

**Hearing Date and Time: January 21, 2022 at 10:00 a.m. (Prevailing Eastern Time)**  
**Objection Date and Time: January 18, 2022 at 12:00 p.m. (Prevailing Eastern Time)**

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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.<sup>1</sup>**

**Chapter 11**

**Case No. 20-11563 (SCC)**

**(Jointly Administered)**

**NOTICE OF HEARING ON DEBTORS' MOTION FOR ENTRY OF AN  
ORDER AUTHORIZING DEBTOR AEROVÍAS DE MÉXICO, S.A. DE C.V.  
TO IMPLEMENT CERTAIN TRANSACTIONS WITH MUFG BANK,  
LTD., INCLUDING (I) ENTRY INTO AN OMNIBUS AMENDMENT  
AGREEMENT, (II) ASSUMPTION AND/OR REINSTATEMENT OF CERTAIN  
AIRCRAFT TRANSACTION DOCUMENTS (AS AMENDED BY THE OMNIBUS  
AMENDMENT AGREEMENT), AND (III) THE CLAIMS SETTLEMENT**

**PLEASE TAKE NOTICE** that, on January 4, 2022, the above-captioned debtors and  
debtors in possession (collectively, the “**Debtors**”) filed the *Debtors’ Motion for Entry of an Order  
Authorizing Debtor Aerovías de México, S.A. de C.V. To Implement Certain Transactions with*

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<sup>1</sup> 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.

*MUFG Bank, Ltd., Including (I) Entry into an Omnibus Amendment Agreement, (II) Assumption and/or Reinstatement of Certain Aircraft Transaction Documents (as Amended by the Omnibus Amendment Agreement), and (III) the Claims Settlement (the “Motion”).* A hearing on the Motion is scheduled to be held on **January 21, 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**”),<sup>2</sup> 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](http://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,

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<sup>2</sup> 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>.

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 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](http://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 18, 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.

*[Remainder of page intentionally left blank]*

Dated: January 4, 2022  
New York, New York

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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.<sup>1</sup>**

**Chapter 11**

**Case No. 20-11563 (SCC)**

**(Jointly Administered)**

**DEBTORS' MOTION FOR ENTRY OF AN ORDER AUTHORIZING  
DEBTOR AEROVÍAS DE MÉXICO, S.A. DE C.V. TO IMPLEMENT  
CERTAIN TRANSACTIONS WITH MUFG BANK, LTD., INCLUDING  
(I) ENTRY INTO AN OMNIBUS AMENDMENT AGREEMENT,  
(II) ASSUMPTION AND/OR REINSTATEMENT OF CERTAIN AIRCRAFT  
TRANSACTION DOCUMENTS (AS AMENDED BY THE OMNIBUS  
AMENDMENT AGREEMENT), AND (III) 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:

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<sup>1</sup> 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.

- a. authorizing, but not directing,
  - i. Debtor Aerovías de México, S.A. de C.V. (“**Aerovías**”), as the owner participant of the Borrowers, is entering into an omnibus amendment agreement (the “**Omnibus Amendment Agreement**”)<sup>2</sup> with (A) Bank of Utah, not in its individual capacity but solely as owner trustee of the Boeing 737 aircraft bearing manufacturer’s serial number 30283 (“**MSN 30283**”) (the “**MSN 30283 Borrower**”), (B) Bank of Utah, not in its individual capacity but solely as owner trustee of the Boeing 737 aircraft bearing manufacturer’s serial number 33784 (“**MSN 33784**”) (the “**MSN 33784 Borrower**”), (C) Bank of Utah, not in its individual capacity but solely as owner trustee of the Boeing 737 aircraft bearing manufacturer’s serial number 33788 (“**MSN 33788**”) (the “**MSN 33788 Borrower**” and, together with the MSN 30283 Borrower and the MSN 33784 Borrower, the “**Borrowers**”), (D) MUFG Bank, Ltd., as Loan Participant and Agent under each Facility Agreement (“**MUFG**”), and (E) DVB Bank SE, as Security Trustee under each Facility Agreement (the “**Security Trustee**” and, together with the Borrowers and MUFG, the “**Counterparties**”) in connection with MSN 30283, MSN 33784, and MSN 33788 (collectively, with the related engines, parts, equipment, and appurtenances, the “**Aircraft**”); and
  - ii. Aerovías to assume and/or reinstate, as applicable, the Transaction Documents (as defined herein), each as amended by the Omnibus Amendment Agreement; and
- b. approving the Claims Settlement (as defined herein).

The Omnibus Amendment Agreement is attached to the Proposed Order (as defined herein) as Exhibit 1 and a summary of the material terms thereof is attached hereto as Exhibit B. This Motion is supported by the *Declaration of Jeffrey S. Craine in Support of (A) Debtors’ Motion for Entry of an Order Authorizing Debtor Aerovías de México, S.A. de C.V. To Implement Certain Transactions with MUFG Bank, Ltd., Including (I) Entry into an Omnibus Amendment Agreement, (II) Assumption and/or Reinstatement of Certain Aircraft Transaction Documents (as Amended by the Omnibus Amendment Agreement), and (III) the Claims Settlement and (B) Related Sealing*

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<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Omnibus Amendment Agreement.

*Motion* (the “**Craine Declaration**”) filed contemporaneously herewith and incorporated herein by reference. In further support of this Motion, the Debtors respectfully state as follows:

### **Jurisdiction and Venue**

1. The United States Bankruptcy Court for the Southern District of New York (the “**Court**”) has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference M-431*, dated January 31, 2012 (Preska, C.J.). This is a core proceeding pursuant to 28 U.S.C. § 157(b). In addition, the Debtors confirm their consent, pursuant to Rule 7008 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter a final order or judgment in connection herewith consistent with Article III of the United States Constitution.

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

### **Relief Requested**

3. By this Motion, and pursuant to sections 363, 364, 365, and 105(a) of chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) and Bankruptcy Rules 6004, 6006, 9013, and 9019, the Debtors seek entry of an order, substantially in the form attached hereto as **Exhibit A** (the “**Proposed Order**” and, if entered, the “**Order**”), (a) authorizing, but not directing, Aerovías to enter into the Omnibus Amendment Agreement with the Counterparties, (b) authorizing, but not directing, Aerovías to assume and/or reinstate, as applicable, the Transaction Documents, each as amended by the Omnibus Amendment Agreement, and (c) approving the Claims Settlement, each as further detailed herein and in the Proposed Order.

## **Background**

### **A. General Background**

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

5. The Chapter 11 Cases are being jointly administered for procedural purposes only pursuant to Bankruptcy Rule 1015(b) and the *Order Directing Joint Administration of Chapter 11 Cases* [ECF No. 30] entered by the Court on July 1, 2020 in Grupo Aeroméxico’s Chapter 11 Case.<sup>3</sup>

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.

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<sup>3</sup> 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.



**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 and 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 and financings 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 October 30, 2020, the Debtors filed their *Motion for Approval of Stipulations and Orders Between Debtors and Counterparties Concerning Certain Aircraft Financing Agreements* [ECF No. 601] (the “**Financing Stipulation Motion**”), pursuant to which the Debtors sought approval of certain stipulations between certain Debtors and certain of the Counterparties concerning certain Agreements and Equipment (each as defined in the Financing Stipulation Motion). Broadly speaking, the stipulations entered into in connection therewith minimized the Debtors’ costs and the Counterparties’ administrative claims under the Agreements. The Court

entered an order approving the Financing Stipulation Motion [ECF No. 650] and so ordered the underlying stipulations [ECF Nos. 651–53, 835], including stipulations related to the Transaction Documents (as defined herein) [ECF Nos. 692–94] (the “**Financing Stipulations**”).

11. 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,<sup>4</sup> and subsequently entered each of the orders related thereto.<sup>5</sup> 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.

12. The Court has also entered additional orders authorizing the Debtors to either enter into new aircraft and equipment leases and/or assume existing aircraft and equipment leases on an amended basis. *See* ECF Nos. 984, 1100, 1544, 1572–73, 1579, 1659, 1693, 1759, 1891, 1932, 1934, 1939, 1941, 2004, 2006, 2024, 2068, 2082, 2128, 2130, 2144, 2152–54, 2385, 2397, 2399.

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<sup>4</sup> *See* Hr’g Tr. (April 30, 2021), 29:17–23 and 37:13–16.

<sup>5</sup> *See* ECF Nos. 1141–42, 1145, 1154, 1156–57, 1160–62.

**C. The MUFG Transactions**

13. Over the last several months, the Debtors have continued negotiating with existing lessors and financiers, and potential lessors and financiers 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 and structure upon emergence from the Chapter 11 Cases.

14. As a result of arm's length and good faith negotiations, the Debtors have reached a series of integrated agreements with the Counterparties relating to the following transactions:

*i. The Omnibus Amendment Agreement*

15. Collectively, Aerovías, as the owner participant, currently holds 100% of the beneficial ownership interests in the Aircraft through the Borrowers, which are owner trusts. Pursuant to the AMX Guarantees, Aerovías has guaranteed the secured debt obligations owed by the Borrowers to the Loan Participant, the Agent, and the Security Trustee under the Facility Agreements, the Mortgages, the Aircraft Operating Agreements, and the other Operative Documents (together with the AMX Guarantees, the "**Transaction Documents**"). The Aircraft are pledged as collateral securing the obligations under, among other things, the Facility Agreements.

16. Aerovías also uses the Aircraft pursuant to those certain (a) Amended and Restated Aircraft Operating Agreement N997AM, dated as of September 4, 2019, between Aerovías and the MSN 30283 Borrower (as supplemented, amended, and/or modified from time to time, the "**30283 Operating Agreement**"), (b) Aircraft Operating Agreement N784XA, dated as of March 11, 2015, between Aerovías and the MSN 33784 Borrower (as supplemented, amended, and/or modified from time to time, the "**33784 Operating Agreement**"), and (c) Aircraft

Operating Agreement N788XA, dated as of March 12, 2015, between Aerovías and the MSN 33788 Borrower (as supplemented, amended, and/or modified from time to time, the “**33788 Operating Agreement**” and, together with the 30283 Operating Agreement and the 33784 Operating Agreement, the “**Aircraft Operating Agreements**”).

17. The Omnibus Amendment Agreement attached to the Proposed Order as Exhibit 1 sets forth the commercial terms agreed among the Counterparties and Aerovías amending certain of the Transaction Documents (the transactions contemplated thereby, the “**Restructuring Transactions**”). Through the Omnibus Amendment Agreement, Aerovías and the Counterparties will mutually amend their relationship to better align with the Debtors’ long-term business plan. By agreeing to such terms, the Debtors have achieved certainty in maintaining the Aircraft in their fleet on terms that fit the Debtors’ short- and long-term needs and with improved terms, conditions, and near-term cash flow projections as compared to the existing Transaction Documents. Specifically, the terms of the Omnibus Amendment Agreement include, among other things, amendments to the repayment schedules and extensions of the maturity dates of the loans.

18. Furthermore, the Counterparties and the Debtors agree that, subject to the Debtors’ compliance with the terms of Transaction Documents, the Financing Stipulations, and the Omnibus Amendment Agreement, the assumption of the Transaction Documents (as amended by the Omnibus Amendment Agreement) would not give rise to an obligation to make any cash payments at the time of assumption to cure any defaults under the Transaction Documents under section 365(b)(1)(A) of the Bankruptcy Code.

*ii. The Claims Settlement*

19. In conjunction with the Restructuring Transactions, the Debtors seek to resolve all pre-assumption claims against the Debtors relating to any of the Transaction Documents or the

Aircraft in the Chapter 11 Cases. To this end, the parties have agreed that (a) MUFG, on behalf of itself and any other party with an interest in any of the Transaction Documents or the Aircraft, shall be granted a new contingent non-priority general unsecured claim against Aerovías's bankruptcy estate (the "**Contingent Claim**") for all reasonable and documented fees and expenses of the Counterparties under the Transaction Documents, including, without limitation, the legal fees and expenses and the fees and expenses of MUFG's technical advisor (collectively, the "**Fees and Expenses**"), in excess of \$275,000 and (b) all other claims relating to the Transaction Documents or the Aircraft, including, without limitation, the claims numbered 341, 342, and 344, shall be expunged (the "**Claims Settlement**" and, together with the Restructuring Transactions, the "**MUFG Transactions**"). The Contingent Claim, to the extent applicable, shall constitute the only claim relating to the Transaction Documents or the Aircraft allowed in the Chapter 11 Cases.

20. In determining to enter into the MUFG 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,<sup>6</sup> and the Ad Hoc Group of Unsecured Claimholders.<sup>7</sup>

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<sup>6</sup> 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].

<sup>7</sup> 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 Unsecured Claimholders Pursuant to Bankruptcy Rule 2019* [ECF No. 2244].

**Basis for Relief**

**A. The Court Should Authorize the Entry into the Omnibus Amendment Agreement and Assumption and Reinstatement of the Transaction Documents, each as amended by the Omnibus Amendment Agreement, under Sections 363(b), 364, 365, and 105(a) of the Bankruptcy Code**

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

22. 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.

23. 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 Nostas Assoc. v. Costich (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 (MG), 2011 WL 6792758, at \*2 (Bankr. S.D.N.Y. Dec. 20, 2011) ("The assumption or rejection of an executory contract may be approved if such action would benefit the debtor's estate and is an exercise of sound business judgment."); *In re Chipwich, Inc.*, 54 B.R. 427, 430–31 (Bankr. S.D.N.Y. 1985). The party opposing a debtor's exercise of its business judgment has the burden of rebutting the presumption of validity. *See Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.)*, 147 B.R. 650, 656 (S.D.N.Y. 1992), *appeal dismissed*, 3 F.3d 49 (2d Cir. 1993).

24. 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.

25. Further, to the extent that entry into the Restructuring Transactions uses estate property, such use is a justified exercise of the Debtors' business judgment, pursuant to section 363 of the Bankruptcy Code. Section 363(b)(1) of the Bankruptcy Code empowers a court to allow a debtor to "use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). A debtor's decision to use, sell, or lease assets outside the ordinary course of business must be based upon the sound business judgment of the debtor. *See Official Comm. of Unsecured Creditors of LTV Aerospace and Defense Co. v. LTV Corp. (In re Chateaugay Corp.)*, 973 F.2d 141, 143 (2d Cir. 1992) (holding that "a judge determining a § 363(b) application [must] expressly find from the evidence presented before him . . . a good business reason to grant such an application"); *see also Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1071 (2d Cir. 1983) (same); *In re Glob. Crossing Ltd.*, 295 B.R. 726, 743 (Bankr. S.D.N.Y. 2003); *In re Ionosphere Clubs, Inc.*, 100 B.R. 670, 674 (Bankr. S.D.N.Y. 1989) (noting that the standard for determining a motion under section 363(b) of the Bankruptcy Code is "good business reason").

26. The business judgment rule is satisfied "when the following elements are present: (1) a business decision, (2) disinterestedness, (3) due care, (4) good faith, and (5) according to some courts and commentators, no abuse of discretion or waste of corporate assets." *In re Integrated Res.*, 147 B.R. at 656 (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.*

27. Moreover, to the extent that entry into the Restructuring Transactions implicates section 364 of the Bankruptcy Code, given the reaffirmation of the AMX Guarantees, the Debtors have established that entry into the Restructuring Transactions 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)).

28. 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).

29. 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 363(b), 364, 365(a), and 105(a) of the Bankruptcy Code. As described above and in the Craine Declaration, the Debtors are seeking to reset their fleet and attendant costs to a market level. As part of this process, the Debtors are evaluating their fleet of aircraft and equipment, reviewing the relevant underlying leases and agreements, and, to the extent prudent, negotiating amendments to such leases and agreements for aircraft and equipment that the Debtors desire to maintain. In doing so, the Debtors compared the Transaction Documents (including the AMX Guarantees, the Facility Agreements, the Mortgages, the Aircraft Operating Agreements, and the other Operative Documents) and the Aircraft to available alternatives and ultimately negotiated (at arm’s length, in good faith, and in consultation with their key stakeholders) economically favorable terms, as set forth in the Omnibus Amendment Agreement, that are in line with the Debtors’ long-term business plan. In addition, the Omnibus Amendment Agreement, and the amendments to the Transaction Documents contemplated therein, will (a) create operational flexibility for the Debtors, as they contemplate, among other things, a near-term reduction in principal payments due and reallocation of the principal balance of the outstanding loans to improve the Debtors’ near-term cash flow, (b) allow the Debtors to retain three existing Aircraft in their fleet, and (c) position the Debtors to potentially reject other costly aircraft or equipment that are not as attractive for the long term fleet. Lastly, entry into the Restructuring Transactions further benefits the Debtors, their estates, and the Debtors’ economic stakeholders, as it will preserve the Debtors’ equity value in the Aircraft by

keeping intact Aerovías's rights under the Transaction Documents to acquire the remaining ownership interests in the Aircraft from the non-Debtor Borrowers—each a limited purpose trust of which Aerovías is the sole beneficiary.

30. In light of the foregoing, the Debtors respectfully submit that the approval of the Restructuring Transactions, including the assumption and/or reinstatement of the Transaction Documents (as amended by the Omnibus Amendment 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, (c) would further serve to maximize value for the benefit of all creditors, and (d) represent the best available transactions under the circumstances of the Chapter 11 Cases. Accordingly, the Debtors respectfully request that the Court authorize, but not direct, Aerovías to enter into the Omnibus Amendment Agreement, to assume and/or reinstate the Transaction Documents (each as amended by the Omnibus Amendment Agreement), and to perform all of the obligations under the Omnibus Amendment Agreement and the Transaction Documents (each as amended by the Omnibus Amendment Agreement).

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

31. By this Motion, the Debtors also seek approval of the Claims Settlement between the Counterparties and the Debtors, which includes granting the Contingent Claim to MUFG and expunging of all other claims belonging to the Counterparties against the Debtors in the Chapter 11 Cases relating to the Transaction Documents or the Aircraft.

32. 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).

33. 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).

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

product of ‘arms-length’ bargaining, and not fraud or collusion.” *In re Ionosphere Clubs, Inc.*, 156 B.R. at 428.

35. The Debtors respectfully submit that the Claims Settlement satisfies the range of reasonableness test described above. Rather than engage in costly and value-destructive litigation over the Debtors’ obligations to the Counterparties (including the Fees and Expenses), the amounts of the Counterparties’ claims, and any amounts mitigating the quantum of those claims, the parties negotiated a consensual resolution whereby Aerovías would grant the Contingent Claim to MUFG. 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 Counterparties that will eliminate the need for a costly claims dispute. 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.

### **Notice**

36. Notice of this Motion will be provided to the following parties: (a) the entities on the Master Service List (as defined in the *Order Establishing Certain Notice, Case Management, and Administrative Procedures* [ECF No. 79], which is available on the Debtors’ case website at <https://dm.epiq11.com/case/aeromexico/info>); (b) the U.S. Trustee; (c) counsel to the Committee;

(d) counsel to the DIP Lenders; (e) counsel to the Ad Hoc Group of Senior Noteholders; (f) counsel to the Ad Hoc Group of Unsecured Claimholders; and (g) any person or entity with a particularized interest in the subject matter of this Motion. The Debtors respectfully submit that no other or further notice is required.

**No Prior Request**

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

*[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: January 4, 2022  
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  
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:**

**GRUPO AEROMÉXICO, S.A.B. de C.V., et al.,  
Debtors.<sup>1</sup>**

**Chapter 11**

**Case No. 20-11563 (SCC)**

**(Jointly Administered)**

**ORDER AUTHORIZING DEBTOR AEROVÍAS DE MÉXICO, S.A. DE C.V. TO  
IMPLEMENT CERTAIN TRANSACTIONS WITH MUFG BANK, LTD.,  
INCLUDING (I) ENTRY INTO AN OMNIBUS AMENDMENT AGREEMENT,  
(II) ASSUMPTION AND/OR REINSTATEMENT OF CERTAIN AIRCRAFT  
TRANSACTION DOCUMENTS (AS AMENDED BY THE OMNIBUS  
AMENDMENT AGREEMENT), AND (III) THE CLAIMS SETTLEMENT**

Upon the motion (the “**Motion**”)<sup>2</sup> of the Debtors for entry of an order (this “**Order**”), (a) authorizing, but not directing, Aerovías to enter into the Omnibus Amendment Agreement (attached hereto as **Exhibit 1**) with the Counterparties, (b) authorizing, but not directing, Aerovías to assume and/or reinstate the Transaction Documents (each as amended by the Omnibus Amendment Agreement), and (c) approving the Claims Settlement, each as set forth more fully in the Motion and the Craine 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 proceedings being proper

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<sup>1</sup> 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.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

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 21, 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 hereby granted, and the MUFG Transactions are hereby approved, to the extent set forth herein.
2. Pursuant to sections 363(b), 364, and 105 of the Bankruptcy Code and Bankruptcy Rule 9019, (a) the Omnibus Amendment Agreement is hereby approved and (b) Aerovías is authorized (but not directed) to (i) enter into, and to pay all amounts and otherwise perform all obligations under, the Omnibus Amendment Agreement, including, without limitation, amending the Transaction Documents in accordance with the terms set forth in the Omnibus Amendment Agreement, which is in the best interest of the Debtors and their estates, and (ii) grant the Contingent Claim to MUFG for all reasonable and documented Fees and Expenses of the Counterparties under the Transaction Documents in excess of \$275,000; *provided, however*, that allowance of the Contingent Claim and the

calculation of the final amount thereof (if any) is subject to the terms of the Omnibus Amendment Agreement.

3. Pursuant to and in accordance with sections 364 and 365 of the Bankruptcy Code, Aerovías is authorized (but not directed) to (a) reinstate and/or assume each of the Transaction Documents (each as amended by the Omnibus Amendment Agreement) and (b) pay all amounts and otherwise perform all obligations under the Transaction Documents (each as amended by the Omnibus Amendment Agreement) in accordance with the terms thereof. Upon the effectiveness of the Omnibus Amendment Agreement, in accordance with its terms, the Transaction Documents (each as amended by the Omnibus Amendment Agreement) shall be deemed assumed and/or reinstated, as applicable, by Aerovías without the need for further notice or action by Aerovías or the Borrowers or a further order of the Court.

4. Subject to Aerovías's continued compliance with the terms of the Transaction Documents (each as amended by the Omnibus Amendment Agreement) and the Financing Stipulation, as well as the Omnibus Amendment Agreement, the cure payment required by section 365(b) of the Bankruptcy Code upon assumption of the applicable Transaction Documents shall be \$0.00.

5. Aerovías and the Counterparties are authorized (but not directed) to (a) execute, deliver, provide, implement, and fully perform any and all obligations, instruments, and papers necessary or advisable to implement the MUFG Transactions, including, without limitation, as provided for or contemplated in the Omnibus Amendment Agreement, the AMX Guarantees, the Facility Agreements, the Mortgages, the Aircraft Operating Agreements and the Transaction Documents (each as amended by the Omnibus

Amendment Agreement) and (b) take any and all actions to implement the MUFG Transactions, including, without limitation, the Omnibus Amendment Agreement and the Transaction Documents (each as amended by the Omnibus Amendment Agreement) in accordance with the terms thereof.

6. From and after the effective date of each Amended Transaction Document, the obligations of Aeroméxico under such applicable Amended Transaction Document shall constitute administrative expenses of the Debtors' estates pursuant to sections 503(b)(1) and 507(a)(2) of the Bankruptcy Code.

7. The Claims Settlement is (a) integral and necessary to the MUFG 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 and the Counterparties.

8. In accordance with the Claims Settlement, upon the effective date of the Amended Transaction Documents, all claims relating to the Transaction Documents or the Aircraft, aside from the Contingent Claim, shall be deemed withdrawn (collectively, the "**Withdrawn Claims**"), including, without limitation, the claims numbered 341, 342, and 344; *provided, however*, that MUFG, the Agent, the Loan Participant, and the Security Trustee shall be entitled to assert additional claims as explicitly provided under the Claims Settlement and the Omnibus Amendment Agreement.

9. Subject to the terms of this Order and upon the terms set forth in Decretal Paragraph 8 above, the Withdrawn Claims shall be deemed withdrawn and no further notice or action shall be required of the Counterparties or the Debtors to effectuate the

withdrawal of such claims. From and after the date 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, reflecting the withdrawal of the Withdrawn Claims as set forth in this Order.

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

11. 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.

12. 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 Omnibus Amendment Agreement, and the Amended Transaction Documents.

Dated: \_\_\_\_\_, 2022  
New York, New York

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THE HONORABLE SHELLEY C. CHAPMAN  
UNITED STATES BANKRUPTCY JUDGE

**Exhibit 1**

**Omnibus Amendment Agreement**

Execution Version

**OMNIBUS AMENDMENT AGREEMENT  
[MSNs 30283, 33784 AND 33788]**

Dated as of \_\_\_\_\_, 2021

among

**BANK OF UTAH,**  
not in its individual capacity but solely as owner trustee,  
as MSN 30283 Borrower

**BANK OF UTAH,**  
not in its individual capacity but solely as owner trustee,  
as MSN 33784 Borrower

**BANK OF UTAH,**  
not in its individual capacity but solely as owner trustee,  
as MSN 33788 Borrower

**AEROVÍAS DE MÉXICO, S.A. DE C.V.,**  
as Owner Participant and Guarantor under each Facility Agreement

**MUFG BANK, LTD.,**  
as Loan Participant and Agent under each Facility Agreement

and

**DVB BANK SE,**  
as Security Trustee under each Facility Agreement

\_\_\_\_\_  
Three (3) Boeing Model 737 Aircraft  
\_\_\_\_\_

**OMNIBUS AMENDMENT AGREEMENT**  
**[MSNs 30283, 33784 and 33788]**

**THIS OMNIBUS AMENDMENT AGREEMENT [MSNs 30283, 33784 and 33788]** dated as of \_\_\_\_\_, 2021 (this “**Agreement**” and “**Omnibus Agreement**”) is among **BANK OF UTAH**, not in its individual capacity but solely as owner trustee under the Trust Agreement (as defined in the MSN 30283 Facility Agreement (as defined below)), as borrower under the MSN 30283 Facility Agreement (the “**MSN 30283 Borrower**”), **BANK OF UTAH**, not in its individual capacity but solely as owner trustee under the Trust Agreement (as defined in the MSN 33784 Facility Agreement (as defined below)), as borrower under the MSN 33784 Facility Agreement (the “**MSN 33784 Borrower**”), **BANK OF UTAH**, not in its individual capacity but solely as owner trustee under the Trust Agreement (as defined in the MSN 33788 Facility Agreement (as defined below)), as borrower under the MSN 33788 Facility Agreement (the “**MSN 33788 Borrower**” and, together with the MSN 30283 Borrower and the MSN 33784 Borrower, collectively, the “**Borrowers**” and each individually a “**Borrower**”), **AEROVÍAS DE MÉXICO, S.A. DE C.V. (“Aeromexico”)**, a *sociedad anónima de capital variable* duly organized and validly existing under the laws of Mexico, as owner participant (the “**Owner Participant**”) and as guarantor under each Facility Agreement (as defined below) (the “**Guarantor**”), **MUFG BANK, LTD.**, as loan participant under each Facility Agreement (the “**Loan Participant**”) and as agent for the relevant Loan Participant under each Facility Agreement (the “**Agent**”) and **DVB BANK SE**, as security trustee under each Facility Agreement (the “**Security Trustee**”).

**WITNESSETH:**

**WHEREAS**, the MSN 30283 Borrower, the Owner Participant, the Guarantor, the Loan Participant, the Agent and the Security Trustee previously entered into the Amended and Restated Facility Agreement [Aeromexico B737 [30283] dated as of September 4, 2019 (as amended, supplemented or otherwise modified prior to the Effective Date (as hereinafter defined), the “**MSN 30283 Facility Agreement**”) in connection with the financing of one (1) Boeing model 737-76Q aircraft with manufacturer’s serial number 30283 (“**MSN 30283**”);

**WHEREAS**, the MSN 30283 Borrower and the Security Trustee previously entered into the Amended and Restated Mortgage and Security Agreement [Aeromexico B737 [30283]] dated as of September 4, 2019 (as amended, supplemented or otherwise modified prior to the Effective Date (as hereinafter defined), including as supplemented by the Mortgage Supplement [Aeromexico B737 [30283]] No. 1 dated September 4, 2019, executed and delivered by the Borrower (the “**MSN 30283 Mortgage Supplement**”), the “**MSN 30283 Mortgage**”);

**WHEREAS**, the MSN 33784 Borrower, the Owner Participant, the Guarantor, the Loan Participant, the Agent and the Security Trustee previously entered into the Amended and Restated Facility Agreement [Aeromexico B737 [33784] dated as of July 11, 2019 (as amended, supplemented or otherwise modified prior to the Effective Date (as hereinafter defined), the “**MSN 33784 Facility Agreement**”) in connection with the financing of one (1) Boeing model 737-752 aircraft with manufacturer’s serial number 33784 (“**MSN 33784**”);

**WHEREAS**, the MSN 33784 Borrower and the Security Trustee previously entered into the Amended and Restated Mortgage and Security Agreement [Aeromexico B737 [33784]] dated



**[Omnibus Amendment Agreement [MSNs 30283, 33784 and 33788]]**

as of July 11, 2019 (as amended, supplemented or otherwise modified prior to the Effective Date (as hereinafter defined), including as supplemented by the Mortgage Supplement [Aeromexico B737 [33784]] No. 1 dated July 11, 2019, executed and delivered by the Borrower (the “**MSN 33784 Mortgage Supplement**”), the “**MSN 33784 Mortgage**”);

**WHEREAS**, the MSN 33788 Borrower, the Owner Participant, the Guarantor, the Loan Participant, the Agent and the Security Trustee previously entered into the Amended and Restated Facility Agreement [Aeromexico B737 [33788]] dated as of July 11, 2019 (as amended, supplemented or otherwise modified prior to the Effective Date (as hereinafter defined), the “**MSN 33788 Facility Agreement**” and together with the MSN 30283 Facility Agreement and the MSN 33784 Facility Agreement, collectively, the “**Facility Agreements**” and each individually, a “**Facility Agreement**”) in connection with the financing of one (1) Boeing 737-752 aircraft with manufacturer’s serial number 33788 (“**MSN 33788**” and, together with MSN 30283 and MSN 33784, collectively, the “**Aircraft**” and each individually, an “**Aircraft**”), which Aircraft are more particularly described in Exhibit C attached to this Agreement;

**WHEREAS**, the MSN 33788 Borrower and the Security Trustee previously entered into the Amended and Restated Mortgage and Security Agreement [Aeromexico B737 [33788]] dated as of July 11, 2019 (as amended, supplemented or otherwise modified prior to the Effective Date (as hereinafter defined), including as supplemented by the Mortgage Supplement [Aeromexico B737 [33788]] No. 1 dated July 11, 2019, executed and delivered by the Borrower (the “**MSN 33788 Mortgage Supplement**” and, together with the MSN 30283 Mortgage Supplement and the MSN 33784 Mortgage Supplement, collectively, the “**Mortgage Supplements**), the “**MSN 33788 Mortgage**” and, together with the MSN 30283 Mortgage and the MSN 33784 Mortgage, collectively, the “**Mortgages**” and each individually, a “**Mortgage**”), which Mortgages are more particularly described in Exhibit C attached to this Agreement;

**WHEREAS**, Aeromexico and certain of its affiliates filed for Chapter 11 bankruptcy protections and sought emergency reorganization pursuant to which the parties hereto have agreed to restructure the transaction on the terms set out in this Omnibus Agreement; and

**WHEREAS**, the relevant parties hereto have agreed to, among other things, amend [REDACTED], to amend [REDACTED], to [REDACTED], in each case on the terms and conditions set forth herein.

**NOW, THEREFORE**, in consideration of the mutual agreements herein contained and other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto hereby agree as follows:

**Section 1. Definitions.** Unless the context otherwise requires, capitalized terms used herein and not otherwise defined herein shall have the meanings set forth in Appendix A to the relevant Mortgage, and this Omnibus Agreement shall be interpreted in accordance with the rules of construction set forth therein.

In addition, the following words and expressions shall have the following meanings:

“**Approval Order**” means an order of the Bankruptcy Court that, *inter alia*, (i) approves this Omnibus Agreement, (ii) authorizes the Guarantor to comply with the terms and obligations

**[Omnibus Amendment Agreement [MSNs 30283, 33784 and 33788]]**

of the Omnibus Agreement, (iii) approves of the Approved Claim, (iv) provides that neither MUFG nor the Finance Parties shall have any claims under the Chapter 11 Cases except for the Allowed Claim and any claims relating to each Borrower's and the Guarantor's compliance with their respective obligations under the Stipulations or, from and after the Effective Date, the Operative Documents (as amended by this Agreement), and (v) is otherwise in form and substance reasonably acceptable to the Finance Parties.

**"Approved Claim"** means any general unsecured claim for the reasonable and documented costs and expenses incurred by MUFG and the Finance Parties in connection with the Chapter 11 Cases and the transactions contemplated by this Omnibus Agreement (including, without limitation, the fees and expenses of Vedder Price P.C., counsel to MUFG, Mexican counsel to MUFG in connection with the transactions contemplated by this Omnibus Agreement, and Deucalion Aviation Limited (formerly DVB Aviation Asset Management) as technical advisor to MUFG) in excess of [REDACTED].

**"Bankruptcy Court"** means the United States Bankruptcy Court for the Southern District of New York.

**"Chapter 11 Cases"** means those certain Chapter 11 proceedings under Title 11 of the United States Code, 11 U.S.C. § 101 et. seq., of Aeromexico and its affiliated debtors and debtors-in-possession filed on June 30, 2020, in the Bankruptcy Court and the related parallel and ancillary proceedings.

**"Effective Date"** means the date occurring on or after the date of the Approval Order on which all conditions precedent set forth in Section 3 hereof have been satisfied.

**"MUFG"** means MUFG Bank, Ltd.

**"Stipulations"** means the *Stipulations (ECF No. 692, ECF No. 693, and ECF No. 694)*, dated December 3, 2020, among, Aerovías de México, S.A. de C.V., the Agent, the Security Trustee, the Loan Participant and the Borrower and approved by the Bankruptcy Court.

**Section 2. Amendments.** Effective as of the Effective Date, the parties hereby agree to the following **amendments**:

(a) Amendments to the Facility Agreements. The parties to each Facility Agreement agree to amend the relevant Facility Agreement as follows:

(i) Section 2(a) of the MSN 30283 Facility Agreement is amended by adding the following text at the end of such Section:

"Notwithstanding the foregoing, on the Effective Date, the [REDACTED] as of the Effective Date will be deemed to be [REDACTED]. The Security Trustee shall, within five (5) Business Days after the Effective Date, return to the Guarantor [REDACTED]."

(ii) Section 2(a) of the MSN 33784 Facility Agreement is amended by adding the following text at the end of such Section:

**[Omnibus Amendment Agreement [MSNs 30283, 33784 and 33788]]**

“Notwithstanding the foregoing, on the Effective Date, [REDACTED] will be deemed to be [REDACTED]. The Security Trustee shall, within five (5) Business Days after the Effective Date, return to the Guarantor [REDACTED].”

(iii) Section 2(a) of the MSN 33788 Facility Agreement is amended by adding the following text at the end of such Section:

“Notwithstanding the foregoing, on the Effective Date, [REDACTED] will be deemed to be [REDACTED]. The Security Trustee shall, within five (5) Business Days after the Effective Date, return to the Guarantor [REDACTED].”

(iv) Section 2(c) of each Facility Agreement is amended by adding the following text at the end of such Section:

“Subject to the terms and conditions of the Omnibus Agreement, and immediately prior to the Effective Date, the Borrower shall authorize the delivery and filing for record at the FAA of the Omnibus Agreement, and the Security Trustee shall authorize the amendment at the FAA of the Mortgage and Mortgage Supplement thereto previously filed therewith by filing the Omnibus Agreement with the FAA.”

(v) Section 3(a) of the MSN 30283 Facility Agreement is amended by adding the following text at the end of such Section:

“Notwithstanding the foregoing, commencing on the Effective Date, the Loans shall amortize on a quarterly basis in arrears on each Interest Payment Date (the first such amortizing payment to be made on the Interest Payment Date falling in March 2022 and the final such installment becoming due on the Maturity Date) to zero in accordance with Annex A of the Loan Certificates (and the related Schedule 1 of the Mortgage Supplement for the Designated Aircraft).”

(vi) Section 3(a) of each of the MSN 33784 Facility Agreement and the MSN 33788 Facility Agreement is amended by adding the following text at the end of such Section:

“Notwithstanding the foregoing, commencing on the Effective Date, the Loans shall amortize on a quarterly basis in arrears on each Interest Payment Date (the first such amortizing payment to be made on the Interest Payment Date falling in January 2022 and the final such installment becoming due on the Maturity Date) to zero in accordance with Annex A of the Loan Certificates (and the related Schedule 1 of the Mortgage Supplement for the Designated Aircraft).”

(vii) Section 3(b) of each Facility Agreement is amended by adding the following text at the end of such Section:

“Notwithstanding the foregoing, from and after the Effective Date, the Loans will bear interest at the Fixed Rate.”

**[Omnibus Amendment Agreement [MSNs 30283, 33784 and 33788]]**

(viii) Section 3(j) of each Facility Agreement is amended by deleting such section in its entirety and inserting the following in lieu thereof:

“(j) Benchmark Replacement Setting. Notwithstanding anything to the contrary herein or in any other Operative Document:

(i) Replacing USD LIBOR. On March 5, 2021 the Financial Conduct Authority (“FCA”), the regulatory supervisor of USD LIBOR’s administrator (“IBA”), announced in a public statement the future cessation or loss of representativeness of overnight/Spot Next, 1-month, 3-month, 6-month and 12-month USD LIBOR tenor settings. On the earlier of (i) the date that all Available Tenors of USD LIBOR have either permanently or indefinitely ceased to be provided by IBA or have been announced by the FCA pursuant to public statement or publication of information to be no longer representative and (ii) the Early Opt-in Effective Date, if the then-current Benchmark is USD LIBOR, the Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Operative Document in respect of any setting of such Benchmark on such day and all subsequent settings without any amendment to, or further action or consent of any other party to this Agreement or any other Operative Document. If the Benchmark Replacement is Daily Simple SOFR, all interest payments will be payable on a monthly basis.

(ii) Replacing Future Benchmarks. Upon the occurrence of a Benchmark Transition Event, the Benchmark Replacement will replace the then-current Benchmark for all purposes hereunder and under any Operative Document in respect of any Benchmark setting at or after 5:00 p.m. on the fifth (5th) Business Day after the date notice of such Benchmark Replacement is provided to the Loan Participants without any amendment to, or further action or consent of any other party to, this Agreement or any other Operative Document so long as the Agent has not received, by such time, written notice of objection to such Benchmark Replacement from Loan Participants comprising the Majority in Interest of Holders. At any time that the administrator of the then-current Benchmark has permanently or indefinitely ceased to provide such Benchmark or such Benchmark has been announced by the regulatory supervisor for the administrator of such Benchmark pursuant to public statement or publication of information to be no longer representative of the underlying market and economic reality that such Benchmark is intended to measure and that representativeness will not be restored, until the Borrower’s receipt of notice from the Administrative Agent that a Benchmark Replacement has replaced such Benchmark, a Market Disruption Event will be deemed to have occurred and the provisions of Section 3(g) will apply.

(iii) Benchmark Replacement Conforming Changes. In connection with the implementation and administration of a Benchmark Replacement, the Agent will have the right to make Benchmark

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Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Operative Document, any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of any other party to this Agreement.

(iii) Notices; Standards for Decisions and Determinations. The Agent will promptly notify the Borrower and the Loan Participants of (A) the implementation of any Benchmark Replacement and (B) the effectiveness of any Benchmark Replacement Conforming Changes. Any determination, decision or election that may be made by the Agent or, if applicable, any Loan Participant (or group of Loan Participants) pursuant to this Section, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party hereto, except, in each case, as expressly required pursuant to this Section.

(iv) Unavailability of Tenor of Benchmark. At any time (including in connection with the implementation of a Benchmark Replacement), (i) if the then-current Benchmark is a term rate (including Term SOFR or USD LIBOR), then the Agent may remove any tenor of such Benchmark that is unavailable or non-representative for Benchmark (including Benchmark Replacement) settings and (ii) the Agent may reinstate any such previously removed tenor for Benchmark (including Benchmark Replacement) settings.

(v) Definitions.

“Available Tenor” means, as of any date of determination and with respect to the then-current Benchmark, as applicable, (x) if the then-current Benchmark is a term rate, any tenor for such Benchmark that is or may be used for determining the length of an Interest Period or (y) otherwise, any payment period for interest calculated with reference to such Benchmark, as applicable, pursuant to this Agreement as of such date.

“Benchmark” means, initially, USD LIBOR; provided that if a replacement of the Benchmark has occurred pursuant to this Section titled “Benchmark Replacement Setting”, then “Benchmark” means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate. Any reference to “Benchmark” shall include, as applicable, the published component used in the calculation thereof.

“Benchmark Replacement” means, for any Available Tenor:

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(1) For purposes of clause (i) of this Section, the first alternative set forth below that can be determined by the Administrative Agent:

(a) the sum of: (i) Term SOFR and (ii) 0.11448% (11.448 basis points) for an Available Tenor of one-month's duration, 0.26161% (26.161 basis points) for an Available Tenor of three-months' duration, and 0.42826% (42.826 basis points) for an Available Tenor of six-months' duration, or

(b) the sum of: (i) Daily Simple SOFR and (ii) the spread adjustment selected or recommended by the Relevant Governmental Body for the replacement of the tenor of USD LIBOR with a SOFR-based rate having approximately the same length as the interest payment period specified in clause (a) of this Section; and

(2) For purposes of clause (ii) of this Section, the sum of (a) the alternate benchmark rate and (b) an adjustment (which may be a positive or negative value or zero), in each case, that has been selected by the Agent and the Borrower as the replacement for such Available Tenor of such Benchmark giving due consideration to any evolving or then-prevailing market convention, including any applicable recommendations made by the Relevant Governmental Body, for U.S. dollar-denominated syndicated credit facilities at such time;

provided that, if the Benchmark Replacement as determined pursuant to clause (1) or (2) above would be less than the Floor, the Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement and the other Operative Documents.

"Benchmark Replacement Conforming Changes" means, with respect to any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of "Business Day," the definition of "Interest Period," timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, the applicability and length of lookback periods, the applicability of breakage provisions, and other technical, administrative or operational matters) that the Agent decides may be appropriate to reflect the adoption and implementation of such Benchmark Replacement and to permit the administration thereof by the Agent in a manner substantially consistent with market practice (or, if the Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Agent determines that no market practice for the administration of such Benchmark Replacement exists, in such other manner of administration as the Agent decides is reasonably necessary in connection with the administration of this Agreement and the other Operative Documents).

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“Benchmark Transition Event” means, with respect to any then-current Benchmark other than USD LIBOR, the occurrence of a public statement or publication of information by or on behalf of the administrator of the then-current Benchmark, the regulatory supervisor for the administrator of such Benchmark, the Board of Governors of the Federal Reserve System, the Federal Reserve Bank of New York, an insolvency official with jurisdiction over the administrator for such Benchmark, a resolution authority with jurisdiction over the administrator for such Benchmark or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark, announcing or stating that (a) such administrator has ceased or will cease on a specified date to provide all Available Tenors of such Benchmark, permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark or (b) all Available Tenors of such Benchmark are or will no longer be representative of the underlying market and economic reality that such Benchmark is intended to measure and that representativeness will not be restored.

“Daily Simple SOFR” means, for any day, SOFR, with the conventions for this rate (which will include a lookback) being established by the Agent in accordance with the conventions for this rate recommended by the Relevant Governmental Body for determining “Daily Simple SOFR” for syndicated business loans; provided, that if the Agent decides that any such convention is not administratively feasible for the Agent, then the Agent may establish another convention in its reasonable discretion.

“Early Opt-in Effective Date” means, with respect to any Early Opt-in Election, the sixth (6th) Business Day after the date notice of such Early Opt-in Election is provided to the Loan Participants, so long as the Agent has not received, by 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date notice of such Early Opt-in Election is provided to the Loan Participants, written notice of objection to such Early Opt-in Election from Loan Participants comprising the Majority in Interest of Holders.

“Early Opt-in Election” means the occurrence of:

(1) a notification by the Agent to (or the request by the Borrower to the Agent to notify) each of the other parties hereto that at least five currently outstanding U.S. dollar-denominated syndicated credit facilities at such time contain (as a result of amendment or as originally executed) a SOFR-based rate (including SOFR, a term SOFR or any other rate based upon SOFR) as a benchmark rate (and such syndicated credit facilities are identified in such notice and are publicly available for review), and

(2) the joint election by the Agent and the Borrower to trigger a fallback from USD LIBOR and the provision by the Agent of written notice of such election to the Loan Participants.

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“Floor” means the benchmark rate floor, if any, provided in this Agreement initially (as of the execution of this Agreement, the modification, amendment or renewal of this Agreement or otherwise) with respect to USD LIBOR.

“Relevant Governmental Body” means the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or any successor thereto.

“SOFR” means a rate per annum equal to the secured overnight financing rate for such Business Day published by the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate) on the website of the Federal Reserve Bank of New York, currently at <http://www.newyorkfed.org> (or any successor source for the secured overnight financing rate identified as such by the administrator of the secured overnight financing rate from time to time).

“Term SOFR” means, for the applicable corresponding tenor, the forward-looking term rate based on SOFR that has been selected or recommended by the Relevant Governmental Body.

“USD LIBOR” means the London interbank offered rate for U.S. dollars.”

(b) Amendments to Mortgages. The parties to each Mortgage hereby agree to amend the relevant Mortgage as follows:

(i) Section 2.01 of each Mortgage is amended and restated as follows:

“**Section 2.01 Form of Loan Certificates**. The Loan Certificates shall each be substantially in the form set forth in Exhibit C to the Facility Agreement or, if issued on or after the Effective Date, they shall be substantially in the form attached as Exhibit B to the Omnibus Agreement.”

(ii) Section 2.02(a) of the MSN 30283 Mortgage is amended by adding the following text at the end of such Section:

“On the Effective Date, the Borrower shall issue Loan Certificates in respect of the Aircraft in an aggregate Original Amount set forth in item 1 of Schedule 1 to the Omnibus Agreement.”

(iii) Section 2.02(a) of the MSN 33784 Mortgage is amended by adding the following text at the end of such Section:

“On the Effective Date, the Borrower shall issue Loan Certificates in respect of the Aircraft in an aggregate Original Amount set forth in item 2 of Schedule 1 to the Omnibus Agreement.”



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(iv) Section 2.02(a) of the MSN 33788 Mortgage is amended by adding the following text at the end of such Section:

“On the Effective Date, the Borrower shall issue Loan Certificates in respect of the Aircraft in an aggregate Original Amount set forth in item 3 of Schedule 1 to the Omnibus Agreement.”

(v) Section 2.02(c) of the MSN 30283 Mortgage is amended and restated as follows:

“(c) The principal of the Loan Certificates shall be due and payable in eight installments as set forth in Schedule 1 to the Mortgage Supplement, the first such installment to be due on the Interest Payment Date to occur in March 2022.”

(vi) Section 2.02(c) of each of the MSN 33784 Mortgage and the MSN 33788 Mortgage is amended and restated as follows:

“(c) The principal of the Loan Certificates shall be due and payable in nine installments as set forth in Schedule 1 to the Mortgage Supplement, the first such installment to be due on the Interest Payment Date to occur in January 2022.”

(vii) Section 2.02(e) of each Mortgage is amended by deleting the last sentence thereof.

(viii) Section 2.06 of each Mortgage is amended by deleting the words “Amendment Date” and replacing them with the words “Effective Date”.

(ix) Section 2.09(a) of each Mortgage is amended by deleting such section in its entirety and inserting the following in lieu thereof:

“(a) At any time following the Effective Date, and on at least three Business Days’ prior written notice to the Agent and the Security Trustee, the Borrower may prepay on the date specified in its notice of prepayment delivered pursuant to this Section 2.09(a) in whole all of the Loan Certificates then outstanding under the Facility Agreement and all of the Loan Certificates (as defined in each Related Mortgage) then outstanding under the Related Facility Agreements at the principal amount thereof, together with accrued interest thereon to the date of prepayment plus all Break Amount (if any) (as defined herein and in each Related Mortgage, as applicable) and all other amounts due to the Holders (as defined herein and each Related Mortgage, as applicable) of the Loan Certificates (as defined herein and each Related Mortgage, as applicable) hereunder, thereunder and under the other Operative Documents (as defined herein and each Related Mortgage, as applicable); provided that no partial prepayments of the Loan Certificates shall be permitted hereunder unless otherwise specified herein; provided further that no prepayments in full of solely the Loan Certificates issued under the Facility Agreement shall be permitted hereunder unless otherwise specified herein; and provided further that no prepayment shall be permitted under this Section 2.09(a) while an Event of Default (other than the Chapter 11 Cases (as

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defined in the Omnibus Agreement) or any *ipso facto* defaults related to the Chapter 11 Cases (as defined in the Omnibus Agreement)) is occurring. The Security Trustee will give prompt notice of the Borrower's notice to prepay to the Holders."

(x) Section 2.09(c) of each Mortgage is amended and restated as follows:

"(c) Upon the occurrence of an Event of Loss with respect to an Engine under circumstances in which there has not occurred an Event of Loss with respect to the Airframe, on at least three Business Days' prior written notice to the Security Trustee, the Borrower may prepay in part all Loan Certificates (or, if the Security Trustee has received the insurance proceeds in respect thereof, direct that the Security Trustee apply such proceeds *pro rata* in partial prepayment of all Loan Certificates), on the date specified in its notice of prepayment delivered pursuant to this Section 2.09(c); provided that (i) such insurance proceeds shall be sufficient to prepay the Loans for the Aircraft in an amount not less than the applicable Engine Allocable Percentage of the outstanding principal balance thereof, together with accrued interest thereon to the date of prepayment plus all Break Amount (if any), and all other amounts then due thereunder and hereunder and under the other Operative Documents to the Holders, (ii) any insurance proceeds remaining after the partial prepayment of the Loan Certificates contemplated under this Section 2.09(c) shall be applied *pro rata* to prepay the Loan Certificates (as defined in each Related Mortgage), together with accrued interest thereon to the date of prepayment plus all Break Amount (as defined in each Related Mortgage) (if any), and all other amounts due thereunder and hereunder and under the other Operative Documents (as defined in each Related Mortgage) to the Holders (as defined in each Related Mortgage) and (iii) such partial prepayment shall be made no later than 90 days after the occurrence of such Event of Loss. The Security Trustee will give prompt notice of the Borrower's notice to prepay to the Holders.

Upon such prepayment, (x) the Security Trustee shall, at the cost and expense of the Borrower, execute and deliver to the Borrower such documents and instruments, prepared by the Borrower at the Borrower's expense and consent to the discharge of the International Interest granted under this Mortgage in such Engine as the Borrower shall reasonably request to evidence the release of such Engine from the Lien of this Mortgage and (y) the Security Trustee shall assign to the Borrower all claims it may have against any other Person relating to any Event of Loss giving rise to such prepayment, if applicable."

(xi) Section 2.09(d) of each Mortgage is amended as follows:

"(d) On at least three Business Days' prior written notice to the Security Trustee, so long as no Event of Default (other than the Chapter 11 Cases (as defined in the Omnibus Agreement) or any *ipso facto* defaults related to the Chapter 11 Cases (as defined in the Omnibus Agreement)) has occurred and is continuing, the Borrower may sell the Aircraft, the related Airframe or any related Engine (a "Sale") in a true sale to a third party buyer that is not an Affiliate of the Guarantor pursuant to an arm's-length transaction (and, in

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connection with such Sale, the Borrower shall prepay the Loan Certificates and, if applicable, the "Loan Certificates" (as defined in the Related Mortgages) as described in this Section); provided that (i) the proceeds of any Sale shall be first applied to prepay the Loan Certificates *pro rata* across the remaining principal amortizations, together with all accrued interest to the date of prepayment plus all Break Amount (if any), and all other amounts then due hereunder and under the other Operative Documents to the Holders, (ii) any proceeds of such Sale remaining after application pursuant to clause (i) shall then be applied *pro rata* to prepay the Loan Certificates (as defined in each Related Mortgage) outstanding under the Related Facility Agreements, together with accrued interest thereon to the date of prepayment plus all Break Amount (as defined in each Related Mortgage) (if any), and all other amounts due thereunder and under the other Operative Documents (as defined in each Related Mortgage) to the Holders (as defined in each Related Mortgage) and (iii) in the case of a Sale of an Engine (including by way of a Sale of the Aircraft), either (x) the proceeds of such Sale shall be sufficient to prepay the Loan Certificates for the Aircraft in an amount not less than the applicable Engine Allocable Percentage of the outstanding principal balance thereof at the time of such Sale, together with accrued interest thereon to the date of prepayment plus all Break Amount (if any), and all other amounts due thereunder and hereunder and under the other Operative Documents to the Holders (the "**Payoff Amount**") or (y) if the proceeds of such Sale are less than the Payoff Amount, the Borrower shall pay the difference between the Sale proceeds and the Payoff Amount in order to prepay the Loan Certificates in an amount equal to the Payoff Amount. For the avoidance of doubt, if only part of an Aircraft is subject to a Sale, the remaining parts of such Aircraft shall remain subject to the terms of this Mortgage and the other Operative Documents in accordance with their terms. The Security Trustee will give prompt notice of the Borrower's notice to prepay to the Holders.

Upon such Sale, the Security Trustee shall, at the cost and expense of the Borrower, execute and deliver to the Borrower such documents and instruments, prepared by the Borrower at the Borrower's expense and consent to the discharge of the International Interest granted under this Mortgage in the Aircraft, the Airframe or such Engine (as applicable) as the Borrower shall reasonably request to evidence the release of the Aircraft, the Airframe or such Engine (as applicable) from the Lien of this Mortgage."

(xii) New Sections 2.09(e) and (f) are added to each Mortgage as follows:

"(e) Any notice of prepayment delivered pursuant to paragraph (a), (b), (c) or (d) above shall be irrevocable if not revoked at least three Business Days prior to the specified date of payment and shall identify the amount to be prepaid.

(f) The Loan Certificates shall also be subject to prepayment as to any single Loan Participant as provided in Sections 3(f) and 8(d)(ii)(z) of the Facility Agreement."

(xiii) Section 5.01 of each Mortgage is amended by including the words "in accordance with Section 2.09(b)," immediately prior to the words "pay or cause to be paid" at the beginning of clause (ii) therein.

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(xiv) Section 5.02 of each Mortgage is amended by (A) including the words “either prepay in whole or in part the Loan Certificates as set forth in Section 2.09(c) or,” immediately after the words “shall, within 90 days after the occurrence of such Event of Loss,” (B) deleting all references to “Section 10.01” therein, (C) deleting the words “(ii) furnish the Security Trustee with an opinion of the Borrower’s counsel to the effect that such Replacement Engine is owned by the Borrower free and clear of all Liens (other than Inchoate Liens), and that upon execution and filing of the Mortgage Supplement or other required document, the Replacement Engine will be subject to the Mortgage on a first priority and perfected basis” and replacing them with the words “(ii) furnish the Security Trustee with an opinion of the Borrower’s counsel to the effect that upon execution and filing of the Mortgage Supplement or other required document the Replacement Engine will be subject to the Lien of the Mortgage on a perfected basis, subject to no other Liens of record” and (D) deleting the word “and” before clause (v) and adding the following at the end of clause (v): “and (vi) furnish the Security Trustee with a copy of a bill of sale (or other evidence) reflecting the Borrower’s title to such Replacement Engine.”

(xv) Section 5.03 of each Mortgage is amended by including the words “Except if the Borrower has elected to prepay in whole or in part the Loan Certificates as set forth in Sections 2.09(c) and 5.02,” at the beginning of clause (2) of such Section.

(xvi) A new Section 5.06 is added to each Mortgage as follows:

**“Section 5.06 Substitution of an Engine.** So long as no Event of Default (other than the Chapter 11 Cases (as defined in the Omnibus Agreement) or any *ipso facto* defaults related to the Chapter 11 Cases (as defined in the Omnibus Agreement)) has occurred and is continuing at the time of such election and at the time of closing of such substitution, the Borrower may elect to substitute an Engine in accordance with the terms and conditions of this Section 5.06. Upon the Borrower’s election to substitute an Engine, the Borrower shall give the Security Trustee written notice thereof and shall, within 90 days after such notice, subject to the Lien of this Mortgage another CFM International, Inc. model CFM56-7B22 engine (or an engine of the same manufacturer of the same or an improved model and suitable for installation and use on the Airframe and compatible with the other Engines mortgaged hereunder) free and clear of all Liens (other than Inchoate Liens) and having a value and utility at least equal to, and being in as good an operating condition (including as to hours and cycles remaining until overhaul), as the Engine subject to such substitution, assuming such Engine was maintained in accordance with the provisions of this Mortgage. Prior to or at the time of any such conveyance, the Borrower will (i) cause a Mortgage Supplement with respect to such Replacement Engine to be duly executed and filed for recording pursuant to the Federal Aviation Act, or such other applicable law of the jurisdiction other than the United States in which the Airframe is registered with the prior written consent of the Security Trustee (in its sole discretion), as the case may be, and cause the international interest of such Mortgage Supplement to be registered with the International Registry with respect to such replacement engine, (ii) furnish the Security Trustee with an opinion of the Borrower’s counsel to the effect that upon execution and filing of the Mortgage Supplement or other required document the

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Replacement Engine will be subject to the Lien of the Mortgage on a perfected basis, subject to no other Liens of record and (x) a contract of sale in favor of the Borrower as owner of such replacement engine(s) and (y) the international interest of the Mortgage in favor of the Security Trustee as mortgagee of such replacement engine(s) have been duly registered with the International Registry (subject to no prior international interests); (iii) furnish a certificate signed by a duly authorized officer of the Borrower stating with respect to any Replacement Engine: (1) a description of the Engine being substituted, which shall be identified by manufacturer's serial number; (2) a description of the Replacement Engine (including the manufacturer's name and serial number); (3) that on the date of the Mortgage Supplement relating to the Replacement Engine the Borrower will be the owner of such Replacement Engine (with such ownership interest reflected on the International Registry as a contract of sale) free and clear of all Liens except Permitted Liens, that such Replacement Engine will be on such date in good working order (subject to maintenance permitted or required by this Mortgage) and condition and that such Replacement Engine is of the same or an improved model of the Engine; and (4) that each of the conditions specified in this Section 5.06 with respect to such Replacement Engine has been satisfied, (iv) furnish the Security Trustee with such evidence of compliance with the insurance provisions of Article VI hereof with respect to such Replacement Engine as the Security Trustee may reasonably request, (v) furnish the Security Trustee with an appraisal or engineer's report (which engineer may be in the employ of the Guarantor) reasonably satisfactory to the Security Trustee attesting to the requisite valuation of such Replacement Engine and (vi) furnish the Security Trustee with a copy of a bill of sale (or other evidence) reflecting the Borrower's title to such Replacement Engine. Upon compliance by the Borrower with all of the terms of this Section 5.06 such Engine shall thereupon cease to be an Engine secured hereunder. For all purposes hereof, each such Replacement Engine shall, after such conveyance, be deemed an "Engine" hereunder.

Upon satisfaction of all conditions to such substitution, the Security Trustee shall, at the cost and expense of the Borrower, execute and deliver to the Borrower such documents and instruments, prepared by the Borrower at the Borrower's expense and consent to the discharge of the International Interest granted under this Mortgage in the replaced Engine as the Borrower shall reasonably request to evidence the release of such replaced Engine from the Lien of this Mortgage."

(xvii) Subject to Section 8 of this Omnibus Agreement, during the pendency of the Chapter 11 Cases, the Events of Default set forth in Article VIII of each Mortgage shall be construed to exclude the Chapter 11 Cases or any *ipso facto* defaults related to the Chapter 11 Cases.

(xviii) The following defined terms are added in proper alphabetical order to Appendix A to each Mortgage:

““**Effective Date**” has the meaning provided to such term in the Omnibus Agreement.

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**“Omnibus Agreement”** means that certain Omnibus Amendment Agreement [MSNs 30283, 33784 and 33788] dated as of \_\_\_\_\_, 2021, among, *inter alios*, the Borrower, the Guarantor, the Loan Participant and the Security Trustee.”

**“Related Facility Agreement”** means, in respect of each Related Mortgage, the “Facility Agreement” as defined in such Related Mortgage.

(xix) The defined term “Engine Allocable Percentage” is added in proper alphabetical order to Appendix A to the MSN 30283 Mortgage as follows:

**“Engine Allocable Percentage”** means, with respect to the Engine bearing Manufacturer’s Serial Number 889997, [REDACTED]% and, with respect to the Engine bearing Manufacturer’s Serial Number 660271, [REDACTED]%.”

(xx) The defined term “Engine Allocable Percentage” is added in proper alphabetical order to Appendix A to the MSN 33788 Mortgage as follows:

**“Engine Allocable Percentage”** means, with respect to the Engine bearing Manufacturer’s Serial Number 890697, [REDACTED]% and, with respect to the Engine bearing Manufacturer’s Serial Number 890699, [REDACTED]%.”

(xxi) The defined term “Engine Allocable Percentage” is added in proper alphabetical order to Appendix A to the MSN 33788 Mortgage as follows:

**“Engine Allocable Percentage”** means, with respect to the Engine bearing Manufacturer’s Serial Number 890598, [REDACTED]% and, with respect to the Engine bearing Manufacturer’s Serial Number 890599, [REDACTED]%.”

(xxii) The following defined terms in Appendix A to the MSN 30283 Mortgage are amended and restated as follows:

**“AMX Guarantee”** means, collectively, (i) the *Fianza* dated as of December 18, 2015, by the Guarantor in favor of the Loan Participants, the Agent and the Security Trustee, (ii) the Guarantor Consent and Acknowledgment Agreement dated September 4, 2019, by the Guarantor in favor of the Loan Participants, the Agent and the Security Trustee and (iii) the Guarantor Consent and Acknowledgment Agreement dated the Effective Date, by the Guarantor in favor of the Loan Participants, the Agent and the Security Trustee.

**“Fixed Rate”** means [REDACTED]% per annum.

**“Maturity Date”** means December 4, 2023.

**“Mortgage”** or **“this Mortgage”** means this Amended and Restated Mortgage and Security Agreement [Aeromexico B737 [30283]], as amended by the Omnibus Agreement and including any Mortgage Supplement and each other supplement from time to time entered into pursuant hereto or to the Omnibus Agreement.

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**“Operative Documents”** means the Facility Agreement, the Mortgage, the Mortgage Supplement, the AMX Guarantee, the Operating Agreement, the Trust Agreement, the Pledge Agreement, the Loan Certificates, the Fee Letter, the Resignation Instrument, the Assignment and Assumption Agreement, the IDERA and the Omnibus Agreement, and any amendments or supplements of any of the foregoing.”

(xxiii) The following defined terms in Appendix A to the MSN 33784 are amended and restated as follows:

**“Mortgage”** or **“this Mortgage”** means this Amended and Restated Mortgage and Security Agreement [Aeromexico B737 [33784]], as amended by the Omnibus Agreement and including any Mortgage Supplement and each other supplement from time to time entered into pursuant hereto or to the Omnibus Agreement.”

(xxiv) The following defined terms in Appendix A to the MSN 33788 are amended and restated as follows:

**“Mortgage”** or **“this Mortgage”** means this Amended and Restated Mortgage and Security Agreement [Aeromexico B737 [33788]], as amended by the Omnibus Agreement and including any Mortgage Supplement and each other supplement from time to time entered into pursuant hereto or to the Omnibus Agreement.”

(xxv) The following defined terms in Appendix A to the MSN 33784 Mortgage and the MSN 33788 Mortgage are amended and restated as follows:

**“AMX Guarantee”** means, collectively, (i) the *Fianza* dated as of March 6, 2015, by the Guarantor in favor of the Loan Participants, the Agent and the Security Trustee, (ii) the Guarantor Consent and Acknowledgment Agreement dated July 11, 2019, by the Guarantor in favor of the Loan Participants, the Agent and the Security Trustee and (iii) the Guarantor Consent and Acknowledgment Agreement dated the Effective Date, by the Guarantor in favor of the Loan Participants, the Agent and the Security Trustee.

**“Fixed Rate”** means [REDACTED]% per annum.

**“Maturity Date”** means January 11, 2024.

**“Operative Documents”** means the Facility Agreement, the Mortgage, the Mortgage Supplement, the AMX Guarantee, the Operating Agreement, the Trust Agreement, the Pledge Agreement, the Loan Certificates, the Fee Letter, the IDERA and the Omnibus Agreement, and any amendments or supplements of any of the foregoing.”

(c) Amendments to the Mortgage Supplements.

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(i) The MSN 30283 Mortgage Supplement is amended by deleting Schedule 1 thereto in its entirety and replacing it with a new Schedule 1 as set forth in Exhibit A-1 hereto.

(ii) The MSN 33784 Mortgage Supplement is amended by deleting Schedule 1 thereto in its entirety and replacing it with a new Schedule 1 as set forth in Exhibit A-2 hereto.

(iii) The MSN 33788 Mortgage Supplement is amended by deleting Schedule 1 thereto in its entirety and replacing it with a new Schedule 1 as set forth in Exhibit A-3 hereto.

**Section 3. Conditions Precedent.** After the Approval Date, the Effective Date will be deemed to have occurred, and the amendments in Section 2 of this Omnibus Agreement will be deemed to take effect, on the date on which each of the following conditions precedent shall have been satisfied or waived by the relevant party:

(a) This Omnibus Agreement shall have been duly authorized, executed and delivered by the parties hereto, shall be in full force and effect, and an executed counterpart shall have been delivered to each Loan Participant;

(b) The representations and warranties set out in Sections 5 and 6 of this Omnibus Agreement shall be true and correct on and as of the Effective Date (except to the extent such representation or warranty relates to an earlier date in which case such representation or warranty shall be true and correct as of such earlier date);

(c) Either (i) the relevant Security Trustee shall have received and be in physical possession of originals of all outstanding Loan Certificates issued prior to the Effective Date and have confirmed in writing to the relevant Borrower that the Holders thereof as shown on the Certificate Register immediately prior to the Effective Date have authorized such Security Trustee to deliver such original Loan Certificates to such Borrower promptly following the Effective Date and in accordance with Section 2(a) of the relevant Facility Agreement (as amended by this Omnibus Agreement on the Effective Date) or (ii) if the relevant Security Trustee does not have physical possession of any or all such original outstanding Loan Certificates, the Holders of such Loan Certificates shall have delivered to the relevant Borrower and such Security Trustee such security or indemnity as may be reasonably required by them to hold such Borrower and such Security Trustee harmless and evidence satisfactory to such Borrower and such Security Trustee of the destruction, loss or theft of such Loan Certificates and of ownership thereof;

(d) The relevant Security Trustee shall have received and be in physical possession of originals of all Loan Certificates to be issued by the relevant Borrower on the Effective Date in accordance with the relevant Facility Agreement and the relevant Mortgage (in each case as amended on the Effective Date), duly executed by each of the relevant Borrower and the Guarantor;

(e) The Guarantor shall have executed and delivered to each Security Trustee a Guarantor Consent and Acknowledgment Agreement in respect of the amendments contemplated by this Omnibus Agreement, in form and substance satisfactory to such Security Trustee;



**[Omnibus Amendment Agreement [MSNs 30283, 33784 and 33788]]**

(f) (i) FAA Counsel in Oklahoma City, Oklahoma shall have filed (or shall be in the process of filing) originals of this Omnibus Agreement with the FAA in respect of the amendments contemplated herein and reflecting the revised principal amount of the Loans and repayment schedule to take effect on the Effective Date and (ii) the international interest of the Mortgages (as amended hereby) with respect to the Airframe and Engines associated with each Aircraft shall have been registered with the International Registry (or arrangements satisfactory to the Agent for such registration immediately upon effectiveness hereof), and there exists no registered international interest on the International Registry prior to such international interest;

(g) No Event of Default (other than the Chapter 11 Cases or any *ipso facto* defaults related to the Chapter 11 Cases) shall have occurred and be continuing;

(h) The Agent shall have received an opinions addressed to the Loan Participants, the Agent and the Security Trustee from (i) Daugherty, Fowler, Peregrin, Haught & Jenson, P.C., special FAA counsel and (ii) Nader, Hayaux y Goebel, S.C., special Mexican counsel, each dated the Effective Date, in form and substance reasonably satisfactory to the addressees thereof.

**Section 4. Effectiveness.**

(a) The parties acknowledge and agree that this Omnibus Agreement will be binding upon the parties upon the later to occur of the execution of this Omnibus Agreement by the parties and the Bankruptcy Court's issuance of the Approval Order.

(b) The parties hereto agree that on the Effective Date, the parties shall be bound by the terms of the Operative Documents (each as amended by this Omnibus Agreement).

**Section 5. Representations and Warranties of each Borrower.** Each Borrower hereby represents and warrants to the relevant Agent, the relevant Security Trustee and the relevant Loan Participant on the date hereof and on the Effective Date (except to the extent such representation or warranty relates to an earlier date, in which case such representation or warranty shall only be made as to the date on which it is expressed to be made) that:

(a) it is a Utah corporation incorporated and validly existing under the laws of Utah; is duly qualified to do business as a foreign corporation in each jurisdiction in which its operations or the nature of its business requires, except where the failure to be so qualified would not give rise to a Material Adverse Change; and has the corporate power and authority to, and holds all licenses, permits and franchises from the appropriate Governmental Body necessary to authorize it to own the relevant Designated Aircraft and to enter into and perform its obligations under the relevant Operative Documents and this Omnibus Agreement, except where the failure to hold such license, permit or franchise would not give rise to a Material Adverse Change;

(b) it has duly authorized, executed and delivered this Omnibus Agreement and each of the relevant Operative Documents to which it is (or will be) a party in connection herewith, and each of such Operative Documents to which it is (or will be) a party constitutes, or when entered into will constitute, its legal, valid and binding obligation, enforceable against it in accordance with its terms, except as the same may be limited by applicable bankruptcy, insolvency,

**[Omnibus Amendment Agreement [MSNs 30283, 33784 and 33788]]**

reorganization, arrangement, moratorium or similar laws affecting the rights of creditors generally and by general principles of equity;

(c) neither its execution and delivery of this Omnibus Agreement or the relevant Operative Documents to which it is or will be a party in connection herewith, nor its consummation of any of the transactions contemplated hereby or thereby, nor its compliance with any of the terms and provisions hereof and thereof, (A) requires or will require any approval of its stockholders, or approval or consent of any trustees or holders of any of its indebtedness or obligations except such as have been (or will be) duly obtained, (B) violates or will violate its certificate of incorporation or by-laws, (C) contravenes or will contravene any provision of, or constitutes or will constitute a default under, or results or will result in any breach of, any indenture, mortgage, lease, chattel mortgage, deed of trust, conditional sale contract, bank loan or credit agreement, material license, or other agreement, instrument or contractual restriction to which it is a party or by which it is bound, provided, however, that its grant to the Security Trustee of a Lien in certain after-acquired property of the type described in clause (4) of the Granting Clause of the Mortgage may require the consent of lenders under third-party loan agreements to which the Borrower is a party, which consent shall be obtained by it prior to it having any rights in such after-acquired property, or (D) contravenes or will contravene any law binding on it; and

(d) no authorization of, giving of notice to, or registration with, or taking of any other action in respect of, any Governmental Body is required for its execution and delivery of, or its carrying out of any of the transactions contemplated hereby or by any other of the relevant Operative Documents to which it is or will be a party in connection herewith, except for (A) the orders, permits, waivers, exemptions, authorizations and approvals of the regulatory authorities having jurisdiction over its operation of the relevant Designated Aircraft, which orders, permits, waivers, exemptions, authorizations and approvals have been duly obtained or will on or prior to the Effective Date be duly obtained, and will on the Effective Date be in full force and effect, (B) any normal periodic and other reporting requirements under the Federal Aviation Act and the regulations promulgated thereunder and the applicable rules, and regulations of the FAA, in each case to the extent required to be given or obtained only after the Effective Date and (C) any filings, registrations or applications specifically described in this Omnibus Agreement or any of the other relevant Operative Documents.

**Section 6. Representations and Warranties of the Guarantor.** The Guarantor hereby represents and warrants to each Agent, each Security Trustee and each Loan Participant on the date hereof and on the Effective Date (except to the extent such representation or warranty relates to an earlier date, in which case such representation or warranty shall only be made as to the date on which it is expressed to be made) that:

(a) the Guarantor is a *sociedad anónima de capital variable* duly incorporated and validly existing under the laws of Mexico; is duly qualified to do business as a foreign corporation in each jurisdiction in which its operations or the nature of its business requires, except where the failure to be so qualified would not give rise to a Material Adverse Change; and has the corporate power and authority to, and holds all licenses, permits and franchises from the appropriate Governmental Body necessary to authorize the Guarantor to enter into and perform its obligations under this Omnibus Agreement and the Operative Documents (as defined in each

**[Omnibus Amendment Agreement [MSNs 30283, 33784 and 33788]]**

Facility Agreement), except where the failure to hold such license, permit or franchise would not give rise to a Material Adverse Change;

(b) the Guarantor has duly authorized, executed and delivered this Omnibus Agreement and each of the Operative Documents (as defined in each Facility Agreement) to which it is (or will be) a party in connection therewith, and each of the Operative Documents (as defined in each Facility Agreement) to which it is (or will be) a party in connection therewith constitutes, or when entered into will constitute, a legal, valid and binding obligation of the Guarantor, enforceable against the Guarantor in accordance with its terms, except as the same may be limited by applicable *concurso mercantil* or *quiebra*, bankruptcy, insolvency, reorganization, arrangement, moratorium or similar laws affecting the rights of creditors generally and by general principles of equity;

(c) neither the execution and delivery by the Guarantor of this Omnibus Agreement nor the Operative Documents (as defined in each Facility Agreement) to which it is or will be a party in connection herewith, nor the consummation by the Guarantor of any of the transactions contemplated hereby or thereby, nor the compliance by the Guarantor with any of the terms and provisions hereof and thereof, (A) requires or will require any approval of its stockholders, or approval or consent of any trustees or holders of any indebtedness or obligations of the Guarantor except such as have been (or will be) duly obtained, (B) violates or will violate its certificate of incorporation or by-laws (*estatutos sociales*), (C) contravenes or will contravene any provision of, or constitutes or will constitute a default under, or results or will result in any breach of, any indenture, mortgage, lease, chattel mortgage, deed of trust, conditional sale contract, bank loan or credit agreement, material license, or other agreement, instrument or contractual restriction to which it is a party or by which it is bound, or (D) contravenes or will contravene any law binding on it; and

(d) no authorization of, giving of notice to, or registration with, or taking of any other action in respect of, any Governmental Body is required for the execution and delivery of, or the carrying out by, the Guarantor of any of the transactions contemplated hereby or by any other of the Operative Documents to which the Guarantor is or will be a party in connection herewith, except for any filings, registrations or applications specifically described in this Omnibus Agreement or any of the other Operative Documents.

**Section 7. Payment of Accrued Interest.** All Accrued Interest (as defined in the Stipulations) will be due and payable in accordance with the terms and conditions set forth in the Stipulations. With respect to the foregoing, the relevant Agent shall provide the relevant Borrower with an invoice and a calculation in reasonable detail at least three (3) Business Days prior to the corresponding due date; provided that such Agent's failure to provide, or any delay in providing, such invoice will not affect such Borrower's obligation to pay such interest.

**Section 8. Reservation of Rights.** If this Omnibus Agreement is executed by the parties hereto but the Effective Date does not occur, this Omnibus Agreement is entered into without prejudice to: (i) any Default or Event of Default, howsoever described, under the Mortgages (whether occurring before, on or after the date of this Agreement), (ii) the continuing obligations of the Borrowers and the Guarantor under the Operative Documents (as defined in each Mortgage) to which it is respectively a party; and (iii) any Loan Participant's, Agent's and/or

**[Omnibus Amendment Agreement [MSNs 30283, 33784 and 33788]]**

Security Trustee's rights and remedies under the Operative Documents (as defined in the relevant Mortgage) and/or under applicable law, all of which rights and remedies are expressly reserved.

**Section 9. Ratification.**

(a) Each of the Operative Documents (as defined in each Facility Agreement) are and shall continue and shall remain in full force and effect in all respects, in each case as amended hereby. The amendments set forth herein shall be effective as to the Operative Documents (as defined in the relevant Facility Agreement) as and from the Effective Date, and from and after the Effective Date any and all references to any of such Operative Documents shall be deemed to refer to such document as amended hereby.

(b) Each Borrower and the Guarantor confirm for the benefit of the relevant Finance Parties that any Lien created by it under the relevant Operative Documents (i) extends to their obligations under the Operative Documents as amended, supplemented or otherwise modified by this Agreement and (ii) continue in full force and effect as a continuing security on the terms set out in such Operative Documents, as amended hereby

(c) The Guarantor hereby acknowledges and agrees that, upon its execution and delivery of a Guarantor Consent and Acknowledgment Agreement (which shall occur on the Effective Date), its obligations under each AMX Guarantee (as defined in each Facility Agreement) are and shall remain in full force and effect following the effectiveness of the Agreement, and extend to all additional obligations incurred pursuant to this Amendment.

**Section 10. GOVERNING LAW; Counterparts.** THIS OMNIBUS AGREEMENT SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK, INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE. This Omnibus Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

**Section 11. JURY TRIAL WAIVER.** EACH PARTY HEREBY WAIVES ALL RIGHT TO TRIAL BY A JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS OMNIBUS AGREEMENT TO THE EXTENT PERMITTED BY APPLICABLE LAW.

**Section 12. Miscellaneous.**

(a) Any provision of this Omnibus Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof to the fullest extent permitted by law, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction to the fullest extent permitted by law.

(b) No terms or provisions of this Omnibus Agreement may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the party

**[Omnibus Amendment Agreement [MSNs 30283, 33784 and 33788]]**

or other Person against whom enforcement of the change, waiver, discharge or termination is sought and any other party or other Person whose consent is required pursuant to this Omnibus Agreement. Any waiver of the terms hereof shall be effective only in the specific instance and for the specific purpose given.

(c) All covenants and agreements contained herein shall be binding upon, and inure to the benefit of, each of the parties hereto and the successors and assigns of each, all as herein provided.

(d) The headings of the various Sections herein and in the table of contents hereto are for the convenience of reference only and shall not define or limit any of the terms or provisions hereof.

[SIGNATURE PAGE FOLLOWS]

**[Omnibus Amendment Agreement [MSNs 30283, 33784 and 33788]]**

**IN WITNESS WHEREOF**, the parties hereto have caused this Omnibus Amendment Agreement [MSNs 30283, 33784 and 33788] to be duly executed as of the date and year first above written.

**[Omnibus Amendment Agreement [MSNs 30283, 33784 and 33788]]**

**MSN 30283 Borrower**

**BANK OF UTAH**, not in its individual capacity but solely as owner trustee, as borrower under the MSN 30283 Facility Agreement

By: \_\_\_\_\_

Name:

Title:

**[Omnibus Amendment Agreement [MSNs 30283, 33784 and 33788]]**

**MSN 33784 Borrower**

**BANK OF UTAH**, not in its individual capacity but solely as owner trustee, as borrower under the MSN 33784 Facility Agreement

By: \_\_\_\_\_

Name:

Title:



**[Omnibus Amendment Agreement [MSNs 30283, 33784 and 33788]]**

**MSN 33788 Borrower**

**BANK OF UTAH**, not in its individual capacity but solely as owner trustee, as borrower under the MSN 33788 Facility Agreement

By: \_\_\_\_\_  
Name:  
Title:

**Guarantor**

**AEROVÍAS DE MÉXICO, S.A. DE C.V.**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

**Loan Participant and Agent**

**MUFG BANK, LTD.**, as Loan Participant and as Agent under each Facility Agreement

By: \_\_\_\_\_  
Name:  
Title:

**[Omnibus Amendment Agreement [MSNs 30283, 33784 and 33788]]**

<b><u>Security Trustee</u></b>  <b>DVB BANK SE</b> , as Security Trustee under each Facility Agreement  By: _____ Name: Title:	
By: _____ Name: Title:	

**EXHIBIT A-1**

**SCHEDULE 1**

**FIXED RATE: [REDACTED]%  
SCHEDULE OF PRINCIPAL PAYMENTS  
ON LOAN CERTIFICATES**

Interest Payment Date (falling on or closest to)	Outstanding Principal Balance (Beginning of Period)	Principal Amount to be paid	Interest Amount to be paid	Total Amount to be paid	Outstanding Principal Balance (After Repayment)
12/04/2021					
03/04/2022					
06/04/2022					
09/04/2022					
12/04/2022					
03/04/2023					
06/04/2023					
09/04/2023					
12/04/2023					

**EXHIBIT A-2**

**SCHEDULE 1**

**FIXED RATE: [REDACTED]%  
SCHEDULE OF PRINCIPAL PAYMENTS  
ON LOAN CERTIFICATES**

Interest Payment Date (falling on or closest to)	Outstanding Principal Balance (Beginning of Period)	Principal Amount to be paid	Interest Amount to be paid	Total Amount to be paid	Outstanding Principal Balance (After Repayment)
10/11/2021					
01/11/2022					
04/11/2022					
07/11/2022					
10/11/2022					
01/11/2023					
04/11/2023					
07/11/2023					
10/11/2023					
01/11/2024					
07/11/2021					

**EXHIBIT A-3**

**SCHEDULE 1**

**FIXED RATE: [REDACTED]%  
SCHEDULE OF PRINCIPAL PAYMENTS  
ON LOAN CERTIFICATES**

Interest Payment Date (falling on or closest to)	Outstanding Principal Balance (Beginning of Period)	Principal Amount to be paid	Interest Amount to be paid	Total Amount to be paid	Outstanding Principal Balance (After Repayment)
10/11/2021					
01/11/2022					
04/11/2022					
07/11/2022					
10/11/2022					
01/11/2023					
04/11/2023					
07/11/2023					
10/11/2023					
01/11/2024					
07/11/2021					

**EXHIBIT B**

**FORM OF LOAN CERTIFICATE**

LOAN CERTIFICATE

BANK OF UTAH, NOT IN ITS INDIVIDUAL CAPACITY BUT SOLELY AS OWNER  
TRUSTEE

CERTIFICATE DUE [2023]<sup>1</sup>[2024]<sup>2</sup>

ISSUED IN CONNECTION WITH ONE BOEING MODEL [737-76Q]<sup>3</sup>[737-700]<sup>4</sup> AIRCRAFT  
WITH MANUFACTURER'S SERIAL NUMBER [30283][33784][33788] AND BEARING  
UNITED STATES FEDERAL AVIATION ADMINISTRATION REGISTRATION  
NO. N997AM AND TWO CFM INTERNATIONAL, INC. MODEL CFM56-7B22 ENGINES

New York, New York

No.: XX

\$[\_\_\_\_\_]

[Date]

Bank of Utah, not in its individual capacity but solely as owner trustee (the "**Borrower**") hereby promises to pay to **MUFG BANK, LTD.**, or registered transferees, the principal sum of [●], in installments, equal to the amount, and payable on the dates, set forth in Annex A hereto, together with interest on the unpaid principal amount hereof from time to time outstanding from and including the date hereof until such principal amount is paid in full. Interest shall accrue with respect to each Interest Period at the Applicable Rate in effect for such Interest Period and shall be payable in arrears on each Interest Payment Date and on the date this Loan Certificate is paid in full. This Loan Certificate shall bear interest at the applicable Past Due Rate on any principal hereof, and, to the extent permitted by applicable law, interest and other amounts due hereunder, not paid when due (whether at stated maturity, by acceleration or otherwise), for any period during which the same shall be overdue, payable on demand by the Holder hereof given through the Security Trustee.

Interest shall be payable with respect to the first but not the last day of each Interest Period. Interest shall be calculated on the basis of a year of 360 days consisting of 12 30-day months. If any sum payable hereunder falls due on a day which is not a Business Day, then such sum shall be payable on the next succeeding Business Day; provided that, in the case of principal of and interest hereon payable on an Interest Payment Date, if by virtue of such extension such payment would fall in the next succeeding month, such sum shall be payable on the next preceding Business Day.

All payments of principal, Break Amount (if any), interest and other amounts to be made to the Holder hereof or under the Amended and Restated Mortgage and Security Agreement

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<sup>1</sup> NTD: Use for MSN 30283.

<sup>2</sup> NTD: Use for MSNs 33784 and 33788.

<sup>3</sup> NTD: Use for MSN 30283.

<sup>4</sup> NTD: Use for MSNs 33784 and 33788.

[Aeromexico B737 [30283][33784][33788]] dated as of [July 11, 2019]<sup>5</sup>[September 4, 2019]<sup>6</sup> (as amended or supplemented from time to time, herein called the “**Mortgage**”, the terms defined therein and not otherwise defined herein being used herein with the same meanings) between the Borrower and DVB Bank SE, as Security Trustee thereunder, shall be made in accordance with the terms of the Facility Agreement and the Mortgage.

Principal and interest and other amounts due hereon shall be payable in Dollars in immediately available funds prior to 11:00 a.m., New York City time, on the due date thereof, to the Security Trustee at the Payment Office. All such payments by the Borrower shall be made free and clear of and without reduction for or on account of all wire or other like charges.

The Holder hereof, by its acceptance of this Loan Certificate, agrees that, except as otherwise expressly provided in the Mortgage, each payment received by it in respect hereof shall be applied, first, to the payment of any amount (other than the principal of or interest on this Loan Certificate) due in respect of this Loan Certificate, second, to the payment of interest hereon (as well as any interest on overdue principal and, to the extent permitted by law, interest and other amounts payable hereunder) due and payable hereunder, third, to the payment of the principal of this Loan Certificate then due and fourth, the balance, if any, remaining thereafter, to the payment of the principal of this Loan Certificate remaining unpaid, in the manner set forth in the last sentence of Section 2.04 of the Mortgage.

This Loan Certificate is one of the Loan Certificates referred to in the Mortgage which have been or are to be issued by the Borrower pursuant to the terms of the Mortgage. The Mortgage Estate is held by the Security Trustee as security, in part, for the Loan Certificates. Reference is hereby made to the Mortgage and the Facility Agreement referred to therein for a statement of the rights and obligations of the Holder hereof, and the nature and extent of the security for this Loan Certificate and of the rights and obligations of the other Holders, and the nature and extent of the security for the other Loan Certificates, as well as for a statement of the terms and conditions of the trusts created by the Mortgage, to all of which terms and conditions in the Mortgage and such Facility Agreement each Holder hereof agrees by its acceptance of this Loan Certificate.

There shall be maintained a Certificate Register for the purpose of registering transfers and exchanges of Loan Certificates at the Payment Office of the Security Trustee or at the office of any successor security trustee in the manner provided in Section 2.06 of the Mortgage. As provided in the Mortgage and subject to certain limitations set forth therein and in the Facility Agreement, this Loan Certificate or any interest herein may, subject to the next following paragraph, be assigned or transferred, and the Loan Certificates are exchangeable for a like aggregate original principal amount of Loan Certificates of any authorized denomination, as requested by the Holder surrendering the same.

Prior to the due presentment for registration of transfer of this Loan Certificate, the Borrower and the Security Trustee shall deem and treat the person in whose name this Loan Certificate is registered on the Certificate Register as the absolute owner of this Loan Certificate and the Holder for the purpose of receiving payment of all amounts payable with respect to this Loan Certificate and for all other purposes whether or not this Loan Certificate is overdue, and

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<sup>5</sup> NTD: Use for MSNs 33784 and 33788.

<sup>6</sup> NTD: Use for MSN 30283.

neither the Borrower nor the Security Trustee shall be affected by notice to the contrary.

This Loan Certificate is subject to prepayment as permitted by Sections 2.09 and 2.10 of the Mortgage and to acceleration by the Security Trustee as provided in Section 9.01 of the Mortgage, and the Holder hereof, by its acceptance of this Loan Certificate, agrees to be bound by said provisions.

This Loan Certificate shall be governed by and construed in accordance with the law of the State of New York.

\* \* \*



**IN WITNESS WHEREOF**, the Borrower has caused this Loan Certificate to be executed in its corporate name by its officer thereunto duly authorized, as of the date hereof.

**BANK OF UTAH**, not in its individual capacity but solely as owner trustee

By: \_\_\_\_\_  
Name:  
Title:

*Aerovías de México, S.A. de C.V. executes this Loan Certificate as a guarantor of the Borrower.*

**AEROVÍAS DE MÉXICO, S.A. DE C.V.**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

**[ANNEX A  
TO  
LOAN CERTIFICATE  
SCHEDULE OF PRINCIPAL PAYMENTS]<sup>7</sup>**

Interest Payment Date (falling on or closest to)	Outstanding Principal Balance (Beginning of Period)	Principal Amount to be paid	Interest Amount to be paid	Total Amount to be paid	Outstanding Principal Balance (After Repayment)
12/04/2021					
03/04/2022					
06/04/2022					
09/04/2022					
12/04/2022					
03/04/2023					
06/04/2023					
09/04/2023					
12/04/2023					

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<sup>7</sup> NTD: Use for MSN 30283.

**[ANNEX A  
TO  
LOAN CERTIFICATE  
SCHEDULE OF PRINCIPAL PAYMENTS]<sup>8</sup>**

Interest Payment Date (falling on or closest to)	Outstanding Principal Balance (Beginning of Period)	Principal Amount to be paid	Interest Amount to be paid	Total Amount to be paid	Outstanding Principal Balance (After Repayment)
10/11/2021					
01/11/2022					
04/11/2022					
07/11/2022					
10/11/2022					
01/11/2023					
04/11/2023					
07/11/2023					
10/11/2023					
01/11/2024					
07/11/2021					

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<sup>8</sup> NTD: Use for MSN 33784.

**[ANNEX A  
TO  
LOAN CERTIFICATE  
SCHEDULE OF PRINCIPAL PAYMENTS]<sup>9</sup>**

Interest Payment Date (falling on or closest to)	Outstanding Principal Balance (Beginning of Period)	Principal Amount to be paid	Interest Amount to be paid	Total Amount to be paid	Outstanding Principal Balance (After Repayment)
10/11/2021					
01/11/2022					
04/11/2022					
07/11/2022					
10/11/2022					
01/11/2023					
04/11/2023					
07/11/2023					
10/11/2023					
01/11/2024					
07/11/2021					

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<sup>9</sup> NTD: Use for MSN 33788.

**EXHIBIT C**

**DESCRIPTION OF AIRCRAFT AND MORTGAGES**

**Aircraft**

1. **MSN 30283:** One (1) Boeing model 737-76Q (shown on the IR as BOEING model 737-700) aircraft bearing manufacturer's serial number 30283 and U.S. Registration No. N997AM, one (1) CFM International, Inc. model CFM56-7B22E (shown on the IR as CFM model CFM56-7) aircraft engine bearing manufacturer's serial number 660271 and one (1) CFM International, Inc. model CFM56-7B22 (shown on the IR as CFM model CFM56-7) aircraft engine bearing manufacturer's serial number 889997;
2. **MSN 33784:** One (1) Boeing model 737-752 (shown on the IR as BOEING model 737-700) aircraft bearing manufacturer's serial number 33784 and U.S. Registration No. N784XA and two (2) CFM International, Inc. model CFM56-7B22 aircraft engines bearing manufacturer's serial numbers 890598 and 890599; and
3. **MSN 33788:** One (1) Boeing model 737-752 (shown on the IR as BOEING model 737-700) aircraft bearing manufacturer's serial number 33788 and U.S. Registration No. N788XA and two (2) CFM International, Inc. model CFM56-7B22 (shown on the IR as CFM model CFM56-7) aircraft engines bearing manufacturer's serial numbers 890697 and 890699.

**Mortgages**

**1. MSN 30283 Mortgage:**

Mortgage and Security Agreement [Aeromexico B737 [30283]] dated as of December 18, 2015 between Wells Fargo Bank Northwest, National Association, now known as Wells Fargo Trust Company, National Association, as owner trustee, as borrower, and DVB Bank SE, as security trustee, which was recorded by the Federal Aviation Administration on January 12, 2016 and assigned Conveyance No. BS006078, as supplemented, assigned and amended and restated by the following described instruments:

<u>Instrument</u>	<u>Date of Instrument</u>	<u>FAA Recording Date</u>	<u>FAA Conveyance No.</u>
Mortgage Supplement [Aeromexico B737 [30283]] No. 1	12/18/15	01/12/16	BS006078

<u>Instrument</u>	<u>Date of Instrument</u>	<u>FAA Recording Date</u>	<u>FAA Conveyance No.</u>
Assignment and Assumption Agreement by and between Wells Fargo Trust Company, N.A. (f/k/a Wells Fargo Bank Northwest, N.A.), as owner trustee and mortgagor, as assignor, and Bank of Utah, as owner trustee, as assignee	09/04/19	09/04/19	LJ011888
Amended and Restated Mortgage and Security Agreement [Aeromexico B737 [30283]]	as of 09/04/19	09/04/19	LJ011889
Mortgage Supplement [Aeromexico B737 [30283]] No. 1	09/04/19	09/04/19	LJ011889

## 2. MSN 33784 Mortgage:

Mortgage and Security Agreement [Aeromexico B737 [33784]] dated as of March 6, 2015 between Bank of Utah, as owner trustee, as borrower, and DVB Bank SE, as security trustee, which was recorded by the Federal Aviation Administration on March 11, 2015 and assigned Conveyance No. SF012282, as supplemented, amended and amended and restated by the following described instruments:

<u>Instrument</u>	<u>Date of Instrument</u>	<u>FAA Recording Date</u>	<u>FAA Conveyance No.</u>
Mortgage Supplement [Aeromexico B737 [33784]] No. 1	03/11/15	03/11/15	SF012282
Amendment No. 1 to Mortgage [MSN 33784]	as of 12/18/15	01/12/16	SH017383
Amendment No. 2 to Mortgage [MSN 33784]	as of 03/11/19	04/17/19	SD016550
Amendment No. 3 to Mortgage [MSN 33784]	as of 06/11/19	07/15/19	NJ016534
Amended and Restated Mortgage and Security Agreement [Aeromexico B737 [33784]]	as of 07/11/19	07/15/19	NJ016535
Mortgage Supplement [Aeromexico B737 [33784]] No. 1	07/11/19	07/15/19	NJ016535

### 3. MSN 33788 Mortgage:

Mortgage and Security Agreement [Aeromexico B737 [33788]] dated as of March 6, 2015 between Bank of Utah, as owner trustee, as borrower, and DVB Bank SE, as security trustee, which was recorded by the Federal Aviation Administration on March 12, 2015 and assigned Conveyance No. LA011679, as supplemented, amended and amended and restated by the following described instruments:

<u>Instrument</u>	<u>Date of Instrument</u>	<u>FAA Recording Date</u>	<u>FAA Conveyance No.</u>
Mortgage Supplement [Aeromexico B737 [33788]] No. 1	03/12/15	03/12/15	LA011679
Amendment No. 1 to Mortgage [MSN 33788]	as of 12/18/15	01/12/16	MF009969
Amendment No. 2 to Mortgage [MSN 33788]	as of 03/11/19	04/17/19	SS041879
Amendment No. 3 to Mortgage [MSN 33788]	as of 06/11/19	07/15/19	JW013822
Amended and Restated Mortgage and Security Agreement [Aeromexico B737 [33788]]	as of 07/11/19	07/15/19	JW013823
Mortgage Supplement [Aeromexico B737 [33788]] No. 1	07/11/19	07/15/19	JW013823

**SCHEDULE 1<sup>10</sup>**

1. **MSN 30283**  
\$[REDACTED]
2. **MSN 33784**  
\$[REDACTED]
3. **MSN 33788**  
\$[REDACTED]

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<sup>10</sup> Note to draft: figures to be updated to reflect the final figures on and as of the Effective Date.



## **Exhibit B**

### **Summary**

<b>Material Terms: MUFG Omnibus Amendment Agreement</b>	
<b>Financed Aircraft</b>	Three Boeing 737 aircraft
<b>Borrowers</b>	Bank of Utah, not in its individual capacity, but solely as owner trustee
<b>MSNs</b>	MSNs 30283, 33784, and 33788
<b>Revised Maturity Date</b>	<p>The maturity dates of each aircraft will be extended pursuant to the below dates:</p> <p>MSN 30283 Revised Maturity Date: December 4, 2023  MSN 33788 Revised Maturity Date: January 11, 2024  MSN 33784 Revised Maturity Date: January 11, 2024</p>
<b>Revised Amortization Schedule</b>	<p>The outstanding principal amounts under the existing facilities will be amended such that at closing, the outstanding amount under each existing facility shall be a “reallocated debt amount.” The principal amortization schedule will also be replaced in its entirety per the Omnibus.</p> <p>Reallocated Debt Amounts:<sup>1</sup>  MSN 30283: \$[REDACTED]  MSN 33788: \$[REDACTED]  MSN 33784: \$[REDACTED]</p>
<b>Miscellaneous Amendments</b>	<ul style="list-style-type: none"> <li>- More flexible engine substitution rights for AMX</li> <li>- Addition of a sale option for AMX, whereby AMX can sell any Aircraft/Engine pursuant to certain conditions</li> <li>- Addition of a right for AMX to prepay the Loans in full for all aircraft</li> </ul>

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<sup>1</sup> In addition to the below amounts, up to an aggregate of \$[REDACTED] of expenses will be added to these amounts.