

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.¹**

Chapter 11

Case No. 20-11563 (SCC)

(Jointly Administered)

**NOTICE OF HEARING ON DEBTORS' MOTION FOR ENTRY OF AN ORDER
(I) AUTHORIZING DEBTOR AEROVÍAS DE MÉXICO, S.A. DE C.V. TO ASSUME
(ON AN AMENDED BASIS) THAT CERTAIN LEASE AGREEMENT AND
(II) APPROVING THE CLAIMS SETTLEMENT WITH MSN 36707 TRUST**

PLEASE TAKE NOTICE that, on January 7, 2022, the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) filed the *Debtors’ Motion for Entry of an Order (I) Authorizing Debtor Aerovías de México, S.A. de C.V. To Assume (On an Amended Basis) that Certain Lease Agreement and (II) Approving the Claims Settlement with MSN 36707 Trust* (the

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

“**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**”),² the Hearing will be conducted telephonically. Any parties wishing to participate must do so telephonically by making arrangements through CourtSolutions, LLC (www.court-solutions.com). Instructions to register for CourtSolutions, LLC are attached to General Order M-543.

PLEASE TAKE FURTHER NOTICE that copies of the Motion may be obtained free of charge by visiting the website of Epiq Corporate Restructuring, LLC at <https://dm.epiq11.com/aeromexico>. You may also obtain copies of any pleadings by visiting the Court’s website at <http://www.nysb.uscourts.gov> in accordance with the procedures and fees set forth therein.

PLEASE TAKE FURTHER NOTICE that the Hearing may be continued or adjourned from time to time by an announcement of the adjourned date or dates at the Hearing or a later hearing or by filing a notice with the Court. The Debtors will file an agenda before the Hearing, which may modify or supplement the motion(s) to be heard at the Hearing.

PLEASE TAKE FURTHER NOTICE that any responses or objections to the Motion shall be in writing, shall comply with the Federal Rules of Bankruptcy Procedure and the Local

² A copy of the General Order M-543 can be obtained by visiting <http://www.nysb.uscourts.gov/news/general-order-m-543-court-operations-under-exigent-circumstances-created-covid-19>.

Bankruptcy Rules for the Southern District of New York, shall be filed with the Court by (a) attorneys practicing in the Court, including attorneys admitted *pro hac vice*, electronically in accordance with General Order M-399 (which can be found at www.nysb.uscourts.gov) and (b) all other parties in interest, in accordance with the customary practices of the Court and General Order M-399, to the extent applicable, and shall be served in accordance with General Order M-399 and the *Order Establishing Certain Notice, Case Management, and Administrative Procedures*, entered on July 8, 2020 [ECF No. 79], so as to be filed and received no later than **January 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.

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Dated: January 7, 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.¹**

Chapter 11

Case No. 20-11563 (SCC)

(Jointly Administered)

**DEBTORS' MOTION FOR ENTRY OF AN ORDER (I) AUTHORIZING
DEBTOR AEROVÍAS DE MÉXICO, S.A. DE C.V. TO ASSUME (ON AN
AMENDED BASIS) THAT CERTAIN LEASE AGREEMENT AND
(II) APPROVING THE CLAIMS SETTLEMENT WITH MSN 36707 TRUST**

Grupo Aeroméxico, S.A.B. de C.V. (“**Grupo Aeroméxico**”) and certain of its affiliates (collectively, the “**Debtors**”), each of which is a debtor and debtor in possession in the above-captioned chapter 11 cases (the “**Chapter 11 Cases**”), hereby file this motion (this “**Motion**”) seeking the entry of an order (i) authorizing, but not directing, Debtor Aerovías de México, S.A. de C.V. (the “**Debtor Lessee**”) to assume that certain Aircraft Lease Agreement, dated as of September 30, 2013 (the “**Aircraft Lease**”), on an amended basis (the “**Lease Amendment**”) on

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

terms substantially consistent with those set forth in the Letter of Intent, dated October 19, 2021, attached to the Proposed Order (as defined herein) as Exhibit 1 (the “**Letter of Intent**”) and (ii) approving the Claims Settlement (as defined herein). A summary of the material terms of the Letter of Intent is attached hereto as Exhibit B. This Motion is supported by the *Declaration of Matthew Landess in Support of (A) Debtors’ Motion for Entry of an Order (I) Authorizing Debtor Aerovías de México, S.A. de C.V. To Assume (On an Amended Basis) that Certain Lease Agreement and (II) Approving the Claims Settlement with MSN 36707 Trust and (B) Related Sealing Motion* (the “**Landess Declaration**”) filed contemporaneously herewith and incorporated herein by reference. In further support of this Motion, the Debtors respectfully state as follows:

Jurisdiction and Venue

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

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

Relief Requested

3. By this Motion, and pursuant to sections 365 and 105(a) of chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) and Bankruptcy Rules 6004, 6006, 9013, and

9019, the Debtors seek entry of an order, substantially in the form attached hereto as **Exhibit A** (the “**Proposed Order**” and, if entered, the “**Order**”), (a) authorizing (but not directing) the Debtor Lessee to assume the Aircraft Lease on an amended basis on terms substantially consistent with those set forth in the Letter of Intent attached to the Proposed Order as **Exhibit 1**, and (b) approving the Claims Settlement, each as further detailed herein and in the Proposed Order.

Background

A. General Background

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

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

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

² On July 2, 2020, the Court entered similar orders for the other Debtors on their respective case dockets. *See In re Aerovías de México, S.A. de C.V.*, No. 20-11561, 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.

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

B. The Debtors' Fleet Optimization Process

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

9. On September 15, 2020, the Debtors filed their *Motion for Approval of Stipulations and Orders Between Debtors and Counterparties Concerning Certain Aircraft and Engines* [ECF No. 373] (the "**Equipment Stipulation Motion**"), pursuant to which the Debtors sought approval of certain stipulations between certain Debtors and certain counterparties concerning leases of Equipment (as defined in the Equipment Stipulation Motion). These stipulations enabled the Debtors to continue to utilize the Equipment on their operating routes and to maintain the Equipment when not being operated. Broadly speaking, such stipulations provide, with limited variation, for payment of rent calculated based on actual usage of the Equipment (called a "power by the hour" or "PBH" arrangement), rather than a fixed monthly amount. The Court entered an order approving the Equipment Stipulation Motion [ECF No. 396] and so ordered the underlying stipulations. [ECF Nos. 399–429, 475, 491, 502].

10. On April 22, 2021, the Debtors filed their *Motion for (I) Approval of Compromises with Boeing and Other Counterparties, (II) Authorization To (A) Enter Into Amended Aircraft Purchase Agreement with Boeing and (B) Enter into Agreements with Other Counterparties*

related to the Boeing Transaction, (III) Approval of the Assumption of Such Amended Agreements, as Applicable, and (IV) Approval To Settle Certain Prepetition Claims of Counterparties [ECF No. 1108] (the “**Boeing Motion**”) and their *Motion for (I) Authorization To (A) Enter Into New Aircraft Lease Agreements and (B) Amend and Assume Certain Existing Aircraft Lease Agreements, and (II) Approval of Compromise Regarding Prepetition Claims with Air Lease Corporation* [ECF No. 1113] (the “**Air Lease Motion**”). The Court approved both the Boeing Motion and the Air Lease Motion at a hearing on April 30, 2021,³ and subsequently entered each of the orders related thereto.⁴ Pursuant to such orders, the Debtors (a) added 28 new aircraft to their fleet, (b) assumed agreements relating to 18 existing aircraft, and (c) settled the allowed amounts of unsecured claims of certain counterparties with respect to such equipment.

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

C. The Lease Amendment and the Claims Settlement

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

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

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

13. As a result of arm's length and good faith negotiations, the Debtor Lessee has reached an agreement with MSN 36707 Trust (the "**Lessor**") to (a) assume the Aircraft Lease relating to a Boeing 737-800W aircraft bearing manufacturer's serial number 36707 (together with the related engines, parts, equipment, and appurtenances, the "**Aircraft**"), which the Debtor Lessee currently operates as part of its existing fleet, on an amended basis on terms substantially consistent with those set forth in the Letter of Intent and (b) resolve any and all pre-assumption claims against the Debtors in the Chapter 11 Cases relating to the Aircraft or the Aircraft Lease belonging to the Lessor (and/or any other party with an interest in the Aircraft or the Aircraft Lease, collectively, the "**Claimants**"⁵), each as described herein and in the Landess Declaration.

14. The Letter of Intent sets forth the commercial terms between the Lessor and the Debtor Lessee. By agreeing to such terms, the Debtors have achieved certainty in maintaining the Aircraft in their fleet on terms that fit the Debtors' short- and long-term needs and that the Debtors believe are advantageous. The Aircraft will come at attractive economics and ownership costs. Moreover, the Lessor and the Debtor Lessee have agreed that, subject to the Debtor Lessee's continued compliance with the terms of the Aircraft Lease, the assumption of the Aircraft Lease on an amended basis, on terms substantially consistent with those set forth in the Letter of Intent, would not give rise to an obligation to make any cash payment at the time of assumption to cure any defaults under the Aircraft Lease under section 365(b)(1)(A) of the Bankruptcy Code.

15. In conjunction with this transaction, the Debtors seek to resolve all pre-assumption claims against the Debtors relating to the Aircraft or the Aircraft Lease belonging to the Claimants in the Chapter 11 Cases. To this end, the parties have agreed that the Lessor, on behalf of itself

⁵ For the avoidance of doubt, "Claimants" includes, without limitation, claimants of claims assigned numbers 436, 437, and 561066190.

and all other Claimants, will have an allowed non-priority general unsecured prepetition claim against the bankruptcy estate of the Debtor Lessee in the final amount of \$7,500,000 (the “**Allowed Claim**”) on account of all pre-assumption claims relating to the Aircraft or the Aircraft Lease (the “**Claims Settlement**” and, together with the Lease Amendment, the “**Macquarie Transactions**”). The amount of the Claims Settlement shall constitute the only pre-assumption claims relating to the Aircraft or the Aircraft Lease allowed in the Chapter 11 Cases.

16. In determining to enter into the Macquarie Transactions, the Debtors consulted with the respective advisors to Apollo Management Holdings, L.P. (on behalf of one or more affiliates and/or funds or separate accounts managed by it and its affiliates (such lenders collectively, the “**DIP Lenders**”)), the Committee, the Ad Hoc Group of Senior Noteholders,⁶ and the Ad Hoc Group of Unsecured Claimholders.⁷

Basis for Relief

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

17. 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

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

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

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).

18. In determining whether to permit a debtor to assume or reject a contract or lease, “the debtor’s interests are paramount.” *COR Route 5 Co. v. Penn Traffic Co. (In re Penn Traffic Co.)*, 524 F.3d 373, 383 (2d Cir. 2008). Accordingly, the decision to assume or reject an executory contract or unexpired lease is governed by the business judgment rule, which requires that a debtor determine that the requested assumption would be beneficial to its estates. *See Grp. of Institutional Invs. v. Chicago, M., St. P. & P. R. Co.*, 318 U.S. 523, 550 (1943) (finding that the question of assumption “is one of business judgment”); *In re Penn Traffic*, 524 F.3d at 383; *In re Old Carco LLC*, 406 B.R. 180, 188 (Bankr. S.D.N.Y. 2009); *In re Helm*, 335 B.R. 528, 538 (Bankr. S.D.N.Y. 2006); *In re MF Global Inc.*, No. 11-2790, 2011 WL 6792758, at *2 (Bankr. S.D.N.Y. Dec. 20, 2011) (“The assumption or rejection of an executory contract may be approved if such action would benefit the debtor’s estate and is an exercise of sound business judgment.”); *Sharon Steel*, 872 F.2d at 40.

19. In considering a motion to assume or reject an executory contract or unexpired lease, a debtor “should examine a contract and the surrounding circumstances and apply its best ‘business judgment’ to determine if [assumption] would be beneficial or burdensome to the estate.” *In re Orion Pictures Corp.*, 4 F.3d at 1099; *see also In re Klein Sleep Prods., Inc.*, 78 F.3d 18, 25 (2d Cir. 1996); *In re Gucci*, 193 B.R. 411, 415 (S.D.N.Y. 1996). A debtor’s decision to assume an executory contract or unexpired lease based on its business judgment will generally not be

disturbed absent a showing of “bad faith or abuse of business discretion.” *In re Old Carco*, 406 B.R. at 188 (quoting *In re G Survivor Corp.*, 171 B.R. 755, 757 (Bankr. S.D.N.Y. 1994), *aff’d sub nom. John Forsyth Co., Inc. v. G Licensing, Ltd.*, 187 B.R. 111 (S.D.N.Y. 1995)); *see also In re MF Global Inc.*, No. 11-2790, 2011 WL 6792758, at *2 (Bankr. S.D.N.Y. Dec. 20, 2011) (“The assumption or rejection of an executory contract may be approved if such action would benefit the debtor’s estate and is an exercise of sound business judgment.”); *In re Chipwich, Inc.*, 54 B.R. 427, 430–31 (Bankr. S.D.N.Y. 1985). The party opposing a debtor’s exercise of its business judgment has the burden of rebutting the presumption of validity. *See Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.)*, 147 B.R. 650, 656 (S.D.N.Y. 1992), *appeal dismissed*, 3 F.3d 49 (2d Cir. 1993).

20. 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.

21. Moreover, section 105(a) of the Bankruptcy Code confers the Court with broad equitable powers to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a).

22. The Debtors respectfully submit that the relief requested herein is fair, equitable, reasonable, and in the best interests of the Debtors’ estates and is, thus, justified under sections 365(a) and 105(a) of the Bankruptcy Code. As described above and in the Landess Declaration, the Debtors are seeking to reset their fleet and attendant costs to a market level. As part of this process, the Debtors are evaluating their fleet of aircraft and equipment, reviewing the relevant

underlying leases and agreements, and, to the extent prudent, negotiating amendments to such leases and agreements for aircraft and equipment that the Debtors desire to maintain. In doing so, the Debtors compared the Aircraft Lease 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 memorialized in the Letter of Intent, that are in line with the Debtors' long-term business plan. In addition to the improved costs and better terms and conditions as compared to the Aircraft Lease, the amended Aircraft Lease (on terms substantially consistent with those set forth in the Letter of Intent) also will create operational flexibility for the Debtors, as it will allow the Debtors to retain and operate an existing aircraft in their fleet and would position the Debtors to potentially reject other aircraft or equipment that are not as attractive for the long term fleet. Finally, the Debtors have determined (based on the exercise of their sound business judgment) that the terms of the Lease Amendment represent the best available transaction under the circumstances (*i.e.*, the Chapter 11 Cases), but also would be a commercially beneficial transaction irrespective of such circumstances (and is superior to at least some of their prepetition aircraft leases).

23. In light of the foregoing, the Debtors respectfully submit that the assumption of the Aircraft Lease on an amended basis, on terms substantially consistent with those set forth in the Letter of Intent, (a) would be the result of the Debtors exercising their sound business judgment in accordance with their fiduciary duties, (b) would be in the best interests of their estates and economic stakeholders, and (c) would further serve to maximize value for the benefit of all creditors. Accordingly, the Debtors respectfully request that the Court authorize, but not direct, the Debtor Lessee to assume the Aircraft Lease on an amended basis on terms substantially

consistent with those set forth in the Letter of Intent and to perform all the obligations under the Lease Amendment.

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

24. By this Motion, the Debtors also seek approval of the Claims Settlement between the Claimants and the Debtors to resolve any and all pre-assumption claims against the Debtors relating to the Aircraft or the Aircraft Lease in the Chapter 11 Cases.

25. A court should exercise its discretion to approve settlements “in light of the general public policy favoring settlements.” *In re Hibbard Brown & Co.*, 217 B.R. 41, 46 (Bankr. S.D.N.Y. 1998). Indeed, courts in this district have made clear that “[a]s a general matter, ‘settlements and compromises are favored in bankruptcy as they minimize costly litigation and further parties’ interests in expediting the administration of the bankruptcy estate.’” *In re Republic Airways Holdings, Inc.*, No. 16-10429 (SHL), 2016 WL 2616717, at *3 (Bankr. S.D.N.Y. May 4, 2016) (citing *In re Dewey & LeBouef LLP*, 478 B.R. 626, 640 (Bankr. S.D.N.Y. 2012)); *see also Motorola, Inc. v. Official Comm. of Unsecured Creditors (In re Iridium Operating LLC)*, 478 F.3d 452, 455 (2d Cir. 2007).

26. Under Bankruptcy Rule 9019 and governing case law, a court should approve a compromise or settlement where it makes an independent determination that the compromise or settlement is fair and equitable, reasonable, and in the best interests of the debtor’s estate. *See, e.g., In re Republic Airways*, 2016 WL 2616717 at *3; *Air Line Pilots Ass’n, Int’l v. Am. Nat’l Bank & Trust Co. of Chi. (In re Ionosphere Clubs)*, 156 B.R. 414, 426 (S.D.N.Y. 1993); *Nellis v. Shugrue*, 165 B.R. 115, 122–23 (S.D.N.Y. 1994). In so doing, a court may consider the opinions of the trustee or debtor in possession that the settlement is fair and equitable. *See Nellis*, 165 B.R. at 122; *In re Purofied Down Prods. Corp.*, 150 B.R. 519, 522 (S.D.N.Y. 1993).

27. Furthermore, when assessing whether or not to approve a settlement, “the court need not conduct a ‘mini-trial’ to determine the merits of the underlying litigation” nor decide the issues of law or fact raised by the settlement. *See In re Purofied Down Prods.*, 150 B.R. at 522. Instead, a court should “canvass the issues and see whether the settlement fall[s] below the lowest point in the range of reasonableness.” *Cosoff v. Rodman (In re W.T. Grant Co.)*, 699 F.2d 599, 608 (2d Cir. 1983) (alteration in original) (citations omitted). In this regard, courts have found that “[t]he ‘reasonableness’ of [a] settlement depends upon all factors, including probability of success, the length and cost of the litigation, and the extent to which the settlement is truly the product of ‘arms-length’ bargaining, and not fraud or collusion.” *In re Ionosphere Clubs, Inc.*, 156 B.R. at 428.

28. The Debtors respectfully submit that the Claims Settlement satisfies the range of reasonableness test described above. Rather than engage in costly and value-destructive litigation over the Debtor Lessee’s obligations to the Claimants, the amounts of the Claimants’ claims, and any amounts mitigating the quantum of those claims, the parties negotiated a consensual resolution settling on \$7,500,000 as the agreed final amount for the Claims Settlement. Any efforts by the Debtors, through litigation or otherwise, to resolve such disputes would be time-consuming and expensive, and would delay any distribution to the creditor beneficiaries of the Debtors’ estates. A failure to resolve the matters at issue at this time could negatively impact the Debtors and their estates. The Claims Settlement is the product of arm’s length and good faith bargaining among the separate and independent advisors of the Debtors and the Lessor (on behalf of itself and all other Claimants) that will (a) eliminate the need for a costly claims dispute and (b) unlock distributable value for the Debtors’ unsecured creditors by liquidating the Claimants’ claim against the Debtors. 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

29. 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

30. 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 7, 2022
New York, New York

DAVIS POLK & WARDWELL LLP

By: /s/ Timothy Graulich

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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.¹**

Chapter 11

Case No. 20-11563 (SCC)

(Jointly Administered)

**ORDER (I) AUTHORIZING DEBTOR AEROVÍAS DE MÉXICO,
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LEASE AGREEMENT AND (II) APPROVING THE CLAIMS
SETTLEMENT WITH MSN 36707 TRUST**

Upon the motion (the “**Motion**”)² of the Debtors for entry of an order (this “**Order**”), (i) authorizing, but not directing, Debtor Aerovías de México, S.A. de C.V. (the “**Debtor Lessee**”) to assume the Aircraft Lease on an amended basis on terms substantially consistent with those set forth in the Letter of Intent (attached hereto as **Exhibit 1**) and (ii) approving the Claims Settlement, each as set forth more fully in the Motion and the Landess Declaration; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference M-431*, dated January 31, 2012 (Preska, C.J.); and consideration of the Motion and the relief requested therein being a core proceeding under 28 U.S.C. § 157(b); and venue of the Chapter 11 Cases and related proceedings being proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to the notice parties identified

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

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

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 granted to the extent set forth herein.
2. The Macquarie Transactions are hereby approved and the Debtors are authorized (but not directed), pursuant to section 365 of the Bankruptcy Code, to assume the Aircraft Lease on an amended basis on terms substantially consistent with those set forth in the Letter of Intent and pay all amounts and otherwise perform all obligations under the Lease Amendment in accordance with the terms thereof. The Aircraft Lease, as amended, shall be deemed assumed by the Debtor Lessee upon the effectiveness of the amendment contemplated by the Lease Amendment and, upon such effectiveness, the amended Aircraft Lease shall be in full force and effect and the Debtor Lessee shall be obligated to perform all of its obligations thereunder without the need for further notice or action by the Debtor Lessee or the Lessor or further order of the Court.
3. Subject to the Debtor Lessee’s continued compliance with the terms of the Aircraft Lease, the Debtor Lessee shall pay \$0.00 to the Lessor (inclusive of its affiliates) in

satisfaction of its obligation to cure any pre-assumption defaults under the Aircraft Lease (on an amended basis on terms substantially consistent with those set forth in the Letter of Intent) in accordance with section 365(b)(1)(A) of the Bankruptcy Code.

4. The Debtors are authorized (but not directed) to enter into, and perform their obligations under, all exhibits, addenda, and other agreements contemplated by the Lease Amendment without further approval of the Court.

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

6. From and after the effective date of the amendment to the Aircraft Lease contemplated by the Lease Amendment, the obligations under the amended Aircraft Lease shall constitute administrative expenses of the Debtor Lessee's estate pursuant to section 503(b)(1) and 507(a)(2) of the Bankruptcy Code.

7. The Claims Settlement is (a) integral and necessary to the Macquarie 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, the Lessor, and their respective affiliates.

8. In accordance with the Claims Settlement, Claim Number 436 filed by the Lessor against the Debtor Lessee shall be allowed as a non-priority general unsecured claim in the final amount of \$7,500,000 against the bankruptcy estate of the Debtor Lessee on account of all pre-assumption claims relating to the Aircraft or the Aircraft Lease in the Chapter 11

Cases (or any subsequent chapter 7 case in the event of conversion) (collectively, the “**Allowed Claim**”). For the avoidance of doubt, the Allowed Claim shall constitute the only allowed pre-assumption claim relating to the Aircraft or the Aircraft Lease in the Chapter 11 Cases. The Allowed Claim shall be given the same treatment as the holders of other similarly situated general unsecured claims against the Debtor Lessee. The Allowed Claim shall not be (either directly or indirectly) (a) subject to any challenge, objection, reduction, subordination, counterclaim, or offset for any reason and (b) subject to any objection, subordination, avoidance, or recovery actions under sections 502(d), 542, 544, 547, 548, 549, 550, 551, or 553 of the Bankruptcy Code.

9. The parties recognize and agree that the Allowed Claim arises solely from rental claims under the Aircraft Lease. Accordingly, as an express term of the Claims Settlement relating to the Allowed Claim, the Debtor Lessee hereby agrees that it shall apply the 1% withholding rate available for rent-based claims (or the lowest applicable withholding rate available for rent-based claims), unless otherwise required under applicable law.

10. In accordance with the Claims Settlement, any and all claims against the Debtors relating to the Aircraft or the Aircraft Lease, including, without limitation, the claims against the bankruptcy estate of the Debtor Lessee listed below, shall be withdrawn (collectively, the “**Withdrawn Claims**”):

Claim Number	Claimant	Treatment
437	Merino Aerospace Finance 36707 Limited	Withdrawn

11. The Allowed Claim shall be automatically allowed, and the Withdrawn Claims shall be automatically withdrawn, upon the effectiveness of the Lease Amendment, and no further notice or action shall be required of the Lessor or the Debtors to effectuate the allowance or withdrawal, as applicable, of such claims upon such occurrence. From and after

the entry of this Order, Epiq Corporate Restructuring, LLC is authorized to update the claims register to reflect the terms of this Order, including, among other things, reflecting the allowance of the Allowed Claim and the withdrawal of the Withdrawn Claims as set forth in this Order.

12. 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 Lessor, its affiliates, and all other persons asserting interests in the Aircraft or the Aircraft Lease.

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

14. 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 and the Lease Amendment.

Dated: _____, 2022
New York, New York

THE HONORABLE SHELLEY C. CHAPMAN
UNITED STATES BANKRUPTCY JUDGE

Exhibit 1

Letter of Intent

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

INDICATIVE SUMMARY OF PRINCIPAL TERMS AND CONDITIONS

October 19, 2021

This Indicative Summary of Principal Terms and Conditions (this “Summary of Terms”) is for discussion purposes only. No legally binding obligations will be created prior to execution of definitive transaction documents signed by the parties thereto, except for the provisions under the headings “Costs and Expenses” and “Confidentiality” below which are intended by the parties hereto to be legally binding obligations. Capitalized terms used in this Summary of Terms without definition have the same meanings given in the Original Lease (as defined herein).

Transaction Overview	Lessor and Lessee will enter into a lease amendment agreement (the “ <i>Lease Amendment</i> ”) amending the Original Lease for the aircraft described in Appendix 1 hereto (the “ <i>Aircraft</i> ”) to reflect the terms and conditions set forth in this Summary of Terms. Upon signing of this Summary of Terms, and subject always to each party having obtained all necessary internal and shareholder approvals of this Summary of Terms, the parties will negotiate in good faith the definitive documentation (the “ <i>Documentation</i> ”) that reflects the terms and conditions specified in this Summary of Terms and sets forth such other specific terms as Lessor and Lessee shall mutually agree. Documentation will be prepared by Lessee’s counsel and will be executed upon receipt of Bankruptcy Court approval pursuant to an order that is in form and substance reasonably acceptable to both parties. The Stipulation Period (as defined in that certain <i>Stipulation and Order Between Certain Debtors and Counterparties Concerning Certain Equipment</i> dated September 14, 2020 between Lessor and Lessee (the “ <i>Stipulation</i> ”)) shall expire and terminate, pursuant to Section 1(a)(ii) of the Stipulation, upon the entry of an order approving the Documentation.
Lessor	As set out on Appendix 1 hereto.
Servicer	Macquarie Aircraft Leasing Services (Ireland) Limited
Lessee	Aerovías de México, S.A. de C.V.
Aircraft	As set out on Appendix 1 hereto.
Basic Rent	<p>Basic Rent for the Aircraft shall be either the PBH Rent or the Fixed Rent, as described below.</p> <p>From the date of the Bankruptcy Court’s approval of the Documentation (the “<i>Approval Date</i>”), Basic Rent shall be paid in arrears on a power-by-the-hour basis (the “<i>PBH Rent</i>”) until [REDACTED] (the “<i>PBH Period</i>”). PBH Rent will be based on the individual utilization of the Airframe and each Engine (each, a “<i>PBH Component</i>”) comprising the Aircraft and will be calculated in accordance with the following formula:</p>

	$W = (A_{(airframe)} * B_{(airframe)}) + (A_{(engine\ 1)} * B_{(engine\ 1)}) + (A_{(engine\ 2)} * B_{(engine\ 2)})$ <p>where:</p> <p>W: [REDACTED]</p> <p>$A_{(airframe)}$, $A_{(engine\ 1)}$ and $A_{(engine\ 2)}$: [REDACTED]</p> <p>$B_{(airframe)}$, $B_{(engine\ 1)}$ and $B_{(engine\ 2)}$: [REDACTED]</p> <p>For each calendar month (or part thereof) during the PBH Period, the Lessee will provide a utilization report to the Lessor by the 15th day of the immediately succeeding calendar month and make a payment of the PBH Rent by the later of (x) the 20th day of such calendar month and (y) three business days after receiving Lessor's invoice in respect of the PBH Rent.</p> <p>Following the last day of the PBH Period and during the remainder of the Term, Basic Rent shall be paid monthly in advance in a fixed amount per month equal to the "Fixed Rent" described in Appendix 1 hereto ("<i>Fixed Rent</i>").</p>
Term	The Expiration Date shall be extended as set forth in Appendix 1 hereto; provided that Lessee may, in its sole discretion and with no less than [REDACTED] prior written notice to Lessor, extend the Expiration Date by up to [REDACTED]. Such [REDACTED] shall include the same terms and economics included herein.
Security Deposit	On the Approval Date, the existing cash Security Deposit shall be [REDACTED]. Following the Approval Date, the Lessee shall be entitled to replace the cash Security Deposit with a Letter of Credit in form and substance reasonably satisfactory to Lessor. Such Letter of Credit shall be capable of being drawn upon in New York, London or Frankfurt and shall be issued or confirmed by an international bank [REDACTED].
AD Cost Sharing	<p>If Lessee complies on a terminating action basis (or to the highest level of compliance available) with an airworthiness directive applicable to the Aircraft (an "<i>Airworthiness Directive</i>" or "<i>AD</i>") and the reasonable cost of performing such Airworthiness Directive on the Aircraft exceeds US\$[REDACTED], then promptly following receipt of an invoice and other documentation reasonably supporting the cost of such compliance with each Airworthiness Directive on the Aircraft, Lessor will pay to Lessee an amount calculated in accordance with the following formula:</p> $A = ((T - R) \div T) \times (C - D)$ <p>where:</p> <p>A = [REDACTED]</p> <p>T = [REDACTED];</p>

	<p>R = [REDACTED];</p> <p>C = [REDACTED]</p> <p>D = [REDACTED]</p>
Inspection Rights	The terms of the Original Lease relating to inspections shall be supplemented to provide that, provided that no Event of Default has occurred that is continuing, (i) Lessor (or its designated representatives) shall not inspect the Aircraft and related records more than once per year; and (ii) any such inspection by Lessor (or its designated representatives) shall be limited to a visual, walk-around inspection which may include going on board the Aircraft, but shall not include the opening of any panels, bays or disassembly of any components.
Payment of Maintenance Redelivery Amount	Upon the Return Occasion, [REDACTED], as applicable, a Maintenance Redelivery Amount, which shall be calculated by [REDACTED]. The Maintenance Redelivery Amount shall be calculated and payable in the manner specified in Appendix 3.
Maintenance Reserves	Upon the Approval Date, (i) [REDACTED], (ii) [REDACTED] and (iii) [REDACTED].
Return Conditions	Exhibit F (<i>RETURN CONDITIONS</i>) of the Original Lease shall be amended and restated in its entirety into the terms and conditions set forth in Appendix 2.
Holdover Rent	In the event that Lessee does not return the Aircraft to Lessor on the Expiration Date and in the condition required, Lessee shall continue to pay Basic Rent in arrears for the first [REDACTED] days of delay, and [REDACTED]% of Basic Rent thereafter, pro-rated accordingly on a monthly basis until the date the Aircraft is actually tendered to the Lessor in the required condition (the " <i>Holdover Period</i> "). The Aircraft shall not be used in any manner without Lessor's prior written consent (in its sole discretion) during any Holdover Period.
Aircraft Documents	The Aircraft Documents shall be maintained in accordance with the rules and regulations of the Aviation Authority and will comply with the requirements of the FAA for Part 129 operators as further specified in the Lease Amendment.
Substitution of Engines	Lessee may, at any time during the Term, substitute an engine of the same make and same or improved model (a " <i>Substitute Engine</i> ") for any Engine by transferring title to the Substitute Engine (and any unexpired transferable supplier warranties relating to the Substitute Engine) to Lessor at Lessee's expense, with Lessor procuring (at the cost of Lessee) that the title to the original Engine being replaced by the Substitute Engine (and any unexpired transferable supplier warranties relating to that Engine) vests in the Lessee (or such person as the Lessee may direct). The Substitute Engine

	shall thereafter be deemed an “Engine”, as appropriate and as defined herein for all purposes hereunder. Such Substitute Engine shall (i) be of the same make and model and modification status (including service bulletins and AD status), and the same or higher thrust rating, as the original Engine being replaced, or an improved or advanced version of the Engine being replaced, and in each case shall be approved by the Manufacturer or the Engine Manufacturer, as applicable, for installation on the Aircraft; (ii) not have been involved in an incident or accident; (iii) be free and clear of all Security Interests; (iv) have a value and utility equal to the original Engine being replaced (but in any event, [REDACTED]), assuming such original Engine being replaced was in the condition and repair required to be maintained pursuant to the provisions of the Lease Agreement immediately prior to replacement; (v) have all required documentation from the aviation authority of the country of manufacture; (vi) have complete and authentic records; and (vii) [REDACTED]. Notwithstanding anything in the foregoing to the contrary, no such Engine substitution and title transfer will occur during the final [REDACTED] months of the Term without Lessor’s prior consent, provided that such limitation will be waived for an Engine substitution where an Engine fails to meet the redelivery conditions and a substitution is required to enable Lessee to meet the redelivery conditions.
Replacement of Parts	As per the Original Lease; provided that (A) in Section 9(d)(iv) of the Original Lease, the words [REDACTED] shall be deleted, and (B) the sentence [REDACTED] shall be deleted.
Registration	The Aircraft will remain registered in the existing Country of Registration.
Insurance	As per the Original Lease.
Subleasing	Subject to the prior written consent of Lessor (not to be unreasonably withheld or delayed), Lessee may sublease the Aircraft on terms and conditions to be set out in the Lease Amendment; provided that no Lessor consent shall be required if the sublease is to [REDACTED].
Transfers	Lessor may transfer or assign its rights in the Documentation and/or the Aircraft after the Documentation is approved by the Bankruptcy Court, provided that: (i) Lessor shall promptly notify Lessee in writing of any proposed transfer and all relevant details with respect thereto; (ii) Lessor shall pay Lessee’s reasonable and documented out of pocket expenses in conjunction with any Lessor transfer; (iii) the transferee is experienced in the business of aircraft leasing or serviced by such person; (iv) the transferee/assignee provides Lessee with a quiet enjoyment undertaking letter in form and substance acceptable to the Lessee, with such a form to be agreed in the Documentation; (v) the transferee/assignee has a tangible net worth of at least US\$[REDACTED] exclusive of the aggregate equity it is committing to invest in the Aircraft, with a certificate of such tangible net worth being a condition precedent to entering into the transfer; (vi) neither the transferee/assignee nor any of its affiliates is an airline or a direct competitor of Lessee; (vii) such Lessor transfer shall not increase any of Lessee’s risk, obligations, responsibilities, liabilities, costs (including

	without limitation with respect to taxes) or decrease the Lessee's rights under the Lease as determined as of the date of such transfer or assignment; and (viii) the transferee/assignee assumes any and all payment and other obligations of Lessor. If the Lessor is a trust or other SPV, the foregoing requirements shall also apply to the owner participant or beneficial owner of such trust or SPV.
Governing Law	This Summary of Terms and the Documentation is governed by the laws of the State of New York.
Costs and Expenses	Lessee and Lessor will bear their own costs and expenses incurred in the negotiation and completion of the Documentation. The cost of registering the Aircraft will be borne by Lessee. Lessee will also issue, at no cost to Lessor, a customary in-house legal opinion as to Mexican law matters. If Lessor requires an external Mexican legal opinion, Lessor will bear all costs related thereto.
Confidentiality	This Summary of Terms is strictly confidential and must not be revealed by Lessor or Lessee to any person other than those employees, directors, officers, or professional advisers (collectively, " <i>Related Persons</i> ") of the parties hereto (as applicable) who are responsible for analyzing, negotiating and approving the transaction and who are made aware of the confidential nature of this Summary of Terms. Notwithstanding the foregoing, the Lessee may disclose this Summary of Terms (i) as may be required to obtain the bankruptcy court's approval of this Summary of Terms or the Documentation; or (ii) to the U.S. Trustee, the Unsecured Creditors Committee or the entities providing the debtor-in-possession financing to the Debtors and any of their respective Related Persons.
Claim Settlement	Lessor and Lessee shall mutually agree the final dollar amount of Lessor's general, pre-petition unsecured claims against Lessee arising as a result of Lessee's Chapter 11 filing. Such amount shall be specified in the Documentation and approved by the Bankruptcy Court on the Approval Date.

Signature Page

AEROVÍAS DE MÉXICO, S.A. DE C.V.

By: _____

Printed Name: _____

Title: _____

By: _____

Printed Name: _____

Title: _____

**MSN 36707 TRUST, as Lessor, by MACQUARIE AIRCRAFT LEASING SERVICES (IRELAND)
LIMITED, as Servicer**

By: _____

Printed Name: _____

Title: _____

APPENDIX 1

CERTAIN TERMS

Aircraft:	One (1) Boeing B737-800W aircraft bearing manufacturer's serial number 36707 and Mexican registration mark XA-AML, together with two (2) CFM International CFM56-7B26 engines respectively bearing manufacturer's serial numbers 660227 and 660231, as further described in the Original Lease.
Expiration Date:	November 1, 2025, subject to Lessee's exercise of the [REDACTED].
Fixed Rent:	[\$REDACTED]
Lessor:	MSN 36707 Trust
Original Lease:	The Aircraft Lease Agreement dated as of 30 September 2013 currently in effect between Lessor and Lessee, as amended, modified, assigned, assumed or supplemented from time to time up to (but excluding) the Approval Date.
PBH Hourly Rates:	Airframe: [\$REDACTED] Engine 1: [\$REDACTED] Engine 2: [\$REDACTED]

APPENDIX 2

AMENDED AND RESTATED EXHIBIT F

REDELIVERY CONDITIONS

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

During the period commencing [REDACTED] months and ending no less than [REDACTED] months prior to the Expiration Date, Lessee and Lessor will agree to conduct a pre-redelivery meeting for the purpose of reviewing and agreeing upon the workscope for the Redelivery Check and, if applicable, any Engine, APU, or Landing Gear shop visit. Lessor and Lessee shall each commit sufficient resources to the redelivery process to cause the Return Occasion to occur on the Expiration Date.

With respect to any discrepancies in the Redelivery Conditions described herein (other than discrepancies with respect to the Landing Gear Hard Time Minimum specified in paragraph 4, the Engine LLP Hard Life Cycle Minimum specified in paragraph 5, the Engine Performance Restoration Hard Time Minimum specified in paragraph 6, and the APU Hard Life Cycle Minimum specified in paragraph 8, which such discrepancies shall be corrected by Lessee at its expense), Lessee and Lessor agree, subject to the provisions outlined in paragraph 9 – Maintenance Carry-Overs, that Lessee will have the option of either correcting such discrepancy at its own expense or providing compensation in lieu of such correction in an amount to be mutually agreed upon by Lessee and Lessor.

1) Registration & Certification, Maintenance Program & Airworthiness Directives

The Aircraft shall be registered with the AFAC of Mexico (the “*Aviation Authority*”) in the name of Lessor unless such registration cannot be maintained because of the failure of the Lessor to comply with the citizenship or other eligibility requirements for registration of the Aircraft. Upon the Return Occasion, Lessee shall, at its own cost and expense, cooperate with Lessor in procuring the immediate deregistration of the Aircraft from AFAC, including, without limitation, providing the Lessor with the original certificate of registration of the Aircraft (if applicable), and executing and delivering such documents as may be required to de-register the Aircraft from AFAC, terminate the Lease or to evidence the expiration, termination or cancellation of the Lease, and notifying the next Aviation Authority of the cancellation of the Mexican registration. Provided that (i) the Aircraft is in the condition required by this Exhibit F, (ii) all other conditions to the occurrence of the Return Occasion have been fulfilled, and (iii) Lessee has provided all documents and done all things within its control to de-register the Aircraft from AFAC, then Lessee shall not be obligated to pay Basic Rent on any day on which the Return Occasion has not occurred solely as a result of a delay by the AFAC in processing the de-registration of the Aircraft.

Upon the Return Occasion, the Aircraft shall be FAA compliant according to Part 129 and will be eligible for an FAA certificate of airworthiness in accordance with Part 121 to the extent it complied at delivery. Upon the Return Occasion, the Aircraft shall have a valid Certificate of Airworthiness from AFAC of Mexico and Lessee shall provide an Export Certificate of Airworthiness prior to Lessor issuing Technical Acceptance of the Aircraft.

The Aircraft shall be in compliance with the Lessee’s Maintenance Program.

Lessee shall comply with any Airworthiness Directives (“ADs”) that require compliance within [REDACTED] following the last day of the Term, with the cost of performing such AD requiring compliance after the last day of the Term to be for the account of Lessor and paid to Lessee upon execution of the Certificate of Technical Acceptance. However, compliance with such ADs due after the last day of

the Term shall not be required (i) should the Lessee be unable to acquire, after using its best efforts to do so, the items, material, parts or components necessary to accomplish such compliance before the Expiration Date; (ii) should such compliance be waived in writing by the Lessor; or (iii) where such AD has not been issued by the date that is [REDACTED] months prior to the Expiration Date.

2) General Condition

- a) The Aircraft shall be (a) in good operating condition, normal wear and tear excepted, (b) clean by international commercial airline standards, (c) in a passenger configuration, (d) with equipment, components and systems fully functional and operating within limits of the Aircraft Maintenance Manual; and (e) equipped with two Engines (which may be Substitute Engines) duly installed thereon. The Aircraft shall be in compliance with Lessee's corrosion prevention and control program.
- b) The Aircraft shall be extended operations (ETOPS) compliant in accordance with the Manufacturer's then current Configuration and Maintenance Procedures (CMP) documents for the Aircraft if the Aircraft is delivered ETOPS compliance or if ETOPS compliance is obtained during the Term.
- c) There will be no "on watch" conditions, special callouts, special repetitive inspections, special waivers or exemptions in effect on the Aircraft.

3) Redelivery Check

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

"Redelivery Check" means the 12 Year inspections and checks of the Aircraft equivalent in scope and content to a block "C" check in accordance with the Maintenance Program during the Term and the revision of the MPD in effect six months prior to the Expiration Date, and includes all systems, zonal and structural inspections, checks and work up to and including those required every [REDACTED] Flight Hours, [REDACTED] Flight Cycles and [REDACTED] calendar months of operation.

The interior configuration of the Aircraft will be the same as on the Delivery Date unless otherwise modified in accordance with the Lease, and the interior shall be in good condition consistent with an Aircraft fresh from Lessee's 12 Year Check.

4) Landing Gear Minimum

The Landing Gear shall have no less than 18 months or the equivalent number of cycles (based on Lessee's historic utilization) remaining (the "*Landing Gear Hard Time Minimum*") until the next scheduled Landing Gear Overhaul as measured by, Cycles or calendar days, whichever is applicable and most limiting. Each tire shall have at least [REDACTED] tread remaining. The Landing Gear brakes will each have an average of at least [REDACTED] life remaining before their removal with no individual brake having less than [REDACTED] service life remaining.

5) Engine LLP Minimum

No Engine LLP shall have fewer than [REDACTED] Cycles remaining to reaching the then manufacturer's published Chapter 5 life limit (the "*Engine LLP Hard Life Cycle Minimum*"), provided that Lessee may request of Lessor, and Lessor shall consider in good faith (with no obligation to consent to), the allowance of an extended hard life cycle limit that may be achieved via the incorporation of a service bulletin or other action that may only be incorporated on-wing post-redelivery. Notwithstanding the foregoing, if (i) the Engine LLP is located on the engine bearing serial number 660227 ("ESN 660227") and (ii) ESN 660227

is an Engine under the terms of the Lease at the time of the Redelivery Occasion, then such Engine LLP shall have no fewer than [REDACTED] Cycles remaining to reaching the then manufacturer's published Chapter 5 life limit.

6) Engine Performance Restoration Hard Time Minimum

Each Engine shall have no fewer than [REDACTED] Flight Hours remaining, provided that ESN 660227 shall only be required to have no fewer than [REDACTED] Flight Hours remaining, (the "*Engine Performance Restoration Hard Time Minimum*") until the next anticipated removal for repair (whether for a Performance Restoration Shop Visit or otherwise), based on condition, trend monitoring, and as measured by Lessee's expected time on wing to such next sequential removal for Performance Restoration Shop Visit ("*Expected Time on Wing*") for engines in Lessee's fleet of the same make and model. All of the parts in the gas path of each Engine shall be parts that have been produced by or on behalf of an original equipment manufacturer (an "OEM"), or that have been approved for use by the OEM and manufactured by another party ("OEM Parts"). [REDACTED].

7) Components

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

8) Auxiliary Power Unit Minimum

The APU shall be in serviceable condition, as evidenced by an APU condition test performed in accordance with the Manufacturer's AMM and shall have no less than [REDACTED] APU operating hours remaining until the next APU medium repair, based on the APU manufacturer's average mean time between APU medium repair shop visits.

9) Maintenance Carry-Overs

If the Aircraft is scheduled to be redelivered fresh from a C Check, any deferred, continued, carry-over, time-limited repairs or open log book maintenance items against the Aircraft (each, an "*MCO*") which can be deferred until the next C Check need not be corrected or performed by Lessee except to the extent that the aggregate cost of rectifying all such MCOs exceeds \$[REDACTED] (the "*MCO Threshold*"), in which case Lessee, at its own expense, shall correct or perform sufficient MCOs selected by Lessee such that the aggregate cost of rectifying the remaining uncorrected and unperformed MCOs shall be equal to or less than the MCO Threshold. Lessee and Lessor shall agree, acting reasonably, on the reasonable cost to complete any such MCO items during the next Structural Check. Any MCOs which cannot be deferred until the next Structural Check [REDACTED].

If the Aircraft is scheduled to be redelivered fresh from a 12 Year Check, [REDACTED].

10) Paint and Special Markings

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

with Lessor. Such quotation shall be for a scope of painting that includes preparation of the fuselage, wings, empennage and stabilizers in accordance with the manufacturer's practices for stripping of such surfaces, application of corrosion protection and performance of other procedures. The Aircraft shall be reweighed according to the then applicable Boeing weight and balance procedures.

11) Records

No less than [REDACTED] months prior to the targeted Redelivery Check induction date, Lessee will provide for the review of Lessor all then-existing Aircraft Documents and, provided that all such Aircraft Documents are made available to Lessor at the commencement of the six-month period, Lessor will provide to Lessee its response and findings on such Aircraft Documents at least [REDACTED] days prior to the targeted Redelivery Check induction date. Lessee shall promptly provide Lessor access to all additional Aircraft Documents that are created through to the Return Occasion, and Lessee shall correct all findings on such Aircraft Documents which are notified to Lessee by Lessor. All Aircraft Documents shall be delivered in English to Lessor (except for the cabin rectification log book which may be maintained and returned in Spanish, provided that upon [REDACTED] days' written notice from Lessor, Lessee will translate the final [REDACTED] months of the same into English at Lessee's cost, if Lessor's onward lessee requires it) in Lessee's format and at Lessee's expense on the Return Occasion, except to the extent any Aircraft Documents require updating following compliance with these Redelivery Conditions, in which case such Aircraft Documents will be delivered within [REDACTED] days after the Return Occasion.

In the event of missing, incomplete or noncompliant records that are required to be maintained by the Aviation Authority and/or the FAA, Lessee shall at its expense re-accomplish the tasks necessary to produce such records in accordance with FAA Part 129 requirements and return such records to Lessor, to enable immediate transfer to a subsequent operator under FAR Part 129 provided that Lessee shall not be obligated to:

- a) create any Aircraft Documents required pursuant to the foregoing provisions that should have existed prior to the Delivery Date or been provided by Lessor on the Delivery Date but did not exist or were not provided; or
- b) correct deficiencies, if any, that existed prior to the Delivery Date (or any subsequent deficiencies which are the direct result of such deficiency at delivery) in any Aircraft Documents that are required pursuant to the foregoing provisions.

12) Borescope Inspections; Power Assurance Runs

A power assurance run in accordance with the Manufacturer's Aircraft Maintenance Manual ("AMM") will be carried out on each Engine following the completion of the Redelivery Check. Following the demonstration flight contemplated by paragraph 13 below and before the Return Occasion, a hot and cold section video borescope inspection of each Engine, each module in each Engine, and the APU in accordance with the AMM shall be performed Return Occasion by Lessee or its representative at Lessee's expense and in the [REDACTED]. Lessee will record the Engine power assurance test conditions and results on the Certificate of Technical Acceptance. Lessee will correct any discrepancies in accordance with the guidelines set out by OEM manufacturer which may be discovered during such inspections. In addition, Lessee will provide Lessor the latest trend data for each Engine, based on the last [REDACTED] months of operation, or since last Performance Restoration Shop Visit if such event occurred within the [REDACTED] months prior to the Return Occasion. Such trend data shall not show a level of accelerated deterioration in the on-wing performance of the Engine that would indicate that the Engine will fail to meet the Engine Performance Restoration Minimum. If the parties cannot reasonably agree on whether such accelerated deterioration will cause the Engine to fail to meet the Engine Performance Restoration Minimum, Lessor and Lessee will request the Engine Manufacturer to provide an opinion on the expected time remaining on wing based on Lessee's operational information and the trend monitoring data, which opinion shall be binding on Lessee and Lessor.

13) Demonstration Flight

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

14) Liens

The Aircraft shall be free and clear of Liens arising during the Term (other than any Lessor Liens).

15) Fuel, Oil and Hydraulic Fluid

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

16) Inspection

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

APPENDIX 3

REDELIVERY MAINTENANCE PAYMENT

The Original Lease shall be amended to incorporate the terms and conditions of this Appendix 2.

A. Maintenance Redelivery Amount

Upon the Return Occasion, Lessor shall calculate the amount (the “**Maintenance Redelivery Amount**”) that is the aggregate sum of each of the Airframe Structural Check Amount, the Engine Amount, the Engine LLP Amount, the APU Amount and the Landing Gear Amount, in each case as determined in accordance with paragraphs (B) through (F) below, as applicable. If the Maintenance Redelivery Amount is a positive number, then upon the Return Occasion, Lessee shall pay that amount to Lessor. If the Maintenance Redelivery Amount is a negative number, then [REDACTED]

Wherever it appears in paragraphs (B) through (F) below, the phrase “then-current cost” means the labor and market cost as of the Return Occasion for the performance of the relevant maintenance item, which shall be calculated as the average of six (6) recent quotes for such maintenance from reputable maintenance providers who are FAA/EASA approved repair stations to accomplish such maintenance item, three (3) to be procured by Lessee and three (3) to be procured by Lessor, on the basis of an agreed workscope based on the requirements of (i) the relevant Aircraft Maintenance Manual (AMM), (ii) the Component Maintenance Manual (CMM), (iii) the Manufacturer Overhaul Manual, or (iv) the relevant manufacturer’s then-current workscope planning guide, as applicable in each case for the relevant maintenance item.

B. Airframe Structural Check Amount

The Airframe Structural Check Amount shall be the amount that is the aggregate sum of the 9 Year Check Amount and the 12 Year Check Amount, as calculated in accordance with subparagraphs (a) and (b) immediately below, respectively.

- (a) The 9 Year Check Amount shall be calculated pursuant to the following formula:

$$A = (W/B) \times (C - E)$$

Where:

A is [REDACTED]

W is [REDACTED]

B is [REDACTED]

C is, as applicable, [REDACTED]

E is, as applicable [REDACTED]

- (b) The 12 Year Check Amount shall be calculated pursuant to the following formula:

$$A = (W/B) \times (C - E)$$

Where:

A is [REDACTED]

W is [REDACTED]

B is [REDACTED].

C is, as applicable, [REDACTED].

E is, as applicable, [REDACTED].

C. Landing Gear Amount

The Landing Gear Amount shall be calculated pursuant to the following formula:

$$A = (W/B) \times (C - E)$$

Where:

A is the [REDACTED]

W is the [REDACTED]

B is the [REDACTED].

C is, as applicable, [REDACTED].

E is, as applicable, [REDACTED].

D. Engine LLP Amount

For each LLP in each Engine, an amount shall be calculated pursuant to the following formula. The aggregate sum of such calculations for all of the LLPs in both Engines shall be the Engine LLP Amount.

$$A = (W/B) \times (C - E)$$

Where:

A is the [REDACTED].

W is [REDACTED].

B is the [REDACTED].

C is the [REDACTED].

E is, as applicable, [REDACTED].

E. Engine Amount

The Engine Amount shall be calculated in respect of each Engine Major Module pursuant to the following formula:

$$A = (W/B) \times (C - E)$$

Where:

A is the [REDACTED]

W is the [REDACTED]

B is the [REDACTED].

C is, as applicable, [REDACTED].

E is, as applicable, [REDACTED].

For the purposes of the foregoing paragraph E, the term “Engine Major Module” means, at any time, any of the major modules of an Engine which are defined as “Engine Major Modules” in the Engine Manufacturer’s Maintenance Manual as in effect at that time.

F. APU Amount

The APU Amount shall be calculated pursuant to the following formula:

$$A = (W/B) \times (C - E)$$

Where:

A is the [REDACTED]

W is the [REDACTED]

B is the [REDACTED].

C is, as applicable, [REDACTED].

E is, as applicable, [REDACTED].

“**APU Medium Repair Maintenance**” means, with respect to the APU, a level of work that includes, at a minimum, (a) complete gearbox disassembly and/or partial or complete disassembly of the load compressor and/or power section with reuse or limited repair/replacement of parts; (b) exposed parts checked to the continue-time and general check criteria set forth in the APU Manufacturer’s inspection and repair manual; and c) limited use of zero-time check criteria set forth in the APU Manufacturer’s inspection and repair manual, as requested by repair facility engineering, where additional checks are needed on specific parts based on part condition, failure mode or operating environment.

G. Maintenance Condition of Airframe, Landing Gear, Engine LLPs, Engines and APU as at July 1, 2020

(i) Airframe:

Airframe Status		
Relevant Check	Date Check Last Performed	Months Since Last Check or New, as Applicable
9-Year	N/A	[REDACTED]
12-Year	N/A	[REDACTED]

(ii) Landing Gear:

Landing Gear Status	
Date of Last Overhaul	Months Since Last Overhaul or New, as Applicable
N/A	[REDACTED]

(iii) Engine LLPs in ESN 660227:

Status of Engine LLPs in ESN 660227	
Relevant LLP	Total Flight Cycles Accumulated
Fan - Booster	[REDACTED]

Fan - Disk	[REDACTED]
Fan - Shaft	[REDACTED]
HPC - CDP Seal	[REDACTED]
HPC - Front Shaft	[REDACTED]
HPC - 1-2 Spool	[REDACTED]
HPC - Disk 3	[REDACTED]
HPC - 4-9 Spool	[REDACTED]
HPT - Disk	[REDACTED]
HPT - Front Seal	[REDACTED]
HPT - Front Shaft	[REDACTED]
HPT - Rear Shaft	[REDACTED]
LPT – Rotor Support	[REDACTED]
LPT - Shaft	[REDACTED]
LPT - Stage 1 Disk	[REDACTED]
LPT - Stage 2 Disk	[REDACTED]
LPT - Stage 3 Disk	[REDACTED]
LPT - Stage 4 Disk	[REDACTED]

(iv) Engine LLPs in ESN 660231:

Status of Engine LLPs in ESN 660231	
Relevant LLP	Total Flight Cycles Accumulated
Fan - Booster	[REDACTED]
Fan - Disk	[REDACTED]
Fan - Shaft	[REDACTED]
HPC - CDP Seal	[REDACTED]
HPC - Front Shaft	[REDACTED]
HPC - 1-2 Spool	[REDACTED]
HPC - Disk 3	[REDACTED]
HPC - 4-9 Spool	[REDACTED]
HPT - Disk	[REDACTED]
HPT - Front Seal	[REDACTED]
HPT - Front Shaft	[REDACTED]
HPT - Rear Shaft	[REDACTED]
LPT – Rotor Support	[REDACTED]
LPT - Shaft	[REDACTED]
LPT - Stage 1 Disk	[REDACTED]
LPT - Stage 2 Disk	[REDACTED]
LPT - Stage 3 Disk	[REDACTED]
LPT - Stage 4 Disk	[REDACTED]

(v) Engine Performance Restoration:

Engine Performance Restoration (“PR”)			
Make/ Model	Serial Number	Date of Last PR	Flight Hours Since Last PR or New, as Applicable *
CFM56-7B26E	660227	N/A	[REDACTED]
CFM56-7B26E	660231	N/A	[REDACTED]

*The Flight Hours Since Last PR or New for each of the Engine Major Modules as of July 1, 2020 are the same as the Flight Hours Since Last PR or New for each Engine as of July 1, 2020.

(vi) APU:

APU S/N P-10402	
Date of Last Overhaul	APU Hours since Last Overhaul or New, as Applicable
None since new	[REDACTED]

Exhibit B

Summary of Terms of Letter of Intent

Material Terms:	
Leased Aircraft	One Boeing 737-800 aircraft
MSN	MSN 36707
Term	The Expiration Date of the Lease shall be extended through [REDACTED]
Power-by-the-Hour Period	From the Effective Date, Basic Rent shall be paid from Lessee to Lessor in arrears on a power-by-the-hour basis (the “ PBH Rent ”) until [REDACTED] (the “ PBH Period ”). PBH Rent shall be capped at Fixed Rent for a full calendar month of utilization and shall be calculated using the formula set forth in the following row.
Power-by-the-Hour Pricing	<p>$PBH\text{ Rent} = (A_{(airframe)} * B_{(airframe)}) + (A_{(engine\ 1)} * B_{(engine\ 1)}) + (A_{(engine\ 2)} * B_{(engine\ 2)})$</p> <p><u>A_(airframe)</u>, <u>A_(engine 1)</u> and <u>A_(engine 2)</u> means the utilization of the Airframe and each Engine, respectively, in a given calendar month, expressed in flight hours</p> <p><u>B_(airframe)</u> means \$[REDACTED]</p> <p><u>B_(engine 1)</u> means \$[REDACTED]</p> <p><u>B_(engine 2)</u> means \$[REDACTED]</p>
Monthly Rent per Aircraft	\$[REDACTED]