsel is a common provision – and for a publicly-filed agreement, it’s not bad marketing for the outside counsel 😊

9.3 Definitions. Capitalized terms used in this Agreement shall have the respective meanings ascribed thereto in the sections of the Agreement set forth next to such terms on Annex A hereto. For purposes of this Agreement:

An “Affiliate” of any Person means another Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such first Person.

A “Business Day” means any day other than (i) a Saturday or a Sunday or (ii) a day on which banking and savings and loan institutions are authorized or required by Law to be closed in New York City.

Commented [DCT75]: Getting very specific here.

“Cash-Settled Profit-Based RSU Award” means a Continental Stock-Based Award that is a profit-based restricted stock unit award granted under Continental’s Long-Term Incentive and RSU Program the payment amount of which is based on the average of the closing sales price of Continental Common Stock on the New York Stock Exchange Composite Tape (as reported in The Wall Street Journal, New York City edition) over the 20 most recent consecutive trading days ending on the last trading day preceding the Effective Time, as required by the terms of such restricted stock unit award as in effect on the date of this Agreement.

A “Continental Director” means a director of the Surviving Corporation who, immediately prior to the Effective Time, is either (i) an Independent Continental Director or (ii) the Chief Executive Officer of Continental or an individual designated as his replacement pursuant to Section 6.11.

A “Continental Material Adverse Effect” means a Material Adverse Effect with respect to Continental.

“Continental Restricted Shares” means any award of Continental Common Stock that is subject to restrictions based on performance or continuing service and granted under any Continental Stock Plan.

“Continental Stock-Based Award” means shares of Continental Common Stock and other compensatory awards denominated in shares of Continental Common Stock subject to a risk of forfeiture to, or right of repurchase by, Continental.

“Continental Stock Option” means any option to purchase Continental Common Stock granted under any Continental Stock Plan.

“Continental Stock Plans” means the equity-based compensation plans identified in Section 9.3 of the Continental Disclosure Schedule.

The “Combined Company” means United, the United Subsidiaries, Continental and the Continental Subsidiaries, taken as a whole, combined in the manner currently intended by the parties.

“Domestic Regulatory Extension Date” means the later to occur of (i) the Litigation Extension Date and (ii) the date that is five days after the date on which the condition set forth in Section 7.1(d) has been satisfied, to the extent such condition relates to the approval by the DOT of the de facto transfer of route authority and/or any other regulatory approval that is required to be obtained from DOT to allow the lawful consummation of the Merger.

“EBITDAR” means earnings before interest, taxes, depreciation, amortization and aircraft rental, in each case as such items are determined in accordance with GAAP, as shown on the applicable publicly-filed financial statements.

Commented [DCT76]: Note the variation on “EBITDA”

“Equity Equivalents” of any Person means (x) any securities convertible into or exchangeable for, or any warrants or options or other rights to acquire, any capital stock, voting securities or equity interests of such Person, (y) any warrants or options or other rights to acquire from such Person, or any other obligation of such Person to issue, deliver or sell, or cause to be issued, delivered or sold, any capital stock, voting securities or other equity interests in such Person or (z) any

rights that are linked in any way to the price of any capital stock of, or to the value of or of any part of, or to any dividends or distributions paid on any capital stock of, such Person.

The “ EU Extension Date ” shall mean the date that is five days after the date on which the condition set forth in Section 7.1(d) has been satisfied, to the extent such condition relates to requirements under the EU Merger Regulation.

“ Forfeitures and Cashless Settlements ” by any Person means (w) the forfeiture or satisfaction of Stock-Based Awards of such Person, (x) the acceptance by such Person of shares of common stock of such Person as payment for the exercise price of Stock Options of such Person, (y) the acceptance by such Person of shares of common stock of such Person for withholding taxes incurred in connection with the exercise of Stock Options of such Person or the vesting or satisfaction of Stock-Based Awards of such Person, in the case of each of clauses (w), (x) and (y), in accordance with past practice of such Person and the terms of the applicable award agreements, and (z) the withholding of United Common Stock to satisfy tax obligations in connection with the United Common Stock issued under the United Plan of Reorganization.

“ Global Settlement Agreement ” means the Settlement Agreement by and among United, its direct and indirect subsidiaries, and all members of its “controlled group” as defined under ERISA, and all of its successors and assigns, and the PBGC, as amended.

“ Indebtedness ” means, with respect to any Person, without duplication, (A) all obligations of such Person for borrowed money, or with respect to deposits or advances of any kind to such Person, (B) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (C) all aircraft operating leases of such Person, (D) all capitalized lease obligations of such Person, (E) all guarantees and arrangements having the economic effect of a guarantee of such Person of any Indebtedness of any other Person, or (F) all obligations or undertakings of such Person to maintain or cause to be maintained the financial

position or covenants of others or to purchase the obligations or property of others.

An “Independent Continental Director” means each of the six Independent Directors of Continental serving as a director of Continental immediately prior to the Effective Time who is selected by Continental to serve as a director of United immediately following the Effective Time.

An “Independent Director” of any corporation means a director of such corporation who qualifies as an independent director under the listing standards of the principal market on which the common stock of such corporation is listed or quoted for trading; provided, however, that for purposes of Section 6.11, Mr. Smisek, Mr. Tilton and the Union Directors shall not in any event constitute Independent Directors of United.

An “Independent United Director” means each of the six Independent Directors of United serving as a director of United immediately prior to the Effective Time who is selected by United to serve as a director of United immediately following the Effective Time.

“Intellectual Property Rights” means, collectively, all United States and foreign (i) trademarks, service marks, brand names, certification marks, collective marks, d/b/as, Internet domain names, logos, symbols, trade dress, assumed names, fictitious names, trade names and other indicia of origin, all applications and registrations for the foregoing, and all goodwill associated therewith and symbolized thereby, including all renewals of same; (ii) inventions and discoveries, whether patentable or not, and all patents, registrations, invention disclosures and applications therefor, including divisionals, continuations, continuations-in-part and renewal applications, and including renewals, extensions and reissues; (iii) trade secrets and confidential information and know-how, including confidential processes, schematics, business methods, formulae, drawings, prototypes, models, designs, customer lists and supplier lists; (iv) all rights in published and unpublished works of authorship, whether copyrightable or not (including computer software and databases (including source code, object code and all related documentation)), and other compilations of information, copyrights therein and thereto, and registrations and applications therefor, and all re-

newals, extensions, restorations and reversions thereof; (v) moral rights, rights of publicity and rights of privacy; and (vi) all other intellectual property or proprietary rights.

The “Litigation Extension Date” shall mean, in the event that the condition set forth in the first sentence of Section 7.1(f) is not satisfied as of any date, 10 days following the first subsequent day on which such condition is satisfied.

A “Material Adverse Effect” with respect to any Person means any events or developments that, individually or taken together, materially adversely affect the business, properties, financial condition or results of operations of such Person and its Subsidiaries, taken as a whole,

excluding any effect that results from or arises in connection with

(i) changes or conditions generally affecting the industries in which such Person and any of its Subsidiaries operate, including increases in the price of fuel,

(ii) general economic or regulatory, legislative or political conditions or securities, credit, financial or other capital markets conditions

(including prevailing interest rates, access to capital and commodity prices), in each case in the United States or any foreign jurisdiction,

(iii) any failure, in and of itself, by such Person to meet any internal or published projections, forecasts, estimates or predictions in respect of revenues, earnings or other financial or operating metrics for any period

(it being understood that the facts or occurrences giving rise to or contributing to such failure may be deemed to constitute, or be taken into account in determining whether there has been or will be, a Material Adverse Effect),

(iv) the execution and delivery of this Agreement or the public announcement or pendency of the Merger or any of the other transactions contemplated by this Agreement, including the impact thereof on the relationships, contractual or oth-

Commented [DCT77]: The MAE clause is often intensively negotiated.

erwise, of such Person or any of its Subsidiaries with employees, labor unions, customers, suppliers or partners, and including any lawsuit, action or other proceeding with respect to the Merger or any of the other transactions contemplated by this Agreement

(provided, however, that the exceptions in this clause (iv) shall not apply to that portion of any representation or warranty contained in this Agreement to the extent that the purpose of such portion of such representation or warranty is to address the consequences resulting from the execution and delivery of this Agreement, the public announcement or pendency of the Merger or any of the other transactions contemplated by this Agreement or the performance of obligations or satisfaction of conditions under this Agreement),

(v) any change, in and of itself, in the market price, credit rating or trading volume of such Person's securities (it being understood that the facts or occurrences giving rise to or contributing to such change may be deemed to constitute, or be taken into account in determining whether there has been or will be, a Material Adverse Effect),

(vi) any change in applicable Law, regulation or GAAP (or authoritative interpretation thereof),

(vii) geopolitical conditions, the outbreak of a pandemic or other widespread health crisis, the outbreak or escalation of hostilities, any acts of war, sabotage or terrorism, or any escalation or worsening of any such acts of war, sabotage or terrorism threatened or underway as of the date of this Agreement or

(viii) any hurricane, tornado, flood, earthquake, volcano eruption or natural disaster,

except, in the case of clauses (i), (ii), (vi), (vii) and (viii) only to the extent such events or developments affect such Person to a disproportionate degree relative to other network carriers operating in the airline industry.

A “Person” means any natural person, firm, corporation, partnership, company, limited liability company, trust, joint venture, association, Governmental Entity or other entity.

“Stock-Based Awards” means the Continental Stock-Based Awards and the United Stock-Based Awards.

“Stock Options” means the Continental Stock Options and the United Stock Options.

“Substantial Compliance” means “substantial compliance” as such term is used in the HSR Act.

The “Substantial Compliance Extension Date” shall mean the date that is 45 days after Substantial Compliance by both United and Continental has occurred if Substantial Compliance by both United and Continental has not occurred by September 30, 2010.

A “United Director” means a director of the Surviving Corporation who, immediately prior to the Effective Time, is either (i) an Independent United Director or (ii) the Chief Executive Officer of United or an individual designated as his replacement pursuant to Section 6.11.

A “United Material Adverse Effect” means a Material Adverse Effect with respect to United.

“United Plan of Reorganization” means the Second Amended and Restated Plan of Reorganization of United.

“United Reserve Shares” means shares of United Common Stock issued and held in the New United Stock Reserve (as defined in the United Plan of Reorganization).

“United Restricted Shares” means any award of United Common Stock that is subject to restrictions based on performance or continuing service and granted under any United Stock Plan.

“United Stock-Based Award” means shares of United Common Stock and other compensatory awards denominated in shares of United Common Stock subject to a risk of forfeiture to, or right of repurchase by, United.

“United Stock Option” means any option to purchase United Common Stock granted under any United Stock Plan.

“United Stock Plans” means the equity-based compensation plans identified in Section 9.3 of the United Disclosure Schedule.

A “Union Director” means each member of the United Board serving as a director pursuant to the voting rights of (i) the holder of the Class Pilot MEC Preferred Stock or (ii) the holder of the Class IAM Preferred Stock.

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9.4 Interpretation. When a reference is made in this Agreement to an Article or Section, such reference shall be to an Article or Section of this Agreement unless otherwise indicated.

The table of contents, index of defined terms and headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

Any capitalized term used in any Exhibit but not otherwise defined therein shall have the meaning assigned to such term in this Agreement.

Whenever the words “include,” “includes” or “including” are used in this Agreement, they shall be deemed to be followed by the words “without limitation.”

The words “hereof,” “hereto,” “hereby,” “herein” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement.

The term “or” is not exclusive.

The word “extent” in the phrase “to the extent” shall mean the degree to which a subject or other thing extends, and such phrase shall not mean simply “if.”

The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms.

Any agreement, instrument or Law defined or referred to herein means such agreement, instrument or Law as from time to time amended, modified or supplemented, unless otherwise specifically indicated.

References to a person are also to its permitted successors and assigns.

Unless otherwise specifically indicated, all references to “dollars” and “\$” will be deemed references to the lawful money of the United States of America.

The term “made available” and words of similar import means that the relevant documents, instruments or materials were

(A) posted and made available to the other party on the Intralinks due diligence data site, with respect to United,

or on the Bowne due diligence data site, with respect to Continental, as applicable, maintained by either company for the purpose of the transactions contemplated by this Agreement, prior to the date hereof, or

(B) publicly available by virtue of the relevant party’s filing of a publicly available final registration statement, prospectus, report, form, schedule or definitive proxy statement filed with the SEC pursuant to the Securities Act or the Exchange Act, prior to the date of this Agreement.

No provision of this Agreement will be interpreted in favor of, or against, any of the parties to this Agreement by reason of the extent to which any such party or its counsel participated in the drafting thereof or by reason of the extent to which any such provision is inconsistent with any prior draft of this Agreement, and no rule of strict construction will be applied against any party hereto.

The United Disclosure Schedule and the Continental Disclosure Schedule, as well as all other schedules and all exhibits hereto, will be deemed part of this Agreement and included in any reference to this Agreement.

The United Disclosure Schedule and the Continental Disclosure Schedule set forth items of disclosure with specific reference to the particular Section or subsection of this Agreement to which the information in the United Disclosure Schedule or Continental Disclosure Schedule, as the case may be, relates;

provided, however, that any fact or item that is disclosed in any section of the United Disclosure Schedule or the Continental Disclosure Schedule so as to make its relevance

(i) to other representations made elsewhere in the Agreement,

(ii) to the information called for by other sections of the United Disclosure Schedule or the Continental Disclosure Schedule or

(iii) to the annexes or exhibits to this Agreement reasonably apparent shall be deemed to qualify such representations or to be disclosed in such other sections of the United Disclosure Schedule, the Continental Disclosure Schedule or the annexes or exhibits to this Agreement, as the case may be, notwithstanding the omission of any appropriate cross-reference thereto;

provided further that, notwithstanding anything in this Agreement to the contrary, the inclusion of an item in either such disclosure schedule as an exception to a representation or warranty will not be deemed an admission that such item represents a material exception or material fact, event or circumstance or that such item has had or would reasonably be expected to have a Material Adverse Effect on United or Continental, as the case may be.

This Agreement will not be interpreted or construed to require any Person to take any action, or fail to take any action, if to do so would violate any applicable Law.

References to the “other party” or “either party” will be deemed to refer to United and Merger Sub, collectively, on the one hand, and Continental, on the other

hand. All electronic communications from a Person shall be deemed to be “written” for purposes of this Agreement.

9.5 Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule or Law, or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as either the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party or such party waives its rights under this Section 9.5 with respect thereto. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner to the end that transactions contemplated hereby are fulfilled to the extent possible.

Notwithstanding the foregoing, under no circumstances shall the rights of holders of shares of Continental Common Stock as third-party beneficiaries pursuant to Section 9.7 be exercisable, waivable or enforceable by such stockholders or any other Person acting for or on their behalf other than Continental and its successors in interest.

Notwithstanding the foregoing, under no circumstances shall the rights of holders of shares of United Common Stock as third-party beneficiaries pursuant to Section 9.7 be exercisable, waivable or enforceable by such stockholders or any other Person acting for or on their behalf other than United and its successors in interest.

9.6 Counterparts. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other parties.

9.7 Entire Agreement; No Third Party Beneficiaries. This Agreement, taken together with the Continental Disclosure Letter and the United Disclosure Letter, and the Confidentiality Agreement,

(a) constitute the entire agreement, and supersedes all prior agreements (other than the Confidentiality Agreement) and understandings, both written and oral, among the parties with respect to the Merger and the other transactions contemplated by this Agreement and

(b) is not intended to confer upon any Person other than the parties any rights or remedies other than

(i) as specifically provided in Section 6.6,

(ii) the right of Continental, on behalf of its stockholders, to pursue damages and other relief, including equitable relief, in the event of United's or Merger Sub's knowing material breach of any of its representations and warranties in this Agreement or deliberate material breach of any covenant in this Agreement (as the terms "knowing" and "deliberate" are defined in Section 8.2), which right is hereby acknowledged and agreed by United and Merger Sub and

(iii) the right of United, on behalf of its stockholders, to pursue damages and other relief, including equitable relief, in the event of Continental's knowing material breach of any of its representations and warranties in this Agreement or deliberate material breach of any covenant in this Agreement (as the terms "knowing" and "deliberate" are defined in Section 8.2), which right is hereby acknowledged and agreed by Continental;

provided, however, that the rights granted pursuant to clauses (ii) and (iii) shall be enforceable on behalf of holders of Continental Common Stock only by Continental in its sole and absolute discretion or on behalf of holders of United Common Stock only by United in its sole and absolute discretion, it being understood and agreed that any and all interests in such claims shall attach to such shares of Continental Common Stock or United Common Stock, as applicable, and subsequently trade and transfer therewith and, consequently, any damages, settlements or other amounts recovered or received by Continental or United, as applicable, with respect to such claims (net of expenses incurred by Continental or United, as applicable, in connection therewith) may, in Continental's or United's, as applicable, sole and absolute discretion, be (x) as applicable, distributed, in whole or in part, by Conti-

mental to the holders of shares of Continental Common Stock of record as of any date determined by Continental or by United to the holders of shares of United Common Stock of record as of any date determined by United or (y) as applicable, retained by Continental for the use and benefit of Continental on behalf of its stockholders in any manner Continental deems fit or retained by United for the use and benefit of United on behalf of its stockholders in any manner United deems fit.

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9.8 GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF DELAWARE, REGARDLESS OF THE LAWS THAT MIGHT OTHERWISE GOVERN UNDER ANY APPLICABLE PRINCIPLES OF CONFLICT OF LAWS OF THE STATE OF DELAWARE.

9.9 Assignment. Neither this Agreement nor any of the rights, interests or obligations under this Agreement shall be assigned, in whole or in part, by operation of Law or otherwise by any of the parties without the prior written consent of the other parties. Any purported assignment without such consent shall be void. Subject to the preceding sentences, this Agreement will be binding upon, inure to the benefit of, and be enforceable by, the parties and their respective successors and assigns.

9.10 Specific Enforcement. The parties acknowledge and agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached, and that monetary damages, even if available, would not be an adequate remedy therefor and therefore fully intend for specific performance to be the principal remedy for breaches of this Agreement. It is accordingly agreed that, prior to the termination of this Agreement pursuant to Article VIII, the parties (on behalf of themselves and the third-party beneficiaries of this Agreement) shall be entitled to an Injunction or Injunctions to prevent breaches of this Agreement and to enforce specifically the performance of terms and provisions of this Agreement in any court referred to in Section 9.11(a), without proof of actual damages this being in addition to any other remedy to which they are entitled at law or in equity. The parties further agree

not to assert that a remedy of specific enforcement is unenforceable, invalid, contrary to Law or inequitable for any reason, nor to object to a remedy of specific performance on the basis that a remedy of monetary damages would provide an adequate remedy for any such breach.

Each party further acknowledges and agrees that the agreements contained in this Section 9.10 are an integral part of the transactions contemplated by this Agreement and that, without these agreements, the other party would not enter into this Agreement.

Each party further agrees that no other party hereto or any other Person shall be required to obtain, furnish or post any **bond** or similar instrument in connection with or as a condition to obtaining any remedy referred to in this Section 9.10, and each party hereto irrevocably waives any right it may have to require the obtaining, furnishing or posting of any such bond or similar instrument.

Commented [DCT78]: A bond waiver can be a significant point.

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9.11 Jurisdiction. Each of the parties hereto hereby

(a) agrees that any claim, suit, action or other proceeding, directly or indirectly, arising out of, under or relating to this Agreement, its negotiation or the transactions contemplated by this Agreement, will be heard and determined in the Chancery Court of the State of Delaware

(and **each agrees** that no such claim, action, suit or other proceeding relating to this Agreement will be brought by it or any of its affiliates except in such court),

Commented [DCT79]: The “each agrees” language makes it a breach of contract to file suit in any court other than the agreed one.

subject to any appeal, provided that if jurisdiction is not then available in the Chancery Court of the State of Delaware, then any such claim, suit, action or other proceeding may be brought in any Delaware state court or any federal court located in the State of Delaware and

(b) irrevocably and unconditionally submits to the exclusive jurisdiction of any such court in any such claim, suit, action or other proceeding and irrevocably

and unconditionally waives the defense of an inconvenient forum to the maintenance of any such claim, suit, action or other proceeding.

Each of the parties hereto further agrees that, to the fullest extent permitted by applicable Law, service of any process, summons, notice or document by U.S. registered mail to such Person's respective address set forth in Section 9.2 will be effective service of process for any claim, action, suit or other proceeding in Delaware with respect to any matters to which it has submitted to jurisdiction as set forth above in the immediately preceding sentence.

Commented [DCT80]: Service-of-process agreements can be a good thing.

The parties hereto hereby agree that a final judgment in any such claim, suit, action or other proceeding will be conclusive, subject to any appeal, and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by applicable Law.

In connection with any such proceeding that results in a judgment, the non-prevailing party will pay the prevailing party its reasonable costs and expenses (including attorney's fees and expenses) incurred in connection with such proceeding.

Commented [DCT81]: A prevailing-party attorneys' fees clause can be a useful deterrent to litigation.

9.12 Waiver of Jury Trial. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY SUIT, ACTION OR OTHER PROCEEDING, DIRECTLY OR INDIRECTLY, ARISING OUT OF, UNDER OR RELATING TO THIS AGREEMENT, ITS NEGOTIATION OR ANY OF THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT.

EACH PARTY HERETO

Commented [DCT82]: QUESTION: What is this part all about?

(A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH PARTY WOULD NOT, IN THE EVENT OF ANY ACTION, SUIT OR PROCEEDING, SEEK TO ENFORCE THE FOREGOING WAIVER AND

(B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT, BY, AMONG OTHER THINGS, THE MUTUAL WAIVER AND CERTIFICATIONS IN THIS SECTION 9.12.

9.13 Publicity. Except (a) with respect to any Adverse Recommendation Change made in accordance with the terms of this Agreement and (b) with respect to disclosures that are consistent with prior disclosures made in compliance with this Section 9.13 or any communications plan or strategy previously agreed on by the parties, United and Continental shall consult with each other before issuing, and give each other the opportunity to review and comment upon, any press release or other public statements with respect to the transactions contemplated by this Agreement, including the Merger, and shall not issue any such press release or make any such public statement prior to such consultation, except as such party may reasonably conclude may be required by applicable Law, court process or by obligations pursuant to any listing agreement with any national securities exchange or national securities quotation system. The parties agree that all formal employee communication programs or announcements with respect to the transactions contemplated by this Agreement shall be in forms mutually agreed to by the parties (such agreement not to be unreasonably withheld, conditioned or delayed); provided, however, that no further mutual agreement shall be required with respect to any such programs or announcements that are consistent with prior programs or announcements made in compliance with this Section 9.13. The parties agree that the initial press release to be issued with respect to the transactions contemplated by this Agreement shall be in the form heretofore agreed to by the parties.

[Remainder of page left intentionally blank]

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IN WITNESS WHEREOF, United, Continental and Merger Sub have caused this Agreement to be executed by their respective officers thereunto duly authorized as of the date first above written.

UAL CORPORATION

By: /s/ Glenn F. Tilton

Name: Glenn F. Tilton
Title: Chairman, President and
Chief Executive Officer

CONTINENTAL AIRLINES, INC.

By: /s/ Jeffery A. Smisek

Name: Jeffery A. Smisek
Title: Chairman, President and
Chief Executive Officer

[*Signature Page to Agreement and Plan of Merger*]

JT MERGER SUB INC.

By: /s/ Kathryn A. Mikells

Name: Kathryn A. Mikells

Title: President

[*Signature Page to Agreement and Plan of Merger*]
