

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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In re: : Chapter 11  
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AVIANCA HOLDINGS S.A., *et al.* : Case No. 20-11133 (MG)  
:  
Debtors.<sup>1</sup> : (Jointly Administered)  
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**FIRST STIPULATION AND ORDER BETWEEN DEBTORS AND FINANCE PARTIES  
CONCERNING CERTAIN COLLATERAL**

This stipulation (the “Stipulation”) is entered into as of June 19, 2020, by and between Aerovías del Continente Americano S.A. Avianca and all of the above captioned Debtors (collectively, the “Debtors”) to the extent such Debtor is an obligor under the Agreements (as defined below) and each of the parties set forth in **Exhibit A** hereto (the “Finance Parties”) with respect to the credit and guaranty agreement (the “Credit Agreement”) set forth in **Exhibit A** and the loan documents referred to therein (collectively with the Credit Agreement, the “Agreements”) in respect of the aircraft listed in **Exhibit A** hereto, along with the airframe, engines, related

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<sup>1</sup> The Debtors in these chapter 11 cases, and each Debtor’s federal tax identification number (to the extent applicable), are as follows: Avianca Holdings S.A. (N/A); Aero Transporte de Carga Unión, S.A. de C.V. (N/A); Aeroinversiones de Honduras, S.A. (N/A); Aerovías del Continente Americano S.A. Avianca (N/A); Airlease Holdings One Ltd. (N/A); America Central (Canada) Corp. (00-1071563); America Central Corp. (65-0444665); AV International Holdco S.A. (N/A); AV International Holdings S.A. (N/A); AV International Investments S.A. (N/A); AV International Ventures S.A. (N/A); AV Investments One Colombia S.A.S. (N/A); AV Investments Two Colombia S.A.S. (N/A); AV Taca International Holdco S.A. (N/A); Avianca Costa Rica S.A. (N/A); Avianca Leasing, LLC (47-2628716); Avianca, Inc. (13-1868573); Avianca-Ecuador S.A. (N/A); Aviaservicios, S.A. (N/A); Aviateca, S.A. (N/A); Avifreight Holding Mexico, S.A.P.I. de C.V. (N/A); C.R. Int’l Enterprises, Inc. (59-2240957); Grupo Taca Holdings Limited (N/A); International Trade Marks Agency Inc. (N/A); Inversiones del Caribe, S.A. (N/A); Isleña de Inversiones, S.A. de C.V. (N/A); Latin Airways Corp. (N/A); Latin Logistics, LLC (41-2187926); Nicaraguense de Aviación, Sociedad Anónima (Nica, S.A.) (N/A); Regional Express Américas S.A.S. (N/A); Ronair N.V. (N/A); Servicio Terrestre, Aereo y Rampa S.A. (N/A); Servicios Aeroportuarios Integrados SAI S.A.S. (92-4006439); Taca de Honduras, S.A. de C.V. (N/A); Taca de México, S.A. (N/A); Taca International Airlines S.A. (N/A); Taca S.A. (N/A); Tampa Cargo S.A.S. (N/A); Technical and Training Services, S.A. de C.V. (N/A). The Debtors’ principal offices are located at Avenida Calle 26 # 59 – 15 Bogotá, Colombia.



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equipment and/or other equipment, documents, and records related thereto (collectively, the “Aircraft Equipment”) and together with the Spare Parts Collateral, the Slots Collateral and the Cargo Receivables Collateral (each as defined in Exhibit A hereto, collectively, the “Non-Aircraft Collateral” and, together with the Aircraft Equipment, the “Collateral”);

WHEREAS, on May 10, 2020 (the “Petition Date”), the Debtors filed voluntary petitions under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) with the United States Bankruptcy Court for the Southern District of New York (the “Court”);

WHEREAS, (i) as to the Aircraft Equipment, this Stipulation is effective from the Petition Date through July 9, 2020 (such period, along with, as applicable, the period until the Aircraft Equipment is returned to the Finance Parties under paragraph B(3)(i) herein, the “Aircraft Equipment Stipulation Period”) and (ii) the Aircraft Equipment Stipulation Period will be automatically extended on a rolling thirty (30) day period basis unless either the Debtors or the Finance Parties provide written notice to the other parties at least five (5) days prior to the end of such Aircraft Equipment Stipulation Period;

WHEREAS, as to the Collateral other than Aircraft Equipment, this Stipulation is effective from the Petition Date through the effective date of the Debtors’ plan of reorganization unless either the Debtors or the Finance Parties provide at least thirty (30) days prior written notice to the other parties (the “Non-Aircraft Collateral Stipulation Period”, and each of the Aircraft Equipment Stipulation Period and the Non-Aircraft Collateral Stipulation Period, a “Stipulation Period”);

WHEREAS, the Finance Parties requested adequate protection as of the Petition Date;

WHEREAS, as of the Petition Date, the principal amount of the “Obligations” outstanding under and as defined in the Credit Agreement equaled approximately \$100,000,000, plus accrued but unpaid interest, fees, costs and expenses;

WHEREAS, as of the Petition Date and the date hereof, the value of the Collateral (as defined below) exceeded the amount of the “Obligations” outstanding under and as defined in the Credit Agreement;

WHEREAS, the entity identified as such in **Exhibit A** is the collateral agent under the Credit Agreement; and

WHEREAS, the Debtors and the Finance Parties do hereby STIPULATE and AGREE as follows:

#### AIRCRAFT EQUIPMENT

A. The Debtors represent and warrant that as of the date of the execution of this Stipulation and at the time the Agreements were entered into by and between the relevant Debtors and the Finance Parties, such Debtors did not hold an air carrier operating certificate issued pursuant to chapter 447 of title 49, United States Code and, accordingly for that reason, Section 1110 of the Bankruptcy Code is not applicable to the Aircraft Equipment.

B. During the Aircraft Equipment Stipulation Period:

1. if any item of Aircraft Equipment is not operated, the Debtors shall, at the Debtors’ expense:

(i) maintain and store such item of Aircraft Equipment under a storage program approved by the applicable aviation authority;

(ii) continue to carry and maintain hull and liability insurance with respect to such item of Aircraft Equipment in accordance with the terms required by, and in amounts not less than the amounts required under, the Agreements; and

(iii) provide the applicable Finance Party with reasonable access to inspect the Aircraft Equipment at the sole expense of such Finance Party (provided that any such expenses incurred by the Finance Parties that would be payable or reimbursable by the applicable Debtor pursuant to the Agreements shall become part of the “Obligations” outstanding under and as defined in the Credit Agreement);

2. if any item of Aircraft Equipment is operated, the Debtors shall, at the Debtors’ expense:

(i) operate and maintain such item of Aircraft Equipment pursuant to the maintenance, possession and use covenants of the Agreements; *provided* that such maintenance obligation under this Stipulation shall not include the performance of any scheduled heavy maintenance or overhauls of the Aircraft Equipment;

(ii) continue to carry and maintain hull and liability insurance with respect to such item of Aircraft Equipment in accordance with the terms required by, and in amounts not less than the amounts required under, the Agreements; and

(iii) provide the applicable Finance Party with reasonable access to inspect the Aircraft Equipment at the sole expense of such Finance Party (provided that any such expenses incurred by the Finance Parties that would be payable or reimbursable by the applicable Debtor pursuant to the Agreements shall become part of the “Obligations” outstanding under and as defined in the Credit Agreement); *provided* that any such

inspection does not interfere with the operation or maintenance of the Aircraft Equipment or the Debtor's operations generally;

3. the Debtors may, subject to any requirement by the Court that a further order or notice is necessary, at any time upon fifteen (15) days notice to the Finance Parties, abandon the Aircraft Equipment and, in such case, the Debtors shall, at the Finance Parties' expense (provided that any such expenses incurred by the Finance Parties that would be payable or reimbursable by the applicable Debtor pursuant to the Agreements shall become part of the "Obligations" outstanding under and as defined in the Credit Agreement), (i) promptly deliver such Aircraft Equipment (expressly including the original engines listed on **Exhibit A** hereto, unless the parties agree otherwise) to the Finance Parties at a location permitted under the Agreements or such other location mutually acceptable to the Debtors and the Finance Parties, (ii) as soon as reasonably practicable, deliver to the Finance Parties all technical records and documents relating to such Aircraft Equipment that are in the Debtor's possession or control, and (iii) cooperate in taking all actions and signing all documents reasonably required by the Finance Parties with regard to the return of the Aircraft Equipment to the Finance Parties, the transfer of title, and its deregistration and export from the current state of registration or country of previous importation, in each case, to the extent applicable.

4. the performance by the Debtor or Debtors (as applicable) of the terms and conditions set forth in this paragraph B above shall satisfy any and all rights of the Finance Parties to administrative expense status or priority in payment under any applicable provision of the Bankruptcy Code for any claims arising out of or related to the Aircraft Equipment Stipulation Period based on the obligations (both monetary or performance based, or in each case lack thereof) of any Debtors in these chapter 11 cases pursuant to sections 361, 362, 363, 364, or 365

of the Bankruptcy Code and any similar provision under the Cape Town Convention on International Interests in Mobile Equipment and the Protocol thereto on Matters Specific to Aircraft Equipment, each as opened for signature on November 16, 2001, that arise out of or relate to the Aircraft Equipment; provided that, to the extent the Aircraft Equipment is being operated, the Finance Parties reserve all rights to assert an unsecured or administrative expense claim, as applicable, against the Debtors as permitted under the Bankruptcy Code for payment for such usage and the Debtors reserve all rights with respect to any such claim. Without limiting the foregoing provisions and notwithstanding anything to the contrary herein, the Finance Parties shall not assert and shall not be entitled to have allowed any claim against any Debtors in these chapter 11 cases entitled to any administrative expense status or priority in payment under any applicable provision of the Bankruptcy Code, or seek adequate protection under any applicable provision of the Bankruptcy Code, in each case, for any diminution of value with respect to their respective interests in the Aircraft Equipment. This paragraph shall survive the termination of this Stipulation.

5. If the Aircraft Equipment Stipulation Period is not extended, subject to any requirement by the Court that a further order or notice is necessary, the Aircraft Equipment shall be abandoned as of the date that the Aircraft Equipment Stipulation Period terminated and the Debtors shall perform the obligations set forth in paragraph B(3). With respect to any Aircraft Equipment that is so abandoned, the automatic stay provided under Section 362 of the Bankruptcy Code shall be terminated and of no further effect.

#### NON-AIRCRAFT COLLATERAL

C. During the Non-Aircraft Equipment Stipulation Period, to secure any diminution in the value of the Non-Aircraft Collateral occurring on or after the Petition Date in

which the Finance Parties had a valid, perfected and unavoidable lien or security interest as of the Petition Date to the fullest extent set forth in the Bankruptcy Code (including, without limitation, such diminution resulting from the imposition of the automatic stay or the use, sale, or lease of the Collateral) and would otherwise constitute “Collateral” as defined in the Credit Agreement, the Debtor or Debtors (as applicable) shall (i) account for any cash collateral (as defined in Section 363(a) of the Bankruptcy Code, the “Cash Collateral”) received from the collection, sale or disposition of the Non-Aircraft Collateral as provided in Section 363(c)(4) of the Bankruptcy Code, and shall provide the Finance Parties a monthly statement showing the balance of such Cash Collateral; *provided* that, notwithstanding any such accounting, the Debtors reserve all of their rights and remedies with respect to any claim or determination as to whether any proceeds derived from any Non-Aircraft Collateral constitute cash collateral for purposes of Section 363 of the Bankruptcy Code, (ii) provide the Finance Parties with an inventory of the Spare Parts Collateral consistent with past practice and upon reasonable written request of the Finance Parties and shall maintain, repair, refurbish and store such Spare Parts Collateral consistent with past practice and in accordance with the maintenance, possession and use covenants of the Agreements; (iii) provide the Finance Parties’ advisors ongoing reasonable access to the Spare Parts Collateral and pay or reimburse the reasonable fees, costs, and expenses associated therewith; (iv) promptly provide evidence of adequate insurance on the Collateral; and (v) hereby grant to the Finance Parties replacement security interests and liens (the “Replacement Liens”) in, on and against all Spare Parts Collateral, Slots Collateral, and Cargo Receivables Collateral (each as defined in **Exhibit A** hereto), whether now existing or hereafter arising, and all proceeds, products, rents or profits thereof that may arise, be acquired, or come into existence at any time on or after the Petition Date to the same extent, validity and priority as

their prepetition lien and security interest in such property (collectively, the “Adequate Protection”). The foregoing grant of Replacement Liens shall not require the execution or filing of any mortgages, security agreements, pledge agreements, financing statements, notices of lien, or other similar agreements or instruments, and such Replacement Liens shall be effective, valid, enforceable, and automatically perfected upon entry of this Stipulation, without further notice or action.

D. During the Non-Aircraft Collateral Stipulation Period, the grant of the Adequate Protection by the Debtor or Debtors (as applicable) set forth in paragraph (C) above shall satisfy any and all rights of the Finance Parties to adequate protection, administrative expense status (subject to the proviso below) or priority in payment (subject to the proviso below) under any applicable provision of the Bankruptcy Code for any claims arising out of or related to the Non-Aircraft Collateral Stipulation Period based on the obligations (both monetary or performance based, or in each case lack thereof) of any Debtors in these chapter 11 cases pursuant to sections 361, 362, 363, or 364 of the Bankruptcy Code that arise out of or relate to the Non-Aircraft Collateral; *provided* that, notwithstanding the foregoing, all rights of the Finance Parties arising under or pursuant to section 507(b) of the Bankruptcy Code (including the priority of claims thereunder) are reserved in respect of the adequate protection provided in respect of the Non-Aircraft Collateral and nothing herein shall alter, limit, or impair such rights arising under or pursuant to section 507(b) of the Bankruptcy Code (including the priority of claims thereunder). This paragraph shall survive the termination of this Stipulation.

#### OTHER MATTERS

E. Except as provided in this Stipulation, all rights of the parties are reserved and preserved. Notwithstanding anything to the contrary herein, following any material breach of

this Stipulation by the Debtors, the Finance Parties may assert an unsecured or administrative expense claim, as applicable, against the Debtors as permitted under the Bankruptcy Code for the actual damages resulting from such material breach and the Debtors reserve all rights with respect to any such claim. The Debtors and any representative of the Debtors' estates reserve all rights and remedies with respect to any claim asserted by any Finance Party. This paragraph shall survive the termination of this Stipulation.

F. All rights of the parties provided in this Stipulation shall survive the termination of the Stipulation.

G. This Stipulation shall be binding, *nunc pro tunc*, as of the Petition Date, upon (i) the Debtors and any trustee or examiner that may be appointed in the pending chapter 11 cases, and their respective successors and assigns, (ii) the Finance Parties and their respective successors and assigns and (with respect to those Finance Parties that are trusts or trustees) trust beneficiaries who so direct or authorize the trusts or trustee of the trusts to enter into this Stipulation and (iii) the trustee in the event that any of the above-captioned cases are converted to cases under chapter 7 of the Bankruptcy Code.

H. This Stipulation may be changed, modified, or otherwise altered in a writing executed and delivered by the parties to this Stipulation. Oral modifications are not permitted. The failure of either party to exercise its rights under this Stipulation shall not constitute a waiver of any such rights.

I. This Stipulation contains the entire agreement between the parties with respect to the subject matter hereof, and may only be modified in writing, signed by the parties or their duly appointed agents.

J. This Stipulation may be executed in one or more counterparts, by facsimile, electronic transmission or otherwise, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

K. This Stipulation shall be effective immediately upon approval by the Court. The Court shall retain jurisdiction for purposes of resolving any issues relating to this Stipulation.

**IT IS SO ORDERED.**

Dated: June 26, 2020  
New York, New York

/s/ Martin Glenn  
MARTIN GLENN  
United States Bankruptcy Judge

Stipulated and agreed to by:

Dated: New York, New York  
June 19, 2020

AVIANCA HOLDINGS S.A., et al., debtors and  
debtors-in-possession

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FINANCE PARTIES

CITIBANK, N.A.

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*Attorneys for administrative agent and collateral agent*

## **EXHIBIT A**

### **Finance Parties**

Citibank, N.A., as Administrative Agent and Collateral Agent (on behalf of itself and the lenders party to the Credit Agreement)

### **Collateral**

1. One (1) Airbus model A320-200 aircraft bearing manufacturer's serial number 2917 and Registration Mark N493TA and two (2) International Aero model V2527E-A5 aircraft engines bearing manufacturer's serial numbers V12415 and V12417
2. Certain accessories, appurtenances, or parts of aircraft, engines, propellers, or appliances, that are to be installed at a later time in an aircraft, engine, propeller or appliance pledged as collateral pursuant to the Credit Agreement and the other Loan Documents referenced therein (the "Spare Parts Collateral")
3. Certain rights and operational authorities to conduct one landing or takeoff at London Heathrow Airport and John F. Kennedy International Airport at a specific time or during a specific time period pledged as collateral pursuant to the Credit Agreement and the other Loan Documents referenced therein (the "Slots Collateral")
4. Certain rights to payment of a monetary obligation for the provision of air transportation services related to freight and cargo in the ordinary course of business, that have been pledged as collateral pursuant to the Credit Agreement and the other Loan Documents referenced therein (the "Cargo Receivables Collateral")

### **Agreements**

Credit and Guaranty Agreement, dated as of August 31, 2018, among Aerovías del Continente Americano S.A. Avianca, as borrower, Avianca Holdings S.A., as guarantor, Tampa Cargo S.A.S., as an additional guarantor, the lenders party thereto and Citibank, N.A., as administrative agent and collateral agent, as amended and supplemented from time to time, and each other Loan Document (as defined in the Credit Agreement) executed in connection with the Credit Agreement