Hearing Date and Time: January 6, 2022 at 10:00 a.m. (Prevailing Eastern Time)
Objection Date and Time: January 3, 2022 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 (I) AUTHORIZING CERTAIN DEBTORS TO ENTER INTO AGREEMENTS WITH MTU MAINTENANCE BERLIN-BRANDENBURG GMBH AND MTU MAINTENANCE LEASE SERVICES B.V. AND (II) APPROVING THE CLAIMS SETTLEMENT THEREIN

PLEASE TAKE NOTICE that, on December 23, 2021, the above-captioned debtors and debtors in possession (collectively, the "**Debtors**") filed the *Debtors' Motion for Entry of an Order (I) Authorizing Certain Debtors To Enter into Agreements with MTU Maintenance Berlin-Brandenburg GMBH and MTU Maintenance Lease Services B.V. and (II) Approving the Claims*

[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.

Settlement Therein (the "**Motion**"). A hearing on the Motion is scheduled to be held on **January 6, 2022 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.

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 **January 3, 2022 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: December 23, 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 (I) AUTHORIZING CERTAIN DEBTORS TO ENTER INTO AGREEMENTS WITH MTU MAINTENANCE BERLIN-BRANDENBURG GMBH AND MTU MAINTENANCE LEASE SERVICES B.V. AND (II) APPROVING THE CLAIMS SETTLEMENT THEREIN

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 (a) authorizing, but not directing, Debtor Aerolitoral, S.A. de C.V. ("**Aerolitoral**") and Debtor Aerovías de México, S.A. de C.V. ("**Aerovías**") to (i) enter into that

[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.

certain letter agreement (together with the exhibits thereto, the "**Letter Agreement**"),[2] attached to the Proposed Order (as defined herein) as Exhibit 1, and the Replacement Agreement (as defined herein), on terms and conditions substantially consistent with those set forth in the letter of intent attached to the Letter Agreement as Appendix 2 (the "**Letter of Intent**"), and (ii) reject the PPE Agreement (as defined herein) and (b) approving the Claims Settlement (as defined herein) contained in the Letter Agreement and further set forth herein. This Motion is supported by the *Declaration of Matthew Landess in Support of (A) Debtors' Motion for Entry of an Order (I) Authorizing Certain Debtors To Enter into Agreements with MTU Maintenance Berlin-Brandenburg GMBH and MTU Maintenance Lease Services B.V. and (II) Approving the Claims Settlement Therein 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] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Letter Agreement.

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(b), 365, and 105(a) of chapter 11 of title 11 of the United States Code (the "**Bankruptcy Code**") and Bankruptcy Rules 6004, 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) Aerolitoral and Aerovías to (i) enter into the Letter Agreement attached to the Proposed Order as Exhibit 1 and the Replacement Agreement (as defined herein), on terms substantially consistent with those set forth in the Letter of Intent, and (ii) reject the PPE Agreement (as defined herein) 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.[3]

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.

B. The Agreements and the Claims Settlement

8. Aerolitoral and MTU Maintenance Berlin-Brandenburg GmbH ("**MTU-BB**") are party to the prepetition PPE Agreement dated January 19, 2011 (as amended, the "**PPE Agreement**") relating to certain maintenance, repair, and overhaul ("**MRO**") services for CF34-10E6 type engines. Separately, Aerolitoral and MTU Maintenance Lease Services B.V. ("**MTU-MLS**" and, together with MTU-BB, "**MTU**") are party to the prepetition Customer Lease Agreements which govern the leasing of two Leased Engines. Finally, Aerovías and MTU-MLS are party to the 876746 Lease Agreement relating to the leasing of Engine 876746.

[3] 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, 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.

9. Prior to the Petition Date, Aerolitoral issued various repair orders to MTU-BB in connection with the PPE Agreement. MTU-BB completed the work requested by Aerolitoral under certain of these repair orders and returned certain of the related engines to Aerolitoral. MTU-BB currently holds a few of these engines that are repaired or in a position to be repaired in the near term. Specifically, these engines include (i) two General Electric model CF34-10E6 engines bearing engine serial numbers 424191 and 424349 that the Debtors understand are repaired and can be ready for shipment promptly (the "**MOE Engines**") and (ii) another General Electric model CF34-10E6 engine bearing engine serial number 424619 that is currently disassembled and could be reassembled and repaired, and ready for shipment in a matter of weeks (the "**Falko Engine**") that is the subject of an aircraft lease that the Debtors have not yet decided to assume or reject (the "**Falko Lease**"). MTU-BB has prepetition claims arising from the repair services performed on these engines, which MTU-BB asserts are secured by liens on these engines. The Debtors project that they will have increased need for these types of engines in the coming months and would benefit from receiving these repaired engines as quickly as practicable.

10. As a result of arm's length and good faith negotiations, the Debtors have reached an agreement with (a) MTU-BB to enter into a replacement MRO agreement (the "**Replacement Agreement**" and, together with the Letter Agreement, the "**Agreements**"), on terms substantially consistent with those set forth in the Letter of Intent, and such entrance will be deemed an immediate rejection of the PPE Agreement, (b) MTU resolving any and all claims against the Debtors in the Chapter 11 Cases relating to the PPE Agreement (related to work and invoices issued prepetition and, also, its potential rejection), the MOE Engines, the Falko Engine, and the various lease agreements with MTU-MLS (the "**Claims**"), and (c) effectuate the timely return of the MOE Engines and, if applicable, the Falko Engine, each free and clear of any liens (these

transactions, the "**MTU Transactions**"), each as described herein, in the Letter Agreement, and in the Landess Declaration.

11. The Letter Agreement and the Letter of Intent set forth the commercial terms between the Debtors and MTU. Consistent with the Letter of Intent, the Debtors and MTU-BB will enter into the Replacement Agreement, which will govern MTU-BB's provision of MRO services to Aerolitoral on a go-forward basis. Of critical near-term concern for the Debtors' estates, by agreeing to the Letter Agreement, the Debtors secure the redelivery of the repaired MOE Engines and can begin reintegrating them into their fleet in a timely fashion at a time when the Debtors' spare engine capacity is limited, which puts severe strain on operations, and, if the Debtors elect to assume the Falko Lease, receive return of the Falko Engine promptly as well.

12. In conjunction with this transaction, the Debtors seek to resolve any and all Claims of MTU against the Debtors. To this end, the parties have agreed (the "**Claims Settlement**"):[4]

a. that the following Claims shall be allowed as prepetition non-priority general unsecured claims in the final amounts, and against the designated Debtors, listed below (the "**Allowed Claims**"):

Claim / Schedule Number	Claimant	Debtor	Treatment	Final Amount
13412 / 561073240	MTU Maintenance Lease Services B.V.	Aerovías	Allowed	$303,904.83
13414 / 565019670	MTU Maintenance Lease Services B.V.	Aerolitoral	Allowed	$247,236.36
13479 / 565019650	MTU Maintenance Berlin-Brandenburg GmbH	Aerolitoral	Allowed	$1,904,921.81
13491	MTU Maintenance Berlin-Brandenburg GmbH	Aerolitoral	Allowed	$2,869,433.95
13494	MTU Maintenance Berlin-Brandenburg GmbH	Aerolitoral	Allowed	$2,148,892.60

[4] To the extent there are any inconsistencies between the description in this Motion and the terms set out in the Letter Agreement; the Letter Agreement governs the transactions between the Debtors and MTU.

13497	MTU Maintenance Berlin-Brandenburg GmbH	Aerolitoral	Allowed	$2,486,669.63
13499	MTU Maintenance Berlin-Brandenburg GmbH	Aerolitoral	Allowed	$261,806.13
13501	MTU Maintenance Berlin-Brandenburg GmbH	Aerolitoral	Allowed	$497,072.92
13502	MTU Maintenance Berlin-Brandenburg GmbH	Aerolitoral	Allowed	$2,165,146.08
			Total:	**$12,885,084.31**

b. Aerolitoral shall pay to MTU-BB $5,741,097.24[5] in cash for completed repair services and the return of the MOE Engines free and clear of any liens (the "**MOE Payoff Amount**"). The claims numbered 13482 and 13483 will be withdrawn.

c. The claim numbered 13498 (the "**Falko Engine Claim**") will be allowed as a prepetition non-priority general unsecured claim against Aerolitoral's bankruptcy estate in the final amount of $2,132,735.62; *provided, however*, that if the Debtors ultimately assume the Falko Engine's underlying lease, then upon the effectiveness of such assumption, (a) the Falko Engine Claim will be expunged, and (b) as set forth in § 2(c) of the Letter Agreement, (i) MTU-BB will complete the repairs to and return the Falko Engine and (ii) Aerolitoral will make the payments specified therein in accordance with its terms.

d. MTU-BB will be granted a contingent non-priority general unsecured claim for rejection damages against Aerolitoral's bankruptcy estate in the final amount of $20,000,000, which will be allowed if, and upon, Aerolitoral and MTU-BB entering into the Replacement Agreement by the Replacement Agreement Completion Date (which shall be deemed a rejection of the PPE Agreement) (the "**Contingent Replacement Agreement Claim**"); *provided*, for the avoidance of doubt, that pursuant to Clause 17.1 of the PPE Agreement, the MOE Engines and the engines bearing serial numbers 424669, 424670, and 424663 which are currently at MTU-BB's facility, will be repaired and returned to Aerolitoral in accordance with the terms of the PPE Agreement.

The amount of the Claims Settlement shall constitute the only general unsecured Claims allowed in the Chapter 11 Cases; *provided, however*, that if the Replacement Agreement is not entered into by the Replacement Agreement Completion Date, MTU reserves all rights, remedies, and claims and may assert claims related to any rejection or assumption of the PPE Agreement (but, for the

[5] The Debtors anticipate that they will be entitled to reimbursement of a portion of these amounts from the lessor of the MOE Engines.

avoidance of doubt, not related to the MOE Engines, Falko Engine, or Completed Repair and Lease Claims); *provided further* that the Debtors expressly reserve all rights to object to any claims relating to the PPE Agreement should the parties not enter into the Replacement Agreement by the Replacement Agreement Completion Date. For the avoidance of doubt, if the Replacement Agreement is entered into on or before the Replacement Agreement Completion Date, the Contingent Replacement Agreement Claim shall be the only Claim relating to the PPE Agreement, included the rejection thereof, allowed in the Chapter 11 Cases.

13. In determining to enter into the MTU 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, the Ad Hoc Group of Senior Noteholders,[6] and the Ad Hoc Group of Unsecured Claimholders,[7] none of which expressed opposition to the relief requested herein.

Basis for Relief

A. The Court Should Authorize Entry into the Agreements Under Sections 363(b), 365, and 105(a) of the Bankruptcy Code

14. The Debtors believe that the anticipated entry into the Agreements constitute ordinary course transactions because (a) they are commonplace in the airline industry and (b) the Debtors have frequently engaged in similar transactions in the past. As a result, the Debtors believe

[6] As used in this Motion, "Ad Hoc Group of Senior Noteholders" refers to the group identified in the *Third Amended Verified Statement of the Ad Hoc Group of Senior Noteholders Pursuant to Bankruptcy Rule 2019* [ECF No. 1731].

[7] As used in this Motion, "Ad Hoc Group of Unsecured Claimholders" refers to the group identified in the *Second Amended Verified Statement of the Ad Hoc Group of Senior Noteholders Pursuant to Bankruptcy Rule 2019* [ECF No. 2244].

that entry into aircraft engine repair agreements would be permitted under section 363(c) of that Bankruptcy Code, which authorizes a debtor 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). Similarly, the Debtors believe that the terms of the Letter Agreement reflecting settlement of pending claims are subject to the relief sought pursuant to Bankruptcy Rule 9019, as discussed below. Nevertheless, out of an abundance of caution (and to the extent that such authorization is required under section 363(b) of the Bankruptcy Code), the Debtors seek entry of an order authorizing the Debtors to enter into the Letter Agreement and the Replacement Agreement. The Debtors also seek entry of an order authorizing the Debtors, pursuant to section 365 of the Bankruptcy Code, to reject the PPE Agreement, which will occur concurrently with entry into the Replacement Agreement.

15. 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").

16. 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); *see also In re Integrated Res., Inc.)*, 147 B.R. at 656 (holding that a party opposing a debtor's exercise of its business judgment has the burden of rebutting the presumption of validity). Indeed, 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." *Id.*

17. Moreover, 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 or rejecting executory contracts and unexpired leases. 11 U.S.C. § 365(a); *see also NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 521 (1984). 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). "[T]he purpose behind allowing the

assumption or rejection of executory contracts is to permit the trustee or debtor-in-possession to use valuable property of the estate and to 'renounce title to and abandon burdensome property.'" *Orion Pictures Corp. v. Showtime Networks, Inc. (In re Orion Pictures Corp.)*, 4 F.3d 1095, 1098 (2d Cir. 1993).

18. 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 or rejection "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.

19. 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 Gucci*, 193 B.R. 411, 414–15 (S.D.N.Y. 1996). A debtor's decision to assume or reject 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).

20. Upon finding that the debtor has exercised its sound business judgment in determining that the assumption or rejection 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 or rejection 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).

21. Finally, 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).

22. The Debtors respectfully submit that the relief requested herein is fair, equitable, reasonable, the product of the Debtors exercising their sound business judgment, and in the best interests of the Debtors' estates and, thus, is justified under sections 363(b), 365, and 105(a) of the Bankruptcy Code. As described above and in the Landess Declaration, the Debtors are seeking to renegotiate favorable terms for necessary future engine repair services, obtain the return of the MOE Engines and, if applicable, the Falko Engine as soon as possible so as to properly reintegrate

them in their fleet promptly and minimize additional claims against the estate that would result from rejection of the PPE Agreement. In order to do so, the Debtors must promptly pay the MOE Payoff Amount, which payment the Debtors anticipate will be partially mitigated by the reimbursement of the MOE Engines' lessor. By doing so, the Debtors will receive return of the MOE Engines and, if applicable, the Falko Engine free and clear of any liens, including mechanic's liens, including the liens that MTU asserts it holds on account of repair it performed on those engines. Finally, the Debtors have determined (based on the exercise of their sound business judgment) that the terms of the Agreements 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.

23. In light of the foregoing, and for the reasons provided above and detailed in the Landess Declaration, the Debtors respectfully submit that the entry into the Agreements, and the concurrent reject of the PPE Agreement, (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 Debtors to enter into the Letter Agreement, and such entrance will be deemed an immediate rejection of the PPE Agreement, and the Replacement Agreement.

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

24. By this Motion, the Debtors also seek approval of the Claims Settlement between MTU and the Debtors for the allowance of certain claims and for permission to remit the MOE Payoff Amount, while expunging all other Claims against the Debtors in the Chapter 11 Cases.

25. 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).

26. 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).

27. 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.

28. 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 Debtors' obligations to MTU under the PPE Agreement or resulting from the rejection thereof, the amounts of MTU's claims, the purportedly secured status of those claims, and any amounts mitigating the quantum of those claims, the parties negotiated a consensual resolution settling on $15,017,819.93 in allowed claims, with an additional $20,000,000 as a contingent claim, and the $5,741,097.24 MOE Payoff Amount. 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 MTU that will (a) eliminate the need for a costly claims dispute and (b) unlock distributable value for the Debtors' unsecured creditors by liquidating the Allowed Claims against the Debtors. Importantly, with respect to the MOE Payoff Amount, the MOE Engines and Falko Engines are allegedly secured by liens on the equipment that will be returned promptly under the Letter Agreement arising from work performed on those specific pieces of equipment (*i.e.*, not elevating the status of claims for work performed on different equipment). Lastly, a number of the Debtors' key stakeholders, including the respective advisors to the Committee, the Ad Hoc Group of Senior Noteholders, and the Ad Hoc Group of Unsecured

Claimholders 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.

Waiver of Bankruptcy Rule 6004(a) and 6004(h)

29. To implement the foregoing successfully, the Debtors request that the Court enter an order providing that notice of the relief requested herein satisfies Bankruptcy Rule 6004(a) and that, to the extent applicable to the relief requested in this Motion, the Court waive the stay imposed by Bankruptcy Rule 6004(h), which provides that "[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise." Fed. R. Bankr. P. 6004(h). As described above, the relief that the Debtors seek in this Motion will allow the Debtors to secure the redelivery of the repaired MOE Engines and begin reintegrating them into their fleet in a timely fashion at a time when the Debtors' spare engine capacity is limited, which puts severe strain on operations, and, if the Debtors elect to assume the Falko Lease, receive return of the Falko Engine promptly as well. It is, therefore, critical for the Debtors to obtain prompt approval of this Motion. Accordingly, the Debtors respectfully request that the Court waive the 14-day stay imposed by Bankruptcy Rule 6004(h), as the exigent nature of the relief sought herein justifies immediate relief.

Notice

30. 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

31. 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: December 23, 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
Joshua Y. Sturm

Counsel to the Debtors
and Debtors in Possession

Exhibit A

Proposed Order

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)**

ORDER (I) AUTHORIZING CERTAIN DEBTORS TO ENTER INTO AGREEMENTS WITH MTU MAINTENANCE BERLIN-BRANDENBURG GMBH AND MTU MAINTENANCE LEASE SERVICES B.V. AND (II) APPROVING THE CLAIMS SETTLEMENT THEREIN

Upon the motion (the "**Motion**")[2] of the Debtors for entry of an order (this "**Order**"), (a) authorizing, but not directing, Debtor Aerolitoral, S.A. de C.V. ("**Aerolitoral**") and Debtor Aerovías de México, S.A. de C.V. ("**Aerovías**") to (i) enter into the Letter Agreement attached hereto as **Exhibit 1** and the Replacement Agreement, on terms substantially consistent with those set forth in the Letter of Intent attached to the Letter Agreement as Appendix 2, and reject the PPE Agreement upon entry into the Replacement Agreement and (b) approving the Claims Settlement, each as set forth more fully in the Motion, the Letter Agreement, 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 a core proceeding under 28 U.S.C. § 157(b); and venue of the Chapter 11 Cases and related

[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.

[2] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion or the Letter Agreement, as applicable.

proceedings being proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to the notice parties identified in the Motion; 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 to consider the relief requested in the Motion on January 6, 2022 (the "**Hearing**")]; 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 establish just cause for the relief granted herein; and the Court having found that the relief granted herein is in the best interests of the Debtors, their creditors, and all other parties in interest; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is granted to the extent set forth herein.

2. The Debtors are authorized (but not directed), pursuant to section 363(b) of the Bankruptcy Code, to enter into, and perform their obligations under, the Letter Agreement attached hereto as **Exhibit 1**.

3. The Debtors are authorized (but not directed), pursuant to sections 363(b) and 365 of the Bankruptcy Code, to enter into, and perform their obligations under, the Replacement Agreement on terms substantially consistent with those set forth in the Letter of Intent attached to the Letter Agreement as Appendix 2, and upon effectiveness of the Replacement Agreement, the PPE Agreement will be deemed rejected.

4. The Debtors and MTU are authorized (but not directed) to execute, deliver, provide, implement, and fully perform any and all obligations, instruments, and papers provided for or contemplated in the Agreements, and to take any and all actions to implement the Agreements.

5. The Claims Settlement is (a) integral and necessary to the MTU Transactions, (b) supported by reasonable consideration, (c) fair and equitable and in the best interest of the Debtors' estates, and (d) permitted by the Bankruptcy Code, and thus, is hereby approved pursuant to Bankruptcy Rule 9019(a) and shall be binding on the Debtors, MTU, and their affiliates.

6. In accordance with the Claims Settlement, the following Claims shall be allowed in the final amounts listed below (the "**Allowed Claims**"):

Claim / Schedule Number	Claimant	Debtor	Treatment	Final Amount
13412 / 561073240	MTU Maintenance Lease Services B.V.	Aerovías	Allowed	$303,904.83
13414 / 565019670	MTU Maintenance Lease Services B.V.	Aerolitoral	Allowed	$247,236.36
13479 / 565019650	MTU Maintenance Berlin-Brandenburg GmbH	Aerolitoral	Allowed	$1,904,921.81
13491	MTU Maintenance Berlin-Brandenburg GmbH	Aerolitoral	Allowed	$2,869,433.95
13494	MTU Maintenance Berlin-Brandenburg GmbH	Aerolitoral	Allowed	$2,148,892.60
13497	MTU Maintenance Berlin-Brandenburg GmbH	Aerolitoral	Allowed	$2,486,669.63
13499	MTU Maintenance Berlin-Brandenburg GmbH	Aerolitoral	Allowed	$261,806.13
13501	MTU Maintenance Berlin-Brandenburg GmbH	Aerolitoral	Allowed	$497,072.92
13502	MTU Maintenance Berlin-Brandenburg GmbH	Aerolitoral	Allowed	$2,165,146.08
			Total:	**$12,885,084.31**

7. In accordance with the Claims Settlement, Aerolitoral is authorized to pay MTU-BB $5,741,097.24 in cash for the return of the MOE Engines free and clear of any liens (the "**MOE Payoff Amount**"), and must remit such amount within 10 business days of the date of this Order. Upon such payment, (i) MTU-BB must promptly release, discharge, and ship the MOE Engines to Aerolitoral free of any liens and encumbrances in favor of or arising through MTU-BB services

performed on the MOE Engines and (ii) the claims assigned numbers 13482 and 13483 will be withdrawn (the "**Withdrawn Claims**").

8. The claim numbered 13498 is currently allowed as a prepetition non-priority general unsecured claim against Aerolitoral's bankruptcy estate in the final amount of $2,132,735.62. If the Debtors ultimately assume the Falko Engine's underlying lease, then upon the effectiveness of such assumption, (a) the Falko Engine Claim will be expunged, and (b) as set forth in § 2(c) of the Letter Agreement, (i) MTU-BB will complete the repairs to and return the Falko Engine and (ii) Aerolitoral will make the payments specified therein in accordance with its terms.

9. MTU-BB will be granted a contingent non-priority general unsecured claim against Aerolitoral's bankruptcy estate in the final amount of $20,000,000, which will be immediately allowed if Aerolitoral and MTU-BB enter into the Replacement Agreement by the Replacement Agreement Completion Date (the "**Contingent Replacement Agreement Claim**"). For the avoidance of doubt, if the replacement Agreement is entered into on or before the Replacement Agreement Completion Date, the Contingent Replacement Agreement Claim shall be the only Claim of MTU-BB resulting from the rejection of the PPE Agreement allowed in the Chapter 11 Cases.

10. Upon entry of this Order, the Allowed Claims shall be automatically allowed and the Contingent Replacement Agreement Claim shall be automatically granted. Upon the remittance of the MOE Payoff Amount, the Withdrawn Claims will be automatically withdrawn. Upon entry into the Replacement Agreement, so long as it is entered into on or by the Replacement Agreement Completion Date, the Contingent Replacement Agreement Claim shall be automatically allowed. In each instance, no further notice or action shall be required of the

Debtors, or MTU to effectuate the allowance or withdrawal, as applicable, of such claims. From and after the entry of this Order, Epiq Corporate Restructuring, LLC is authorized to update the claims register to reflect the terms of this Order, including, among other things, the granting of the Contingent Replacement Agreement Claim, the allowance or expungement of the Contingent Replacement Agreement Claim, the allowance of the Allowed Claims, and the withdrawal of the Withdrawn Claims, each as set forth in this Order.

11. The Debtors agree that the Allowed Claims, Falko Engine Claim, and, if applicable, the Contingent Replacement Agreement Claim shall be deemed "allowed" for all purposes in the Chapter 11 Cases. Upon entry of this Order, the Allowed Claims, the Falko Engine Claim, and, if applicable, the Contingent Replacement Agreement Claim ***shall not be*** (either directly or indirectly) (a) subject to any challenge, objection, reduction, counterclaim, or offset for any reason and (b) subject to any objection, avoidance or recovery actions under Sections 502(d), 542, 544, 545, 547, 548, 549, 550, 551, and 553 of the Bankruptcy Code.

12. Any Bankruptcy Rule (including, but not limited to, Bankruptcy Rule 6004(h)) that might otherwise delay the effectiveness of this Order is hereby waived, and the terms and conditions of this Order shall be effective and enforceable immediately upon its entry.

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

14. 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, their creditors, their respective affiliates, successors, and

assigns, and any affected third parties, including, but not limited to, the Lessor and all other persons asserting interests in the Aircraft.

15. 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, the PPE Agreement, the Replacement Agreement and the Letter Agreement.

Dated: _____, 2022
New York, New York

THE HONORABLE SHELLEY C. CHAPMAN
UNITED STATES BANKRUPTCY JUDGE

Exhibit 1

Letter Agreement

LETTER AGREEMENT

THIS LETTER AGREEMENT (this "**Agreement**") is made and entered into as of December [_], 2021, by and among:

Aerolitoral, S.A. de C.V.
Paseo de la Reforma #445 A y B
Col. Cuauhtemoc, Del. Cuauhtemoc
C.P. 06500, Mexico D.F.
Mexico

- hereinafter referred to as "**Customer**," -

MTU Maintenance Berlin-Brandenburg GmbH
Dr.-Ernst-Zimmermann-Strasse 2
14974 Ludwigsfelde
Germany

- hereinafter called "**MTU-BB**," – and,

MTU Maintenance Lease Services B.V.
World Trade Center, Office Tower B/16F
Strawinskylaan 1639
1077XX Amsterdam

- hereinafter called "**MTU-MLS**" -

- Customer, Aerovías (as defined below), MTU-BB, and MTU-MLS, hereinafter each individually called a "**Party**" and collectively called the "**Parties**".

RECITALS

WHEREAS, on June 30, 2020 (the "**Petition Date**"), Customer, Customer's parent entity and certain affiliates filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code commencing the bankruptcy case captioned *In re Grupo Aeromexico, S.A.B. de C.V., et al,* jointly-administered under Case No. 20-11563 (the "**Bankruptcy Case**") and pending in the United States Bankruptcy Court for the Southern District Court of New York (the "**Bankruptcy Court**").

WHEREAS, prior to the Petition Date, Customer and MTU-BB entered into that certain Agreement (C004636) dated January 19, 2011, relating to certain maintenance, repair and overhaul ("**MRO**") services for CF34-10E6 type engines (as amended, supplemented or otherwise modified from time-to-time, including pursuant to: (i) that certain Side Letter Agreement dated as of January 15, 2013, between the Customer and MTU-BB; (ii) that certain First Amendment to the LPT QT Agreement dated on or about March 3, 2015; (iii) that certain First Amendment to Side Letter Agreement dated on or about March 3, 2015; (iv) that certain Side Letter No. 4 to the Maintenance,

Repair and Overhaul Services Agreement for CF34-10E6 type Engines dated as of September 25, 2019; and (v) that certain First Amendment to the CF34-10E6 PPE Agreement dated on or about January 19, 2011, collectively the "**PPE Agreement**").[1]

WHEREAS, prior to the Petition Date, Customer issued various repair orders to MTU-BB in connection with the PPE Agreement as more fully set forth in the MTU Claims (as defined below) and MTU-BB completed the work requested by Customer under certain of these repair orders and returned certain of the related engines to Customer as set forth on Appendix 1 of this Agreement, which, for the avoidance of doubt, is incorporated into and part of this Agreement.

WHEREAS, prior to the Petition Date, Customer and MTU-MLS were parties to multiple agreements (as the same may have been amended, modified, or supplemented) respecting the leasing of one (1) aircraft engine model CF34-8E5 with the manufacturer serial number of ESN 902502 ("**Engine 902502**"). Specifically, Engine 902502 was governed by the following agreements/amendments: (a) that certain *Aircraft Engine Lease General Terms Agreement* (Contract No. 5D-1111-5068), dated December 12, 2011 (the "**General Terms Agreement**"); (b) that certain *Aircraft Engine Lease Agreement* (Contract No. 5D-1216-6805), dated December 29, 2016 (the "**902502-ELA**"); (c) the 902502-ELA, as further amended by the *First Amendment to the Aircraft Engine Lease Agreement*, effective as of January 1, 2018; and (d) the 902502-ELA, as further amended by the *Second Amendment to the Aircraft Engine Lease Agreement*, effective as of January 1, 2019 (the preceding (a) – (d), collectively, the "**902502 Lease Agreement**").

WHEREAS, prior to the Petition Date, Customer and MTU-MLS were also parties to multiple agreements (as the same may have been amended, modified, or supplemented) respecting the leasing of one (1) aircraft engine model CF34-10E6 with the manufacturer serial number ESN 994551 ("**Engine 994551**", and with Engine 902502, the "**Leased Engines**"). Specifically, Engine 994551 was governed by the following agreements/amendments: (a) the General Terms Agreement; (b) that certain *Aircraft Engine Lease Agreement* (Contract No. 5D-0518-8236), dated May 28, 2018 (the "994551 ELA"); (c) the 994551 ELA, as further amended by the *First Amendment to the Aircraft Engine Lease Agreement*, effective as of August 27, 2018; and (d) the 994551 ELA, as further amended by *the Second Amendment to the Aircraft Engine Lease Agreement*, effective as of October 4, 2018.(the "**994551 Lease Agreement**" and, with the 902502 Lease Agreement, collectively, the "**Customer Lease Agreements**").

WHEREAS, prior to the Petition Date, Customer affiliate Aerovías de México, S.A. de C.V. ("**Aerovías**") and MTU-MLS were parties to multiple agreements (as the same may have been amended, modified, or supplemented) respecting the leasing of one (1) aircraft engine model CFM56-7B26/3 with the manufacturer serial number ESN 876746 (the "**Engine 876746**"). Specifically, the Engine 876746 was governed by the following agreements/amendments: (a) that certain *Aircraft Engine Lease and General Terms Agreement* (Contract No. 5D-1111-5068), dated December 12, 2011; and (b) that certain *Engine Lease Agreement* (Contract No. AM-9014-0719-

[1] A copy of the PPE Agreement is: (a) in the possession of Customer and (b) subject to a confidentiality/proprietary information clause, but can, if required, be produced upon order of the Bankruptcy Court.

876746), dated July 22, 2019 (collectively, the "**876746 Lease Agreement**" and with the Customer Lease Agreements, collectively the "**AMX Lease Agreements**").[2]

WHEREAS, on August 25, 2020, Customer, Aerovías, as well as the other affiliated debtors in the Bankruptcy Case, filed their *Schedules of Assets and Liabilities* (collectively, the "**Schedules**") and *Statement of Financial Affairs*. *See, generally*, ECF Nos. 326-333.

WHEREAS, on November 18, 2020, the Bankruptcy Court entered the *Order (I) Establishing Deadline for Filing Proofs of Claim and Procedures Relating Thereto and (II) the Form and Manner of Notice Thereof* (ECF No. 648) (the "**Bar Date Order**"), which established January 15, 2021 as the general date by which creditors must submit their proofs of claim (the "**Bar Date**").

WHEREAS, in compliance with the Bar Date Order, on or prior to the Bar Date, MTU-BB and MTU-MLS (collectively, "**MTU**") filed claims, as more fully set forth on Appendix 1 to this Agreement, asserting amounts due and owing from Customer and Aerovías to MTU-BB and MTU-MLS as of the Petition Date (the "**MTU Claims**").[3] The MTU Claims, independently with respect to MTU-MLS and in the aggregate with respect to MTU-BB, are set forth in the Schedules as undisputed, liquidated, and noncontingent prepetition unsecured claims. *See* Schedules at p. 139-140 of 433 (ECF No. 330) (Aerolitoral) and p. 356 of 1661 (ECF No. 328) (Aerovías).

WHEREAS, to fully resolve the issues described herein, the Parties now desire to set forth the terms upon which the Parties will settle and MTU will be compensated, subject to the approval (the "**Approval Order**") of the Bankruptcy Court, on account of the MTU Claims.

WHEREAS, Customer and MTU-BB also desire to set forth the framework for entering into a new maintenance, repair, overhaul (*i.e.*, MRO services) agreement for CF34-10E6 engine types between Customer and MTU-BB.

NOW, THEREFORE, based on the foregoing recitals, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, and intending to be legally bound hereby, the Parties hereto agree as follows:

1. The above recitals are incorporated herein in the entirety.

2. **Settlement of the MTU Claims**.

    a. **Completed Engine Repair Claims and Completed Lease Claims.** The Parties agree and acknowledge that paragraph A of Appendix 1 hereto sets forth a listing of claims made by both MTU-BB and MTU-MLS against Customer and Aerovías in respect of amounts that were unpaid as of the Petition Date for completed engine repairs provided by MTU-BB to Customer pursuant to the PPE Agreement and unpaid lease-related payments under the various AMX Lease Agreements between Aerovías and MTU-MLS (collectively, the "**Completed Repair and Lease Claims**"). The aggregate amount of the Completed Repair and Lease Claims is

[2] Copies of the AMX Lease Agreements are: (a) in the possession of Aerovías and (b) subject to confidentiality clause, but can, if required, be produced upon order of the Bankruptcy Court.

[3] The MTU-Claims and the attachments thereto are fully incorporated into this Agreement by reference.

$12,885,084.31, as more particularly described in paragraph A of Appendix 1. The Parties agree that upon the Effective Date, the Completed Repair and Lease Claims are allowed, as general unsecured prepetition claims against Customer and Aerovías, as applicable, in the amounts set forth in the "Allowed Claims" column of paragraph A of Appendix 1 attached to this Agreement (collectively, the "**Allowed Completed MTU Claims**"), in full and final satisfaction of the listed claims filed by MTU-BB and MTU-MLS, and other than the Allowed Completed MTU Claims of MTU and workmanship warranty claims of Customer and Aerovías, the Parties hereby fully and completely release one another from any and all other claims in connection with and arising from the Completed Repair and Lease Claims.

b. **MOE Engines**. In full satisfaction of claim numbers 13482 and 13483, relating to, the engines bearing, respectively, serial numbers 424191 and 424349 (the "**MOE Engines**"), Customer and MTU-BB agree that Customer shall pay to MTU-BB the MOE Payoff Amount (as defined in paragraph B of Appendix 1) (*i.e.*, $5,741,097.24**)** in immediately available US currency by wire transfer as directed by MTU-BB, no later than ten (10) business days after entry of the Approval Order on the docket in the Bankruptcy Case. Upon receipt of the MOE Payoff Amount, MTU-BB shall promptly release, discharge and ship the MOE Engines to Customer free of any liens and encumbrances in favor of or arising as a result of MTU-BB's services performed on the MOE Engines and claim numbers 13482 and 13483 will be deemed withdrawn from the Bankruptcy Case.

c. **Falko Engine**. Customer is a party to that certain lease agreement with Drake Leasing (the "**Falko Lease**") pursuant to which it leases the engine bearing serial number 424619 (the "**Falko Engine**"). The Falko Engine is currently dissembled and located at MTU-BB. MTU-BB filed claim no. 13498 in connection with the Falko Engine against Customer on or before the Bar Date. Customer and MTU-BB agree that claim no. 13498 of MTU-BB shall be deemed an allowed, general unsecured prepetition non-priority claim against the bankruptcy estate of Customer in the amount of $2,132,735.62 (the "**Allowed ESN 424619 Claim**") upon entry of the Approval Order, provided, however, if Customer assumes the Falko Lease (including on an amended basis) during the Bankruptcy Case: (i) Customer and MTU-BB agree that Customer shall pay to MTU-BB 50% of the Falko Outstanding Amount (as defined in paragraph B of Appendix 1) (*i.e.*, $1,850,000.00, the "**Falko Initial Payment**") in immediately available US currency by wire transfer as directed by MTU-BB no later than ten (10) business days after entry of an order on the docket in the Bankruptcy Case approving the assumption and amendment of the Falko Lease; (ii) upon receipt of the Falko Initial Payment, MTU-BB shall promptly complete and return the Falko Engine to serviceability and compliance within the agreed workscope and shall notify Customer of such completion; (iii) promptly, and in any event no later than ten (10) business days after receipt of such notice from MTU-BB, Customer shall pay to MTU-BB the remaining 50% of the Falko Outstanding Amount (as defined in paragraph B of Appendix 1) (*i.e.*, $1,850,000.00) in immediately available US currency by wire transfer as

directed by MTU-BB; (iv) MTU-BB shall release, discharge and ship the Falko Engine to Customer free of any liens and encumbrances in favor of or arising as a result of MTU-BB's services performed on the Falko Engine; and (v) the Allowed ESN 424619 Claim (*i.e.*, claim number 13498) will be deemed withdrawn from the Bankruptcy Case.

d. **The PPE Agreement**. All terms of the PPE Agreement shall apply and remain in full force and effect unless specifically altered or amended by this Agreement or until entry of the Replacement Agreement (as defined below). Capitalized terms not otherwise defined herein shall have the meanings given to them in the PPE Agreement. Customer and MTU-BB shall continue to negotiate in good faith to agree on terms to enter into a new MRO agreement ("**Replacement Agreement**") incorporating, among other terms, the terms set forth on Appendix 2 to this Agreement, which, for the avoidance of doubt, is incorporated into and part of this Agreement. Customer and MTU-BB shall use commercially reasonable efforts to agree upon such Replacement Agreement prior to such date that is five (5) days prior to the date set by the Bankruptcy Court as the date for creditors to vote on any plan filed and approved for solicitation in the Bankruptcy Case (the "**Replacement Agreement Completion Date**"). Should Customer and MTU-BB agree upon the Replacement Agreement by the Replacement Agreement Completion Date, the Parties agree that MTU-BB will hold an allowed, general unsecured prepetition non-priority claim against the bankruptcy estate of Customer in the amount of $20,000,000.00 (the "**MTU PPE Claim**") in satisfaction of any claims of MTU-BB against Customer existing under the PPE Agreement or the Bankruptcy Code. Should Customer and MTU-BB not enter into the Replacement Agreement prior to the Replacement Agreement Completion Date, Customer and MTU-BB shall be returned to the *status quo ex ante* respecting matters concerning only the PPE Agreement as if this Agreement had never been executed and each will hold any and all rights, claims, and defenses available under applicable law, equity, and the Bankruptcy Code.

3. **No Challenge**: The Parties agree that any allowed unsecured claim held by MTU under this Agreement (*i.e.*, Allowed Completed MTU Claims, Allowed ESN 424619 Claim, or, if applicable, MTU PPE Claim) shall be deemed "allowed" for all purposes in the Bankruptcy Case. Upon the Effective Date, any such allowed claim ***shall not be*** (either directly or indirectly) (a) subject to any challenge, objection, reduction, counterclaim or offset for any reason and (b) subject to any objection, avoidance or recovery actions under Sections 502(d), 542, 544, 545, 547, 548, 549, 550, 551 and 553 of the Bankruptcy Code.

4. **Condition Precedent**. This Agreement shall become effective on the date upon which the Bankruptcy Court enters the Approval Order, which shall be mutually satisfactory to the Parties hereto, each in its own reasonable discretion (the "**Effective Date**").

5. **Miscellaneous:**

a. **Headings**. Headings in this Agreement are for convenience of reference only and shall not be considered in construing this Agreement.

b. **Severability**. If any provision of this Agreement is held unenforceable by a court or tribunal of competent jurisdiction because it is invalid or conflicts with any law of any relevant jurisdiction, the validity of the remaining provisions shall not be affected. In such event, the Parties shall negotiate a substitute provision that, to the extent possible, accomplishes the original business purpose.

c. **Law and Jurisdiction**. Clause 18 of the PPE Agreement shall apply to this Agreement, *mutatis mutandis*, as if it had been fully set forth herein.

d. **Counterparts**. This Agreement may be signed in counterpart originals and delivered by facsimile or email, which, when fully executed, shall constitute a single original. A facsimile or email signature delivered by portable data format (.pdf) shall be deemed an original.

e. **Integration and Amendment**. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter of it and supersedes all prior agreements and undertakings between the Parties relating to the subject matter hereof. There are no other covenants, promises, agreements, conditions or understandings, either oral or written, express or implied, between the Parties, except for this Agreement with respect to its subject matter. The terms of this Agreement are contractual and not merely recitals. This Agreement may not be modified, amended, altered, changed or waived except in a writing and duly executed by all Parties or by further order of the Bankruptcy Court.

f. **No Presumption**. The Parties acknowledge: (a) they have carefully read and fully understand the terms of this Agreement; (b) no presumption or burden of proof shall apply against the drafter of this Agreement with respect to its interpretation or construction; (c) this Agreement shall be construed in all respects as jointly drafted, and shall not be construed in any way against any other Party hereto on the grounds that the Party was the drafter of this Agreement; and (d) they are fully satisfied with all of the terms of this Agreement.

g. **Authorization**. Each of the Parties to this Agreement represents and warrants it is duly authorized to enter into and be bound by this Agreement and, have obtained all required consents, and have had full opportunity to consult with legal counsel regarding the terms hereof. The Parties entered into this Agreement knowingly and voluntarily and agree to all of its provisions.

h. **No Assignment**. Each of the Parties warrants and represents to the other Party that, as of the date of this Agreement, it has not heretofore assigned, encumbered, hypothecated or transferred, or purported to assign, encumber, hypothecate or transfer, to any other person or entity in any manner, including by way of subrogation, any claim, demand, right or cause of action released herein or relating thereto.

i. **No Admission**. Each Party agrees and stipulates that this Agreement is made solely for the purpose of settling and compromising claims and disputes and in order to avoid the cost and expense of litigation. Nothing herein shall constitute an admission of any fact or prejudice any question of law with respect to the matters addressed by this Agreement unless specifically addressed in this Agreement. Nothing herein shall constitute an admission of wrongdoing or liability by any of the Parties.

j. **The Bankruptcy Case**. This Agreement shall be filed (in unsealed or partially-sealed form) and become part of the record in Bankruptcy Case.

k. **Successors and Assigns**. This Agreement shall be binding on and inure to the benefit of each Party hereto and each of their respective successors and assigns, if any. Nothing in this Agreement is intended to confer upon any other person, whether or not named herein, any rights or remedies of any nature whatsoever under or by reason of this Agreement. Except as otherwise expressly agreed herein, the Parties reserve all their respective rights and defenses with respect to any claims not resolved through this Agreement or other agreements between the Parties not specifically referenced in this Agreement.

l. **No Assumption**. For the avoidance of doubt, nothing herein shall constitute an assumption of any contract or agreement between the Parties.

m. **Claims Agent**. The claims agent, Epiq Corporate Restructuring, LLC, in the Bankruptcy Case, and the clerk of the Bankruptcy Court are authorized to take all actions necessary and appropriate to give effect to this Agreement and the Approval Order.

n. **Bankruptcy Court Approval**. This Agreement is subject to the approval of the Bankruptcy Court and shall be of no force and effect unless and until such approval is obtained. In the event that Customer does not obtain Bankruptcy Court approval, the Effective Date shall not occur, this Agreement shall be unenforceable, null and void and shall be deemed to have been for settlement purposes only, subject to Federal Rule of Evidence 408 and similar rules, and the Parties shall be restored to their positions as if this Agreement were never agreed among them.

[***Signature Page Immediately Follows***]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly-authorized representatives as of the date above-first written:

AEROLITORAL, S.A. DE C.V.

By: _____
Name:
Title:

AEROLITORAL, S.A. DE C.V.

By: _____
Name:
Title:

AEROVÍAS DE MÉXICO, S.A. DE C.V.

By: _____
Name:
Title:

AEROVÍAS DE MÉXICO, S.A. DE C.V.

By: _____
Name:
Title:

MTU MAINTENANCE BERLIN-BRANDENBURG GMBH

By: _____
Name:
Title:

MTU MAINTENANCE BERLIN-BRANDENBURG GMBH

By: _____
Name:
Title:

MTU MAINTENANCE LEASE SERVICES B.V.

By: _____
Name:
Title:

MTU MAINTENANCE LEASE SERVICES B.V.

By: _____
Name:
Title:

APPENDIX 1

The MTU Claims

A. Completed Engine Repair Claims and Completed Lease Claims

Claim No.	Debtor	Creditor	ESN	US$ Amount per PoC	Allowed Unsecured Claim US$ Amount
13497	Customer	MTU-BB	424 404	2,486,669.63	2,486,669.63
13491	Customer	MTU-BB	424 398	2,869,433.95	2,869,433.95
13479	Customer	MTU-BB	424 178	1,904,921.81	1,904,921.81
13501	Customer	MTU-BB	994 411	497,072.92	497,072.92
13502	Customer	MTU-BB	994 614	2,165,146.08	2,165,146.08
13494	Customer	MTU-BB	424 402	2,148,892.60	2,148,892.60
13499	Customer	MTU-BB	902 502	261,806.13	261,806.13
13412	Aerovías	MTU-MLS	876746	303,904.83	303,904.83
13414	Customer	MTU-MLS	902502 /994551	247,236.36	247,236.36
			Total:	**$12,885,084.31**	**$12,885,084.31**

B. Engines Located at MTU-BB's Facility

Claim No.	Creditor	Debtor	ESN	Owner	Status	US$ Amount per PoC	US$ Cash amount due
13482	MTU-BB	Customer	424 191	Brasilmex Leasing LLC	on hold after test run	3,149,776.65	3,149,776.65
13483	MTU-BB	Customer	424 349	Brasilmex Leasing LLC	serviceable	2,591,320.59	2,591,320.59
						Total:	**$5,741,097.24 (**the **"MOE Payoff Amount"**)

Claim No.	Creditor	Debtor	ESN	Owner	Status	US$ Amount per PoC	US$ Amount to Complete Repairs	US$ Cash amount due
13498	MTU-BB	Customer	424 619	FALKO [Drake Leasing]	disassembled	2,132,735.62	1,567,264.38	**$3,700,000.00** (the "**Falko Outstanding Amount**")

APPENDIX 2

Summary of Terms – Replacement Agreement

Maintenance Provider:	MTU Maintenance Berlin-Brandenburg GMBH
Customer:	Aerolitoral, S.A. de C.V.
Scope of Contract:	Repair orders for maintenance services placed by Customer or its affiliates for CF34-10E6 engines and related LLPs, LRUs and Parts on a non-exclusive basis.
Term of Contract:	Through November 30, 2026
Agreed Workscope:	To be agreed in the definitive agreement, [REDACTED].
Not-to-Exceed Price:	[REDACTED], escalated pursuant to a formula no less advantageous to Customer than the escalation formula in the existing PPE Agreement, as amended. The NTE Price shall be inclusive and without exception (including selected over and above and supplemental charges) for scheduled removals, except for FOD, misuse, abuse, operations not considered normal operations per the relevant Aircraft Flight Manual and Aircraft Maintenance Manual.
[REDACTED]	[REDACTED]
General Terms and Conditions:	Substantially similar to the existing PPE Agreement between Customer and Maintenance Provider, with such changes as are necessary to implement the specific terms agreed herein and as otherwise are necessary or agreed between the parties.
Governing Law and Disputes:	New York law and AAA arbitration.