

Hearing Date and Time: October 21, 2021 at 9:00 a.m. (Prevailing Eastern Time)
Objection Date and Time: October 18, 2021 at 12:00 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 Z. 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 ENTRY OF AN
ORDER (I) AUTHORIZING DEBTOR AEROLITORAL, S.A. DE C.V. TO
ASSUME (ON AN AMENDED BASIS) CERTAIN LEASE AGREEMENTS
AND (II) APPROVING THE CLAIMS SETTLEMENT**

PLEASE TAKE NOTICE that, on October 7, 2021, the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) filed the *Debtors’ Motion for Entry of an Order (I) Authorizing Debtor Aerolitoral, S.A. de C.V. To Assume (On an Amended Basis) Certain Lease Agreements and (II) Approving the Claims Settlement* (the “**Motion**”). A hearing on the Motion

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.

is scheduled to be held on **October 21, 2021 at 9:00 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.

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

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>.

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 **October 18, 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 attached 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: October 7, 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 Z. Szanzer
Thomas S. Green

*Counsel to the Debtors
and Debtors in Possession*

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450 Lexington Avenue
New York, New York 10017
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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

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

Debtors.¹

Chapter 11

Case No. 20-11563 (SCC)

(Jointly Administered)

**DEBTORS' MOTION FOR ENTRY OF AN ORDER (I) AUTHORIZING DEBTOR
AEROLITORAL, S.A. DE C.V. TO ASSUME (ON AN AMENDED BASIS) CERTAIN
LEASE AGREEMENTS AND (II) APPROVING THE 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-captioned chapter 11 cases (the “**Chapter 11 Cases**”), hereby file this motion (this “**Motion**”) seeking the entry of an order:

- i. authorizing, but not directing, Debtor Aerolitoral, S.A. de C.V. (the “**Debtor Lessee**”) to assume:
 - a. that certain Aircraft Lease Agreement, dated as of September 30, 2016 (as assigned, assumed, amended, supplemented, or otherwise modified from time to time, the

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

“**19000200 Aircraft Lease**”), on an amended basis substantially in accordance with the terms and conditions set forth in that certain Amended and Restated Aircraft Lease Agreement (the “**Amended 19000200 Aircraft Lease**”) between Commuter Aircraft Leasing 2017 VI Limited (the “**19000200 Lessor**”) and the Debtor Lessee relating to that certain Embraer E190 aircraft bearing manufacturer’s serial number 19000200 (together with the related engines, parts, equipment, and appurtenances, the “**19000200 Aircraft**”);

- b. that certain Aircraft Lease Agreement, dated as of September 30, 2016 (as assigned, assumed, amended, supplemented, or otherwise modified from time to time, the “**19000208 Aircraft Lease**”), on an amended basis substantially in accordance with the terms and conditions set forth in that certain Amended and Restated Aircraft Lease Agreement (the “**Amended 19000208 Aircraft Lease**”) between Commuter Aircraft Leasing 2017 VI Limited (the “**19000208 Lessor**”) and the Debtor Lessee relating to that certain Embraer E190 aircraft bearing manufacturer’s serial number 19000208 (together with the related engines, parts, equipment, and appurtenances, the “**19000208 Aircraft**”); and
 - c. that certain Aircraft Lease Agreement, dated as of September 5, 2013 (as assigned, assumed, amended, supplemented, or otherwise modified from time to time, the “**19000664 Aircraft Lease**” and, together with the 19000200 Aircraft Lease and 19000208 Aircraft Lease, the “**Aircraft Leases**”), on an amended basis substantially in accordance with the terms and conditions set forth in that certain Amended and Restated Aircraft Lease Agreement (the “**Amended 19000664 Aircraft Lease**” and, together with the Amended 19000200 Aircraft Lease and the Amended 19000208 Aircraft Lease, the “**Amended Aircraft Leases**”) between Commuter Aircraft Leasing 2017 V Limited (the “**19000664 Lessor**” and, together with the 19000200 Lessor and the 19000208 Lessor, the “**Lessors**”) and the Debtor Lessee relating to that certain Embraer E190 aircraft bearing manufacturer’s serial number 19000664 (together with the related engines, parts, equipment, and appurtenances, the “**19000664 Aircraft**” and, together with the 19000200 Aircraft and the 19000208 Aircraft, the “**Aircraft**”); and
- ii. approving the Claims Settlement (as defined herein).

The agreed form of the Amended Aircraft Leases is attached to the Proposed Order (as defined herein) as Exhibit 1 and summaries of the material terms of the Amended Aircraft Leases are attached hereto as Exhibit B. This Motion is supported by the *Declaration of Matthew Landess in Support of (A) Debtors’ Motion for Entry of an Order (I) Authorizing Debtor Aerolitoral, S.A. de C.V. To Assume (On an Amended Basis) Certain Lease Agreements and (II) Approving the Claims Settlement and (B) Related Sealing Motion* (the “**Landess 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 365, 364, 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) the Debtor Lessee to assume the Aircraft Leases on an amended basis, substantially in accordance with (i) the terms and conditions set forth in the form of Amended Aircraft Lease attached to the Proposed Order as **Exhibit 1** and (ii) the summaries of material terms of the Amended Aircraft Leases attached hereto as **Exhibit B** and (b) 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

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. *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’ 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.

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

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 between certain Debtors and certain counterparties concerning leases of Equipment (as defined in the Equipment Stipulation Motion). These 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, 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 amount. The Court entered an order approving the Equipment Stipulation Motion [ECF No. 396] and so ordered the underlying 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, 1759.

C. The Amended Aircraft Leases and the Claims Settlement

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

13. As a result of arm’s length and good faith negotiations, the Debtors have reached an agreement with the Lessors to (a) assume the Aircraft Leases on an amended basis substantially in accordance with the terms and conditions set forth in the Amended Aircraft Leases relating to the Aircraft, (b) resolve any and all prepetition claims against the Debtors in the Chapter 11 Cases relating to the Aircraft belonging to the Lessors (collectively with their affiliates, the “**Claimants**”), and (c) reaffirm Debtor Aerovías de México, S.A. de C.V.’s (“**Aerovías**”) guaranty

³ *See* Hr’g Tr. (April 30, 2021), 29:17–23 and 37:13–16.

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

of the Debtor Lessee's obligations under the Amended Aircraft Leases by issuance of a guaranty (the "**Guaranty**"), each as described herein, in the Amended Aircraft Leases, and in the Landess Declaration.

14. The Amended Aircraft Leases set forth the commercial terms between the Lessors and the Debtor Lessee. 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 economics and terms and conditions as compared to the existing Aircraft Leases. The Aircraft will come at attractive economics and ownership costs. Moreover, the Lessors and the Debtor Lessee agree that the assumption of the Aircraft Leases on an amended basis, substantially in accordance with the terms and conditions set forth in the Amended Aircraft Leases, would not give rise to any obligations to make any cash payments at the time of assumption (other than payments for post-petition obligations of the Debtors to the Lessors) to cure any defaults under the Aircraft Leases under section 365(b)(1)(A) of the Bankruptcy Code.

15. Summaries of the principal terms and conditions of the Amended Aircraft Leases are attached hereto as **Exhibit B**.

16. In conjunction with these transactions, the Debtors seek to resolve any and all prepetition claims (including guaranty claims) against the Debtors relating to the Aircraft in the Chapter 11 Cases (collectively, the "**Claims Settlement**" and, together with the Amended Aircraft Leases and the Guaranty, the "**Chorus Transactions**"). To this end, the parties have agreed that the Lessors, on behalf of themselves and all other Claimants, will have allowed non-priority, net general unsecured, prepetition claims against the Debtor Lessee on account of all prepetition claims belonging to the Claimants in respect of the Aircraft against the Debtors in the Chapter 11 Cases as follows:

<u>Aircraft</u>	<u>Surviving Claimant</u>	<u>Allowed Claim Amount</u>
19000200 Aircraft	Commuter Aircraft Leasing 2017 VI Limited	\$2,005,543
19000208 Aircraft	Commuter Aircraft Leasing 2017 VI Limited	\$4,987,928
19000664 Aircraft	Commuter Aircraft Leasing 2017 V Limited	\$7,762,734
Total		\$14,756,205

Such claims will be guaranteed by Aerovías de México, S.A. de C.V. as set forth in the Proposed Order. The amount of the Claims Settlement shall constitute the only prepetition general unsecured claims belonging to the Claimants relating to the Aircraft allowed in the Chapter 11 Cases. The Debtors shall modify or withdraw any objections to proofs of claim which are inconsistent with the terms of the Claims Settlement.

17. In determining to enter into the Chorus Transactions, 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 of Senior Noteholders.⁵

Basis for Relief

A. The Court Should Authorize the Assumption of the Aircraft Leases (on an Amended Basis) Under Sections 365(a), 364, and 105(a) of the Bankruptcy Code

18. 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

⁵ As used in this Motion, “Ad Hoc Group of Senior Noteholders” refers to those parties identified in the *Third Amended Verified Statement of the Ad Hoc Group of Senior Noteholders Pursuant to Bankruptcy Rule 2019* [ECF No. 1731].

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).

19. 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; *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.

20. 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 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, 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).

21. 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.

22. Moreover, to the extent that entry into the Amended Aircraft Leases implicates section 364 of the Bankruptcy Code given the reaffirmation of the Guaranty, the Debtors have established that entry into the Amended Aircraft Leases is in the best interests of the Debtors’ estates, their creditors, and all other parties 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)).

23. Lastly, 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).

24. 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 365(a), 364, and 105(a) of the Bankruptcy Code. As described above and in the Landess 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 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 memorialized in the Amended Aircraft Leases, that are in line with the Debtors' long-term business plan. In addition to the improved costs and better terms and conditions as compared to the Aircraft Leases, the Amended Aircraft Leases also will create operational flexibility for the Debtors, as they will allow the Debtors to

retain and operate three existing aircraft in their fleet and would position the Debtors to potentially reject other aircraft or equipment that are not as attractive for the long term fleet. Finally, the Debtors have determined (based on the exercise of their sound business judgment) that the terms of the Amended Aircraft Leases represent the best available transactions under the circumstances (*i.e.*, the Chapter 11 Cases), but also would be commercially beneficial transactions irrespective of such circumstances (and are superior to at least some of their prepetition aircraft leases).

25. In light of the foregoing, the Debtors respectfully submit that the assumption of the Aircraft Leases on an amended basis, substantially in accordance with the terms and conditions set forth in the Amended Aircraft Leases, (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, and (c) would further serve to maximize value for the benefit of all creditors. Accordingly, the Debtors respectfully request that the Court authorize, but not direct, the Debtor Lessee to assume the Aircraft Leases on an amended basis substantially in accordance with the terms and conditions set forth in the Amended Aircraft Leases and to perform all the obligations thereunder.

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

26. By this Motion, the Debtors also seek approval of the Claims Settlement between the Claimants and the Debtors for the allowance of certain claims stemming from the amendment of the Aircraft Leases' terms, while expunging all other claims belonging to the Claimants against the Debtors in the Chapter 11 Cases relating to the Aircraft.

27. 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).

28. 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; *Air Line Pilots Ass’n, Int’l v. Am. Nat’l Bank & Trust Co. of Chi. (In re Ionosphere Clubs)*, 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).

29. 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.

30. 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 the Debtor Lessee’s obligations to the Claimants, the amounts of the Claimants’ claims, and any amounts mitigating the quantum of those claims, the parties negotiated a consensual resolution settling on \$14,756,205 as the agreed aggregate amount for 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 Debtors and the Lessors that will (a) eliminate the need for a costly claims dispute and (b) unlock distributable value for the Debtors’ unsecured creditors by liquidating the Claimants’ prepetition claims against the Debtors. Lastly, a number of the Debtors’ key stakeholders, including the respective advisors to the Committee and the Ad Hoc Group of Senior Noteholders, 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

31. 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 of Senior Noteholders; 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

32. 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: October 7, 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 Z. Szanzer
Thomas S. Green

*Counsel to the Debtors
and Debtors in Possession*