

Hearing Date and Time: August 12, 2021 at 10:00 a.m. (Prevailing Eastern Time)
Objection Date and Time: August 7, 2021 at 4:00 p.m. (Prevailing Eastern Time)

DAVIS POLK & WARDWELL LLP
450 Lexington Avenue
New York, New York 10017
Telephone: (212) 450-4000
Facsimile: (212) 701-5800
Marshall S. Huebner
Timothy Graulich
Steven S. Szanzer
Thomas S. Green

*Counsel to the Debtors
and Debtors in Possession*

**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) AUTHORIZATION TO
(A) ENTER INTO NEW AIRCRAFT LEASE AGREEMENTS AND (B) AMEND AND
ASSUME A CERTAIN EXISTING AIRCRAFT LEASE AGREEMENT, AND
(II) APPROVAL OF COMPROMISE REGARDING PREPETITION CLAIMS WITH
AFFILIATES OF DUBAI AEROSPACE ENTERPRISE (DAE) LTD**

PLEASE TAKE NOTICE that on July 19, 2021, the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) filed the *Debtors' Motion for (I) Authorization to (A) Enter Into New Aircraft Lease Agreements and (B) Amend and Assume a Certain Existing Aircraft Lease Agreement, and (II) Approval of Compromise Regarding Prepetition Claims with*

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.

Affiliates of Dubai Aerospace Enterprise (DAE) Ltd. (the “**Motion**”). A hearing on the Motion will be held on **August 12, 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 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 motion(s) to be heard at the Hearing.

PLEASE TAKE FURTHER NOTICE that any responses or objections to the Motion

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>.

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 **August 5, 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.

[Remainder of page intentionally left blank]

Dated: July 19, 2021
New York, New York

DAVIS POLK & WARDWELL LLP

By: /s/ Timothy Graulich

450 Lexington Avenue
New York, New York 10017
Telephone: (212) 450-4000
Facsimile: (212) 701-5800
Marshall S. Huebner
Timothy Graulich
Steven S. Szanzer
Thomas S. Green
*Counsel to the Debtors
and Debtors in Possession*

DAVIS POLK & WARDWELL LLP
450 Lexington Avenue
New York, New York 10017
Telephone: (212) 450-4000
Facsimile: (212) 701-5800
Marshall S. Huebner
Timothy Graulich
Steven S. Szanzer
Thomas S. Green

*Counsel to the Debtors
and Debtors in Possession*

**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) AUTHORIZATION TO (A) ENTER INTO NEW
AIRCRAFT LEASE AGREEMENTS AND (B) AMEND AND ASSUME A CERTAIN
EXISTING AIRCRAFT LEASE AGREEMENT, AND (II) APPROVAL OF
COMPROMISE REGARDING PREPETITION CLAIMS WITH AFFILIATES OF
DUBAI AEROSPACE ENTERPRISE (DAE) LTD**

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 (as defined herein) to enter the proposed order annexed hereto as **Exhibit A** (the “**Proposed Order**”) authorizing Aerovías de México, S.A.

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.

de C.V. (“**Aerovías**,” or “**Lessee Debtor**”) to: (a) enter into new long-term aircraft lease agreements (collectively, with any other transaction documents contemplated therein to which the Debtors are a party and the Fleet Standardization Support Letter Agreement to be entered into substantially contemporaneously with such aircraft lease agreements, the “**New 737MAX Leases**”) pursuant to which the Debtors will take delivery of up to twelve (12) new Boeing 737MAX aircraft (collectively, the “**737MAX Aircraft**”), substantially consistent with the terms set forth in the letter of intent annexed to the Proposed Order as Annex 1 (the “**737MAX Letter of Intent**”); (b) assume a certain aircraft lease agreement, as amended and restated (the existing aircraft lease agreement, as amended and restated, the “**Amended 737-800 Lease**,” and together with the New 737MAX Leases, the “**DAE Leases**”), for one (1) Boeing 737-800 aircraft bearing manufacturer’s serial number 39439 that the Lessee Debtor currently operates as part of its existing fleet (together with the related engines, parts, equipment, and appurtenances, the “**737-800 Aircraft**”), substantially consistent with the terms set forth in the letter of intent annexed to the Proposed Order as Annex 2 (the “**737-800 Letter of Intent**,” and together with the 737MAX Letter of Intent, the “**Letters of Intent**”); (c) allow certain claims related to the 737-800 Aircraft pursuant to the Claims Settlement (as defined herein); and (d) effectuate the transactions relating to each of the foregoing (collectively, the “**DAE Transactions**”). This Motion is supported by the *Declaration of Matthew Landess in Support of DAE Motion and Related Pleadings* (the “**Landess Declaration**”), filed substantially 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.

Relief Requested

3. 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 Rule 9019 of the Bankruptcy Rules, the Debtors seek (a) authorization to enter into (i) the New 737MAX Leases and (ii) the Amended 737-800 Lease, and (b) approval of the Claims Settlement (as defined herein), as further set forth herein and in the Proposed Order.

Background

A. General Background

4. 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 the Bankruptcy 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.

5. 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].

6. 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.

7. 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.

B. The Debtors’ Fleet Optimization Process

8. As the Court is aware, the Debtors have been engaged in a multi-step process to (a) analyze their anticipated fleet needs, (b) make corresponding adjustments to the size and composition of their operating fleet, and (c) seek to obtain the most favorable terms for new agreements for aircraft equipment.

9. On September 15, 2020, the Debtors filed their *Motion for Approval of Stipulations and Orders Between Debtors and Counterparties Concerning Certain Aircraft and Engines* [ECF No. 373] (the “**Equipment Stipulation Motion**”). Pursuant to the Equipment Stipulation Motion, the Debtors sought approval of certain stipulations between certain Debtors and certain counterparties concerning leases of certain equipment, including the 737-800 Aircraft. The stipulations enabled the Debtors to continue to utilize the Equipment (as defined in the Equipment Stipulation Motion) on their operating routes and to maintain the Equipment when not being operated. Broadly speaking, such stipulations provide, with limited variation, for payment of rent calculated based on actual usage of the Equipment (called a “power by the hour” or “PBH”

arrangement), rather than a fixed monthly rental payment. The Court subsequently approved the stipulations, including with respect to the 737-800 Aircraft. [ECF Nos. 399–429, 475, 491, 502] (each a “**PBH Stipulation**”).

10. On April 22, 2021, the Debtors filed their *Motion for (I) Authorization to (A) Implement Certain Aircraft-Related Transactions, and (B) Enter Into Certain Agreements, Including Amendments to a Purchase Agreement with The Boeing Company and Certain Financing and Other Agreements Related Thereto, (II) Approval of the Assumption of Such Amended Agreements, As Applicable, (III) Approval of Amendments to and Repayment of Pre-Delivery Payment Financing Related to Certain Boeing Aircraft, and (IV) Approval of Compromises Reflected Therein* [ECF No. 1108] (the “**Boeing Motion**”) and their *Motion for (I) Authorization to (A) Enter Into New Aircraft Lease Agreements and (B) Amend and Assume Certain Existing Aircraft Lease Agreements, and (II) Approval of Compromise Regarding Prepetition Claims with Air Lease Corporation* (the “**Air Lease Motion**”). The Court approved both the Boeing Motion and the Air Lease Motion at a hearing on April 30, 2021,² and subsequently entered each of the orders related thereto.³ Through such orders, the Debtors (a) added twenty-eight (28) new aircraft to their fleet, including twenty (20) new Boeing 737MAX aircraft; (b) assumed agreements relating to eighteen (18) existing aircraft; and (c) settled the allowed amounts of unsecured claims of certain counterparties with respect to such equipment.

² See Hr’g Tr. (April 30, 2021), 29:17–23 and 37:13–16).

³ See ECF Nos. 1141–42, 1145, 1154, 1156–57, 1160–62.

C. The DAE Leases and Claims Settlement

11. Over the last several months, the Debtors have continued to negotiate with existing lessors and potential lessors of additional aircraft equipment to obtain the best terms available for the aircraft that will be necessary for the Debtors to pursue their long-term business plan and optimize their anticipated fleet at emergence.

12. As a result of arm's length and good faith negotiations, the Debtors have reached agreements with affiliates of Dubai Aerospace Enterprise (DAE) Ltd (collectively, "**DAE**" or the "**Lessors**") pursuant to which: (a) the Debtors will take delivery of up to twelve (12) new Boeing 737MAX aircraft, the first of which is anticipated to be delivered as early as October 2021, in time for the holiday travel season; (b) amend and assume an existing lease with respect to one (1) Boeing 737-800 aircraft already part of the Debtors' fleet; and (c) allow certain unsecured claims against Aerovías in favor of MSN 39439 Trust, as lessor of the 737-800 Aircraft (the "**737-800 Lessor**"), related to the 737-800 Aircraft, each as described herein, in the Letters of Intent, and in the Landess Declaration.

13. The Letters of Intent set forth commercial terms that will be contained in the DAE Leases. By agreeing on the majority of the core terms at the letter-of-intent stage, the Debtors have the comfort of adding the 737MAX Aircraft to, and maintaining the 737-800 Aircraft in, their fleet on terms that fit the Debtors' short- and long-term needs. The leasing of these state-of-the-art aircraft provides greater fuel- and cost-efficiency thereby permitting the Debtors to offer comprehensive and competitive services to their customers, and an upgraded customer experience, all while sustaining improved profitability and flexibility. The addition of the 737MAX Aircraft is yet another monumental step forward in the Debtors' fleet simplification and modernization effort that should benefit the Company and its economic stakeholders for years to come.

14. Partially redacted summaries of the principal terms and conditions of the Letters of Intent are annexed hereto as **Exhibit B-1** and **Exhibit B-2**.

15. Finally, in conjunction with these transactions, the Debtors seek to resolve certain pre- and postpetition claims that the 737-800 Lessor and certain parties related to and/or affiliated with the 737-800 Lessor (the “**Claims Parties**”) have asserted against Aerovías with respect to the 737-800 Aircraft. To this end, the parties have agreed that the 737-800 Lessor will have an allowed non-priority general unsecured claim in the aggregate amount of \$4,514,859.98 against Aerovías, in final satisfaction of the Claims Parties’ claims in respect of the 737-800 Aircraft (the “**Claims Settlement**”).

16. In determining to enter into the Letters of Intent, the Debtors consulted with the DIP Lenders⁴ and the advisors to the Ad Hoc Group,⁵ neither of which expressed opposition to the relief requested herein. The Debtors continue to discuss the relief requested herein with the advisors to the Committee.

17. As discussed below, because entry into the transactions contemplated by the Letters of Intent represents a sound exercise of the Debtors’ business judgment, the Debtors respectfully request that the Court authorize the Debtors to enter into the Letters of Intent and the transactions contemplated thereby, including the Claims Settlement, as further set forth in the Proposed Order.

⁴ 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].

⁵ As used in this Motion, “Ad Hoc Group” refers to those identified in the *Second Amended Verified Statement of the Ad Hoc Group of Senior Noteholders Pursuant to Bankruptcy Rule 2019* [ECF No. 1292].

Basis for Relief

A. The Court Should Authorize the Debtors' Entry Into the DAE Leases Under Sections 363(b) and 105(a) of the Bankruptcy Code

18. The Debtors submit that the DAE Transactions involving the leasing of new aircraft, as contemplated by the Letters of Intent, are ordinary course transactions, because the leasing of aircraft is commonplace in the airline industry, and the Debtors have frequently engaged in aircraft lease transactions in the past that are similar to the ones now proposed. Accordingly, the Debtors believe that they are authorized to enter into such DAE Transactions contemplated by the Letters of Intent under section 363(c) of that Bankruptcy Code that authorizes them to “enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing....” 11 U.S.C. § 363(c)(1). Nevertheless, out of an abundance of caution, the Debtors seek authorization to enter into such DAE Transactions to the extent that such authorization is required under section 363(b) of the Bankruptcy Code.

19. 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 Official Comm. of Unsecured Creditors of LTV Aerospace and Defense Co. v. LTV Corp. (In re Chateaugay Corp.)*, 973 F.2d 141, 143 (2d Cir. 1992) (holding that “a judge determining a § 363(b) application [must] expressly find from the evidence presented before him... a good business reason to grant such an 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”).

20. 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.

21. 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).

22. The Debtors respectfully submit that the requested relief 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 and in the Landess Declaration, the Debtors are seeking to reset their fleet costs to a market level and therefore desire to enter into the DAE Leases with the Lessors, on terms described in the Letters of Intent, in order to obtain the benefit of the most

attractive costs and lease conditions that will create operational flexibility. To achieve that goal for the Debtors' estates, and in accordance with their fiduciary duties, the Debtors have evaluated and negotiated the terms in the Letters of Intent in the context of the Debtors' current aircraft equipment agreement negotiations and available alternatives, and now seek to enter into the DAE Leases as contemplated thereby because they represent economically sound transactions that are in line with that goal.

23. As mentioned previously, the Debtors obtained the Court's approval for the acquisition of twenty (20) new Boeing 737MAX aircraft. The DAE Transactions build on the progress forged by the Boeing Motion, by adding up to an additional twelve (12) state-of-the-art Boeing 737MAX aircraft to their fleet, and therefore represent another major milestone in the Chapter 11 Cases. As discussed in the Boeing Motion, these new Boeing 737MAX aircraft will provide the latest technology, fuel efficiency, and passenger cabins, which should produce an improved passenger experience.

24. The Debtors have determined that the terms of the DAE Leases, including the payment and delivery schedules thereunder, not only represent the best available transactions under the circumstances of these Chapter 11 Cases, but also would be commercially beneficial transactions irrespective of such circumstances. The terms of the DAE Leases are even superior to some of the Debtors' existing leases and will allow the Debtors to potentially reject other aircraft that are not as attractive in the long-term fleet. Consequently, the Aircraft will provide greater profit-maximizing potential for the Debtors and their key stakeholders. Furthermore, the Debtors and their advisors negotiated the Letters of Intent at arm's length and in good faith, and in consultation with their key stakeholders. As a result, the proposed transactions provide improved

costs and better terms and conditions as compared to current market levels.

25. For the reasons set forth above, the Court's authorization for the Debtors to enter into the Letters of Intent and the DAE Leases contemplated thereby (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 authorize the Debtors to enter into the Letters of Intent and the DAE Leases contemplated thereby.

B. The Court Should Approve the Assumption of the Amended 737-800 Lease Under Section 365(a) of the Bankruptcy Code

26. Pursuant to this Motion, the Debtors are also seeking authority to assume the Amended 737-800 Lease.

27. The Bankruptcy Code empowers the Debtors (with court approval) to assume executory contracts and unexpired leases. 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).

28. In determining whether to permit the debtor to assume or reject a contract or lease, "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 or unexpired lease 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.

29. 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. 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. *See In re Integrated Res.*, 147 B.R. at 656 (S.D.N.Y. 1992).

30. In considering a motion to assume or reject an executory contract or unexpired lease, a debtor “should examine a contract and the surrounding circumstances and apply its best ‘business judgment’ to determine if [assumption] 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 or unexpired lease 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.”).

31. Upon finding that the debtor has exercised its sound business judgment in determining that the assumption of an agreement or lease 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.

32. 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, in addition to being a part of a comprehensive arrangement with DAE, assumption of the Amended 737-800 Lease represents a sound exercise of the Debtors’ business judgment and because it will allow the Debtors to retain the 737-800 Aircraft on competitive terms and conditions, the assumption of the Amended 737-800 Lease is justified under section 365(a) of the Bankruptcy Code. Accordingly, the Debtors respectfully request that the Court authorize the assumption of the Amended 737-800 Lease.

C. The Court Should Approve the Claims Settlement Under Bankruptcy Rule 9019

33. Pursuant to this Motion, the Debtors also seek approval of the Claims Settlement between the 737-800 Lessor and Aerovías.

34. A court should exercise its discretion to approve settlements “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).

35. 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. American National Bank and Trust Co. of Chicago*, 156 B.R. 414, 426 (S.D.N.Y. 1993); *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).

36. 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.

37. “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.

38. Furthermore, on February 17, 2021, the Court entered an *Order Approving (I) Omnibus Claims Objection Procedures, (II) Omnibus Claims Settlement Procedures and (III) Omnibus Claims Hearing Procedures* [ECF No. 904] (the “**Claims Settlement Procedures Order**”), which, among other things, authorized the Debtors, using their reasonable business judgment, to settle claims in accordance with procedures specified therein (the “**Claims Settlement Procedures**”). Specifically, those Claims Settlement Procedures provided that they apply to the settlement of general unsecured claims, Claims Settlement Procedures Order ¶ 4(c), and, “[i]f the [s]ettlement [a]mount is greater than \$500,000 and the [difference between the Settlement Amount compared to the amount asserted on the proof of claim] is greater than \$200,000, the Debtors shall seek the approval of this Court by way of a motion pursuant to Bankruptcy Rule 9019.” Claims Settlement Procedures Order ¶ 4(b).

39. The Debtors submit that the Claims Settlement satisfies the range of reasonableness test described above. Rather than engage in costly and value-destructive litigation over Aerovías’ obligations, the Claims Parties’ unsecured claim amounts, and any amounts mitigating the quantum of those claims, the Debtors and the Claims Parties negotiated a consensual resolution with respect to the Claims Parties’ claims, as further set forth in the Proposed Order. Specifically, the parties have agreed that the aggregate amount of the 737-800 Lessor’s allowed non-priority general unsecured claims against Aerovías is \$4,514,859.98. This settled amount shall be the only general unsecured claim of the Claims Parties allowed in these Chapter 11 Cases.

40. The Claims Settlement is the product of arm’s-length and good-faith bargaining that will (a) eliminate the need for costly claims disputes and (b) unlock distributable value for the Debtors’ unsecured creditors by liquidating the 737-800 Lessor’s compromised claim amount. Lastly, a number of the Debtors’ key stakeholders, including the advisors to the Committee and

the Ad Hoc Group, have been consulted regarding the relief requested herein and have not expressed opposition to the relief requested. Accordingly, the Debtors respectfully request that the Court approve the Claims Settlement.

Notice

41. 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

42. 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: July 19, 2021
New York, New York

DAVIS POLK & WARDWELL LLP

By: /s/ Timothy Graulich

450 Lexington Avenue
New York, New York 10017
Tel: (212) 450-4000
Fax: (212) 607-7983
Marshall S. Huebner
Timothy Graulich
Steven S. Szanzer
Thomas S. Green
Counsel to the Debtors and Debtors in Possession

Exhibit A to Motion

Proposed Order

**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)

**ORDER (I) AUTHORIZING DEBTORS TO (A) ENTER INTO NEW AIRCRAFT
LEASE AGREEMENTS AND (B) AMEND AND ASSUME A CERTAIN
EXISTING AIRCRAFT LEASE AGREEMENT, AND (II) APPROVING
COMPROMISE REGARDING PREPETITION CLAIMS WITH AFFILIATES OF
DUBAI AEROSPACE ENTERPRISE (DAE) LTD**

Upon the motion (the “**Motion**”)² of Grupo Aeroméxico, S.A.B. de C.V. and its affiliates that are debtors and debtors in possession in these proceedings (collectively, the “**Debtors**”) for entry of an order (this “**Order**”): (a) authorizing the Debtors (i) to enter into the New 737MAX Leases and the Amended 737-800 Lease, and (ii) to assume the Amended 737-800 Lease, (b) approving the Claims Settlement, and (c) authorizing the Debtors to effectuate the DAE Transactions, all as set forth more fully in the Motion, **Annex 1** and **Annex 2** attached hereto, and the Landess Declaration; and the Court having jurisdiction to consider the Motion and the relief requested therein 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.); and consideration of the Motion and the relief requested therein being

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 Mexico, 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.

² Each capitalized term used herein but not otherwise defined herein shall have the meaning ascribed to it in the Motion.

a core proceeding under 28 U.S.C. § 157(b); and venue being proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to the Notice Parties; such notice having been adequate and appropriate under the circumstances and it appearing that no other or further notice need be provided; and the Court having reviewed the Motion [and held a hearing (the “**Hearing**”) to consider the relief requested in the Motion]; [and upon the record of the Hearing,] and upon all of the proceedings had before the Court; and after due deliberation the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and the Court having found that the relief requested in the Motion is in the best interests of the Debtors, their creditors, and all other parties in interest; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor;

IT IS HEREBY ORDERED THAT:

1. The Motion is granted, as set forth herein.
2. The Debtors are authorized to enter into, and perform their obligations under, the Letters of Intent annexed hereto as **Annex 1** and **Annex 2** and the DAE Leases, including the New 737MAX Leases and the Amended 737-800 Lease, which will contain terms substantially consistent with those of the Letters of Intent, pursuant to section 363(b) of the Bankruptcy Code. Entry into and performance under each of the foregoing agreements is in the best interest of the Debtors and their estates.
3. The Debtors are authorized (but not directed) to enter into, and perform their obligations under, all exhibits, addenda, and other agreements contemplated by the Letters

of Intent, and following execution and consummation, the DAE Leases, without further approval of the Court.

4. The Debtors are further authorized pursuant to section 365 of the Bankruptcy Code to assume the Amended 737-800 Lease.

5. The Debtors and the Lessors are authorized to execute all documentation necessary to (i) enter into the DAE Leases and implement the terms of the 737MAX Letter of Intent and (ii) assume the Amended 737-800 Lease and implement the terms of the 737-800 Letter of Intent.

6. The Debtors' obligations under the New 737MAX Leases (including any other transaction documents contemplated therein to which the Debtors are a party), the Fleet Standardization Support Letter Agreement to be entered into substantially contemporaneously with the New 737MAX Leases, and the Amended 737-800 Lease shall constitute administrative expenses of the Debtors' estates pursuant to sections 503(b)(1) and 507(a)(2) of the Bankruptcy Code.

7. The automatic stay under section 362 of the Bankruptcy Code is vacated and modified to the extent necessary to implement the terms and conditions set forth in the Letters of Intent and the DAE Leases. Upon the occurrence, and during the continuance, of any event of default under any DAE Lease, the applicable Lessor may file with the Court, and deliver to the Debtors and the Committee, a written notice (a "**Termination Notice**") effective as of five (5) business days after its filing and delivery (the "**Remedies Period**"). Upon the expiration of the Remedies Period, the automatic stay in the Chapter 11 Cases shall be deemed lifted and the applicable Lessor may undertake any remedies and enforcement actions provided for under such DAE Lease without the need for any

authorization from the Court or further notice (other than as expressly provided for under the applicable DAE Lease). During the Remedies Period, the Debtors or the Committee may seek an emergency hearing at which either may contest the fact that an event of default under the applicable DAE Lease has occurred and is continuing. The Remedies Period shall automatically extend to the conclusion of such a hearing and the issuance of a ruling on the matters contested thereat.

8. Notwithstanding any subsequent appointment of any trustee(s) under any chapter of the Bankruptcy Code, this Order shall be binding in all respects upon, and shall inure to the benefit of, the Debtors, their estates, and their creditors, their respective affiliates, successors, and assigns; and any affected third parties, including, but not limited to, DAE and the Lessors, and all other persons asserting interests in the relevant aircraft.

9. The cure (as defined in section 365(b) of the Bankruptcy Code) payment due upon assumption of the Amended 737-800 Lease in respect of prepetition claims will be \$0.00. In full and final satisfaction of all prepetition claims belonging to the Claims Parties in respect of the 737-800 Aircraft, the 737-800 Lessor shall have an aggregate allowed non-priority general unsecured claim in the Chapter 11 Cases (and any subsequent chapter 7 case in the event of conversion) amount of \$4,514,859.98 against Aerovías (the “**Allowed Claim**”). The Allowed Claim shall be the only general unsecured claim of the Claims Parties allowed in these Chapter 11 Cases.

10. The Allowed Claim shall be automatically allowed upon execution of the Amended 737-800 Lease, and no further notice or action shall be required of the Debtors, DAE, the 737-800 Lessor, any other Lessor, or any affiliate thereof or person related thereto in order to effect the allowance of such claim. Any chapter 11 plan of

reorganization filed by the Debtors shall afford the Allowed Claim treatment that is no worse than the treatment given to the non-priority unsecured claims of any other aircraft or engine lessor whose claims run solely against Aerovías. Upon allowance of the Allowed Claim, the Debtors are authorized to direct Epiq Corporate Restructuring, LLC (“**Epiq**”) to reflect the terms of the Claims Settlement. Further, Epiq is authorized to expunge from the Debtors’ claims register any claims belonging to DAE, the 737-800 Lessor, the Claims Parties, or any affiliate thereof or person related thereto in these Chapter 11 Cases that are not allocated a portion of the aggregate allowed non-priority general unsecured claim herein, if such claims have not yet been withdrawn, and such claims were filed or scheduled before the entry of this Order, including, without limitation, the claim scheduled at claim number 561016420, and claim numbers 632-636.

11. The Debtors are authorized to take all such actions as are necessary or appropriate to effectuate the relief granted pursuant to this Order.

12. The Debtors are authorized to take, or refrain from taking, any action necessary or appropriate to implement the terms of, and the relief granted in, this Order without seeking further order of the Court.

13. While the above referenced Chapter 11 Cases are pending, this Court shall retain exclusive jurisdiction over any and all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Dated: _____, 2021
New York, New York

THE HONORABLE SHELLEY C. CHAPMAN
UNITED STATES BANKRUPTCY JUDGE

Annex 1 to Proposed Order

737MAX Letter of Intent



REF: DAE

VERSION 5.0

AEROMEXICO

BOEING 737-8

LEASE PROPOSAL / SUMMARY OF TERMS

A. LESSOR

An entity of the DAE group nominated by DAE Group Holdings Ltd. or DAE (Ireland) Limited. incorporated in a jurisdiction which will not result in any additional withholding tax obligations being placed on the Lessee. Lessor will have a minimum net worth of USD [REDACTED].

B. LESSEE

Aerovias de Mexico, S.A. de C.V.

C. AIRCRAFT DESCRIPTION

Twelve new (12) Boeing 737-8, bearing MSNs as per below table (individually and as a group the "Aircraft") equipped with two (2) CFM-LEAP-1B27 engines rated at 26,400 pounds thrust (the "Engines") and MTOW of [REDACTED] pounds, except where noted below, and as further described in the various Specification Summaries as per below table, a copy of which has been separately provided to Lessee.

MSN	Specification Summary	Dated	Engine Thrust
60455	SS60455 B737-8 Rev 01A	6 Mar 2021	1B27
60444	SS60444 B737-8 Rev 01A	5 Mar 2021	1B27
61855	SS61855 B737-8 Rev 01A	6 Mar 2021	1B27
60227	SS60227 B737-8 Rev 01A	6 Mar 2021	1B27
43976	SS43976 B737-8 Rev 01A	5 Mar 2021	1B27
62426	SS62426 B737-8 Rev 01A	9 Mar 2021	1B27
62427	SS62427 B737-8 Rev 01A	10 Mar 2021	1B27
43798	SS43798 B737-8 Rev 01A	7 Mar 2021	1B27
43310	SS43310 B737-8 Rev 01A	7 Mar 2021	1B27

60434	SS60434 B737-8	6 Mar 2021	1B27
60714	SS60714 B737-8	8 Mar 2021	1B27
61858	SS61858 B737-8	10 Mar 2021	1B27



For avoidance of doubt, [REDACTED] shall be responsible for any cost associated with upgrading the [REDACTED] and [REDACTED] to [REDACTED] and [REDACTED] respectively. Such upgrade may be provided in a maximum of thirty (30) days post-delivery subject to OEM lead time constraints and it is agreed that it will not affect delivery timelines.

It is understood that, unless and until an Aircraft is taken off the market as described below, any specific Aircraft may leave the market due to prior lease, sale or other disposition and Lessor may, with prior notice to Lessee (and subject to Lessee's discretion whether to accept another aircraft), replace such Aircraft with a suitably similar new Aircraft for the purposes of the present LOI.

It is agreed that Lessee will induct each Aircraft into its maintenance facilities in Mexico approximately [REDACTED] months post- delivery and implement the following upgrades towards fleet standardization:

- Thrust upgrade to B28
- Two-class AeroMexico LOPA (existing seats to be removed and shipped to Lessor)
- Panasonic in-seat video
- Wi-fi antenna for wireless cabin
- Wheels & Brakes standardization to Messier Bugatti.
- AeroMexico livery

[REDACTED]

D. REGISTRATION

The Aircraft will be registered in Mexico for the duration of the Lease Term at the sole cost and expense of Lessee.

E. LEASE TERM / DELIVERY DATES

[REDACTED] months commencing on or about October 2021 (the first "Delivery Date"). It is anticipated that [REDACTED] Aircraft deliveries per month can be scheduled subject to Boeing lead time and factory constraints. For avoidance of doubt, deliveries for all the aircraft shall occur no later than [REDACTED].



With [REDACTED] months advance written notice to Lessor prior to the redelivery date, Lessee shall have a [REDACTED] option to extend the Lease Term by [REDACTED], [REDACTED] or [REDACTED] months. If Lessor and Lessee cannot reach agreement on the rental for the extended term within thirty (30) days following the extension notice then each of Lessor and Lessee will submit a market rental provided by an independent and internationally well-known appraiser. If the rentals provided are within [REDACTED]% or less to each other then an average of these rentals will set the rental for the extended term. If the two market rentals differ by more than [REDACTED]% then the appraisers will choose a third appraiser and this appraiser's rent will be averaged with the two first appraisals to set the rental to be used for the extended term.

In addition to the Lease extension option detailed above, with [REDACTED] months advance written notice to the Lessor prior to the redelivery date (original or extended), Lessee shall have a one-time option to extend the Lease for [REDACTED] months (the "Operational Lease Extension") in order to better match operational and redelivery maintenance planning. The rental during this Operational Lease Extension will be [REDACTED], as applicable.

F. RENT

The Rent shall be USD [REDACTED] fixed per month per Aircraft (subject to the immediately following paragraph), payable monthly in advance. [REDACTED]

G. SECURITY DEPOSIT

USD [REDACTED] per Aircraft, in cash, payable as follows:

USD [REDACTED] as the "Acceptance Deposit" within three (3) business days following issuance of approval by the Bankruptcy Court (as defined below);

USD [REDACTED] upon Lease Execution; and

USD [REDACTED] no later than five (5) days before the scheduled Delivery Date.

The Acceptance Deposit for an Aircraft shall be refundable to Lessee promptly upon notice from the Lessee to the Lessor if the Lease documentation for such Aircraft is not executed within the time periods set forth in the Preconditions section below.

For the avoidance of doubt, Lessee's obligations hereunder shall be subject to approval by its DIP Lenders and to Bankruptcy Court approval following established procedures, and to definitive documentation that is satisfactory to Lessee and Lessor.



The Security Deposit shall be returned to the Lessee promptly upon Lessee's fulfilment of all its obligations under the Lease at the end of the Lease Term or as otherwise set forth in the Lease. No interest is payable on the Security Deposit, and it may be commingled by Lessor with general funds during the Lease Term.

Provided that no event of default has occurred and is continuing, Lessee shall have the option to convert the cash Security Deposit to a Letter of Credit. The Letter of Credit shall be [REDACTED] and issued and confirmed by banks [REDACTED]

H. END OF LEASE TRUE UP

Lessee shall be solely responsible for the cost of all maintenance of the Aircraft during the Lease Term. Lessee shall, in consultation with Lessor, be responsible for developing and managing the Airframe, Engine, Landing Gear and APU heavy maintenance shop visit / overhaul workscopes which shall remain subject to Lessor notification by Lessee prior to the respective Airframe, Engine, Landing Gear or APU heavy maintenance shop visit / overhaul.

Upon redelivery of the Aircraft at the end of the Lease Term (the "Return Date"), Lessee shall pay to Lessor an amount (respectively, the "Airframe True Up Amount", the "Landing Gear True Up Amount", the "APU True Up Amount", the "Engine True Up Amount", " the Engine LLP True Up Amount", collectively referred to as the "True Up Amounts") to compensate for the variance in the number of Flight Hours, Cycles or calendar months, as applicable, accumulated as of the Return Date since new or since its last Performance Restoration for an Engine or heavy maintenance shop visit as applicable for other maintenance events, representing a full-Interval condition of such aforementioned major components/major maintenance events. The True Up Amounts shall be calculated as follows:

Airframe True Up Amount 9-Year Structural Check.

Lessor and Lessee shall each propose [REDACTED] cost for the accomplishment of this Check and agree in good-faith to a [REDACTED] cost. If no agreement is reached then each party will submit an independent quote from a reputable FAA-certificated MRO and the [REDACTED] shall be used as the [REDACTED] cost for this Check. Lessee shall pay to Lessor an amount equal to the product of (x) the [REDACTED] cost for this Check divided by [REDACTED] months and (y) the number of calendar months accumulated on the Airframe as of the Return Date since new or since its major airframe 9-Year Structural Check (systems, zonal and structural) as appropriate.



Airframe True Up Amount 15 Year Structural Check.

Lessor and Lessee shall each propose [REDACTED] cost for the accomplishment of this Check and agree in good-faith to a [REDACTED] cost. If no agreement is reached then each party will submit an independent quote from a reputable FAA-certificated MRO and the [REDACTED] shall be used as the [REDACTED] cost for this Check. Lessee shall pay to Lessor an amount equal to the product of (x) the [REDACTED] cost for this Check divided by [REDACTED] months and (y) the number of calendar months accumulated on the Airframe as of the Return Date since new or since its major airframe 15-Year Structural Check (systems, zonal and structural) as appropriate. Lessee and Lessor shall review and mutually agree the scope of the Airframe Heavy Checks in consideration of MPD task-threshold.

Landing Gear True Up Amount. Lessee shall pay to Lessor an amount equal to the product of [REDACTED] divided by [REDACTED] months and the number of calendar months accumulated on the Landing Gear as of the Return Date since new or since its last overhaul.

APU True Up Amount. Lessee shall pay to Lessor an amount equal to the product of [REDACTED] divided by the MTBR (Mean Time Between Removal for performance restoration or overhaul) promulgated by the OEM and the number of APU Hours accumulated on the APU as of the Return Date since new or since its last heavy maintenance.

Engine LLP True Up Amount. For each life limited part of an Engine, Lessee shall pay to Lessor the per Cycle dollar amount determined below multiplied by the number of Cycles accumulated on such life limited part of such Engine as of the Return Date since new.

The per Cycle dollar amount to be used for the foregoing calculations shall be determined by dividing the Engine manufacturer's then current catalogue list price for such life limited part by [REDACTED]% of the total number of Cycles of such life limited part (determined in accordance with Manufacturer's limits).



Engine True Up Amount. Lessor and Lessee shall each propose an [REDACTED] cost for the accomplishment of the next shop visit to meet the Engine Performance Restoration Shop Visit ("PRSV") as described below and agree in good-faith to a [REDACTED] cost. If no agreement is reached, then each party will submit an independent quote from a reputable FAA-certificated MRO and the [REDACTED] of these [REDACTED] shall be used as the [REDACTED] cost for such PRSV. Lessee shall pay to Lessor an amount equal to the product of such PRSV cost divided by the then current [REDACTED] MTBR and the number of Engine Hours accumulated on an Engine as of the Return Date since new or since its last PRSV.

Performance Restoration Shop Visit shall mean the services performed during a shop visit to insure optimum EGTM levels where as a minimum the following modules are exposed, disassembled and subsequently worked as follows:

- (i) [REDACTED]
- (ii) [REDACTED]
- (iii) [REDACTED]
- (iv) [REDACTED]

I. DELIVERY CONDITION

The Aircraft will be delivered ex-Factory in an "AS IS, WHERE IS" condition, and, subject to Manufacturer's agreement, the Lessee will be entitled to participate in the Manufacturer's delivery inspection process as is customary in the delivery process of new Boeing Aircraft. Lessee will be entitled to participate in the pre-delivery testing and acceptance process upon signing a tri-partite advisor appointment agreement among Lessor, Lessee and Boeing.

Lessor will assign to Lessee the available warranties at the time of delivery as described below:

- (a) Boeing warranties – standard warranties for new aircraft;
- (b) CFM warranties – standard warranties for new engines; and

BFE vendors – available warranties at the time of delivery.
[REDACTED]

J. REDELIVERY CONDITION

The Aircraft will be returned in conformance with the general conditions set forth in Schedule B hereto, with more detailed conditions to be documented in the Lease and customary for new aircraft Leases.



K. NET LEASE

The Lease will be a non-cancelable "net" lease with Lessee responsible for all costs associated with the possession, use, operation, maintenance, repair, management, insurance, and return of the Aircraft, including, but not limited to, any and all sales, use, customs, excise, value added, ad valorem or similar tax assessment or duty, withholdings, insurance, and compliance with applicable laws, regulations and airworthiness directives. The foregoing obligations of Lessee shall be subject to customary carve-outs to be agreed and included in the Lease.

L. APPROVED MAINTENANCE PROVIDER

The Aircraft, Engines and all other parts shall be maintained by a maintenance facility [REDACTED] that is approved by:

- (a) Lessee's aviation authority in the case of "A" Checks and all lesser airframe checks; and
- (b) Lessee's aviation authority and an approved FAA and/or EASA Part 145 maintenance provider in the case of any major airframe maintenance visit, the end of lease redelivery check and any Engine, APU or Landing Gear shop visit.

Lessor confirms that Aeromexico and Delta MRO are acceptable Maintenance Providers to the extent their FAA approvals are maintained for the 737-8.

M. AIRWORTHINESS DIRECTIVES

Lessee shall comply with all airworthiness directives issued by Lessee's aviation authority and FAA, any regulatory order or directive of Lessee's aviation authority not issued as an airworthiness directive, or any mandatory service bulletin, all of which requiring the inspection, alteration, modification or repair of Boeing 737-8 series aircraft or CFMI LEAP-1B series engines during the Lease Term, [REDACTED].



If Lessee performs or causes to be performed a modification to the Aircraft required by a regulatory order or directive issued as an airworthiness directive required by the FAA and having a compliance date during the Term and if the net cost to Lessee of direct costs of labour and material for implementation of such FAA airworthiness directive and covering no indirect costs of incorporating such modification in the Aircraft, [REDACTED] USD [REDACTED], and if such modification is deemed a terminating action (or at the highest possible level of accomplishment) for such FAA airworthiness directive, Lessor shall, promptly after the accomplishment and following Lessor's receipt of evidence confirming the incorporation of the FAA airworthiness directive and receipt of an invoice in respect of such amount, and provided no Default or Event of Default has occurred and is continuing, promptly reimburse to Lessee (the "AD Contribution") an amount calculated in accordance with the following formula:

[REDACTED]

**N. MAINTENANCE
STANDARDS**

During the Lease Term, Lessee shall ensure that the Aircraft, Engines, Landing Gear and APU are maintained at its expense at an Approved Maintenance Provider and in accordance with an approved Maintenance Program, which must meet the requirements of the latest standard of the Boeing MPD. Lessee shall forward to Lessor a copy of its approved Maintenance Program prior to delivery of the Aircraft to enable full verification that the Maintenance Program complies in total with the Boeing MPD.

Lessee shall also ensure that all parts replaced or installed onto the Aircraft during the Lease Term have appropriate FAA or EASA release certification, e.g. FAA 8130-3 or EASA Form 1, and that all applicable Airworthiness Directives are complied with. Lessee may subject the Landing Gear, APU and Parts to normal interchange or pooling agreements which shall [REDACTED], with [REDACTED] in the airline industry and entered into by Lessee in the ordinary course of its business. Terms and conditions to be set out in the Lease. Furthermore, Lessee shall perform all repairs and modifications in accordance with OEM and FAA approved data.

[REDACTED]



Lessee may, [REDACTED] but no later than [REDACTED] months prior to [REDACTED] and at the Redelivery Date if any Engine fails the inspections required at redelivery, substitute an engine of the same make and same or improved model (a "Substitute Engine") for any Engine by transferring title to the Substitute Engine to Lessor, and the Lessor will transfer title to the replaced Engine to or at the direction of Lessee. Such Substitute Engine will [REDACTED] to that of the replaced Engine [REDACTED] and shall be deemed an "Engine" as defined in the Lease for all purposes under the Lease.

O. INSURANCE

Lessee will bear all risks of loss or damage to the Aircraft during the Lease Term. Lessee shall be responsible, at its sole cost and expense, to maintain and keep in full force and effect all insurances with insurers in the London and / or New York markets, in a form reasonably acceptable to Lessor, using brokers and insurers of recognized responsibility and which are reasonably acceptable to Lessor, and with coverages to include:

- (a) Comprehensive liability, bodily injury and property damage insurance, general legal liability (including products, hangarkeepers and premises liability), including AVN52E and excess war third party liability insurance for an amount not less than USD [REDACTED] per occurrence, [REDACTED];
- (b) All-Risk Hull insurance (including the Engines or parts removed from the Aircraft) and Hull War insurance (including Confiscation by Government of Registration) for the Agreed Value of USD [REDACTED] (Such amount is subject to annual reduction of [REDACTED]% with the first reduction taking effect on the Lessee's insurance renewal date falling due after the first anniversary of the respective Delivery Date. The policy shall be subject to a maximum deductible of USD [REDACTED]); and
- (c) Spares all risks insurance, covering engines replaced on the Aircraft and parts as spares for limits adequate to cover the Lessee's operations.

Any reinsurance will contain a satisfactory cut-through clause.

P. SUBLEASE

The Lessee will not sublease the Aircraft without the prior written consent of the Lessor. If the Lessee seeks the consent of the Lessor to any proposed sublease, Lessee agrees to [REDACTED]. For avoidance of doubt, no Lessor consent shall be required if the sublease is to a member of Grupo Aeromexico (as defined below) or to [REDACTED].



Notwithstanding the above, Lessee may charter or wet lease the Aircraft in the ordinary course of its business provided that:

- (a) Lessee will at all times maintain exclusive possession and operational control of the Aircraft and will operate the Aircraft exclusively with Lessee's flight crew; and
- (b) the Aircraft will at all times be operated and maintained by Lessee in accordance with the Lease and the Aircraft registration shall not be changed.

The rights granted by Lessee under any such sublease, charter or wet lease shall be expressly subject and subordinate to all of the terms and conditions of the definitive Lease documentation in respect of the Aircraft, shall not conflict with any of the terms of the Lease, and the period of any sublease, wet lease or charter shall not be longer than the Lease Term.

Q. LESSOR FINANCING

This proposal is subject to the ability of the Lessor to properly and adequately register, record, and perfect each of the Lessor's and its financier's right, title, and interest in and to the Aircraft, and the Lease. The Lessee shall execute an acknowledgement and consent, and such other documents as Lessor's financiers may reasonably request, acknowledging their security interests in this Aircraft and the Lease. The Lessor's ownership interest and leasehold interest shall be freely transferable and assignable by the owner(s) and Lessor of any such interests to such financiers as security for the Lessor's obligations throughout the Lease Term. Any such Lessor financing shall not result increased costs or obligations for Lessee under the Lease documentation (in the understanding that including such entities as additional insured on its policies of insurance shall not constitute an increased obligation or cost).

R. PLACE OF DELIVERY

Manufacturer's facility in the State of Washington, U.S.A.

S. PLACE OF REDELIVERY

At an airport in Mexico nominated by Lessee or at such other location mutually agreed between Lessee and Lessor.

T. PRECONDITIONS

This is a Lease Proposal only, and sets forth the general terms and conditions upon which Lessor and Lessee would be willing to enter into a definitive transaction for any or all of the Aircraft should they proceed with a transaction for any Aircraft. This Lease Proposal is expressly subject to:

- (a) prior lease, sale or other disposition of the Aircraft by Lessor (subject to Lessor's agreement to remove any relevant Aircraft from the market if Lessee submits the transaction for approval of the Bankruptcy Court);



-
- (b) approval by the board of DAE Group Holdings Ltd or DAE (Ireland) Limited. which decision shall be advised to Lessee by no later than [REDACTED] business days after the date of execution by both parties of this Lease Proposal;
 - (c) approval by the board of Lessee or its executive committee which decision shall be advised to Lessor by no later than [REDACTED] business days after the date of execution by both parties of this Lease Proposal;
 - (d) a satisfactory credit (including latest business plan), 'know your customer' ("KYC"), assessment of the Lessee;
 - (e) receipt of the first portion of Lessee's deposit within the time period provided therefor in the paragraph entitled "Acceptance" below;
 - (f) receipt by Lessor of all necessary third-party consents (including lessor lender consents) within [REDACTED] business days after the date of of execution by both parties of this Lease Proposal; and
 - (g) Definitive documentation satisfactory to Lessor and Lessee within [REDACTED] business days after receipt of Bankruptcy Court approval (or such later date as the parties may agree).

Upon submission of this Lease Proposal to the Bankruptcy Court referred to in part (a) above, the relevant Aircraft shall be removed from the leasing market and Lessor and Lessee shall promptly engage in negotiation of the transaction, including the total number of Aircraft to be included and the specific terms and conditions of the definitive documentation. Lessor and Lessee shall complete definitive lease documentation within a period of [REDACTED] business days after receipt of Bankruptcy Court approval or by such later date as may be agreed by the parties. Unless otherwise agreed, Lessor may remarket the relevant Aircraft if definitive documentation is not timely completed or agreed within such time period.

All lease documentation shall be prepared by counsel to Lessor, and shall be in form and substance reasonably satisfactory to Lessee and Lessor. Other standard and customary conditions and terms required of lessees will be included in the Lease and must be complied with by Lessee prior to Aircraft delivery.



For the avoidance of doubt, this Lease Proposal does not create a binding obligation of Lessor to deliver any Aircraft to Lessee or of Lessee to lease any Aircraft from Lessor. Lessee continues to analyse its fleet requirements and will continue to consider alternatives to the Aircraft until definitive documentation is signed by the parties. Neither party shall be obligated to enter into a lease transaction for any Aircraft unless and until definitive documentation is executed with respect thereto.

U. VALIDITY PERIOD

This Lease Proposal is valid until [REDACTED], and any preceding proposals or communications are no longer valid.

V. BANKING DETAILS

The Acceptance Deposit payable hereunder is to be paid to the bank and account as is designated by Lessor in the Lessor Notice defined in the paragraph entitled "Acceptance" below.

All funds due from Lessee shall be in immediately available US Dollars, clear of any and all taxes and deductions.

W. ACCEPTANCE

This proposal may be accepted by written acknowledgment from Lessee in the space and manner provided below. Lessor must receive such acceptance by Lessee within the validity period specified above.

Upon acceptance of the terms and conditions hereof by Lessee, and following a satisfactory KYC review of Lessee by Lessor and receipt of approval from the Bankruptcy Court, the Lessor shall direct the Lessee in writing to pay the Acceptance Deposit to the order of the Lessor for each Aircraft that the parties have then confirmed will be leased by Lessee (the "Lessor's Notice"), which deposit shall be due and must be received by Lessor within [REDACTED] business days of issuance of such notice by Lessor.

X. CONFIDENTIALITY

This Lease Proposal is strictly confidential and is provided to you on the understanding that the terms and conditions contained herein shall not be revealed to any person other than your directors, officers, employees and professional advisers who are responsible for analysing, negotiating and approving the lease of the Aircraft and who are made aware of the confidential nature of this Lease Proposal. Notwithstanding the foregoing, the Lessee shall be permitted to provide copies of this Lease Proposal to its DIP Lenders and their advisors, as well as the advisors to the Unsecured Creditors Committee and the Ad Hoc Bondholders Group in its Chapter 11 proceeding, and to file a copy of this LOI with the Bankruptcy Court (with such redactions as may be agreed by the Lessor and the Lessee).

Y. GOVERNING LAW

The laws of the state of New York.



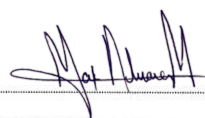
**Z. *BANRUPTCY COURT
APPROVAL***

This Lease Proposal (and/or any subsequent discussions, correspondence, document drafts, negotiations, other communications or acceptance of payments) creates no legal obligations (except for the Confidentiality and Governing Law provisions, and Lessor's agreement to remove Aircraft from the market as set forth above, which are binding) until receipt of, and remains expressly conditional on, the approval by the DIP Investor and the United States Bankruptcy Court for the Southern District of New York (acting in respect of the Chapter 11 cases and proceedings initially filed by Lessee and its affiliates on July 1, 2020 under the lead case no. 20-11563 with such court) (the "Bankruptcy Court"), and the entry of a final unappealable order by such court in a form acceptable to DAE Group Holdings LTD (in each case as servicer for Lessor), in their sole discretion authorizing and approving, among other things, the Lessee entering into this Lease Proposal and any leases or any agreements or documents proposed to be effectuated hereunder. Lessee shall take all reasonable steps as are available to it in order to promptly apply for such approval with respect to such Aircraft and shall keep DAE Group Holdings LTD (in each case as servicer for Lessor) apprised of the same.

TRANSFERS

Lessor may transfer or assign its rights in the Documentation and/or the Aircraft after the Aircraft is delivered to Lessee under the Lease, provided that: (i) Lessor shall promptly notify Lessee in writing of any proposed transfer and all relevant details with respect thereto; (ii) Lessor shall pay Lessee's reasonable and documented out of pocket expenses in conjunction with any Lessor transfer; (iii) the transferee is experienced in the business of aircraft leasing or serviced by such person; (iv) the transferee/assignee provides Lessee with a quiet enjoyment undertaking letter in form and substance acceptable to the Lessee, with such a form to be agreed in the Documentation; (v) the transferee/assignee [REDACTED] (vi) neither the transferee/assignee nor any of its affiliates is an airline or a direct competitor of Lessee; (vii) such Lessor transfer shall not increase [REDACTED] and (viii) the transferee/assignee assumes any and all payment and other obligations of Lessor. If the Lessor is a trust or other SPV, the foregoing requirements shall also apply to the owner participant or beneficial owner of such trust or SPV



LEASE PROPOSAL MADE BY DAE GROUP HOLDINGS LTD (in its capacity as servicer for Lessor)	LEASE PROPOSAL ACCEPTED BY AEROVÍAS DE MÉXICO, S.A. DE C.V.
Location: <u>Dubai, UAE</u> Name : <u>David Houlihan</u> Title : <u>Authorised Signatory</u> Date : <u>28 May 2021</u>	 Name : <u>Max Edgardo Alvarez Matos / Ido A. Kestel</u> Title : <u>Attorneys in Fact</u> Date : <u>Kontes de Dea Hernandez</u>

LEASE PROPOSAL MADE BY DAE (IRELAND) LIMITED. (in its capacity as servicer for Lessor)
Location: <u>Dublin, Ireland</u> Name : <u>Jenny Moulton</u> Title : <u>Director</u> Date : <u>28 May 2021</u>





SCHEDULE A

AIRCRAFT REDELIVERY CONDITIONS

The Aircraft shall be returned to the Lessor at the end of the Lease Term in the following general condition:

1. Clean.
2. Serviceable.
3. Stripped and painted white or (with at least [REDACTED] months advance provisioning of livery drawings and stencils) painted in a livery designated by Lessor.
4. Fresh out of the next sequential scheduled block systems/zonal/structural 'C' check (as per the latest revision of the Boeing MPD including all CPCP, aging aircraft and out-of-sequence inspections) and including all lesser level Checks sufficient to clear the Aircraft for operation for the full 'C' Check interval (in Flight Hours, Cycles or calendar months, whichever is limiting) under the latest version of the MPD. The return check is to be completed by a maintenance organization, holding a FAA Part 145 Certificate of Approval, acceptable to Lessor.
5. With the same seating configuration as modified by Lessee and [REDACTED] as part of the fleet standardization upgrade program and with FAA compliant seat covers, carpets and curtains.
6. Each of the Engines shall have not less than [REDACTED] flight hours and [REDACTED] flight cycles to the next PRSV. If an Engine undergoes a PRSV during the Term, each LLP shall have sufficient cycle life remaining and each Airworthiness Directive shall have sufficient clearance period to its next due date to match the expected on-wing performance life in terms of engine hours and cycles (in line with [REDACTED]) for such Engine after such shop visit, notwithstanding the minimum life remaining set forth in paragraphs 10 and 15 below.
7. Lessor, at Lessee's cost, shall have the right to observe a video borescope inspection of the full gas path of the Engines and the APU, to observe a full systems functional and operational check of the Engines (power assurance) and APU and to inspect the magnetic chip detectors of the Engines. Any defects or deficiencies noted outside of maintenance manual limits shall be rectified at Lessee's expense prior to redelivery.
8. The APU shall be in a serviceable condition.
9. The Landing Gear shall have a minimum of [REDACTED] months until the next scheduled overhaul in accordance with the then current Boeing MPD.
10. All Engine and APU LLPs shall have a remaining life of at least [REDACTED] cycles in accordance with the overhaul and maintenance manual of the Engine manufacturer. The Landing Gear LLPs shall have a used life comparable to the [REDACTED] for the MSN's listed in the Aircraft Description at the time of return.
11. All other "hard time" components shall have a remaining life of at least [REDACTED] months (in Flight Hours, Cycles, whichever is limiting) to the next required overhaul, shop visit, inspection or replacement in accordance with the latest revision of the Boeing MPD; otherwise, the component shall be fresh from overhaul, shop visit, inspection or replacement.
12. All components that are "on condition" or "condition monitored" shall be in serviceable condition.



-
13. Lessor shall have the right to review all maintenance reports, engine trend monitoring data, pilot reports and Aircraft systems functional check reports to confirm serviceability status of each component. Any defects or deficiencies noted outside of maintenance manual limits shall be rectified at Lessee's expense prior to redelivery.
 14. The Aircraft shall be returned with a valid certificate of airworthiness and an export certificate of airworthiness from the Lessee's aviation authority, and shall be eligible, with full supporting documentation, for the immediate issue of an FAA certificate of airworthiness for passenger transport and commercial passenger operation by an FAA Part 129 operator.,.
 15. All FAA airworthiness directives issued prior to the actual return date and which require inspection or terminating action to be taken within [REDACTED] months after the actual return date shall be accomplished on a terminating action basis at the expense of the [REDACTED]. If no terminating action exists then the highest level of inspection or modification action shall be accomplished.
 16. Lessor shall be entitled to witness a demonstration flight of up to [REDACTED] minutes to confirm the airworthiness of the Aircraft and the proper functioning of all systems and components within manufacturer limits. Such demonstration flight will be mutually agreed based on the Boeing 737MAX Change of Operator Document (D013A602-1). Lessor shall have the right to have up to [REDACTED] representatives participate as direct observers in such demonstration flight which shall be performed at [REDACTED] cost. All procedures to be in compliance with local authorities' approval.
 17. Lessee shall provide evidence satisfactory to Lessor of there being no unpaid accounts relating to the Aircraft including, but not limited to, airport and airway user charges and any other detention charges.
 18. With all documents, manuals and operational and maintenance records relating to such Aircraft (including those relating to the engines and parts) being complete and up to date and in the English language and otherwise in compliance with FAA regulations; and a minimum of [REDACTED] full set of airframe and engine OEM maintenance and operation manuals and technical documents shall be returned with the Aircraft.

Annex 2 to Proposed Order

737-800 Letter of Intent

AEROVÍAS DE MÉXICO, S.A. DE C.V.
AIRCRAFT LEASE AGREEMENT

INDICATIVE SUMMARY OF PRINCIPAL TERMS AND CONDITIONS

December 21, 2020

This Indicative Summary of Principal Terms and Conditions (this "Summary of Terms") is for discussion purposes only. No legally binding obligations will be created prior to execution of definitive transaction documents signed by the parties thereto, except for the provisions under the headings "Costs and Expenses" and "Confidentiality" below which are intended by the parties hereto to be legally binding obligations.

Transaction Overview Lessor and Lessee will enter into a new aircraft lease agreement (the "*Lease*") for the aircraft described in Appendix 1 hereto (the "*Aircraft*"). Upon signing of this Summary of Terms, the parties will negotiate in good faith to finalize and execute definitive documentation (the "*Documentation*") that reflects the terms and conditions specified in this Summary of Terms and sets forth other specific terms of Lessee's agreement to lease the Aircraft from Lessor and Lessor's agreement to lease the Aircraft to Lessee. Documentation will be prepared by Lessee's counsel and will be based on Lessee's form lease agreement.

Lessor As set out on Appendix 1 hereto.

Servicer Dubai Aerospace Enterprise

Lessee Aerovías de México, S.A. de C.V., as lessee under the Lease (the "*Lessee*").

Aircraft Details of the Aircraft are described in Appendix 1 hereto.

Basic Rent Basic Rent for the Aircraft shall be either the PBH Rent or the Fixed Rent, as described below.

Initially from the date of execution of the Documentation, Basic Rent shall be paid in arrears on a power-by-the-hour basis (the "*PBH Rent*") until the earlier of (i) [REDACTED] and (ii) the date that the fleetwide average utilization for the same aircraft type as the Aircraft reaches a minimum of [REDACTED] of the monthly utilization for each of the [REDACTED] consecutive months corresponding to the same months from January 2019 through December 2019, as set forth in Appendix 2 (the "*PBH Period*").

PBH Rent will be based on the individual utilization of the airframe and each engine (each, a "*PBH Component*") comprising the Aircraft and will be calculated in accordance with the following formula:

$$W = (A_{\text{(airframe)}} * B_{\text{(airframe)}}) + (A_{\text{(engine 1)}} * B_{\text{(engine 1)}}) + (A_{\text{(engine 2)}} * B_{\text{(engine 2)}})$$

where:

W: PBH Rent

$A_{\text{(airframe)}}$, $A_{\text{(engine 1)}}$ and $A_{\text{(engine 2)}}$: The utilization of the airframe and each of the engines in a given calendar month, expressed in flight hours

B_(airframe), B_(engine 1) and B_(engine 2): The hourly rate for the airframe and each of the engines set forth in Appendix 1 hereto under the heading “PBH Hourly Rates”, which rate is based on a monthly utilization of [REDACTED] flight hours, representing a full calendar month of utilization.

For each calendar month (or part thereof) during the PBH Period, the Lessee will provide a utilization report to the Lessor by the 15th day of the immediately succeeding calendar month and make a payment of the PBH Rent by the later of (x) the 20th day of such calendar month and (y) three business days after receiving Lessor’s invoice in respect of the PBH Rent.

Following the last day of the PBH Period and during the remainder of the Lease Term, Basic Rent shall be paid monthly in arrears in a fixed amount per month equal to the “Fixed Rent” described in Appendix 1 hereto (“*Fixed Rent*”).

Lease Term The last day of the Lease Term shall be the “*Expiry Date*” as set out on Appendix 1 hereto, provided that Lessee may, in its sole discretion and with no less than [REDACTED] days’ prior written notice, extend the Expiry Date by up to [REDACTED] months for operational reasons (the “*Operational Extension*”). Such Operational Extension shall include the same terms and economics included herein.

Extension Options Lessee shall have the option, upon no less than [REDACTED] days’ prior written notice, to extend the Lease Term for up to [REDACTED] successive extension terms (each, an “*Extension Term*”), with each Extension Term having a term of [REDACTED] to [REDACTED] years as selected by Lessee.

The rent during each Extension Term shall be equal to [REDACTED] at the time of such election as determined pursuant to a mechanism to be defined in the Lease and will be mutually agreed between Lessor and Lessee upon receipt of Lessee’s notice of intent to exercise each extension option. If the Lessor and Lessee are unable to agree to the rent amount for any extension term within 30 days of Lessee’s notice, such amount shall be determined by an appraisal procedure to be set forth in the Lease.

Security Deposit Lessee shall pay Lessor a security deposit, either in cash or by providing a letter of credit, equal to [REDACTED]. The Lessor will apply a portion of the existing security deposit in an amount equal to [REDACTED] to satisfy the foregoing obligation.

AD Cost Sharing If Lessee complies on a terminating action basis (or to the highest level of compliance available) with an airworthiness directive applicable to the Aircraft and the cost of performing such airworthiness directive on the Aircraft exceeds US\$[REDACTED] promptly following receipt of an invoice or other documentation supporting the cost of performing such airworthiness directive on the Aircraft, Lessor will pay to Lessee an amount calculated in accordance with the following formula:

[REDACTED]

Inspection Rights Lessor will have the right to inspect the Aircraft and related records annually at its own cost and expense, subject to no unreasonable interference with Lessee’s

operations and to certain other conditions to be agreed in the Lease. Any such inspection shall be limited to a visual, walk-around inspection which may include going on board the Aircraft, but shall not include the opening of any panels, bays or disassembly of any components.

**Maintenance
Redelivery
Payments**

Lessee shall pay to Lessor a Maintenance Redelivery Payment for the Aircraft [REDACTED] measured by comparing the maintenance condition of each of the Airframe, Engines, Engine LLPs, Landing Gear and APU comprising the Aircraft as of the Expiry Date (the “*Expiry Date Condition*”) to the maintenance condition of such component [REDACTED] (the “*Petition Date Condition*”). Such Maintenance Redelivery Payment for the Aircraft will be [REDACTED], as more particularly described below.

The Maintenance Redelivery Payment amount attributable to each component (other than Engine LLPs) will be calculated on the basis of a) [REDACTED] and b) [REDACTED] for Airframe heavy checks, Engine performance restoration, Landing Gear overhauls, and APU medium repairs (each, a “*Heavy Maintenance Event*”) as of the [REDACTED]. The Maintenance Redelivery Payment amount for Engine LLPs will be calculated by the then-current list price of each LLP divided by the ultimate life limit of such LLP.

Such Maintenance Redelivery Payment amounts for all components comprising the Aircraft will be aggregated as follows:

- (i) if the Expiry Date Condition of a particular component is [REDACTED];
- (ii) if the Expiry Date Condition of a particular component is [REDACTED]; and
- (iii) if the result of [REDACTED].

During the initial [REDACTED] months of the Lease Term, [REDACTED] shall, upon [REDACTED] request, compensate [REDACTED] for [REDACTED] of any [REDACTED] falling due during such period (each, a [REDACTED]), whether from current [REDACTED] balances or from [REDACTED] own funds or as otherwise agreed. If the [REDACTED] makes a [REDACTED] in respect of any [REDACTED] at [REDACTED] during the Lease Term, including during the [REDACTED] months, the corresponding [REDACTED] for the Maintenance Redelivery Payment will be adjusted [REDACTED] to account for such [REDACTED], up to [REDACTED].

**Maintenance
Reserves**

Lessee will not pay Maintenance Reserves. Any current Maintenance Reserve balances held by Lessor [REDACTED].

**Redelivery
Procedure**

At return, the Aircraft shall comply with the return conditions specified in Appendix 3 hereto.

Holdover Rent

In the event that Lessee does not return the Aircraft to Lessor on the Expiry Date and in the condition required, Lessee shall continue to pay [REDACTED] for the first [REDACTED] days of delay, and [REDACTED] thereafter, pro-rated accordingly on

a monthly basis until the date the Aircraft is actually tendered to the Lessor in the required condition (the “*Holdover Period*”). The Aircraft shall not be used in commercial passenger operations during any Holdover Period.

Aircraft Documents	Aircraft records (the “ <i>Aircraft Documents</i> ”) will be maintained in accordance with the rules and regulations of the Aviation Authority and will comply with the requirements of the FAA for Part 129 operators.
Substitution of Engines	Lessee may, at any time during the Lease Term, substitute an engine of the same make and same or improved model (a “ <i>Substitute Engine</i> ”) for any Engine by transferring title to the Substitute Engine to Lessor, and the Lessor will transfer title to the replaced Engine to or at the direction of Lessee. Such Substitute Engine will have [REDACTED] equal to that of the replaced Engine (but in any event, [REDACTED]) and shall be deemed an “Engine” as defined in the Lease for all purposes under the Lease.
Replacement of Parts	Lessee shall be entitled to remove and replace any component, furnishing or equipment (including any APU and landing gear, but excluding a complete Engine) furnished with the Aircraft (“ <i>Parts</i> ”) on terms and conditions to be set out in the Lease.
Registration	The Aircraft will remain registered in the existing State of Registration.
Insurance	As per current leases.
Subleasing	Subject to the prior written consent of Lessor (not to be unreasonably withheld or delayed), Lessee may sublease the Aircraft on terms and conditions to be set out in the Lease; provided that no Lessor consent shall be required if the sublease is to [REDACTED].
Transfers	Lessor may transfer or assign its rights in the Documentation and/or the Aircraft after the Aircraft is delivered under the Lease, provided that: (i) Lessor shall promptly notify Lessee in writing of any proposed transfer and all relevant details with respect thereto; (ii) Lessor shall pay Lessee’s reasonable and documented out of pocket expenses in conjunction with any Lessor transfer; (iii) the transferee is experienced in the business of aircraft leasing or serviced by such person; (iv) the transferee/assignee provides Lessee with a quiet enjoyment undertaking letter in form and substance acceptable to the Lessee, with such a form to be agreed in the Documentation; (v) the transferee/assignee has a tangible net worth of at least US\$[REDACTED] exclusive of the aggregate equity it is committing to invest in the Aircraft, with a certificate of such tangible net worth being a condition precedent to entering into the transfer; (vi) neither the transferee/assignee nor any of its affiliates is an airline or a direct competitor of Lessee; (vii) such Lessor transfer shall not increase any of Lessee’s risk, obligations, responsibilities, liabilities, costs (including without limitation with respect to taxes) or decrease the Lessee’s rights under the Lease as determined as of the date of such transfer or assignment; and (viii) the transferee/assignee assumes any and all payment and other obligations of Lessor. If the Lessor is a trust or other SPV, the foregoing requirements shall also apply to the owner participant or beneficial owner of such trust or SPV.

Governing Law This Summary of Terms and the Documentation will be governed by the laws of the State of New York.

Costs and Expenses Lessee and Lessor will bear their own costs and expenses incurred in the negotiation and completion of the Documentation. The cost of registering the Aircraft will be borne by Lessee. Lessee will also issue, at no cost to Lessor, a customary in-house legal opinion as to Mexican law matters. If Lessor requires an external Mexican legal opinion, Lessor will bear all costs related thereto.

Confidentiality This Summary of Terms is strictly confidential and must not be revealed by Lessor or Lessee to any person other than those employees, directors, officers, or professional advisers (collectively, "Related Persons") of the parties hereto (as applicable) who are responsible for analyzing, negotiating and approving the transaction and who are made aware of the confidential nature of this Summary of Terms. Notwithstanding the foregoing, the Lessee may disclose this Summary of Terms (i) as may be required to obtain the bankruptcy court's approval of this Summary of Terms or the Documentation; or (ii) to the U.S. Trustee, the Unsecured Creditors Committee or the entities providing the debtor-in-possession financing to the Debtors and any of their respective Related Persons.


Signature Pages

AEROVÍAS DE MÉXICO, S.A. DE C.V.

By: 

Printed Name: Diego Hernanz Martín del Campo

Title: Attorney in Fact

By: 

Printed Name: Daniel Martínez Martínez

Title: Attorney in Fact



MSN 39439 TRUST, as lessor

By: Walter Valarezo

Printed Name: Walter Valarezo

Title: President

APPENDIX 1

CERTAIN TERMS

Lessor: MSN 39439 Trust

Aircraft: One (1) Boeing B737-800 aircraft bearing manufacturer's serial number 39439 and Mexican registration mark XA-AMG, together with two (2) CFM-56-7B26E engines respectively bearing manufacturer's serial numbers 658745 and 658758.

PBH Hourly Rates Airframe: \$[REDACTED]
Engine 1: \$[REDACTED]
Engine 2: \$[REDACTED]

Fixed Rent: \$[REDACTED]

Expiry Date: [REDACTED]

APPENDIX 2

Aeromexico 737-800 Monthly Average Utilization - 2019

[illegible]

APPENDIX 3

REDELIVERY CONDITIONS

Lessee shall redeliver the Aircraft to Lessor for technical acceptance (“Technical Acceptance”) by delivering the Aircraft to a maintenance or storage facility in Mexico as selected by Lessee (the date of such delivery, the “Redelivery Date”), or any other location as agreed between Lessee and Lessor, in compliance with the conditions specified below, and Lessor shall execute and deliver to Lessee a certificate of Technical Acceptance confirming delivery of the Aircraft to Lessor. For the avoidance of doubt, there shall be no requirements for Technical Acceptance other than those specified in this Appendix.

During the period commencing [REDACTED] months and ending [REDACTED] months prior to the Expiry Date, Lessee and Lessor will agree to conduct a pre-redelivery meeting for the purpose of reviewing and agreeing upon the workscope for the Redelivery Check and, if applicable, any Engine, APU, or Landing Gear shop visit. Lessor and Lessee shall each commit sufficient resources to the Redelivery process to achieve Redelivery by the Expiry Date.

With respect to any discrepancies in the Redelivery Conditions described herein (other than discrepancies with respect to the [REDACTED] Minimum specified in Section [REDACTED], the [REDACTED] Minimum specified in Section [REDACTED], the [REDACTED] Minimum specified in Section [REDACTED] and the [REDACTED] Minimum specified in Section [REDACTED], which such discrepancies shall be corrected by [REDACTED] at its expense). Lessee and Lessor agree, subject to the provisions outlined in Section [REDACTED], that Lessee will have the option of [REDACTED] or [REDACTED] to be mutually agreed upon by Lessee and Lessor.

A. Registration & Certification, Maintenance Program & Airworthiness Directives

The Aircraft shall be registered with the AFAC of Mexico (the “Aviation Authority”) in the name of Lessor unless such registration cannot be maintained because of the failure of the Lessor to comply with the citizenship or other eligibility requirements for registration of the Aircraft. Lessee shall use reasonable efforts to assist the Lessor in de-registering the Aircraft and obtaining a Certificate of De-registration for the Aircraft; however, the obligation to obtain de-registration shall remain with Lessor. Upon redelivery, the Aircraft shall be FAA compliant according to Part 129 and will be eligible for an FAA certificate of airworthiness in accordance with Part 121 to the extent it complied at delivery. Lessee will provide an Export Certificate of Airworthiness following Technical Acceptance of the Aircraft.

The Aircraft shall be in compliance with the Lessee’s maintenance program (the “*Maintenance Program*”), which shall be based on the manufacturer’s Maintenance Planning Document and approved by the Aviation Authority.

Lessee will comply with any ADs that require compliance within [REDACTED] days following the [REDACTED] day of the Lease Term, with the cost of performing such AD requiring compliance after the [REDACTED] day of the Lease Term to be for the account of [REDACTED] upon execution of the Technical Acceptance certificate. However, compliance with such ADs due after the [REDACTED] day of the Lease Term shall not be required (i) should the Lessee be unable to acquire, after using its best efforts to do so, the items, material, parts or components necessary to accomplish such compliance before the Expiry Date; (ii) should such compliance be waived in writing by the Lessor; or (iii) where such AD has not been issued by the date that is [REDACTED] months prior to the Expiry Date.

B. General Condition

The Aircraft shall be (a) in good operating condition, normal wear and tear excepted, (b) clean by international commercial airline standards, (c) in a passenger configuration, (d) with equipment, components and systems fully functional and operating within limits under the Maintenance Program and the Aircraft Maintenance Manual; and (e) equipped with two Engines (which may be Substitute Engines) duly installed thereon. The Aircraft shall be in compliance with Lessee’s corrosion prevention and control program.

C. Redelivery Check

The Airframe shall have completed, within [REDACTED] days prior to the Redelivery Date, the Redelivery Check (as defined below), and following such Redelivery Check the Aircraft shall not be used in commercial passenger operations.

“**Redelivery Check**” means Lessee’s next due block “C” check in accordance with the Maintenance Program during the Lease Term and the revision of the MPD in effect [REDACTED] months prior to the Expiry Date, and includes all inspections, checks and work up to and including those required every [REDACTED] Flight Hours, [REDACTED] Flight Cycles and [REDACTED] calendar months of operation.

D. Landing Gear Minimum

Each of the nose and main landing gear assemblies (the “*Landing Gear*”) shall have no fewer than [REDACTED] months remaining (the “*Landing Gear Hard Time Minimum*”) until the next scheduled performance restoration visit under the Maintenance Program (any such visit, a “*Landing Gear Performance Restoration Visit*”) as measured by hour, cycle or calendar day, whichever is applicable and most limiting. Each tire shall have at least [REDACTED]% tread remaining. The Landing Gear brakes will each have an average of at least [REDACTED]% life remaining before their removal with no individual brake having less than [REDACTED] per cent ([REDACTED]%) service life remaining.

E. Engine LLP Minimum

No Engine LLP shall have fewer than [REDACTED] cycles remaining to reaching the then manufacturer’s published Chapter 5 life limit (the “*Engine LLP Hard Life Cycle Minimum*”). Notwithstanding the foregoing, Lessee may request of Lessor, and Lessor shall consider in good faith, the allowance of an extended hard life cycle limit that may be achieved via the incorporation of a service bulletin or other action that may only be incorporated on-wing post-redelivery.

F. Engine Performance Restoration Hard Time Minimum

Each Engine shall have no fewer than [REDACTED] flight hours remaining (the “*Engine Performance Restoration Hard Time Minimum*”) until the next sequential performance restoration visit of such Engine under the Maintenance Program and based on manufacturer recommendations (any such visit, an “*Engine Performance Restoration Visit*”), as measured by [REDACTED] to such next sequential Engine Performance Restoration Visit (“*Expected Time on Wing*”) for engines in [REDACTED] of the same make and model. All of the parts in the gas path of each Engine shall be parts that have been produced by or on behalf of an OEM, or that have been approved for use by the OEM and manufactured by another party (“*OEM Parts*”). Repaired parts in the gas path of the engine shall be OEM approved repairs, except for any DER repair that was previously approved by Lessor.

G. Components

Each time controlled component (as listed in the MPD but excluding any Engine LLP, the APU and Landing Gear) will have no less than [REDACTED] months (with respect to MPD specified calendar limit) or the equivalent flight hours or cycles, whichever is applicable, based on Lessee’s average utilization, remaining to next scheduled removal, shop inspection or overhaul. Any such time controlled component having an MPD interval of less than [REDACTED] months or the equivalent flight hours or cycles, whichever is applicable, based on Lessee’s average utilization, shall have a full replacement interval remaining until its next shop inspection, removal or overhaul.

H. Auxiliary Power Unit Minimum

The auxiliary power unit (“*APU*”) shall be in serviceable condition, as evidenced by an APU condition test performed in accordance with the Manufacturer’s AMM.

I. [REDACTED]

J. Paint and Special Markings

The Aircraft paint will be in the condition as removed from airline service, with Lessee's identification marks removed or painted over. Lessee shall at Redelivery pay Lessor an amount equal to Lessee's average cost to complete the painting of its livery on aircraft of the same type as the Aircraft, based on the average of [REDACTED] recent invoices or quotations for the same.

K. Records

No less than [REDACTED] months prior to the targeted Redelivery Check induction date, Lessee will provide for the review of Lessor all Aircraft Documents and, provided that all such Aircraft Documents are made available to Lessor at the commencement of the [REDACTED] month period, Lessor will provide to Lessee its response and findings on such Aircraft Documents at least [REDACTED] days prior to the targeted Redelivery Check date. All Aircraft Documents shall be delivered in English to Lessor [REDACTED] in Lessee's format and at Lessee's expense on the Redelivery Date, except to the extent any Aircraft Documents require updating following compliance with these Redelivery Conditions, in which case such Aircraft Documents will be delivered within fifteen (15) days after the Redelivery Date.

L. Borescope Inspections; Power Assurance Runs

A hot and cold section video borescope inspection of each Engine and its Modules in accordance with the Manufacturer's Aircraft Maintenance Manual ("AMM") and a power assurance run for each Engine in accordance with the AMM shall be performed at or before the Redelivery Date by Lessee or its representative at Lessee's expense and in the presence of a representative of Lessor (should Lessor provide advance notice that it would like to attend such inspections). Lessee will record the Engine power assurance test conditions and results on the redelivery acceptance certificate. Lessee will correct any discrepancies in accordance with the guidelines set out by OEM manufacturer which may be discovered during such inspection. In addition, Lessee will provide Lessor the latest trend data for each Engine, based on the last [REDACTED] months of operation, or since last Engine Performance Restoration Visit if such event occurred within the [REDACTED] months prior to the Redelivery Date. Such trend data shall not show a level of accelerated deterioration in the on-wing performance of the Engine that would indicate that the Engine will fail to meet the Engine Performance Restoration Minimum. If the parties cannot reasonably agree on whether such accelerated deterioration will cause the Engine to fail to meet the Engine Performance Restoration Minimum, Lessor and Lessee will request the Engine Manufacturer to provide an opinion on the expected time remaining on wing based on Lessee's operational information and the trend monitoring data, which opinion shall be binding on Lessee and Lessor.

M. Demonstration Flight

At Lessor's request, Lessee will perform, at its expense, and in accordance with a mutually agreed acceptance flight procedure, a demonstration flight lasting no more than [REDACTED] hours for the purpose of demonstrating the satisfactory operation of the Aircraft with no more than two representatives of Lessor, or of the next operator, on board during such flight, subject to consent of the Aviation Authority. If the demonstration flight reveals any discrepancies from the Redelivery Conditions, Lessee will correct them or pay compensation to Lessor in accordance with the third paragraph of this Appendix 3.

N. Liens

The Aircraft shall be free and clear of liens (other than any Lessor's Liens).

O. Fuel

Lessee shall have no obligation to provide any fuel or oil with respect to the Aircraft at redelivery, provided that any fuel or oil remaining on board the Aircraft on the Redelivery Date shall be the property of Lessor without charge.

P. Inspection

The Aircraft inspection shall occur during the Redelivery Check. During the Redelivery Check, Lessor and/or its representatives will have an opportunity to observe functional and operational system checks, in accordance with Lessee's procedures, as they are performed, and to perform a visual inspection of the Aircraft only in those areas that are visible during the Redelivery Check and concurrently as the inspection tasks are being performed by Lessee.

Exhibit B-1

Summary of Material Terms of 737MAX Letter of Intent

Material Terms: Boeing 737-8 Lease Proposal / Summary of Terms dated May 10, 2021	
Leased Aircraft	Twelve Boeing 737-8 aircraft
MSNs	60455, 60444, 61855, 60227, 43976, 62426, 62427, 43798, 43310, 60434, 60714, and 61858
Term	For each aircraft: [REDACTED] months from the delivery date
Monthly Rent	For each aircraft: \$[REDACTED] per month for the first [REDACTED] months of the applicable lease, and thereafter, \$[REDACTED]; [REDACTED].

Exhibit B-2

Summary of Material Terms of 737-800 Letter of Intent

Material Terms: Indicative Summary of Principal Terms and Conditions dated December 21, 2020	
Leased Aircraft	One Boeing 737-800 aircraft
MSN	39439
Term	[REDACTED]
Power-by-the-Hour Period	Until the earlier of (i) [REDACTED] (the “ <i>Cut-Off Date</i> ”) or (ii) the date that the fleetwide average utilization for the same aircraft type as the Aircraft reaches a minimum of [REDACTED] of the monthly utilization for each of the [REDACTED] consecutive months corresponding to the same months from January 2019 through December 2019.
Power-by-the-Hour Pricing	<p>PBH Rent is based on the individual utilization of the airframe and each engine comprising the Aircraft and is calculated in accordance with the following formula:</p> $W = (A(\text{airframe}) \times B(\text{airframe})) + (A(\text{engine 1}) \times B(\text{engine 1})) + (A(\text{engine 2}) \times B(\text{engine 2}))$ <p>where:</p> <p>W = PBH Rent</p> <p>A(airframe), A(engine 1) and A(engine 2): The utilization of the airframe and each of the engines in a given calendar month, expressed in flight hours</p> <p>B(airframe): [REDACTED]</p> <p>B(engine 1): [REDACTED]</p> <p>B(engine 2): [REDACTED]</p> <p>which rate is based on a monthly utilization of [REDACTED] flight hours, representing a full calendar month of utilization</p>
Monthly Rent	Following the PBH Period, [REDACTED]