Hearing Date and Time: September 17, 2021 at 10:00 a.m. (Prevailing Eastern Time)
Objection Date and Time: September 14, 2021 at 12:00 p.m. (Prevailing Eastern Time)

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	**Chapter 11**
GRUPO AEROMÉXICO, S.A.B. de C.V., *et al.*,	**Case No. 20-11563 (SCC)**
Debtors.[1]	**(Jointly Administered)**

NOTICE OF HEARING ON DEBTORS' MOTION FOR ENTRY OF AN ORDER AUTHORIZING CERTAIN OF THE DEBTORS TO IMPLEMENT CERTAIN TRANSACTIONS WITH EX-IM BANK, INCLUDING (I) ENTRY INTO OMNIBUS AMENDMENT AGREEMENTS, (II) ASSUMPTION (ON AN AMENDED BASIS) OF CERTAIN AIRCRAFT LEASES, AND (III) CLAIMS SETTLEMENT

PLEASE TAKE NOTICE that, on September 3, 2021, the above-captioned debtors and debtors in possession (collectively, the "**Debtors**") filed the *Debtors' Motion for Entry of an Order*

[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.

Authorizing Certain of the Debtors To Implement Certain Transactions with Ex-Im Bank, Including (I) Entry Into Omnibus Amendment Agreements, (II) Assumption (on an Amended Basis) of Certain Aircraft Leases, and (III) Claims Settlement (the "**Motion**"). A hearing on the Motion is scheduled to be held on **September 17, 2021 at 10:00 a.m. (prevailing Eastern Time)** (the "**Hearing**") before the Honorable Judge Shelley C. Chapman, United States Bankruptcy Judge, in the United States Bankruptcy Court for the Southern District of New York (the "**Court**"), or at such other time as the 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 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 from time to time by an announcement of the adjourned date or dates at the Hearing or a later hearing or by filing a notice with the Court. The Debtors will file an agenda before the Hearing, which may modify or supplement the motion(s) to be heard at the Hearing.

[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.

PLEASE TAKE FURTHER NOTICE that any responses or objections to the Motion shall be in writing, shall comply with the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules for the Southern District of New York, shall be filed with the Court by (a) attorneys practicing in the 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) all other parties in interest, in accordance with the customary practices of the 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 **September 14, 2021 at 12:00 p.m. (prevailing Eastern Time)** (the "**Objection Deadline**").

PLEASE TAKE FURTHER NOTICE that all 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 Court an order substantially in the form of the proposed order annexed to the Motion, under certification of counsel or certification of no objection, which order may be entered by the Court without further notice or opportunity to be heard.

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Dated: September 3, 2021
New York, New York

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	**Chapter 11**
GRUPO AEROMÉXICO, S.A.B. de C.V., *et al.*,	**Case No. 20-11563 (SCC)**
Debtors.[1]	**(Jointly Administered)**

DEBTORS' MOTION FOR ENTRY OF AN ORDER AUTHORIZING CERTAIN OF THE DEBTORS TO IMPLEMENT CERTAIN TRANSACTIONS WITH EX-IM BANK, INCLUDING (I) ENTRY INTO OMNIBUS AMENDMENT AGREEMENTS, (II) ASSUMPTION (ON AN AMENDED BASIS) OF CERTAIN AIRCRAFT LEASES, AND (III) CLAIMS SETTLEMENT

Grupo Aeroméxico, S.A.B. de C.V. ("**Grupo Aeroméxico**") and certain of its affiliates (collectively, the "**Debtors**"), each of which is a debtor and debtor in possession in the above-

[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.

captioned chapter 11 cases (the "**Chapter 11 Cases**"), hereby file this motion (this "**Motion**") seeking the entry of an order:

(a) authorizing, but not directing,

(i) Debtors Aerovías de México, S.A. de C.V. ("**Aerovías**") and Grupo Aeroméxico to enter into an omnibus amendment agreement (the "**Omnibus Amendment Agreement 1**") with Mexican Aircraft Finance III, Ltd. ("**MAF III Lessor Parent**"), Mexican Aircraft Finance III, LLC ("**MAF III Lessor**"), Wilmington Trust Company, as security trustee (the "**MAF III Security Trustee**"), and Export-Import Bank of the United States, an agency of the Government of the United States of America, ("**Ex-Im**" and, together with the MAF III Lessor Parent, the MAF III Lessor, and the MAF III Security Trustee, the "**MAF III Counterparties**") in connection with three Boeing 737-800 aircraft with manufacturer's serial numbers 36700, 36701, and 36702,

(ii) Debtors Aerovías and Grupo Aeroméxico to enter into an omnibus amendment agreement (the "**Omnibus Amendment Agreement 2**") with Mexican Aircraft Finance IV, Ltd. ("**MAF IV Lessor Parent**"), Mexican Aircraft Finance IV, LLC ("**MAF IV Lessor**"), Wilmington Trust Company, as security trustee (the "**MAF IV Security Trustee**"), and Ex-Im (Ex-Im, together with the MAF IV Lessor Parent, the MAF IV Lessor, and the MAF IV Security Trustee, the "**MAF IV Counterparties**") in connection with three Boeing 737-800 aircraft with manufacturer's serial numbers 36703, 36704, and 36708,

(iii) Debtors Aerovías, Grupo Aeroméxico, and Aerolitoral, S.A. de C.V. ("**Aerolitoral**" and, together with Aerovías and Grupo Aeroméxico, "**Aeroméxico**") to enter into an omnibus amendment agreement (the "**Omnibus Amendment Agreement 3**" and, together with the Omnibus Amendment Agreement 1 and the Omnibus Amendment Agreement 2, the "**Aircraft Omnibus Amendment Agreements**") with Mexican Aircraft Finance V, Ltd. ("**MAF V Lessor Parent**"), Mexican Aircraft Finance V, LLC ("**MAF V Lessor**" and, together with MAF III Lessor and MAF IV Lessor, the "**Lessors**" and, together with MAF III Lessor Parent, MAF IV Lessor Parent, and MAF V Lessor Parent, the "**Lessor Parties**"), Wilmington Trust Company, as security trustee (the "**MAF V Security Trustee**" and, together with the MAF III Security Trustee and the MAF IV Security Trustee, the "**Security Trustees**"), and Ex-Im (Ex-Im, together with the MAF V Lessor Parent, the MAF V Lessor, and the MAF V Security Trustee, the "**MAF V Counterparties**") in connection with two Boeing 787-8 aircraft with manufacturer's serial numbers 36843 and 36844,

(iv) Debtors Aerovías and Grupo Aeroméxico to enter into an omnibus amendment agreement (the "**Omnibus Amendment Agreement 4**") with Ex-Im (the

"**CGF No. 1 Counterparty**") in connection with that certain Credit Agreement, dated June 28, 2017, among Aerovías, as borrower, Grupo Aeroméxico, as guarantor, and HSBC Bank USA, N.A., as lender (the "**CGF No. 1 Credit Agreement**"),

(v) Debtors Aerovías and Grupo Aeroméxico to enter into an omnibus amendment agreement (the "**Omnibus Amendment Agreement 5**") with Ex-Im (the "**CGF No. 2 Counterparty**") in connection with that certain Credit Agreement, dated June 26, 2018, among Aerovías, as borrower, Grupo Aeroméxico, as guarantor, and HSBC Bank USA, N.A., as lender (the "**CGF No. 2 Credit Agreement**"),

(vi) Debtors Aerovías and Grupo Aeroméxico to enter into an omnibus amendment agreement (the "**Omnibus Amendment Agreement 6**") with Ex-Im (the "**CGF No. 3 Counterparty**") in connection with that certain Credit Agreement, dated December 23, 2019, among Aerovías, as borrower, Grupo Aeroméxico, as guarantor, HSBC México, S.A., Institución de Banca Múltiple, Grupo Financiero HSBC, as lender, and HSBC Securities (USA) Inc., as MLA (the "**CGF No. 3 Credit Agreement**"), and

(vii) Debtor Aerovías and Grupo Aeroméxico to enter into an omnibus amendment agreement (the **"Omnibus Amendment Agreement 7**" and, together with the Omnibus Amendment Agreements 4, the Omnibus Amendment Agreement 5, and the Omnibus Amendment Agreement 6, the **"CGF Omnibus Amendment Agreements**" and, together with the Aircraft Omnibus Amendment Agreements, the "**Omnibus Amendment Agreements**") with Ex-Im (the "**CGF No. 4 Counterparty**" and, together with the CGF No. 1 Counterparty, the CGF No. 2 Counterparty, and the CGF NO. 3 Counterparty, the "**CGF Counterparties**") in connection with that certain Facility Agreement dated June 26, 2019 among Aerovías, as borrower, Banco Nacional de México, S.A., Integrante del Grupo Financiero Banamex, as lender, and Citibank, N.A., as facility agent (the "**CGF No. 4 Credit Agreement**" and, together with the CGF No. 1 Credit Agreement, CGF No. 2 Credit Agreement, and CGF No. 3 Credit Agreement, the **"CGF Credit Agreements**");

(b) authorizing, but not directing, Aerovías, Grupo Aeroméxico, and Aerolitoral, as applicable, to assume the Aircraft Leases (as defined below) on an amended basis (collectively, the "**Amended Aircraft Leases**") in accordance with the terms and conditions set forth in the applicable Aircraft Omnibus Amendment Agreement; and

(c) approving the Claims Settlement (as defined herein).

This Motion is supported by the *Declaration of Jeffrey S. Craine in Support of (A) Debtors' Motion for Entry of an Order Authorizing Certain of the Debtors To Implement Certain Transactions with*

Ex-Im Bank, Including (I) Entry Into Omnibus Amendment Agreements, (II) Assumption (on an Amended Basis) of Certain Aircraft Leases, and (III) Claims Settlement and (B) Related Pleadings (the "**Craine Declaration**") filed contemporaneously herewith and incorporated herein by reference. In further support of this Motion, the Debtors respectfully state as follows:

Jurisdiction and Venue

1. The United States Bankruptcy Court for the Southern District of New York (the "**Court**") has jurisdiction over this Motion 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). In addition, the Debtors confirm their consent, pursuant to Rule 7008 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), to the 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 in connection herewith consistent with Article III of the United States Constitution.

2. Venue of the Chapter 11 Cases and related proceedings is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

Relief Requested

3. By this Motion, and pursuant to sections 363, 364, 365, and 105(a) of chapter 11 of title 11 of the United States Code (the "**Bankruptcy Code**") and Bankruptcy Rules 6004, 6006, 9013, and 9019, the Debtors seek entry of an order, substantially in the form attached hereto as **Exhibit A** (the "**Proposed Order**" and, if entered, the "**Order**"), (a) authorizing, but not directing, (i) Aerovías and Grupo Aeroméxico to enter into the Omnibus Amendment Agreement 1 with the MAF III Counterparties, (ii) Aerovías and Grupo Aeroméxico to enter into the Omnibus Amendment Agreement 2 with the MAF IV Counterparties, (iii) Aerovías, Grupo Aeroméxico, and Aerolitoral to enter into the Omnibus Amendment Agreement 3 with the MAF V

Counterparties, (iv) Aerovías and Grupo Aeroméxico to enter into the Omnibus Amendment Agreement 4 with the CGF No. 1 Counterparty, (v) Aerovías and Grupo Aeroméxico to enter into the Omnibus Amendment Agreement 5 with the CGF No. 2 Counterparty, (vi) Aerovías and Grupo Aeroméxico to enter into the Omnibus Amendment Agreement 6 with the CGF No. 3 Counterparty, and (vii) Aerovías and Grupo Aeroméxico to enter into the Omnibus Amendment Agreement 7 with the CGF No. 4 Counterparty, each substantially in the form annexed as Exhibits 1–7, respectively, to the Proposed Order, (b) authorizing, but not directing, Aeroméxico to assume the Aircraft Leases (as defined below) on an amended basis in accordance with the terms and conditions set forth in the Aircraft Omnibus Amendment Agreements, and (c) approving the Claims Settlement, each as further detailed herein and in the Proposed Order.

Background

A. General Background

4. On June 30, 2020 (the "**Petition Date**"), each of the Debtors filed in this Court voluntary petitions for relief under chapter 11 of the Bankruptcy Code. The Debtors have continued to operate and manage their businesses and have continued to possess their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

5. The Chapter 11 Cases are being jointly administered for procedural purposes only pursuant to Bankruptcy Rule 1015(b) and the *Order Directing Joint Administration of Chapter 11 Cases* [ECF No. 30] entered by the Court on July 1, 2020 in Grupo Aeroméxico's Chapter 11 Case.[2]

[2] On July 2, 2020, the Court entered similar orders for the other Debtors on their respective case dockets. *See In re Aerovías de México, S.A. de C.V.*, No. 20-11561 (SCC) [ECF No. 4]; *In re Aerolitoral, S.A. de C.V.*, No. 20-11565 (SCC) [ECF No. 4]; *In re Aerovías Empresa de Cargo, S.A. de C.V.*, No. 20-11566 (SCC) [ECF No. 4].

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

7. Detailed information regarding the Debtors' businesses and affairs, capital structure, and the circumstances leading to the commencement of the Chapter 11 Cases can be found in the *Declaration of Ricardo Javier Sánchez Baker in Support of the Debtors' Chapter 11 Petitions and First Day Pleadings* [ECF No. 20], which is incorporated herein by reference.

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, long-term fleet and equipment needs, (b) make corresponding adjustments to the size and composition of their current operating fleet, and (c) obtain the most favorable terms for agreements relating to 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 which the Debtors sought approval of certain stipulations (the "**Equipment Stipulations**") between certain Debtors and certain counterparties concerning leases of Equipment (as defined in the Equipment Stipulation Motion). The Equipment Stipulations enabled the Debtors to continue to utilize the Equipment on their operating routes and to maintain the Equipment when not being operated. Broadly speaking, the Equipment Stipulations provide for payment of (a) rent calculated based on actual usage of the Equipment (called a "power by the hour" or "PBH" arrangement), rather than a fixed monthly amount, or (b) interest only. The Court entered an order approving the Equipment Stipulation

Motion [ECF No. 396] and so-ordered the underlying Equipment Stipulations [ECF Nos. 399–429, 475, 491, 502].

10. On April 22, 2021, the Debtors filed their *Motion for (I) Approval of Compromises with Boeing and Other Counterparties, (II) Authorization To (A) Enter Into Amended Aircraft Purchase Agreement with Boeing and (B) Enter into Agreements with Other Counterparties related to the Boeing Transaction, (III) Approval of the Assumption of Such Amended Agreements, as Applicable, and (IV) Approval To Settle Certain Prepetition Claims of Counterparties* [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* [ECF No. 1113] (the "**Air Lease Motion**"). The Court approved both the Boeing Motion and the Air Lease Motion at a hearing on April 30, 2021,[3] and subsequently entered each of the orders related thereto.[4] Pursuant to such orders, the Debtors (a) added 28 new aircraft to their fleet, (b) assumed agreements relating to 18 existing aircraft, and (c) settled the allowed amounts of unsecured claims of certain counterparties with respect to such equipment.

11. The Court has also entered additional orders authorizing the Debtors to either enter into new aircraft leases and/or assume existing aircraft leases on an amended basis. *See* ECF Nos. 984, 1100, 1544, 1572–73, 1659, 1693.

[3] *See* Apr. 30, 2021 Hr'g Tr. 29:17–23; 37:13–16.

[4] *See* ECF Nos. 1141–42, 1145, 1154, 1156–57, 1160–62.

C. The Aircraft Omnibus Amendment Agreements

12. Collectively, Aeroméxico currently leases six Boeing 737-800 aircraft and two Boeing B787-8 aircraft (collectively, the "**Aircraft**")[5] from the Lessors pursuant to that certain (a) Lease Agreement, dated as of August 9, 2012 (as supplemented, amended, and/or modified from time to time, the "**MAF III Aircraft Lease**"), (b) Lease Agreement, dated as of June 11, 2013 (as supplemented, amended, and/or modified from time to time, the "**MAF IV Aircraft Lease**"), and (c) Lease Agreement, dated as of December 18, 2014 (as supplemented, amended, and/or modified from time to time, the "**MAF V Aircraft Lease**" and, together with the MAF III Aircraft Lease and the MAF IV Aircraft Lease, the "**Aircraft Leases**").

13. The Lessors are also borrowers or issuers, as applicable, under certain loan agreements or indentures in connection with the Aircraft (collectively, the "**Aircraft Financing Documents**") between and among, *inter alia*, the Lessors, the Security Trustees, and Ex-Im (collectively, the "**Aircraft Counterparties**" and, together with the CGF Counterparties, the "**Counterparties**"). The Aircraft are pledged as collateral securing obligations under, among other things, the Aircraft Financing Documents. Aerovías and Grupo Aeroméxico are guarantors under each Aircraft Financing Document with the Lessors, and Aerolitoral is a guarantor only under the Aircraft Financing Document with the MAF V Lessor (collectively, the "**AMX Guarantees**"). In addition, certain of the Lessors' obligations under the Aircraft Financing Documents associated with the Aircraft are supported by guarantees by Ex-Im (the "**Ex-Im Guarantees**").

[5] The Boeing 737-800 aircraft bearing manufacturer's serial numbers 36700, 36701, 36702, 36703, 36704, and 36708, and the Boeing B787-8 aircraft bearing manufacturer's serial numbers 36843 and 36844.

14. The Aircraft Counterparties are also parties to certain participation agreements with respect to the leasing and financing transactions of the Aircraft (the "**Participation Agreements**" and, together with the Aircraft Leases, the Aircraft Financing Documents, the AMX Guarantees, the Ex-Im Guarantees, and other related transaction documents associated with the Aircraft, the "**Aircraft Transaction Documents**").

15. The Aircraft Omnibus Amendment Agreements annexed to the Proposed Order as Exhibits 1–3 set forth the commercial terms agreed between the Aircraft Counterparties and Aeroméxico amending the Aircraft Leases, the Participation Agreements, and certain other Aircraft Transaction Documents (the "**Amended Aircraft Transaction Documents**"). Through the Aircraft Omnibus Amendment Agreements, Aeroméxico and the Aircraft Counterparties will mutually amend their relationship to better align with Debtors' long-term business plan. By agreeing to such terms, the Debtors have achieved certainty in maintaining the Aircraft in their fleet on terms that fit the Debtors' short- and long-term needs and with improved terms, conditions, and near-term cash flow projections as compared to the existing Aircraft Transaction Documents. Specifically, the terms of the Aircraft Omnibus Amendment Agreements include, among other things, amendments to the repayment schedules and extensions of the maturity dates of the Aircraft Leases and the corresponding loans.

16. Furthermore, the Aircraft Counterparties and the Debtors agree that, subject to the Debtors' compliance with the terms of Aircraft Leases (as amended in accordance with the terms and conditions set forth in the Aircraft Omnibus Amendment Agreements), the Aircraft Omnibus Amendment Agreements, and the applicable Equipment Stipulations, the assumption of the Aircraft Leases, each on an amended basis in accordance with the terms and conditions set forth in the Aircraft Omnibus Amendment Agreements (and to be set forth in the Amended Aircraft

Leases), will not give rise to an obligation to make any cash payments at the time of assumption to cure any defaults under the Aircraft Leases under section 365(b)(1)(A) of the Bankruptcy Code.

D. CGF Omnibus Amendment Agreements

17. Aerovías is the borrower under each of the CGF Credit Agreements and, Grupo Aeroméxico is a guarantor under each of the CGF Credit Agreements (the "**AMX CGF Guarantees**"). Each lender under a CGF Credit Agreement previously entered into a Master Guarantee Agreement with Ex-Im (the "**MGAs**"), pursuant to which each lender assigned to Ex-Im all of such lender's rights, title, and interest in and to the CGF Credit Agreements and the AMX CGF Guarantees (the "**Assignments**" and, together with the MGAs, the CGF Credit Agreements, the AMX CGF Guarantees, any and all other documents relating to the CGF Credit Agreements, and any amendments, supplements, side letters, novations, or assignments pertaining to any of the forgoing, the "**CGF Transaction Documents**" and, together with the Aircraft Transaction Documents, the "**Transaction Documents**"). Similar to the Aircraft Financing Documents, the Aircraft likewise serves as collateral securing obligations under the CGF Credit Agreements.

18. The CGF Omnibus Amendment Agreements annexed to the Proposed Order as Exhibits 4–7 set forth the commercial terms agreed between the CGF Counterparties, Aerovías, and Grupo Aeroméxico amending certain of the CGF Transaction Documents (the "**Amended CGF Transaction Documents**" and, together with the Amended Aircraft Transaction Documents, the "**Amended Transaction Documents**"). Through the CGF Omnibus Amendment Agreements, Aerovías, Grupo Aeroméxico, and the CGF Counterparties will mutually amend their relationship to better align with Debtors' near-term and long-term business plans. Specifically, the terms of the CGF Omnibus Amendment Agreements include, among other things, amendments to the repayment schedules and extensions of the maturity dates of the CGF Credit Agreements.

E. Claims Settlement

19. In conjunction with the transactions contemplated by the Omnibus Amendment Agreements, the Debtors seek to resolve all claims against the Debtors belonging to Ex-Im and/or the Security Trustees in the Chapter 11 Cases as follows (sub-clauses (a) and (b) below, the "**Claims Settlement**"):

a. This Claims Settlement resolves certain claims held by Ex-Im (collectively, the "**Vendor Claims**") resulting from Ex-Im paying to certain of the Debtors' vendors (collectively, the "**Insureds**") on account of insurance claims submitted by such Insureds under their respective insurance policies with Ex-Im.[6] Pursuant to the Claims Settlement, Ex-Im Bank will be allowed prepetition non-priority general unsecured claims in the aggregate amount of $196,852.26 (collectively, the "**Allowed Claims**") on account of all documented sums that Ex-Im has paid to the Insureds, which will be allocated as follows:

Claim Number	Claimant	Debtor	Original Claim Amount	Allowed Claim Amount
537	Ex-Im	Aerovías	$90,920.80	$88,682.68
538	Ex-Im	Aerovías	$40,030.49	$7,214.78
539	Ex-Im	Aerovías	$21,569.33	$17,185.50
540	Ex-Im	Aerovías	$368,001.07	$0.00
572	Ex-Im	Aerolitoral	$101,684.09	$83,769.33
		Total	$254,204.71	**$196,852.26**

b. In addition, all prepetition claims against the Debtors in the Chapter 11 Cases belonging to Ex-Im and/or the Security Trustees that are not Allowed Claims shall be deemed withdrawn.

[6] By the *Debtors' Seventeenth Omnibus Claims Objection to Proofs of Claim (Misclassified Unliquidated, Wrong Debtor, Incorrectly Classified, No Liability, Satisfied, Amended, Duplicate, Reduced, and/or Foreign Currency Claims)* [ECF No. 1593], the Debtors objected to certain claims filed by the Insureds that have been satisfied by Ex-Im.

20. The amounts of the Claims Settlement shall constitute the only prepetition claims of Ex-Im and/or the Security Trustees against the Debtors in the Chapter 11 Cases. Notably, entry into the Omnibus Amendment Agreements and the Claims Settlement does not result in any additional claim amounts being asserted or allowed against the Debtors or their estates.

21. In determining to enter into the Omnibus Amendment Agreements and, in turn, the Amended Transaction Documents and the Claims Settlement, the Debtors consulted with the respective advisors to Apollo Management Holdings, L.P. (on behalf of one or more affiliates and/or funds or separate accounts managed by it and its affiliates (such lenders collectively, the "**DIP Lenders**")), the Committee, and the Ad Hoc Group.[7]

Basis for Relief

A. The Court Should Authorize the Entry into the Omnibus Amendment Agreements and Assumption of the Aircraft Leases (on an Amended Basis) under Sections 105(a), 363(b), 364, and 365 of the Bankruptcy Code

22. Section 365 of the Bankruptcy Code allows a debtor in possession (with bankruptcy court approval) to maximize the value of its estates by, among other things, assuming executory contracts and unexpired leases. 11 U.S.C. § 365(a); *see also NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 521 (1984); *Orion Pictures Corp. v. Showtime Networks, Inc. (In re Orion Pictures Corp.)*, 4 F.3d 1095, 1098 (2d Cir. 1993). An executory contract is a "contract under which the obligation of both the bankrupt and the other party to the contract are so far unperformed that the failure of either to complete performance would constitute a material breach excusing performance of the other." *Sharon Steel Corp. v. Nat'l Fuel Gas Distribution Corp.*, 872 F.2d 36, 39 (3d Cir.

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

1989) (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).

23. In determining whether to permit a debtor to assume or reject a contract or lease, "the debtor's interests are paramount." *COR Route 5 Co. v. Penn Traffic Co. (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 governed by the business judgment rule, which requires that a 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) (finding that the question of assumption "is one of business judgment"); *In re Penn Traffic*, 524 F.3d at 383 (same); *In re Old Carco LLC*, 406 B.R. 180, 188 (Bankr. S.D.N.Y. 2009) (same); *In re Helm*, 335 B.R. 528, 538 (Bankr. S.D.N.Y. 2006) (same).

24. 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 Nostas Assocs. v. Costich (In re Klein Sleep Prods., Inc.)*, 78 F.3d 18 (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 Old Carco*, 406 B.R. at 188 (quoting *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)); *see also In re MF Global Inc.*, No. 11-2790 (MG), 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."); *In re Chipwich, Inc.*, 54 B.R. 427, 430–31 (Bankr. S.D.N.Y. 1985). The party opposing a debtor's exercise of its business judgment has the burden of rebutting the presumption of validity. *See 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).

25. Upon finding that the debtor has exercised its sound business judgment in determining that the assumption of a contract 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.

26. Moreover, section 105(a) of the Bankruptcy Code confers the Court with broad equitable powers 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).

27. Further, to the extent that entry in the Omnibus Amendment Agreements uses estate property, such use is a justified exercise of the Debtors' business judgment, pursuant to section 363 of the Bankruptcy Code. Section 363(b)(1) of the Bankruptcy Code empowers a 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 motion under section 363(b) of the Bankruptcy Code is "good business reason").

28. 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.'" *In re Integrated Res., Inc.*, 147 B.R. at 656 (citations omitted). In fact, "[o]nce a debtor has articulated a valid business justification under section 363, a presumption arises that the debtor's decision was made on an informed basis, in good faith, and in the honest belief that the action was in the best interest of the Debtors," *see In re Residential Cap., LLC*, No. 12-12020, 2013 WL 3286198, at *18 (Bankr. S.D.N.Y. June 27, 2013) (citations omitted), and "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).

29. Lastly, to the extent that entry in the Omnibus Amendment Agreements implicates section 364 of the Bankruptcy Code, the Debtors' have established that entry into the Omnibus Amendment Agreements is in the best interests of the Debtors' estates, their creditors, and all other partiers in interest, which is sufficient to satisfy the standard for relief under section 364 of the Bankruptcy Code. Provided that an agreement to obtain post-petition credit is consistent with the provisions of, and policies underlying, the Bankruptcy Code, courts grant a debtor considerable deference in exercising its sound business judgment in obtaining such credit. *See, e.g., In re Latam Airlines Grp. S.A.*, 620 B.R. 722, 768 (Bankr. S.D.N.Y. 2020) ("Generally, in evaluating the merits of proposed post-petition financing, courts will defer to a debtor's business judgment provided that

the financing does not unduly benefit a party in interest at the expense of the estate.") (citations omitted); *In re Barbara K. Enters., Inc.*, No. 08-11474 (MG), 2008 WL 2439649, at *14 (Bankr. S.D.N.Y. June 16, 2008) ("The Court is aware that its normal function in reviewing requests for post-petition financing is to defer to a debtor's own business judgment so long as a request for financing does not 'leverage the bankruptcy process' and unfairly cede control of the reorganization to one party in interest.") (citing *In re Ames Dep't Stores, Inc.*, 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990)).

30. The Debtors respectfully submit that the relief requested herein is fair, equitable, reasonable, and in the best interests of the Debtors' estates and is, thus, justified under sections 105(a), 363(b), 364, and 365(a) of the Bankruptcy Code. As described above and in the Craine Declaration, the Debtors are seeking to reset their fleet and attendant costs to a market level. As part of this process, the Debtors are evaluating their fleet of aircraft and equipment, reviewing the relevant underlying leases and agreements, and, to the extent prudent, negotiating amendments to such leases and agreements for aircraft and equipment that the Debtors desire to maintain. In doing so, the Debtors compared the Aircraft Transaction Documents (including the Aircraft Leases) and the Aircraft to available alternatives and ultimately negotiated (at arm's length, in good faith, and in consultation with their key stakeholders) new economically favorable terms, as set forth in the Omnibus Amendment Agreements that are in line with the Debtors' long-term business plan. In addition, the Omnibus Amendment Agreements, and the amendments to the Transaction Documents contemplated therein, will (a) create operational flexibility for the Debtors, as they contemplate, among other things, a deferral of fixed rental payments that affords the Debtors an improved cash flow profile during the remainder of the amended leasing terms for each Aircraft Lease, (b) allow the Debtors to retain and operate eight existing aircraft in their fleet, and

(c) position the Debtors to potentially reject other costly aircraft or equipment that are not as attractive for the long term fleet. Lastly, entry into the Omnibus Amendment Agreements further benefits the Debtors, their estates, and the Debtors' economic stakeholders, as it will preserve the Debtors' equity value in the Aircraft by keeping intact Aeroméxico's rights under the Aircraft Leases to acquire the remaining ownership interests in the Aircraft from the non-Debtor Lessors – each a limited purpose trust of which Aeroméxico is the sole beneficiary.

31. In light of the foregoing, the Debtors respectfully submit that the approval of the Omnibus Amendment Agreements and assumption of the Aircraft Leases on an amended basis, in accordance with the terms and conditions set forth in the Omnibus Amendment Agreements, (a) would be the result of the Debtors exercising their sound business judgment in accordance with their fiduciary duties, (b) would be in the best interests of their estates and economic stakeholders, (c) would further serve to maximize value for the benefit of all creditors, and (d) represent the best available transactions under the circumstances of the Chapter 11 Cases. Accordingly, the Debtors respectfully request that the Court authorize, but not direct, Aeroméxico to enter into the Omnibus Amendment Agreements, to assume the Aircraft Leases on an amended basis in accordance with the terms and conditions set forth in the Aircraft Omnibus Amendment Agreements, and to perform all of the obligations under the Omnibus Amendment Agreements.

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

32. By this Motion, the Debtors also seek approval of the Claims Settlement between Ex-Im, the Security Trustees, and the Debtors, which includes (a) the allowance of the Allowed Claims in the amounts set forth herein and (b) the expungement of all other claims belonging to Ex-Im and/or the Security Trustees against the Debtors in the Chapter 11 Cases.

33. 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.*, No. 16-10429 (SHL), 2016 WL 2616717, 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). 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 Air Line Pilots Ass'n, Int'l v. Am. Nat'l Bank & Trust Co. of Chi. (In re Ionosphere Clubs, Inc.)*, 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 Nellis*, 165 B.R. at 122; *In re Purofied Down Prods. Corp.*, 150 B.R. 519, 522 (S.D.N.Y. 1993).

34. Furthermore, when assessing whether or not to approve a settlement, "the court need not conduct a 'mini-trial' to determine the merits of the underlying litigation" nor decide the issues of law or fact raised by the settlement. *See In re Purofied Down Prods.*, 150 B.R. at 522. Instead, a court should "canvass the issues and see whether the settlement fall[s] below the lowest point in the range of reasonableness." *Cosoff v. Rodman (In re W.T. Grant Co.)*, 699 F.2d 599, 608 (2d Cir. 1983) (alteration in original) (citations omitted). In this regard, courts have found that "[t]he '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.

35. The Debtors respectfully submit that the Claims Settlement satisfies the range of reasonableness test described above. Rather than engage in costly and value-destructive litigation over Aeroméxico's obligations under the Transaction Documents and in connection with the Vendor Claims, the amounts of Ex-Im's and/or the Security Trustees' claims, and any amounts mitigating the quantum of those claims, the parties negotiated consensual resolutions settling on $196,852.26 with respect to the prepetition claims held by Ex-Im and/or the Security Trustees as the agreed aggregate amount of the Claims Settlement. Any efforts by the Debtors, through litigation or otherwise, to resolve such disputes would be time consuming and expensive, and would delay any distribution to the creditor beneficiaries of the Debtors' estates. A failure to resolve the matters at issue at this time could negatively impact the Debtors and their estates. The Claims Settlement is the product of arm's length and good faith bargaining among the separate and independent advisors of the parties that will (a) eliminate the need for a costly claims dispute and (b) unlock distributable value for the Debtors' unsecured creditors by liquidating Ex-Im's and the Security Trustees' claims against the Debtors. Lastly, a number of the Debtors' key stakeholders, including the respective advisors to the Committee and the Ad Hoc Group, have no objection to the relief requested herein. Accordingly, the Debtors respectfully submit that the proposed Claims Settlement is fair and equitable, would be in the best interests of the Debtors' estates, creditors, and other stakeholders, and should be approved.

Notice

36. Notice of this Motion will be provided to the following parties: (a) the entities on the Master Service List (as defined in the *Order Establishing Certain Notice, Case Management,*

and Administrative Procedures [ECF No. 79], which is 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 the DIP Lenders; (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 other or further notice is required.

No Prior Request

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

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.

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Dated: September 3, 2021
New York, New York

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