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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 TO ASSUME CERTAIN
AGREEMENTS WITH
GRUPO AEROPORTUARIO DEL CENTRO NORTE, S.A.B. DE C.V. AND
AEROPUERTO INTERNACIONAL DE LA CIUDAD DE MEXICO, S.A. DE C.V.**

PLEASE TAKE NOTICE that on April 26, 2021, the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) filed the *Debtors’ Motion to Assume Certain Agreements with Grupo Aeroportuario del Centro Norte, S.A.B. de C.V. and Aeropuerto Internacional de la Ciudad de Mexico, S.A. de C.V.* (the “**Motion**”). A hearing on the Motion will be held on **May 21, 2021, at 10:00 a.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

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.

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 agenda before the Hearing, which may modify or supplement the motions 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

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>.

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 **Friday, May 14, 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 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.

Dated: April 26, 2021
New York, New York

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Case No. 20-11563 (SCC)

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**DEBTORS' MOTION TO ASSUME CERTAIN AGREEMENTS WITH
GRUPO AEROPORTUARIO DEL CENTRO NORTE, S.A.B. DE C.V. AND
AEROPUERTO INTERNACIONAL DE LA CIUDAD DE MEXICO, S.A. DE C.V.**

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 “**Company**” or “**Aeroméxico**”) hereby move (this “**Motion**”) this Court for entry of an order, substantially in the form attached hereto as **Exhibit A** (the “**Order**”), granting the relief described below. In further support of the Motion, the Debtors contemporaneously submit the *Declaration of Ricardo Javier Sánchez Baker in Support of the Debtors’ Motion to Assume Certain Agreements with Grupo*

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.

Aeroportuario del Centro Norte, S.A.B. de C.V. and Aeropuerto Internacional de la Ciudad de Mexico, S.A. de C.V., attached hereto as **Exhibit B**, and further represent as follows:

Jurisdiction and Venue

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

Background

2. On June 30, 2020 (the “**Petition Date**”), the Debtors each commenced with this Court a voluntary case (these “**Chapter 11 Cases**”) under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”). The Debtors are authorized to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. On July 13, 2020, the United States Trustee for the Southern District of New York appointed a statutory committee of unsecured creditors (the “**Committee**”) in these Chapter 11 Cases. No trustee or examiner has been appointed in these Chapter 11 Cases.

3. These Chapter 11 Cases are being jointly administered pursuant to Bankruptcy Rule 1015(b) and the *Order Directing Joint Administration of Chapter 11 Cases* [ECF No. 30] entered by the Court in each of the Chapter 11 Cases. Additional information about the Debtors’ businesses and the events leading up to the Petition Date can be found in the *Declaration of*

Ricardo Javier Sanchez Baker in Support of the Debtors' Chapter 11 Petitions and First Day Pleadings [ECF No. 20].

4. On July 1, 2020, the Court entered an order granting the *Motion of Debtors for Interim and Final Orders (I) Authorizing Debtors to Honor Interline Agreements, Clearinghouse Agreements, Industry Agreements, Protection Agreements, Alliance Agreements, Delta Airlines Agreements, Club Premier Loyalty Program Agreements and Prepetition Obligations Related Thereto, (II) Modifying the Automatic Stay Solely to the Extent Necessary to Effectuate the Intended Relief and (III) Authorizing Financial Institutions to Honor and Process Related Checks and Transfers* [ECF No. 11] (the “**Airline Motion**”) on an interim basis. Subsequently, on August, 5, 2020, the Debtors filed a supplement (the “**Airline Supplement**,” and together with the Airline Motion, the “**Airline and Airport Motion**”) to the Airline Motion [ECF No. 247]. The Airline Supplement, among other things, describes the economic terms of the Mexican Airport Agreements (as defined in the Airline Supplement) and highlights the necessity of maintaining an ongoing relationship with the airports.

5. On August 20, 2020, the Court entered an order (the “**Airline and Airport Order**”) granting the Airline and Airport Motion on a final basis [ECF No. 307]. The Airline and Airport Order, among other things, permits the Debtors to honor its prepetition obligations under the Mexican Airport Agreements and to continue performing and exercising their respective rights and obligations (whether prepetition or postpetition) in the ordinary course of business. In accordance with the Airline and Airport Order and as further described below, the Debtors have been making regular payments to AICM (as defined below) and OMA (as defined below). In particular, the Debtors have been making periodic payments to AICM and OMA for outstanding prepetition TUA (as defined below) and Airport Services (as defined below) obligations.

6. The Debtors did not assume any agreement pursuant to the Airline and Airport Order. However, on September 21, 2020, the Court entered an *Order Authorizing the Debtors to Assume Certain Mexican Airport Agreements with Grupo Aeroportuario del Centro Norte, S.A.B. de C.V.* (the “**OMA Assumption Order**”), which approved the Debtors’ motion to assume its airport agreements with Grupo Aeroportuario del Centro Norte, S.A.B. de C.V. (“**OMA**”) [ECF No. 395] (the “**OMA Assumption Motion**”); and on November 23, 2020, the Court entered an *Order Authorizing the Debtors to Assume Certain Mexican Airport Agreements with Aeropuerto Internacional de la Ciudad de Mexico, S.A. de C.V.* [ECF No. 665] (the “**AICM Assumption Order**,” and together with the OMA Assumption Order, the “**First Assumption Orders**”), which approved the Debtors’ motion to assume its airport agreements with Aeropuerto Internacional de la Ciudad de Mexico, S.A. de C.V. (“**AICM**”) [ECF No. 624] (the “**AICM Assumption Motion**,” and together with the OMA Assumption Motion, the “**OMA and AICM Assumption Motions**”).

7. Pursuant to the First Assumption Orders, the Debtors assumed all of its Airport Services (as defined herein) and TUA (as defined herein) related agreements with OMA and AICM. The Debtors’ real property leases with OMA and AICM were not assumed pursuant to the First Assumption Orders. However, the Debtors’ deadline to assume or reject such unexpired leases of real property is April 26, 2021 (the “**365(d)(4) Deadline**”). On January 26, 2021, the Court entered an *Order Further Extending the Deadline to Assume or Reject Unexpired Leases of Nonresidential Real Property* [ECF No. 843], which extended the 365(d)(4) Deadline to April 26, 2021.

The OMA and AICM Real Property Leases

8. As the leading Mexican airline, the Debtors maintain a comprehensive international and domestic flight network. Therefore, certain of the Debtors are party to agreements with

various public and private airport concessionaires (the “**Concessionaires**”) to enable flight operations to critically important destinations, such as Mexico City, Monterrey and Chihuahua. Two such Concessionaires with whom the Debtors have such agreements are OMA and AICM, a privately-owned and publicly-owned airport group, respectively. OMA and AICM are and will continue to be important partners for the Debtors. The Debtors have continued to fly through the OMA and AICM Airports (as defined herein) throughout these Chapter 11 Cases and plan to do so in the future, as the OMA and AICM Airports remain critical parts of the reorganized Debtors’ flight network. Without uninterrupted access to the OMA and AICM Airports, the Debtors would effectively be shut out of flying in and out of certain critical gateways in Mexico, including, among others, its most important hub and the busiest airport in Mexico, Mexico City International Airport, and an important hub in the eastern part of Mexico, Monterrey International Airport.

9. The Debtors have three types of agreements with OMA and AICM. First, it has certain service agreements (the “**Airport Service Agreements**”), whereby OMA and AICM provide the Debtors with necessary flight operation services at certain airports throughout Mexico (the “**OMA and AICM Airports**”)². Those services include, among other things, security, baggage handling and inspection, check-in and ticketing, cleaning, landing and apron parking services (collectively, the “**Airport Services**”). Second, the Debtors lease certain real property at the OMA and AICM Airports for, among other things, its office and warehouse needs (as may have been amended from time to time, the “**Airport Leases**”). And third, the Debtors have agreements with OMA and AICM pursuant to which the Debtors collect airport use fees (*tarifa de uso Aeroportuario* (“**TUA**”)) from certain passengers that board flights that originate from the

² The OMA and AICM Airports include airports in or near the following cities: Mexico City, Monterrey, Chihuahua, Acapulco, Durango, Zacatecas, Reynosa, Culiacan, Mazatlan, Zihuatanejo, Ciudad Juarez, San Luis Potosi, Tampico and Torreon.

OMA and AICM Airports (the “**TUA Agreements**”) and remit such TUA back to OMA or AICM pursuant to the TUA Agreements. The Airport Service Agreements and the TUA Agreements have already been assumed pursuant to the First Assumption Orders; however, the Airport Leases have not. Relatedly, there are only minimal cure costs (the “**Cure Costs**”) associated with assuming the Airport Leases. The Cure Costs represent outstanding prepetition amounts owed in an amount of \$2,321 to OMA and \$809.2861 to AICM.

Relief Requested

10. Pursuant to this Motion, the Debtors seek authority to assume the Airport Leases and to pay the Cure Costs. This relief is compelled by the unique facts and circumstances of these Chapter 11 Cases, and in particular the benefits and considerations related to maintaining the Debtors’ uninterrupted ability to fly into the OMA and AICM Airports.

11. By this Motion, and pursuant to Bankruptcy Code sections 105(a), 365(a), Bankruptcy Rule 6006 and Rule 9013-1 of the Local Bankruptcy Rules for the Southern District of New York (the “**Local Rules**”), the Debtors seek entry of an order, substantially in the form attached hereto as **Exhibit A**, authorizing the Debtors to assume the Airport Leases, listed on the schedule attached hereto as **Exhibit C**.

Basis for Relief

Section 365(a) of the Bankruptcy Code Allows the Debtors to Assume the Airport Leases.

12. Section 365(a) of the Bankruptcy Code provides that a debtor, “subject to the court’s approval, may assume or reject any executory contract or unexpired lease of the debtor.” 11 U.S.C. § 365(a); *see also NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 521 (1984); *Orion Pictures Corp. v. Showtime Networks, Inc. (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 Distrib. Corp.*, 872 F.2d 36, 39-40 (3d. Cir. 1989) (internal citations omitted); *see also In re Keren Ltd. P’ship*, 225 B.R. 303, 307 (S.D.N.Y. 1997) (same). In determining whether to permit the debtor to assume or reject a contract, “the debtor’s interests are paramount.” *COR Route 5 Co., LLC v. Penn Traffic Co. (In re Penn Traffic Co.)*, 524 F.3d. 373, 383 (2d Cir. 2008).

13. Accordingly, the decision to assume or reject is governed by the business judgment rule, which requires that the debtor determine that the requested assumption would be beneficial to its estates. *See In re Group of Inst. Investors, Inc. v. Chicago, Milwaukee, St. Paul and Pac. R.R. Co.*, 318 U.S. 523, 550 (1943) (“the question [of assumption] is one of business judgment”); *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); *see also In re Sharon Steel Corp.*, 872 F.2d 36, 40 (3d Cir. 1989); *In re Armstrong World Indus.*, 348 B.R. 136, 162 (Bankr. D. Del. 2006) (“Courts have uniformly deferred to the business judgment of the debtor to determine whether the rejection of an executory contract or lease is appropriate under section 365(a).”).

14. A debtor exercises sound business judgment with respect to its decision to assume or reject an executory contract or unexpired lease where it determines, in good faith, that the proposed action will benefit the estate. *See 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.”); *Helm*, 335 B.R. at 538 (“To meet the business judgment test, the debtor in possession must establish that rejection will benefit the estate.”).

15. Absent a showing of “bad faith, or an abuse of business discretion,” the debtor’s business judgment will generally not be altered. *Old Carco*, 406 B.R. at 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. *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).

16. Upon finding that the debtor has exercised its sound business judgment in determining that the assumption or rejection of an executory contract or unexpired lease is in the best interests of the debtor, its creditors and all parties in interest, the court should approve such assumption or rejection under section 365(a) of the Bankruptcy Code. *See In re Fed. Mogul Global, Inc.*, 293 B.R. 124, 126 (D. Del. 2003) (“The business judgment test dictates that a court should approve a debtor’s decision to reject a contract unless that decision is the product of bad faith or gross abuse of discretion.”).

17. Additionally, courts in this jurisdiction have approved the assumption of similar type agreements between airlines and airports. *See In re LATAM Airlines Group, S.A., et al.*, No. 20-11254 (JLG) (Bankr. S.D.N.Y. January 28, 2021) [ECF No. 1759] (approving the assumption of airport lease agreements between LATAM and Miami-Dade County, John F. Kennedy International Airport Terminal LLC and Los Angeles World Airports); *In re Delta Air Lines, Inc. et al.*, No. 05-17923 (ASH) (Bankr. S.D.N.Y. November 8, 2006) [ECF No. 3510] (approving assumption of an airport lease that, among other things, allowed Delta “to continue using its air cargo and ground support facilities [at the Orlando International Airport], which are critical to [Delta’s] operations at the Airport”); *In re Delta Air Lines, Inc. et al.*, No. 05-17923 (ASH) (Bankr. S.D.N.Y. May 1, 2007) [ECF No. 6046] (approving assumption of an amended airport lease that

would provide approximately \$1.7 million in annual savings and “permit Delta to continue operating a reduced amount of space at the Airport at a reduced cost to Delta”).

18. First, the Debtors’ decision to assume the Airport Leases is a rational and sound exercise of its business judgment. The assumption of and performance under the Airport Leases is critical to the Debtors’ ability to continue flying through the OMA and AICM Airports and thereby the rest of Mexico and the world. The Airport Leases are an integral part of the web of contracts—along with the Airport Services and TUA agreements, which have already been assumed—that collectively permit the Debtors to fly through the OMA and AICM Airports uninterrupted. Without the ability to do that, the Debtors would not be able to effectively and economically transport passengers or cargo to numerous regions in Mexico or throughout the rest of the world, as the OMA and AICM Airports serve as the Company’s most important airport hubs.

19. Moreover, as part of the reorganized Debtors’ flight network plan, the Debtors intend to fly through the OMA and AICM Airports during these Chapter 11 Cases and post emergence. That is why the Debtors assumed the Airport Services and TUA agreements with OMA and AICM earlier in these Chapter 11 Cases. Now, as the 365(d)(4) Deadline approaches and because the Debtors continue planning to fly through the OMA and AICM Airports, the rationale for assuming the Airport Leases is straightforward. The Debtors believe that assuming the Airport Leases is in the best interests of the Debtors’ estates because it allows the Debtors to maintain continuity of service through the OMA and AICM Airports. Moreover, it would be counterintuitive to have assumed some of the Debtors’ agreements with OMA and ACIM, but not the Airport Leases, especially since it is the Airport Services, TUA agreements and Airport Leases that collectively provide the Debtors the critical services and access necessary to fly through the OMA and AICM Airports, not any one set of agreements in isolation. Lastly, the Debtors must

assume the Airport Leases before the 365(d)(4) Deadline; otherwise, such leases will be deemed rejected, which is contravenes the Debtors' go-forward flight network plans.

20. As described above, the Airport Leases are unexpired leases and sound business purposes clearly exist for the Debtors' assumption of the Airport Leases. Accordingly, the Debtors submit that the requested relief is appropriate and in the best interests of the Debtors, their estates, their creditors and all parties in interest.

Notice

21. Notice of this Motion will be provided as 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/aeromexico>), (b) counsel to OMA and AICM, (c) counsel to the Committee and (d) counsel to Apollo Management Holdings, L.P. The Debtors respectfully submit that no further notice is required.

No Previous Request

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

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Dated: New York, New York
April 26, 2021

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