

Hearing Date and Time: April 29, 2021, at 1:00 p.m. (prevailing Eastern Time)
Objection Date and Time: April 28, 2021, at 4:00 p.m. (prevailing Eastern Time)

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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

**GRUPO AEROMÉXICO, S.A.B. de C.V., et al.,

Debtors.¹**

Chapter 11

Case No. 20-11563 (SCC)

(Jointly Administered)

**NOTICE OF HEARING ON DEBTORS' MOTION FOR (I) APPROVAL OF
COMPROMISES WITH BOEING AND OTHER COUNTERPARTIES,
(II) AUTHORIZATION TO (A) ENTER INTO AMENDED AIRCRAFT
PURCHASE AGREEMENT WITH BOEING AND (B) ENTER INTO
AGREEMENTS WITH OTHER COUNTERPARTIES RELATING TO THE
BOEING TRANSACTION, (III) APPROVAL OF THE ASSUMPTION OF SUCH
AMENDED AGREEMENTS, AS APPLICABLE, AND (IV) APPROVAL TO
SETTLE CERTAIN PREPETITION CLAIMS OF COUNTERPARTIES**

PLEASE TAKE NOTICE that on April 22, 2021, the above-captioned debtors
and debtors in possession (collectively, the “**Debtors**”) filed the *Debtors’ Motion for*
(I) Approval of Compromises with Boeing and other Counterparties, (II) Authorization to

¹ The Debtors in these cases, along with each Debtor’s registration number in the applicable jurisdiction, are as follows: Grupo Aeroméxico, S.A.B. de C.V. 286676; Aerovías de México, S.A. de C.V. 108984; Aerolitoral, S.A. de C.V. 217315; and Aerovías Empresa de Cargo, S.A. de C.V. 437094-1. The Debtors’ corporate headquarters is located at Paseo de la Reforma No. 243, piso 25 Colonia Cuauhtémoc, Mexico City, C.P. 06500.

(A) Enter into Amended Aircraft Purchase Agreement with Boeing and (B) Enter into Agreements with other Counterparties Relating to the Boeing Transaction, (III) Approval of the Assumption of such Amended Agreements, as Applicable, and (IV) Approval to Settle Certain Prepetition Claims of Counterparties (the “**Motion**”). A hearing on the Motion will be held on **April 29, 2021 at 1:00 p.m. (Prevailing Eastern Time)** (the “**Hearing**”) before the Honorable Judge Shelley C. Chapman, United States Bankruptcy Judge, United States Bankruptcy Court for the Southern District of New York (the “**Bankruptcy Court**”), or at such other time as the Bankruptcy Court may determine.

PLEASE TAKE FURTHER NOTICE that, in accordance with General Order M-543, dated March 20, 2020 (Morris, C.J.) (“**General Order M-543**”),² the Hearing will be conducted telephonically. Any parties wishing to participate must do so telephonically by making arrangements through CourtSolutions, LLC (www.court-solutions.com). Instructions to register for CourtSolutions, LLC are attached to General Order M-543.

PLEASE TAKE FURTHER NOTICE that copies of the Motion may be obtained free of charge by visiting the website of Epiq Corporate Restructuring, LLC at <https://dm.epiq11.com/aeromexico>. You may also obtain copies of any pleadings by visiting the Bankruptcy Court’s website at <http://www.nysb.uscourts.gov> in accordance with the procedures and fees set forth therein.

PLEASE TAKE FURTHER NOTICE that the Hearing may be continued or adjourned thereafter from time to time without further notice other than an announcement of the adjourned date or dates at the Hearing or a later hearing. The Debtors will file an

² A copy of the General Order M-543 can be obtained by visiting <http://www.nysb.uscourts.gov/news/general-order-m-543-court-operations-under-exigent-circumstances-created-covid-19>.

agenda before the Hearing, which may modify or supplement the motion(s) to be heard at the Hearing.

PLEASE TAKE FURTHER NOTICE that any responses or objections to the Motion shall be in writing, shall comply with the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules for the Southern District of New York, shall be filed with the Bankruptcy Court (a) by attorneys practicing in the Bankruptcy Court, including attorneys admitted *pro hac vice*, electronically in accordance with General Order M-399 (which can be found at www.nysb.uscourts.gov), and (b) by all other parties in interest, in accordance with the customary practices of the Bankruptcy Court and General Order M-399, to the extent applicable, and shall be served in accordance with General Order M-399 and the *Order Establishing Certain Notice, Case Management, and Administrative Procedures*, entered on July 8, 2020 [ECF No. 79], so as to be filed and received no later than **April 28, 2021 at 4:00 p.m. (Prevailing Eastern Time)** (the “**Objection Deadline**”).

PLEASE TAKE FURTHER NOTICE that any objecting parties are required to telephonically attend the Hearing, and failure to appear may result in relief being granted upon default.

PLEASE TAKE FURTHER NOTICE that if no responses or objections are timely filed and served with respect to the Motion, the Debtors may, on or after the Objection Deadline, submit to the Bankruptcy Court an order substantially in the form of the proposed order annexed to the Motion, which order may be entered without further notice or opportunity to be heard.

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Dated: April 22, 2021
New York, New York

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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

**GRUPO AEROMÉXICO, S.A.B. de C.V., et
al.,**

Debtors.¹

Chapter 11

Case No. 20-11563 (SCC)

(JOINTLY ADMINISTERED)

**DEBTORS' MOTION FOR (I) APPROVAL OF COMPROMISES WITH
BOEING AND OTHER COUNTERPARTIES, (II) AUTHORIZATION TO
(A) ENTER INTO AMENDED AIRCRAFT PURCHASE AGREEMENT WITH
BOEING AND (B) ENTER INTO AGREEMENTS WITH OTHER
COUNTERPARTIES RELATING TO THE BOEING TRANSACTION,
(III) APPROVAL OF THE ASSUMPTION OF SUCH AMENDED
AGREEMENTS, AS APPLICABLE, AND (IV) APPROVAL TO SETTLE
CERTAIN PREPETITION CLAIMS OF COUNTERPARTIES**

Grupo Aeroméxico, S.A.B. de C.V. (“**Grupo Aeroméxico**”) and its affiliates that
are debtors and debtors in possession in these proceedings (collectively, the “**Debtors**”;
the Debtors collectively with their direct and indirect non-Debtor subsidiaries, the

¹ The Debtors in these cases, along with each Debtor’s registration number in the applicable jurisdiction, are as follows: Grupo Aeroméxico, S.A.B. de C.V. 286676; Aerovías de México, S.A. de C.V. 108984; Aerolitoral, S.A. de C.V. 217315; and Aerovías Empresa de Cargo, S.A. de C.V. 437094-1. The Debtors’ corporate headquarters is located at Paseo de la Reforma No. 243, piso 25 Colonia Cuauhtémoc, Mexico City, C.P. 06500.

“**Company**” or “**Aeroméxico**”) hereby move (this “**Motion**”) this Court (as defined herein) to enter the proposed orders, attached hereto as **Exhibit A**, **Exhibit B**, **Exhibit C**, **Exhibit D**, **Exhibit E**, **Exhibit F**, **Exhibit G**, and **Exhibit H** (each a “**Proposed Order**,” and if entered, each an “**Order**”). Each of the Proposed Orders relates to a transaction or series of transactions (each a “**Transaction**”), documented by the various Agreements (as defined herein) annexed thereto, with a specific Counterparty (as defined herein) (or group of affiliated Counterparties), including: (a) Boeing (as defined herein); (b) the SLB Counterparties (as defined herein); (c) the PDP Counterparties (as defined herein); (d) AerCap (as defined herein); and (e) the Engine Maintenance Counterparties (as defined herein). This Motion is supported by the *Declaration of Jeff Craine in Support of the (I) Boeing Motion, (II) Motion to Seal, and (III) Motion to Shorten* (the “**Craine Declaration**”), filed contemporaneously herewith and incorporated herein by reference. In further support of this Motion, the Debtors respectfully state as follows:

Jurisdiction and Venue

1. The United States Bankruptcy Court for the Southern District of New York (the “**Court**”) has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference M-431*, dated January 31, 2012 (Preska, C.J.). This is a core proceeding pursuant to 28 U.S.C. § 157(b), and, pursuant to Rule 7008 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), the Debtors consent to entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter a final order or judgment consistent with Article III of the United States Constitution.

2. Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

Preliminary Statement²

3. This Motion represents a critical step toward transforming the Debtors' fleet. Specifically, it seeks approval for a series of integrated transactions and modifications of prepetition agreements that will result in the Debtors adding twenty (20) new Boeing 737 MAX and four (4) new Boeing 787-9 aircraft to their fleet, and assuming amended agreements for three (3) Boeing 787-9 aircraft, two (2) Boeing 787-8 aircraft, six (6) Boeing 737MAX aircraft, and five (5) Boeing 737-800 aircraft, all at very attractive terms compared to market levels and to other aircraft type alternatives.³ This continues the Debtors' process of realigning the composition of their fleet with expected operations and adding more fuel- and cost-efficient Boeing 737MAX aircraft that will offer an upgraded customer experience and improved profitability. As explained below, the Debtors estimate that these Transactions will create aggregate savings of over \$800 million for the Debtors comprising (a) over \$350 million of savings on restructured existing leases, (b) over \$300 million of savings on amended sale leaseback transactions, and (c) approximately \$150 million of maintenance cost savings. Additionally, the Debtors estimate that the Transactions will result in a reduction of capital expenditures, interest expenses, and related costs of almost \$2 billion that, absent the Transactions, would otherwise have been incurred in respect of aircraft and engines that would have been surplus to the Debtors' requirements. Finally, the Transactions will avoid over

² Capitalized terms used but not defined in this section shall have the meanings ascribed to them in this Motion.

³ Through this Motion (and the *Debtors' Motion for (I) Authorization to (A) Enter into new Aircraft Lease Agreements and (B) Amend and Assume Certain Existing Aircraft Lease Agreements, (II) Approval of Compromises Regarding Certain Prepetition Claims with Air Lease Corporation* filed contemporaneously herewith), the Debtors are proposing to (a) add twenty-eight (28) new aircraft to their fleet and (b) assume agreements relating to eighteen (18) existing aircraft, representing a total of forty-six (46) aircraft. The new aircraft will add 27% more aircraft to the current fleet size and the existing leases that will be restructured pursuant to these transactions represent over 17% of the current fleet.

\$1 billion of potential unsecured claims that would have resulted from rejection of prepetition agreements that are instead being amended pursuant to the Transactions to reflect current market terms.

4. At the center of the Motion is the Company's prepetition aircraft purchase agreement with The Boeing Company ("**Boeing**"). That agreement, along with financings of pre-delivery payments owed to Boeing, sale-leaseback financings, and engine maintenance agreements, was negotiated before the global pandemic. It required the Debtors to buy more Boeing 737MAX aircraft than their current business plan requires, at prices above current market rates. Rejecting those agreements entirely, however, would have frustrated core reorganization goals of replacing older inefficient aircraft types and right-sizing the Debtors' fleet, while also creating over \$1 billion of rejection damages claims that would substantially dilute creditor recoveries. Assuming those agreements would have burdened the estates with expensive excess aircraft and a corresponding unfinanced capital expenditure commitment.

5. Instead, the series of interconnected arrangements described in this Motion will, consistent with the Debtors' business plan, amend the Boeing Agreement to reduce both the number of aircraft the Debtors acquire, and the cost of each aircraft to the Debtors. Pursuant to these arrangements, the Debtors will enter into or restructure sale and leaseback transactions for each of the twenty (20) Aircraft to be acquired from Boeing, each at attractive lease rates (without additional capital expenditures to be made by the Debtors towards such Aircraft). Each relevant sale leaseback agreement and financing agreement provides terms that the Debtors believe are highly favorable in order to match the needs under the new Boeing Agreement. The Transactions will also include

modifications to long-term maintenance and overhaul arrangements (including the purchase of spare engines to meet the minimum requirements of these arrangements) for the subject engines updated to reflect the Debtors' adjusted future Boeing 737MAX fleet size and reductions of lease rates relating to four (4) Boeing 737MAX aircraft which had previously been delivered to Aerovías. In conjunction with renegotiating agreements with various financing or sale leaseback Counterparties for the twenty (20) new Boeing 737MAX Aircraft, the Debtors are now also reaching separate agreements with those Counterparties and others addressing long-term treatment of additional aircraft in the Debtors' fleet. Finally, the Debtors are resolving numerous disputed Counterparty prepetition claims.

6. The benefits derived from these Transactions are extremely significant. Specifically, the Debtors will (a) retain many millions of dollars of value of prior prepetition investments made for the acquisition and operation of Boeing 737MAX aircraft, including investments related to the purchase obligations that will be terminated; (b) restructure non-Debtor loans made to finance pre-delivery payments (“PDPs”)⁴ for the acquisition of the Aircraft, thereby permitting Aerovías to reacquire the right to purchase the Aircraft and sell them to their SLB Counterparties; and (c) obtain sale and leaseback financing from the SLB Counterparties (or amend terms of existing sale and leaseback financing agreements) for all the Aircraft, in each case on very favorable terms

⁴ Aircraft purchase agreements typically require purchasers to make scheduled payments to the manufacturer prior to the delivery of the aircraft. In a typical PDP financing transaction, a lender advances a loan to an aircraft purchaser for the purpose of making these payments when due to the manufacturer. These loans are generally secured by means of a collateral assignment of the borrower's right to purchase the aircraft under such aircraft purchase agreement. A PDP loan typically matures on the earlier to occur of the actual delivery date for the relevant aircraft and a date certain after the scheduled delivery date, to allow for some, but not indefinite, delivery delays. During the term of these loans, the borrower pays periodic interest to the lender (and usually repays all remaining interest plus principal with the proceeds of long-term financing for the purchase of the aircraft upon delivery).

for the Debtors. The Debtors' ability to avoid rejecting the Boeing Agreement (and Boeing's negotiated reduction of prepetition damages claims) also significantly reduces the size of the unsecured claims pool and avoids massive amounts of rejection damages claims (and complex litigation over those claim amounts). Accordingly, entering into such Agreements represents an important achievement for the Debtors and is in the best interests of their estates and economic stakeholders. The Transactions should therefore be approved.

Relief Requested⁵

7. By this Motion, and pursuant to sections 105(a), 362, 363(b), 365(a), and 502 of chapter 11 of title 11 of the United States Code (the "**Bankruptcy Code**"), and Bankruptcy Rule 9019, the Debtors seek entry of the Proposed Orders (a) approving the compromises reflected in the Agreements; (b) granting authorization to (i) implement certain aircraft-related Transactions evidenced by the Agreements annexed to each Proposed Order and (ii) enter into such Agreements; (c) authorizing the Debtors to assume the applicable Agreements; (d) authorizing long-term sale leaseback financing for the Aircraft; (e) authorizing the Amended PDP Financing Arrangements and repayment of such financing upon delivery of each aircraft; (f) authorizing entry into amendments to existing long-term engine maintenance agreements with GE Engine Services, LLC ("**GE Engines**") and CFM International, Inc. ("**CFM**"); (g) approving each of the other transactions relating to the Boeing Transactions, and (h) approving the settled claim amounts, as further set forth in the Proposed Orders.

⁵ Each capitalized term used in this section but not otherwise defined herein shall have the meaning ascribed to it in this Motion.

8. As described above, and in further detail below, the majority of these proposed Transactions relate to the Debtors' acquisition of twenty (20) new Boeing 737MAX aircraft manufactured by Boeing (the "**Aircraft**"). The remaining transactions with the Counterparties involve other aircraft or engines that are integral components of the Boeing Transaction. For ease of reference, the following table sets forth the corresponding exhibit tab of each Proposed Order attached hereto, the Counterparty (or Counterparties) to which each Proposed Order pertains, a general summary of the relief sought in each Proposed Order (including the specific Agreements and Transactions approved therein), and a high-level summary of the benefits that the Debtors will obtain from the Agreements approved by each Proposed Order:

Exhibit of Proposed Order	Counterparty	Relief Requested	Summary of Benefits of Relevant Agreements
<i>A</i>	<i>Boeing</i>	Authorization to assume the Amended Boeing Agreement for the acquisition of the Aircraft.	(a) Reduced order size; (b) improved purchase prices, which reduce long-term leasing costs of the aircraft via favorable SLB Arrangements; (c) reductions of prepetition claims by Boeing; and (d) agreement to a delivery schedule matching anticipated future capacity requirements.
<i>B</i>	<i>Clover</i>	Authorization to (i) enter into amendments to prepetition sale and leaseback transaction agreements, resulting in the purchase and leaseback to Aerovías of seven (7) new Boeing 737MAX Aircraft; and in	(a) Sale and leaseback transactions which cover seven (7) of the new Boeing 737MAX Aircraft at favorable lease rates; (b) significant

Exhibit of Proposed Order	Counterparty	Relief Requested	Summary of Benefits of Relevant Agreements
		respect thereof to enter into certain purchase agreement assignments, and operating leases related thereto, (ii) assume a guarantee to Boeing for the purchase of the Aircraft, (iii) enter into a keep-well agreement for the benefit of the purchaser, and (iv) amend and assume certain leases for other aircraft already in the Debtors' fleet.	reductions in rents to current market levels on existing aircraft in the fleet; and (c) continuation of non-Debtor pre-delivery payment financing facilitates delivery from Boeing to Aerovías without requiring Aerovías to invest additional capital in PDP Loan payments.
C	JSA	Authorization to (i) enter into amendments to prepetition sale and leaseback transactions, resulting in the purchase and leaseback to Aerovías of three (3) new Boeing 737MAX Aircraft, and the termination of sale and leaseback arrangements for a fourth Aircraft (which will be acquired by AerCap and leased to Aerovías) and in respect thereof to assume or enter into, as applicable, certain purchase agreement assignments, and operating leases (and to amend such leases) related thereto; (ii) assume a guarantee to Boeing for the purchase of the Aircraft; (iii) enter into a keep-well agreement for the benefit of the purchaser; and (iv) amend and assume certain leases for other aircraft already in the Debtors' fleet.	(a) Sale and leaseback transactions which cover three (3) of the new Boeing 737MAX Aircraft at favorable lease rates; (b) significant reductions in rents to current market levels on existing aircraft in the fleet; and (c) continuation of non-Debtor pre-delivery payment financing facilitates delivery from Boeing to Aerovías without requiring Aerovías to invest additional capital in PDP Loan payments.
D	SMBC/Natixis	Authorization to (i) enter into amendments to prepetition sale and leaseback transactions resulting in the termination of sale and leaseback arrangements	(a) Continuation of PDP financing facilitates delivery from Boeing to Aerovías without requiring Aerovías to

Exhibit of Proposed Order	Counterparty	Relief Requested	Summary of Benefits of Relevant Agreements
		for six (6) new Boeing 737MAX aircraft to effectuate the AerCap Transactions; (ii) issue a new guarantee to SMBC/Natixis guaranteeing repayment of PDP financing; (iii) assume certain guarantees relating to the purchase of the aircraft and PDP financing; and (iv) enter into a keep-well agreement for the benefit of the purchaser.	invest additional capital in PDP Loan payments, and (b) agreed terms will allow for sale leaseback financing for the purchase of the Aircraft upon delivery.
<i>E</i>	<i>Santander and Carlyle</i>	<p><i>Santander</i></p> <p>Authorization to (i) repay PDP Loans made by Santander and secured by a lien over the purchase rights for three (3) Boeing 737MAX Aircraft and a cash collateral account, with the proceeds of the purchase price paid by the new lessor of such Aircraft (AerCap) and application of the amounts remaining in the cash collateral account; and (ii) enter into agreements providing for the release of the liens over the right to purchase the three (3) relevant Boeing 737MAX Aircraft and the reassignment of those rights to Aerovías to facilitate sale and leaseback transactions with AerCap for such Aircraft.</p> <p><i>Carlyle</i></p> <p>Authorization to enter into agreements providing for the release of liens over the right to purchase two (2) Boeing 737MAX Aircraft and the reassignment of those rights to</p>	(a) Continuation of PDP financing facilitates delivery from Boeing to Aerovías without requiring Aerovías to invest additional capital in PDP Loan payments, and (b) agreed terms will allow for sale leaseback financing for the purchase of the Aircraft upon delivery.

Exhibit of Proposed Order	Counterparty	Relief Requested	Summary of Benefits of Relevant Agreements
		Aerovías to facilitate sale and leaseback transactions with JSA for such Aircraft.	
<i>F</i>	<i>AerCap</i>	Authorization to (i) enter into sale and leaseback transactions for certain Aircraft, including aircraft purchase agreements, purchase assignment agreements, and operating leases related thereto; and (ii) assume certain leases for other aircraft already in Aerovías' fleet.	(a) Sale and leaseback transactions which cover ten (10) of the new Boeing 737MAX Aircraft at favorable lease rates; and (b) significant reductions in rents to current market levels for five (5) Boeing 787 aircraft, including for two (2) new Boeing 787-9 aircraft to be delivered to Aerovías.
<i>G</i>	<i>GE and CFM</i>	Authorization to assume amended Engine Maintenance Agreements relating to the Aircraft and other aircraft in Aerovías' fleet and to acquire additional spare engines in accordance with the requirements thereof.	(a) Reduce order size and contracted number of engines in the fleet to match the number of Boeing 737MAX aircraft on order; and (b) structure improved terms and ability to retain or return to prepetition maintenance compensation rates as Boeing 737MAX fleet grows.
<i>H</i>	<i>AerCap</i>	Amended "power by the hour" stipulation for a Boeing 787-8 aircraft leased by Aerovías from AerCap.	Continued cost savings relative to the Debtors' obligations under section 365(d)(5) of the Bankruptcy Code.

Background

A. General Background

9. On June 30, 2020 (the “**Petition Date**”), the Debtors each commenced in this Court a voluntary case (the “**Chapter 11 Cases**”) under chapter 11 of title 11 of the United States Code. The Debtors are authorized to continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

10. The Debtors’ Chapter 11 Cases are being jointly administered for procedural purposes only pursuant to Bankruptcy Rule 1015(b). *See Order Directing Joint Administration of Chapter 11 Cases* [ECF No. 30].

11. On July 13, 2020, the United States Trustee for the Southern District of New York (the “**U.S. Trustee**”) appointed the Official Committee of Unsecured Creditors (the “**Committee**”) pursuant to section 1102 of the Bankruptcy Code. *See Notice of Appointment of Official Committee of Unsecured Creditors* [ECF No. 92]. No trustee or examiner has been appointed in the Chapter 11 Cases.

12. Detailed information regarding the Debtors’ business, capital structure, and the circumstances leading to the commencement of these Chapter 11 Cases, is set forth in the *Declaration of Ricardo Javier Sánchez Baker in Support of the Debtors’ Chapter 11 Petitions and First Day Pleadings* [ECF No. 20], filed with the Court on the Petition Date.

13. As this Court is aware, the Debtors are engaged in a multistage process to analyze their anticipated aircraft needs and take steps to optimize the size and composition of their operating fleet on the most favorable terms available.

B. The Amended Purchase Agreement with Boeing

14. In 2012, Debtor Aerovías de México, S.A. de C.V. (“**Aerovías**” or the “**Lessee Debtor**”) entered into a purchase agreement (the “**Boeing Agreement**”) with Boeing wherein, among other things, Boeing agreed to manufacture, and Aerovías agreed to purchase, numerous new Boeing 737MAX aircraft over a multiyear period. In contemplation of the commencement of deliveries of the aircraft under the Boeing Agreement, in 2017, Aerovías entered into sale and leaseback transactions with various entities. These transactions were intended to facilitate the financing of the pre-delivery payments to Boeing and result in the ultimate purchase of the initial tranche of aircraft to be delivered under the Boeing Agreement (and the lease of such aircraft to Aerovías on an operating lease basis). Additionally, in 2017, Aerovías entered into Prepetition PDP Financing Arrangements (as defined herein) for three (3) additional Boeing 737MAX aircraft with Banco Santander (as defined herein). In March 2020, Aerovías entered into Prepetition PDP Financing Arrangements for one (1) Boeing 787-9 aircraft with Carlyle (as defined herein). As part of the Boeing 787-9 PDP financing, and in anticipation of the refinancing of the Prepetition PDP Financing Arrangements for two (2) Boeing 737MAX Aircraft, Aerovías granted the lender a lien over the purchase rights for the two (2) Boeing 737MAX Aircraft. In March 2019, after Aerovías had taken delivery of only six (6) Boeing 737MAX aircraft, safety concerns led aviation authorities around the world to temporarily suspend service of all Boeing 737MAX aircraft. The suspension halted all manufacturing and subsequent deliveries of the Boeing 737MAX for over a year. In December 2020, after the Debtors had commenced their Chapter 11 Cases, most aviation authorities lifted the suspension order and provided a process for Boeing 737MAX aircraft to be re-certified for commercial service.

15. After extensive arm's-length negotiations, including consultation with professionals to the Committee, the DIP Lenders,⁶ and the Ad Hoc Group,⁷ Aerovías and Boeing have reached agreement on an amendment to the Boeing Agreement (the “**Amended Boeing Agreement**”). Among other things, the Amended Boeing Agreement:

- reduces the number of remaining Boeing 737MAX aircraft to be delivered under the Boeing Agreement;
- revises the delivery schedule for the Aircraft to match the anticipated capacity needs of Aerovías over the next two years;
- provides Aerovías with significant financial incentives to acquire the Aircraft, as well as certain additional rights in the event the delivery of any Aircraft is further delayed beyond its newly agreed scheduled delivery months; and
- provides that Aerovías will assume leases from internationally recognized aircraft leasing companies for four (4) additional new Boeing 787-9 aircraft, which Aerovías had previously entered into before the Petition Date.

16. As set forth above and in the Craine Declaration, the addition of the Aircraft to Aerovías' fleet constitutes a major milestone in the Debtors' fleet rationalization and modernization process. The Debtors and their advisors have concluded that (a) the terms of the Amended Boeing Agreement represent the most favorable terms available, and (b) entry into the Amended Boeing Agreement is in the best interest of the Debtors, their estates, and their stakeholders. The Amended Boeing Agreement is annexed to **Exhibit A** of this Motion (the “**Proposed Boeing Order**”).

⁶ As used in this Motion, “DIP Lenders” refers to those identified in this Court’s *Final Order Granting Debtors’ Motion to (I) Authorize Certain Debtors in Possession to Obtain Post-Petition Financing; (II) Grant Liens and Superpriority Administrative Expense Claims to DIP Lenders; (III) Modify Automatic Stay; and (IV) Grant Related Relief* [ECF No. 527].

⁷ As used in this Motion, “Ad Hoc Group” refers to those identified in the *Verified Statement of the Ad Hoc Group of Senior Noteholders Pursuant to Bankruptcy Rule 2019* [ECF No. 390].

C. The Ancillary Agreements in Support of the Amended Boeing Agreement

17. To effectuate the Amended Boeing Agreement, Aerovías is proposing to enter into several other Transactions and Agreements for the sale and leaseback financing of the Aircraft. All of the Agreements are interdependent and constitute an integrated resolution of all issues arising under the Boeing Agreement as amended, one of the largest and most important executory contracts in these Chapter 11 Cases. Aerovías further proposes to enter into other ancillary Agreements related to the acquisition of the Aircraft.

18. *First*, as described in further detail below, prior to the Petition Date, certain parties (the “**SLB Counterparties**”) entered into highly structured sale and leaseback arrangements with Aerovías pursuant to which the SLB Counterparties agreed to (a) purchase Aircraft and lease them back to Aerovías and (b) provide funding for all or a significant portion of the pre-delivery payments due for the purchase of the Aircraft from Boeing (the “**Prepetition SLB Arrangements**”). While the structure of the Prepetition SLB Arrangements varies somewhat for each SLB Counterparty, the Prepetition SLB Arrangements generally provided that Aerovías would assign the rights and obligations to purchase the Aircraft from Boeing to a specified Irish special-purpose entity. Each Irish company subsequently entered into an installment purchase agreement (each, an “**IPA**”) with the applicable SLB Counterparty, pursuant to which the SLB Counterparty agreed to purchase the Aircraft and lease them back to Aerovías pursuant to operating leases. The IPA obligated the SLB Counterparty to pay (a) a portion of the purchase price of the Aircraft in installments and (b) the balance at delivery of the Aircraft. The Irish company used such installment payments to pay all or a portion of the PDPs due under the assigned Boeing purchase agreement. In substance, the installment

payments were loans to the Irish company, and the Irish company was obligated to pay a periodic discount amount (interest) to the SLB Counterparty on the outstanding amount of the installment payments. Prior to the Petition Date, Aerovías funded the interest payments and, in certain of the Prepetition SLB Arrangements financing transactions, the portion of the PDPs not covered by installment payments, with subordinated loans to the Irish company. The Irish company collaterally assigned rights in the assigned Boeing purchase agreement to the relevant SLB Counterparty to secure its obligations under the IPA. Aerovías (a) provided guarantees, to the SLB Counterparties, of the obligations of the Irish companies under the relevant IPA, and (b) issued guarantees to Boeing covering the obligations of the Irish companies under the relevant assigned Boeing purchase agreement. Accordingly, Aerovías is seeking approval of certain modifications to the Prepetition SLB Arrangements (the “**Amended SLB Arrangements**”) for the Aircraft and authorization to assume its guarantees (or issue new guarantees) in respect of the Amended SLB Arrangements.

19. *Second*, as described in further detail below, prior to the Petition Date, certain parties entered into structured agreements with Aerovías to provide Aerovías with financing to fund a significant portion of the pre-delivery payments due for the purchase of the Aircraft from Boeing (the “**Prepetition PDP Financing Arrangements**,” and the loans extended thereunder, the “**PDP Loans**,” and the counterparties under the Prepetition PDP Financing Arrangements, the “**PDP Counterparties**”). Under a typical Prepetition PDP Financing Arrangement, the rights to purchase the Aircraft are assigned to special-purpose borrower entities that in turn collaterally assigned such purchase rights to the relevant PDP Counterparties to secure the PDP Loans. In order to implement the

AerCap Transactions (as defined below) and certain of the Amended SLB Arrangements for the Aircraft described below, Aerovías is seeking approval of certain modifications to the Prepetition PDP Financing Arrangements (the “**Amended PDP Financing Arrangements**”) for the Aircraft.

20. *Third*, Aerovías has negotiated agreements documenting a newly contemplated sale and leaseback transaction with AerCap Ireland Limited (“**AerCap**”) for ten (10) Boeing 737MAX Aircraft (the “**AerCap Arrangements**,” and the transactions contemplated thereby, the “**AerCap Transactions**”). Pursuant to the AerCap Arrangements, Aerovías will sell the applicable Aircraft to AerCap, who will simultaneously lease the Aircraft back to Aerovías on an operating lease basis.

21. *Fourth*, as described in further detail below, Aerovías has agreed to amend and assume various agreements relating to the servicing and maintenance of the engines that power its Boeing 737MAX and Boeing 787 aircraft fleets, and to commit to purchase spare engines thereunder to meet the requirements of such agreements (the “**Engine Maintenance Agreements**,” and the counterparties under the Engine Maintenance Agreements, the “**Engine Maintenance Counterparties**,” and together with Boeing, the PDP Counterparties, and the SLB Counterparties, the “**Counterparties**”).

22. *Fifth*, in conjunction with entry into new or amended Agreements with certain SLB Counterparties and AerCap, the parties agreed to execute definitive documentation for amendment and assumption by Aerovías of lease agreements related to aircraft that are not among the Aircraft subject to the Amended Boeing Agreement (these agreements, together with the Amended Boeing Agreement, the Amended SLB

Arrangements the Amended PDP Financing Arrangements, the AerCap Arrangements, and the Engine Maintenance Agreements, the “**Agreements**”).

(a) The Amended SLB Arrangements

23. Each of the Aircraft is subject to Prepetition SLB Arrangements and/or a Prepetition PDP Financing Arrangements. Each of the Prepetition SLB Arrangements and the Prepetition PDP Financing Arrangements provides PDP financing for Aerovías’ acquisition of new aircraft from Boeing. In the case of the Prepetition SLB Arrangements, the PDP financing is embedded within the sale, purchase, and assignment arrangements with the respective SLB Counterparties.

24. Under the Prepetition SLB Arrangements, prior to the Petition Date, the rights to purchase the Aircraft were assigned to various special-purpose entities, which in turn (a) collaterally assigned such purchase rights to the relevant PDP Counterparties to secure the PDP Loans, or (b) further assigned the purchase rights to a third party that reimbursed previously paid or then-owing pre-delivery payments and assumed all payment obligations going forward, including the payment of pre-delivery payments, thereby providing a payment stream and ongoing commitments that had the same practical effect as a PDP loan. In order to implement the SLB Transactions described in the Boeing Motion, the SMBC/Natixis Prepetition SLB Transactions (as described herein) must be modified so that, among other things, the purchase rights for the six (6) Aircraft which are subject to such Transactions revert to Aerovías. This will, in turn, enable Aerovías to assign such rights to the applicable SLB Counterparties. The Clover and JSA Prepetition SLB Arrangements must be modified as described below to reflect certain changes agreed by the parties (e.g. new delivery dates, repayment terms, purchase prices, lease rates). Accordingly, in order to effectuate the Transactions, the Debtors are

seeking entry of the Proposed Orders which relate to each of the following SLB Counterparties:

(i) *Clover Aviation Capital*

25. Prior to the Petition Date, an affiliate of Clover Aviation Capital (“**Clover**”) entered into Prepetition SLB Arrangements for ten (10) of the Aircraft (three (3) of which were purchased and leased to Aerovías prior to the Petition Date).

26. Under Clover’s Prepetition SLB Arrangements, Aerovías assigned its purchase rights for seven (7) Aircraft to Mexican Dragon Aircraft Holdings Limited, an independent Irish special-purpose company (“**Mexican Dragon**”). In exchange for the assignment, Mexican Dragon agreed to (a) reimburse Aerovías for the PDPs that Aerovías previously paid or that were then owing to Boeing, and (b) assume all of the obligations to Boeing for such Aircraft going forward, including the payment of the PDPs. Mexican Dragon in turn agreed to sell the seven (7) Aircraft to Clover on an installment sale basis under an IPA (the “**Mexican Dragon IPA**”). The Mexican Dragon IPA obligates Clover to (a) lease the aircraft to Aerovías at delivery on an operating lease basis on terms agreed in a form of operating lease attached to the IPA and (b) make installment payments, which Mexican Dragon used to pay a portion of the PDPs payable by Mexican Dragon to Boeing under the assigned Boeing Agreement. The remaining portion of the of the PDPs, the discount amount (interest) in respect of the balance of the installment payments, and Mexican Dragon’s general corporate expenses were funded by Aerovías under a subordinated note subscription agreement with Mexican Dragon. Aerovías guaranteed the obligations of Mexican Dragon under both the Mexican Dragon IPA and assigned Boeing Agreement.

27. In order to implement the Transactions, Clover's Prepetition SLB Arrangements will be revised to (a) reflect the new delivery dates and purchase prices for the Aircraft under the Clover-Mexican Dragon IPA and the Mexican Dragon-Boeing assigned purchase agreement; (b) reflect certain changes to the specific aircraft serial numbers for the Aircraft subject to such agreements; (c) (i) terminate the obligation of Mexican Dragon to pay any discount amount (interest) accruing on or after the Petition Date, (ii) provide that no fees of Clover and its affiliates will be paid in respect of the implementation of the Amended SLB Arrangements, and (iii) grant Clover a general unsecured claim for such interest and fees against the Debtor's estate; (d) provide for the assumption of the Aerovías guarantees in favor of Clover in respect of the obligations of Mexican Dragon under the Mexican Dragon IPA and in favor of Boeing in respect of the obligations of Mexican Dragon under the assigned Boeing purchase agreement; (e) require Aerovías to enter into new leases for the Aircraft with Clover, or a Clover affiliate, as lessor; (f) provide for Aerovías to assume the subordinated note subscription agreement; (g) provide for Aerovías to assume the purchase agreement with Mexican Dragon for buyer-furnished equipment to be incorporated into the Aircraft; and (h) provide for the execution and delivery of a keep-well agreement in favor of Mexican Dragon. Accordingly, the Proposed Order relating to Clover, attached hereto as "**Exhibit B**" (the "**Proposed Clover Order**"), (a) authorizes the foregoing Transactions and (b) approves the Clover Amended SLB Arrangements annexed thereto.

(ii) *Jackson Square Aviation*

28. Prior to the Petition Date, Jackson Square Aviation ("JSA") agreed to provide pre-delivery payment and sale-leaseback financing for five (5) Boeing 737MAX aircraft, of which one aircraft was subsequently delivered and is currently in Aerovías'

fleet. Under the JSA Prepetition SLB Arrangements, Aerovías assigned its right to purchase the five aircraft to Caballero Aguila Aircraft Holdings Company, an independent Irish special-purpose entity (“**Caballero**”). In exchange for the assignment, Caballero agreed to (a) reimburse Aerovías for the PDPs that Aerovías previously paid or that were then owing to Boeing and (b) assume all of the obligations to Boeing for such Aircraft going forward, including the payment of the PDPs. Caballero in turn agreed to sell each of the five aircraft to an owner trust (the beneficiary of which is JSA) under the IPA among Caballero as seller, Aerovías as seller guarantor, such owner trusts as purchasers, and JSA as purchaser guarantor (the “**Caballero IPA**”). The Caballero IPA obligates the owner trusts to lease the aircraft to Aerovías at delivery on an operating lease basis pursuant to operating leases between such owner trusts and Aerovías (the “**JSA/Aerovías Leases**”). The installment payments made in accordance with the terms of the Caballero IPA are used to fund PDPs payable by Caballero to Boeing under the assigned Boeing Agreement, and the discount amount (interest) in respect of the balance of the installment payments made by Caballero to the owner trusts before the Petition Date. Caballero’s general corporate expenses were funded by Aerovías under a subordinated note subscription agreement with Caballero. Moreover, Aerovías guaranteed the obligations of Caballero under the Caballero IPA and assigned Boeing purchase agreement.

29. In order to implement these Transactions, JSA’s SLB Financing Arrangements must be revised to (a) reflect the new delivery dates and purchase prices for the Aircraft under the Caballero IPA and the Caballero-Boeing assigned purchase agreement; (b) reflect certain changes to the specific aircraft serial numbers for the

Aircraft subject to such agreements, and terminate the obligation to sell and purchase one of the Aircraft (the “**Terminated Aircraft**”) under such agreements and lease the Terminated Aircraft; (c) (i) terminate the obligation of Caballero to pay the discount amount (interest) accruing on or after the Petition Date, (ii) provide that no fees of JSA, the owner trusts, or their affiliates will be paid in respect of the implementation of the Amended SLB Arrangements, and (iii) give JSA and the owner trusts a general unsecured claim for such interest and fees against the applicable Debtor’s estate; (d) provide for the assumption of the Aerovías guarantees in favor of JSA and the owner trusts in respect of the obligations of Caballero under the Caballero IPA and in favor of Boeing in respect of the obligations of Caballero under the assigned Boeing purchase agreement; (e) provide for Aerovías to assume and amend the leases for the Aircraft (other than the lease in respect of the Terminated Aircraft) with the owner trusts as lessors under the relevant leases; (f) provide for Aerovías to assume the subordinated note subscription agreement; (g) provide for Aerovías to assume the purchase agreement with Caballero for buyer-furnished equipment to be incorporated into the Aircraft; and (h) provide for the execution and delivery of a keep-well agreement in favor of Caballero. Accordingly, the Proposed Order relating to JSA, attached hereto as **Exhibit C** (the “**Proposed JSA Order**”), (a) authorizes the foregoing Transactions and (b) approves the JSA Amended SLB Arrangements annexed thereto.

(iii) SMBC / Natixis

30. Prior to the Petition Date, Sumitomo Mitsui Banking Corporation Brussels Branch (“**SMBC**”) and Natixis S. A. (“**Natixis**”) agreed to provide pre-delivery payment financing for ten (10) Boeing 737MAX aircraft. SMBC Aviation Capital Limited (“**SMBC AC**”) agreed to purchase such aircraft upon delivery from Boeing and lease

them to Aerovías. Two of these aircraft have been delivered and are currently in Aerovías' fleet, while two were removed from the SMBC/Natixis Prepetition SLB Arrangements (and are now subject to the Carlyle Prepetition PDP Financing Arrangements, as described herein).

31. Under the SMBC/Natixis Prepetition SLB Arrangements, Aerovías assigned its right and obligation to purchase the ten (10) aircraft to Mayan Aircraft Holdings Company ("**Mayan**"), an independent Irish special-purpose company. In exchange for the assignment, Mayan agreed to (a) reimburse Aerovías for the PDPs that Aerovías previously paid, or that were then owing to Boeing, and (b) assume all of the obligations to Boeing for such aircraft going forward, including the payment of the PDPs. Mayan in turn agreed to sell each of the ten Aircraft to Sumidero Limited ("**Sumidero**"), another Irish special-purpose entity, under the IPA between Mayan as seller and Sumidero as purchaser (the "**Mayan IPA**"). The installment payments payable by Sumidero under the Mayan IPA pay a portion of the PDPs payable by Mayan to Boeing under the assigned Boeing purchase agreement. At delivery of each Aircraft, SMBC AC agreed to purchase that Aircraft and lease it to Aerovías on an operating lease basis.

32. Sumitomo and Natixis further agreed to provide PDP financing for the ten (10) Aircraft under a loan agreement among Sumitomo, Natixis, Sumidero, and certain other parties (the "**Loan Agreement**"), with loan disbursements matching the obligations of Sumidero to pay installment payments to Mayan under the Mayan IPA. The Mayan IPA in turn obligates Mayan to make payments to Sumidero at times and in amounts sufficient for Sumidero to meet its obligations under the Loan Agreement. Aerovías has agreed under a subordinated note subscription agreement to make advances to Mayan at

times and in amounts sufficient for Mayan to pay the remaining portion of the PDP amounts payable by Mayan under the IPA in respect of Sumidero's obligations under the Loan Agreement, including interest, and general corporate expenses. Aerovías guaranteed the obligations of Mayan under the Mayan IPA and under the assigned Boeing Agreement.

33. The SMBC/Natixis Prepetition SLB Arrangements must be amended to (a) provide for the termination of the obligations of Mayan and Sumidero to sell and buy the Aircraft under the Mayan IPA, and of Aerovías to sell to Mayan the buyer-furnished equipment for the Aircraft; (b) obligate Mayan to make payments under the Mayan IPA sufficient to repay the installment payments made by Sumidero for each of the remaining six Aircraft (which will in turn repay the loans made under the Loan Agreement) on the earlier of the delivery date of such Aircraft and an agreed period after the scheduled delivery month of that Aircraft; (c) confirm termination of SMBC AC's obligation to purchase and lease the Aircraft; (d) provide for the release of the liens of Sumidero and the lenders over the right to purchase each Aircraft from Boeing on the date the installment payments and loan in respect of that aircraft are repaid, and the reassignment to Aerovías of the right to purchase that Aircraft from Boeing, so that Aerovías may then sell the Aircraft to AerCap under the AerCap Arrangements; (e) reflect the new scheduled delivery months for the Aircraft under the Mayan IPA, and new scheduled delivery months and purchase prices for the Aircraft under the Mayan-Boeing assigned purchase agreement; (f) reflect certain changes to the specific aircraft serial numbers for the Aircraft subject to such agreements; (g) (i) terminate the obligation of Mayan and Sumidero to pay interest accruing on or after the Petition Date, (ii) provide that no fees of

SMBC and Natixis will be paid in respect of the implementation of the Amended SLB Arrangements, and (iii) give SMBC and Natixis a general unsecured claim for such interest and fees against the applicable Debtor's estate; (h) provide for the issuance of a new guarantee by Aerovías to SMBC and Natixis in respect of the obligations of Sumidero under the Loan Agreement as amended, and the assumption of the Aerovías guarantees in favor of Sumidero in respect of the obligations of Mayan under the Mayan IPA and in favor of Boeing in respect of the obligations of Caballero under the assigned Boeing purchase agreement; (i) provide for Aerovías to assume the subordinated note subscription agreement; and (j) provide for the execution and delivery of a keep-well agreement in favor of Caballero. Accordingly, the Proposed Order relating to SMBC and Natixis, attached hereto as **Exhibit D**, authorizes the foregoing amendments and termination through the Agreements annexed thereto.

(b) The Amended Prepetition PDP Financing Arrangements

34. Each of the Aircraft is subject to Prepetition SLB Arrangements or Prepetition PDP Financing Arrangements. Each of the Prepetition PDP Financing Arrangements provides PDP financing for Aerovías' acquisition of new aircraft from Boeing.

35. Similar to the Prepetition SLB Arrangements described above, under the Prepetition PDP Financing Arrangements, the rights to purchase the Aircraft were assigned to various special-purpose entities prior to the Petition Date, which in turn collaterally assigned such purchase rights to the relevant PDP Counterparties to secure the PDP Loans. In order to implement certain of the SLB Transactions described in this Motion, the PDP Financing Arrangements must be modified so that, among other things, the purchase rights for certain Aircraft that are subject to liens in favor of the PDP lenders

will be released and revert to Aerovías. This will, in turn, enable Aerovías to assign such rights to the applicable SLB Counterparties. Accordingly, in order to effectuate the Transactions, the Debtors are seeking entry of the Proposed Orders which relate to each of the following PDP Counterparties:

(i) *Banco Santander México, S.A.*

36. Prior to the Petition Date, Banco Santander México, S.A., Institución de Banca Múltiple, Grupo Financiero Santander México (“**Santander**”), led a group of banks, including two other lenders (SABCapital, S.A. de C.V. SOFOM, E.R., and Banco Nacional de Comercio Exterior, S.N.C., Institución de Banca de Desarrollo), that agreed to provide PDP financing for three (3) of the Aircraft (the “**Santander PDPs**”). In connection with the Santander transaction, Aerovías assigned the right to purchase the relevant Aircraft to a special-purpose Mexican trust, which in turn borrowed funds from the above-referenced lenders to reimburse Aerovías for PDPs previously paid or then owing to Boeing and to make future PDPs for such Aircraft. In order to effectuate certain SLB Transactions described below, Aerovías must repay the Santander PDP Loans upon delivery of each Aircraft from Boeing, and Santander (as collateral agent) will release its lien over the purchase rights upon receipt of such payment so that they may be assigned back to Aerovías (and then to AerCap, the SLB Counterparty for these Aircraft). Accordingly, the Proposed Order relating to the Santander PDPs, attached hereto as **Exhibit E**, authorizes the foregoing Transactions and approves the Amended PDP Financing Arrangements annexed thereto.

(ii) *Carlyle Aviation Partners*

37. Prior to the Petition Date, an entity controlled by an affiliate of Carlyle Aviation Management LLC (“**Carlyle**”) agreed to provide PDP financing to Aerovías for

two (2) Boeing 737MAX aircraft and one (1) Boeing 787-9 aircraft. At the closing of the financing of the Boeing 787-9 PDPs, Aerovías assigned the right to purchase the two (2) Boeing 737MAX's to an Irish entity called Runway PDP Borrower Irish Designated Activity Company, which in turn collaterally assigned such rights to the entity that provided the Boeing 787 PDP loan, Runway PDP Lender One LLC. This was done in anticipation of the PDP financing for the 737MAX aircraft closing soon thereafter. However, the financing for the Boeing 737MAX aircraft never closed. The parties have agreed to unwind the Boeing 737MAX assignments to permit the sale of these Boeing 737MAX aircraft to a new lessor. Accordingly, the Proposed Order relating to Carlyle, attached hereto as **Exhibit E**, authorizes Aerovías to unwind this assignment.

(c) The AerCap Arrangements

38. AerCap has agreed to sale-leaseback transactions for ten (10) of the Aircraft. Under the SLB Arrangements with AerCap, at the time that each such Aircraft is delivered by Boeing, Aerovías will (a) ensure that the right to purchase each Aircraft is reassigned to Aerovías from the relevant PDP Counterparties as described above, and (b) assign such rights to AerCap (or its nominee). AerCap will in turn commit to purchase the Aircraft and lease such Aircraft back to Aerovías on the applicable delivery dates. In connection therewith, Aerovías has negotiated a sale and purchase agreement with AerCap in respect of the ten (10) Aircraft and long-term operating leases for these Aircraft with AerCap (or its nominee). Accordingly, the Proposed Order relating to AerCap, attached hereto as **Exhibit F** (the “**Proposed AerCap Order**”) (a) authorizes the foregoing AerCap Transactions and (b) approves the AerCap Arrangements annexed thereto (as well as certain other Agreements described below).

(d) The Engine Maintenance Agreements

39. As a result of the grounding of the Boeing 737MAX fleet and the global pandemic that followed, Aerovías' fleet of Boeing 737MAX and Boeing 787 aircraft will grow at a significantly slower pace than was originally anticipated. In order to reflect this new reality, Aerovías must make corresponding changes to its long-term maintenance and spare engine agreements for the engines that power its Boeing 737MAX and Boeing 787 fleets. Without such changes, the economic and operational terms and technical provisions of its existing maintenance and spare engine agreements for Boeing 737MAX and Boeing 787 aircraft would not be commercially viable. In fact, Aerovías could not meet certain requirements under such arrangements, in their existing form, and the cost of engine maintenance would increase substantially.

40. Moreover, it is a condition precedent to the obligation to accept delivery of the additional Aircraft from Boeing that these agreements be in place. Aerovías will enter into amendments with the Engine Maintenance Counterparties, GE Engines and CFM, to ensure that the terms of the engine maintenance arrangements match the anticipated aircraft fleet size (including the number of spare engines required to support the fleet). Accordingly, the Proposed Order relating to the Engine Maintenance Agreements, attached hereto as **Exhibit G** (the “**Proposed Engine Maintenance Order**”), (a) authorizes the foregoing Transactions and (b) approves the amended Engine Maintenance Agreements annexed thereto.

(e) Agreements Relating to Additional Aircraft in Debtors' Current Fleet

41. As part of the commercial agreements for the SLB Transactions, Aerovías also agreed to provisions with certain SLB Counterparties and AerCap with respect to

aircraft currently in the Debtors' fleet that are not directly related to the Amended Boeing Agreement. Under each of the amended leases described below, Aerovías will realize significant cost savings from the amended rent amounts contemplated therein, as the amended agreements contain terms and lease rates that are substantially more favorable to Aerovías than those in the prepetition agreements. Therefore, the Debtors request additional relief as described below:

(i) *AerCap Ireland Limited*

42. Aerovías is also seeking the Court's approval of the assumption of five (5) existing operating leases for each of the following five aircraft: two (2) Boeing 787-8 aircraft bearing manufacturer's serial numbers 35308 and 35312, and three (3) Boeing 787-9 aircraft bearing manufacturer's serial numbers 65092, 65102, and 65103, each as amended pursuant to the terms of the Other Agreements (as defined in the SLB Purchase and Sale Agreement). In addition, to address one existing AerCap aircraft that will not be assumed pursuant to the Proposed AerCap Order, Aerovías is seeking approval of an amended stipulation with AerCap (the "**Amended AerCap Stipulation**"). The Amended AerCap Stipulation provides for, among other things, the continuation of the "power by the hour" pricing arrangement memorialized in *Stipulation and Order Between Certain Debtors and Counterparties Concerning Certain Equipment* [ECF No. 402], which was approved by the Court on September 21, 2020, with slight adjustments described in the amended stipulation. Accordingly, the AerCap Proposed order also provides for the necessary authorizations to implement the foregoing Transactions. The proposed order relating to the remaining aircraft is annexed hereto as **Exhibit H**.

(ii) Clover

43. Aerovías is also seeking the Court’s approval of the assumption of leases with Clover, each as amended pursuant to the terms of the Other Agreements (as defined in the SLB Purchase and Sale Agreement), for three (3) Boeing 737MAX aircraft which were delivered prior to the Petition Date and the related engines, parts, equipment, and appurtenances. Accordingly, the Proposed Clover Order also provides for the necessary authorizations to implement the foregoing Transactions.

(iii) JSA

44. Aerovías is also seeking the Court’s approval of the assumption of leases with owner trusts, the beneficiary of which in each case is JSA, each as amended pursuant to the terms of the Other Agreements (as defined in the SLB Purchase and Sale Agreement), for (i) one (1) Boeing 737MAX aircraft which was delivered prior to the Petition Date, and the related engines, parts, equipment, and appurtenances and (ii) five (5) Boeing 737-800 aircraft that were delivered on lease prior to the Petition Date, and the related engines, parts, equipment, and appurtenances. Accordingly, the Proposed JSA Order also provides for the necessary authorization to implement the foregoing Transaction.

D. The Negotiations

45. As described above, the execution of the Amended Boeing Agreement and all other Agreements associated with the Transactions (including the Amended SLB Arrangements, the Amended PDP Financing Arrangements, the AerCap Arrangements, the Engine Maintenance Agreements, and the Agreements unrelated to the Aircraft) constitutes a significant milestone in the Debtors’ fleet rationalization process. The Debtors, in consultation with their advisors, have worked tirelessly to renegotiate the

terms of the Amended Boeing Agreement and all other related Agreements in order to optimize their fleet structure, minimize cash outflows associated therewith, minimize resulting claims, and ultimately enable the Debtors to take a major step closer to implementing their long-term business plan.

46. These Agreements will provide significant benefits to the Debtors. As mentioned above, the Debtors will (i) retain the value of prior PDPs made for the acquisition and operation of Boeing 737MAX aircraft, including investments related to the purchase obligations that will be terminated; (ii) restructure arrangements made to fund pre-delivery payments for the acquisition of the Aircraft, thereby permitting Aerovías to reacquire the right to purchase the Aircraft and sell them to their SLB Counterparties; (iii) obtain sale and leaseback terms from the SLB Counterparties (or amend terms of existing sale and leaseback agreements, as applicable) for all the Aircraft; and (iv) restructure its engine maintenance contracts with the manufacturers of the engines that support its Boeing 787 and Boeing 737MAX fleets to reflect current market conditions and Aerovías' fleet plan in each case on very favorable terms for the Debtors, especially considering the current environment for air travel and its impact on the ability to finance the purchase of new aircraft on reasonable terms. The implementation of the Transactions will significantly advance the Debtors' short-term goals during their reorganization efforts, and will help the Debtors achieve their long-term fleet and business plan: to emerge from bankruptcy as a leading global airline.

47. Further, the Debtors, Boeing, the PDP Counterparties, the SLB Counterparties, the Engine Maintenance Counterparties, and their advisors negotiated the Agreements at arm's length and in good faith. Throughout the process, the Debtors have

consulted with professionals to the Committee, the DIP Lenders, and the Ad Hoc Group. The Debtors are confident that the Transactions contemplated by the Agreements maximize value for their estates and economic stakeholders. Thus, the Debtors respectfully request that the Court enter each of the Proposed Orders (a) approving the compromises reflected in the Agreements, including the claim settlements therein, (b) approving the Transactions and each corresponding Agreement, (c) authorizing the assumption of certain prepetition Agreements (or amended prepetition Agreements), including, but not limited to, the Boeing Agreement (as amended), and (d) approving the Amended PDP Financing Arrangements.

Basis for Relief

A. The Court Should Approve the Entry into the Agreements and the Claim Settlements Under Bankruptcy Rule 9019

48. The Boeing Agreement is one of the most important executory contracts in the Debtors' estates. Absent an agreed compromise with Boeing and the many other Counterparties, the Debtors would not have a viable plan for their current fleet, and would face the risk of creating over \$1 billion in rejection claims and operational uncertainty that would severely harm the Debtors' commercial and financial performance. As mentioned above, the Debtors and Boeing engaged in good-faith negotiations at arm's length, which led to an agreed amendment to the Boeing Agreement which significantly reduces the number of aircraft to be purchased, consistent with the Debtors' business plan. Importantly, Boeing agreed to substantially reduce any potential unsecured claims resulting from the termination of a substantial number of aircraft purchases. The Debtors also entered into various interlocking and interconnected transactions with other counterparties to finance and facilitate Aerovías' acquisition and

operation of the Aircraft. The Amended Boeing Agreement and each of the ancillary Agreements with the other Counterparties avoids what would almost certainly have been value-destructive and litigious disputes, which would surely stem from a rejection of the Boeing Agreement.

49. Moreover, as noted above, the Debtors have reached agreements with a number of Counterparties on the amounts of Counterparties' unsecured claims (the "**Claim Settlements**"). These Claim Settlements were negotiated at arm's length in consultation with professionals to the Committee and Ad Hoc Group and will save the Debtors considerable time and expense in their claim reconciliation process.

50. A court should exercise its discretion to approve the settlement "in light of the general public policy favoring settlements." *In re Hibbard Brown & Co.*, 217 B.R. 41, 46 (Bankr. S.D.N.Y. 1998). Indeed, courts in this district have made clear that "[a]s a general matter, 'settlements and compromises are favored in bankruptcy as they minimize costly litigation and further parties' interests in expediting the administration of the bankruptcy estate.'" *In re Republic Airways Holdings, Inc.*, 2016 WL 2616717, No. 16-10429 (SHL) at *3 (Bankr. S.D.N.Y. May 4, 2016) (citing *In re Dewey & LeBouef LLP*, 478 B.R. 626, 640 (Bankr. S.D.N.Y. 2012)); *see also Motorola, Inc. v. Official Comm. of Unsecured Creditors (In re Iridium Operating LLC)*, 478 F.3d 452, 455 (2d Cir. 2007).

51. Under Bankruptcy Rule 9019 and governing case law, a court should approve a compromise or settlement where it makes an independent determination that the compromise or settlement is fair and equitable, reasonable, and in the best interests of the debtor's estate. *See, e.g., In re Republic Airways*, 2016 WL 2616717 at *3; *see also Ionosphere Clubs, Inc. v. Am. Nat'l Bank & Trust Co. of Chicago (In re Ionosphere*

Clubs, Inc.), 156 B.R. 414, 426 (S.D.N.Y. 1993), *aff'd*, 17 F.3d 600 (2d Cir. 1994); *Nellis v. Shugrue*, 165 B.R. 115, 122–23 (S.D.N.Y. 1994). In so doing, a court may consider the opinions of the trustee or debtor in possession that the settlement is fair and equitable. *See id.*; *see also In re Purofied Down Prods. Corp.*, 150 B.R. 519, 522 (S.D.N.Y. 1993).

52. In assessing whether to approve a settlement, a court need not decide the issues of law and fact raised by the settlement, but rather should “canvass the issues and see whether the settlement fall[s] below the lowest point in the range of reasonableness.” *In re W.T. Grant Co.*, 699 F.2d 599, 608 (2d Cir. 1983) (alteration in original) (citations and quotations omitted). Put differently, “the court need not conduct a ‘mini-trial’ to determine the merits of the underlying litigation.” *In re Purofied Down Prods.*, 150 B.R. at 522.

53. “The ‘reasonableness’ of [a] settlement depends upon all factors, including probability of success, the length and cost of the litigation, and the extent to which the settlement is truly the product of ‘arms-length’ bargaining, and not fraud or collusion.” *In re Ionosphere Clubs, Inc.*, 156 B.R. at 428.

54. The Debtors respectfully submit that the compromises set forth in the Agreements, including the Claim Settlements, satisfy the range of reasonableness test described above. The global suspension of Boeing 737MAX services, the resulting halt to the manufacturing of such aircraft, and the subsequent disturbance to the Boeing Agreements’ delivery schedule led to a complex web of claims and counterclaims among Aerovías, Boeing, and the Counterparties. Rather than engage in costly and value-destructive litigation over the Debtors’ obligations and the Counterparties’ unsecured claim amounts, the Debtors have instead chosen to enter into the settlements documented

by the various Agreements. Moreover, as noted above, each of the Agreements is the product of arm's-length and good-faith bargaining. Finally, entry into the Claim Settlements will (a) eliminate the need for lengthy and costly claims disputes and (b) unlock millions of dollars in distributable value for the Debtors' unsecured creditors. Accordingly, the Debtors respectfully request that the Court approve the compromises in the Agreements.

B. The Court Should Authorize Aerovías' Entry into the Amended Boeing Agreement, the SLB Arrangements, the Amended PDP Financing Arrangements, and the Engine Maintenance Agreements Under Sections 363(b) and 105(a) of the Bankruptcy Code

55. Section 363(b)(1) of the Bankruptcy Code empowers the Court to allow a debtor to "use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). A debtor's decision to use, sell, or lease assets outside the ordinary course of business must be based upon the sound business judgment of the debtor. *See In re Chateaugay Corp.*, 973 F.2d 141, 143 (2d Cir. 1992) (holding that a judge determining a section 363(b) application must find from the evidence presented before him a good business reason to grant such application); *see also Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1071 (2d Cir. 1983) (same); *In re Glob. Crossing Ltd.*, 295 B.R. 726, 743 (Bankr. S.D.N.Y. 2003); *In re Ionosphere Clubs, Inc.*, 100 B.R. 670, 674 (Bankr. S.D.N.Y. 1989) (noting that the standard for determining a section 363(b) motion is "good business reason").

56. The business judgment rule is satisfied "when the following elements are present: (1) a business decision, (2) disinterestedness, (3) due care, (4) good faith, and (5) according to some courts and commentators, no abuse of discretion or waste of corporate assets." *Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re*

Integrated Res., Inc.), 147 B.R. 650, 656 (S.D.N.Y. 1992), appeal dismissed, 3 F.3d 49 (2d Cir. 1993) (internal quotations omitted). In fact, “[w]here the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor’s conduct.” *Comm. of Asbestos-Related Litigants and/or Creditors v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986). Courts in this district have consistently and appropriately been loath to interfere with corporate decisions absent a showing of bad faith, self-interest, or gross negligence and will uphold a board’s decisions as long as they are attributable to any “rational business purpose.” *In re Integrated Res. Inc.*, 147 B.R. at 656.

57. Moreover, section 105(a) of the Bankruptcy Code empowers the Court to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a).

58. The Debtors respectfully submit that the requested relief with respect to the Amended Boeing Agreement, the SLB Arrangements, the Amended PDP Financing Arrangements, and the Engine Maintenance Agreements represents a sound exercise of their business judgment and is justified under sections 363(b) and 105(a) of the Bankruptcy Code. As described above, the Debtors are seeking to reset their fleet costs to a market level and therefore desire to enter the proposed amended Agreements with the Counterparties in order to obtain the benefit of the most attractive costs and lease conditions that will create operational flexibility. In accordance with their fiduciary duties, the Debtors have evaluated and negotiated these Agreements in the context of the Debtors’ current aircraft equipment agreement negotiations and available alternatives,

and now seek to enter into Transactions contemplated thereby because they represent economically sound Transactions to achieve that goal for the Debtors' estates. Rejecting the prepetition agreements outright would have led to over \$1 billion in rejection claims. Instead, the Transactions contemplated by these Agreements will provide the Debtors with twenty (20) new Boeing 737MAX aircraft. The Debtors have determined that the terms of these Agreements, including the payment and delivery schedules thereunder, not only represent the best available transactions under the circumstances of these Chapter 11 Cases, but would be commercially beneficial transactions irrespective of such circumstances. The terms of these Agreements are even superior to some of the Debtors' existing leases. In addition, given the current state of the aviation industry and the lingering uncertainty of how long it will take for the industry to regain its pre-pandemic status, the ability to drastically reduce the number of aircraft to be purchased via the Boeing Agreement is advantageous to the Debtors' estates. Furthermore, the Debtors and their advisors negotiated the Agreements at arm's length and in good faith, and in consultation with professionals to the Committee, the DIP Lenders, and the Ad Hoc Group.

59. For the reasons set forth above, the Debtors' authorization to enter into these Agreements (a) is in the best interest of their estates and economic stakeholders and (b) will further serve to maximize value for the benefit of all creditors. Therefore, the Debtors respectfully request that the Court permit Aerovías to enter into these Agreements.

C. To the Extent any Transaction Involves an Assumption of a Prepetition Agreement (or an Amended Prepetition Agreement), the Court Should Approve the Assumption of such Agreement Under Section 365(a) of the Bankruptcy Code

60. Some of the Agreements—namely the Amended Boeing Agreement, the Engine Maintenance Agreement, some of the SLB Arrangements, and some of the Other Agreements—include the assumption of prepetition executory contracts with one or more Counterparties. To the extent that any Agreement constitutes an executory contract, the Debtors respectfully represent that the Court should approve the assumption thereof.

61. The Bankruptcy Code empowers the Debtors (with court approval) to assume executory contracts. 11 U.S.C. § 365(a); *see also NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 521 (1984); *In re Orion Pictures Corp.*, 4 F.3d 1095, 1098 (2d Cir. 1993). An executory contract is a “contract under which the obligation of both the bankrupt and the other party to the contract are so far unperformed that the failure of either to complete performance would constitute a material breach excusing performance of the other.” *Sharon Steel Corp. v. Nat’l Fuel Gas Distribution Corp.*, 872 F.2d 36, 39 (3d. Cir. 1989) (internal citations omitted); *see also In re Keren Ltd. P’ship*, 225 B.R. 303, 307 (S.D.N.Y. 1997), *aff’d*, 189 F.3d 86 (2d Cir. 1999) (same).

62. In determining whether to permit the debtor to assume or reject a contract, “the debtor’s interests are paramount.” *In re Penn Traffic Co.*, 524 F.3d. 373, 383 (2d Cir. 2008). Accordingly, the decision to assume or reject an executory contract is also governed by the business judgment rule, which requires that the debtor determine that the requested assumption would be beneficial to its estates. *See Grp. of Institutional Invs. v. Chicago, M., St. P. & P. R. Co.*, 318 U.S. 523, 550 (1943) (the question of assumption “is one of business judgment”); *In re Penn Traffic*, 524 F.3d at 383; *In re Old Carco LLC*,

406 B.R. 180, 188 (Bankr. S.D.N.Y. 2009); *In re Helm*, 335 B.R. 528, 538 (Bankr. S.D.N.Y. 2006); *In re MF Global Inc.*, No. 11-2790, 2011 WL 6792758, at *2 (Bankr. S.D.N.Y. Dec. 20, 2011) (“The assumption or rejection of an executory contract may be approved if such action would benefit the debtor’s estate and is an exercise of sound business judgment.”); *Sharon Steel*, 872 F.2d at 40.

63. Absent a showing of “bad faith, or an abuse of business discretion,” the debtor’s business judgment will generally not be altered. *In re Old Carco*, 406 B.R. 180, 188 (quoting *In re G Survivor Corp.*, 171 B.R. 755, 757 (Bankr. S.D.N.Y. 1994)). The party opposing a debtor’s exercise of its business judgment has the burden of rebutting the presumption of validity. *See In re Integrated Res.*, 147 B.R. at 656 (S.D.N.Y. 1992).

64. In considering a motion to assume or reject an executory contract, a debtor “should examine a contract and the surrounding circumstances and apply its best ‘business judgment’ to determine if [assuming the contract] would be beneficial or burdensome to the estate.” *In re Orion Pictures Corp.*, 4 F.3d at 1099; *see also In re Klein Sleep Prods., Inc.*, 78 F.3d 18, 25 (2d Cir. 1996); *In re Gucci*, 193 B.R. 411, 415 (S.D.N.Y. 1996). A debtor’s decision to assume an executory contract based on its business judgment will generally not be disturbed “absent a showing of bad faith or abuse of business discretion.” *In re Chipwich, Inc.*, 54 B.R. 427, 430–31 (Bankr. S.D.N.Y. 1985); *see also In re G Survivor Corp.*, 171 B.R. 755, 757 (Bankr. S.D.N.Y. 1994), *aff’d sub nom. John Forsyth Co., Inc. v. G Licensing, Ltd.*, 187 B.R. 111 (S.D.N.Y. 1995); *In re MF Global Inc.*, No. 11-2790, 2011 WL 6792758, at *2 (Bankr. S.D.N.Y. Dec. 20, 2011) (“The assumption or rejection of an executory contract may be approved if such action would benefit the debtor’s estate and is an exercise of sound business judgment.”).

65. Upon finding that the debtor has exercised its sound business judgment in determining that the assumption of an agreement is in the best interests of the debtor, its creditors, and all parties in interest, the court should approve the assumption under Section 365(a) of the Bankruptcy Code. *See, e.g., In re Child World, Inc.*, 142 B.R. 87, 89 (Bankr. S.D.N.Y. 1992); *In re Gucci*, 193 B.R. at 417.

66. The Debtors respectfully submit that the relief requested herein is fair and equitable, reasonable, and in the best interests of the Debtors' estates, and is therefore justified under section 365(a) of the Bankruptcy Code. As detailed above, each of the Agreements to be assumed has been amended to align with the overall set of Transactions, and assumption of these amended Agreements represents a sound exercise of the Debtors' business judgment, and the assumption thereof (to the extent applicable) is therefore justified under section 365(a) of the Bankruptcy Code. Furthermore, the alternative—outright rejection of the prepetition agreements—would have created over \$1 billion in unsecured claims stemming from such rejections. Accordingly, the Debtors respectfully request that the Court approve the assumption of all applicable Agreements relating to the Transactions.

Waiver of Bankruptcy Rule 6004(h)

67. The parties anticipate that eight (8) Aircraft will be delivered to Aerovías no later than June 30, 2021, the first two (2) of which will be ready for delivery as early as April 30, 2021. The Debtors urgently need to integrate these additional Aircraft into their operating fleet schedule as soon as practicable to service steadily increasing demand over the upcoming summer vacation season. It is therefore critical for the Debtors to obtain prompt approval for the proposed Transactions so that they can begin to take

delivery of the Aircraft and then integrate them into their flight schedules. These Aircraft will constitute a significant and integral portion of the Debtors' fleet going forward.

68. Accordingly, to implement the foregoing successfully, the Debtors respectfully request that the Court enter an order providing that the Debtors have established cause to exclude the relief requested herein from the fourteen (14)-day stay period provided under Bankruptcy Rule 6004(h).

Notice

69. Notice of this Motion will be provided to: (a) the entities on the Master Service List (as defined in the Case Management Order and available on the Debtors' case website at <https://dm.epiq11.com/case/aeromexico/info>); (b) the U.S. Trustee; (c) counsel to the Committee; (d) counsel to Apollo Management Holdings, L.P.; (e) counsel to the Ad Hoc Group; and (f) any person or entity with a particularized interest in the subject matter of this Motion. The Debtors respectfully submit that no further notice is required.

No Prior Request

70. No previous request for the relief sought herein has been made by the Debtors to this or any other court.

[Remainder of page intentionally left blank]

WHEREFORE, the Debtors respectfully request that the Court grant the relief requested herein and such other and further relief as the Court deems just and proper.

Dated: April 22, 2021
New York, New York

DAVIS POLK & WARDWELL LLP

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