

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

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In re: : Chapter 11
: :
AVIANCA HOLDINGS S.A., *et al.* : Case No. 20-11133 (MG)
: :
Debtors.¹ : (Jointly Administered)
: :
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**FIRST STIPULATION AND ORDER BETWEEN DEBTORS AND ENGINE
COUNTERPARTIES CONCERNING CERTAIN ENGINES**

This stipulation (the “Stipulation”) is entered into as of September 3, 2020, by and between Aerovías del Continente Americano S.A. Avianca (the “Lessee Debtor” and together with the above-captioned parties, the “Debtors”) and each of the parties set forth in Exhibit A hereto as engine counterparties (the “Engine Counterparties”) with respect to the engine lease and, as applicable, engine sublease (together, the “Lease”) and related documents set forth in Exhibit A (collectively with the Lease, the “Engine Agreements”)² in respect of the engines listed in Exhibit

¹ 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.

² “Engine Agreements” refers to the form of such agreements as in effect at any applicable time. The form of the Engine Agreements in effect immediately prior to the Petition Date are referred to herein as the “Original Engine Agreements”).



A hereto, along with the related documents and records (including maintenance records) with respect to the Lease, as supplemented for any such engine (collectively, the “Engine Equipment”);

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, this Stipulation is effective from the Petition Date through the earliest to occur of (i) with respect to the applicable Engine Equipment, the date such Engine Equipment is returned or made available for return, as applicable, to the Engine Counterparties as required pursuant to paragraph C or paragraph D (as applicable), (ii) the date of the entry of an order of the Court approving the assumption of the applicable Original Engine Agreements with respect to the relevant Engine Equipment pursuant to section 365 of the Bankruptcy Code, (iii) the effective date of a plan of reorganization for the Debtors confirmed by the Court, (iv) the date of an order converting the Lessee Debtor’s chapter 11 case to a case under chapter 7 of the Bankruptcy Code, (v) the date the Lessee Debtor announces that it has permanently discontinued all scheduled passenger service, (vi) the date of substantial consummation of a sale of all or substantially all assets of the Debtors and (vii) such other date as the Engine Counterparties and the Debtors may agree in writing with respect to any Engine Equipment (such period, the “Stipulation Period”);

WHEREAS, the entity identified as such in Exhibit A is the lessor of the applicable Engine Equipment and related items;

WHEREAS, the Engine Counterparties assert rights and interests (collectively, the “Engine Interests” and each an “Engine Interest”) in the Engine Equipment;

WHEREAS, the Debtors and the Engine Counterparties do hereby STIPULATE and AGREE as follows:

A. The Debtors represent and warrant that as of the date of the execution of this Stipulation and at the time the Engine Agreements were entered into by and between the Lessee Debtor and the Engine Counterparties, the Lessee Debtor 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 Engine Equipment.

B. During the Stipulation Period the Debtors shall, at the Debtors' expense (except as otherwise noted herein), perform the covenants pursuant to the terms set forth on Exhibit C and pay for any usage of any Engine Equipment during the Stipulation Period on a power by the hour basis pursuant to the terms attached hereto as Exhibit B and applicable to such Engine Equipment (as modified to reflect the existing transaction-specific details, the "PBH Agreement"), and the PBH Agreement shall be executed and delivered by the parties thereto promptly following the entry of an order approving this Stipulation.

C. The Debtors may, subject to any requirement by the Court that a further order or notice is necessary, at any time upon 15 days' notice to the Engine Counterparties, reject the Engine Agreements corresponding to one or more Engine Equipment or abandon one or more Engine Equipment. If the Engine Counterparties have complied with the conditions set forth in paragraphs 1 and 2 of Exhibit D, then, at the Engine Counterparties' expense, the Debtors shall as soon as reasonably practicable return such Engine Equipment to the Engine Counterparties at a location in the contiguous United States designated by the Engine Counterparties or such other location mutually acceptable to the Debtors and the Engine Counterparties. If, within 20 days of the Debtors' notice of rejection or abandonment, the Engine Counterparties have (I) not complied with the conditions set forth in paragraphs 1 and 2 of Exhibit D, or (II) the Engine Counterparties fail to otherwise reasonably cooperate with the Lessee Debtor in accepting the return of such

Engine Equipment during such period, then the Debtors shall make such Engine Equipment available for return in its then-current location. In any such case, such Engine Equipment will be returned or made available, as applicable, in such Engine Equipment's then "as is, where is" condition, and (x) upon the conclusion of the Engine Shipment (as defined in Exhibit D) of such Engine Equipment (but subject to the second following sentence) or (y) after 5 days of such Engine Equipment being made available for return, as the case may be, all risk of damage, injury, loss and liability of such Engine Equipment shall pass to the Engine Counterparties. Immediately following the Engine Shipment (as defined in Exhibit D) of any Engine Equipment or any Engine Equipment being made available for return, as applicable, the Debtors shall have no further obligations whatsoever with respect to such Engine Equipment except for any reasonable cooperation pursuant to subclauses (i) and (ii) of this paragraph C below; provided, however, that this sentence shall not affect or impair the rights of the Engine Counterparties to assert claims as provided in this Stipulation. Notwithstanding anything to the contrary in this Stipulation or the PBH Agreement, other than as a result of the Debtors' gross negligence or willful misconduct, all risk of damage, injury, loss and liability arising from or in connection with any Engine Shipment (as defined in Exhibit D), to the extent not covered by insurance maintained by the Debtors, shall be borne by the Engine Counterparties. In connection with the return of any Engine Equipment pursuant to this paragraph C, the Debtors shall, at the Engine Counterparties' expense, (i) as soon as reasonably practicable, deliver to the Engine Counterparties all technical records and documents relating to such Engine Equipment that are in the Debtors' possession or control and (ii) cooperate in taking all actions (including filings) and signing all documents reasonably required by the Engine Counterparties with regard to the return of such Engine Equipment to the Engine Counterparties, the transfer of title, and its export from the country of previous importation, in each case, to the

extent applicable. Notwithstanding anything to the contrary herein, the Debtors may reject or abandon any of the Engine Equipment and the Engine Agreements corresponding to such Engine Equipment on an engine by engine basis and this Stipulation shall remain in full force and effect as to any remaining Engine Equipment subject to the terms of this Stipulation.

D. The Engine Counterparties may notify the Debtors of their desire to terminate the Stipulation Period as to one or more Engine Equipment at any time upon 45 days' notice of termination to the Debtors. In addition, within 10 days of receipt by the Engine Counterparties of any Mandatory Order Notice (as defined in Exhibit C) with respect to any Engine Equipment, the Engine Counterparties may notify the Debtors of their desire to terminate the Stipulation Period with respect to such Engine Equipment. In the case of any such notice of termination under this paragraph D to the Debtors, the Debtors, subject to any requirement by the Court that a further order or notice is necessary, shall promptly reject the Engine Agreements corresponding to such Engine Equipment or abandon such Engine Equipment and, in either such case, the Debtors shall, at the Engine Counterparties' expense, take all actions subject to the conditions as are set forth in paragraph C with respect to such Engine Equipment, to the extent applicable. With respect to the rejection of any Engine Agreements or the abandonment of any Engine Equipment pursuant to paragraph C, this paragraph D or paragraph F, in any such case, to the extent necessary, the automatic stay of Section 362 of the Bankruptcy Code is hereby modified to allow the Debtors and the Engine Counterparties to effectuate the provisions of this Stipulation and to, as applicable, transfer, move, dispose or effect title transfer of such Engine Equipment, including, without limitation, authorizing the application of any security deposit held by any Engine Counterparty, to the extent applicable, against obligations of the Lessee Debtor pursuant to the terms of the applicable Original Engine Agreements; *provided* that no Engine Counterparty

shall be permitted to assert any claims against the Debtors in any court other than this Court (or as authorized by this Court).

E. During the Stipulation Period, the obligations of the Debtors set forth in paragraph C and paragraph D above, Part III of Exhibit C hereof, the PBH Agreement, the obligation of the Debtors to return any balance of a Deposit (as defined in Exhibit D) pursuant to paragraph 4 of Exhibit D, and the Specified Obligations to the extent provided in paragraph F below, shall (i) constitute administrative priority status expense obligations under the Bankruptcy Code and (ii) satisfy any and all rights of the Engine Counterparties 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 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 Engine Agreements or Engine Equipment. Without limiting the foregoing provisions and notwithstanding anything to the contrary herein, the Engine Counterparties 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 Engine Interests. This paragraph shall survive the termination of this Stipulation.

F. Following any breach of this Stipulation or of the PBH Agreement by the Debtors, the Engine Counterparties may assert a prepetition claim or administrative priority status expense claim, as applicable, against the Debtors as permitted under the Bankruptcy Code for the actual damages resulting from such breach; *provided* that, for any asserted breach of any of the Debtors' obligations under Part I of Exhibit C (the "Specified Obligation(s)") to be entitled to administrative priority status expense, (x) the Engine Counterparties shall provide the Lessee Debtor written notice of any such breach, (y) the Debtors shall have 30 days from receipt of such notice to remedy such breach or provide notice in accordance with paragraph C above to reject the relevant Engine Agreements or abandon such Engine Equipment and (z) if such breach is remedied or the Debtors provide notice that such Engine Agreements are rejected or such Engine Equipment is abandoned within such 30 day period, then the Engine Counterparties shall not assert or otherwise be entitled to any administrative expense or priority in payment with respect to such breach of the applicable Specified Obligations. In addition, the Engine Counterparties have and may assert (subject to allowance of the amount of the claim by the Court) each of the following against the Debtors solely as pre-petition (non-administrative priority status expense) claims: (i) any claim that would be entitled to administrative expense or priority in payment but for this Stipulation or the PBH Agreement, (ii) any claims for the difference between the rent and other obligations payable or performable by the Debtors under the Original Engine Agreements during the Stipulation Period as compared to the rent and other obligations payable or performable by the Debtors under the Engine Agreements (as modified by the PBH Agreement and this Stipulation) during the Stipulation Period and (iii) any claim pursuant to a breach of the Specified Obligations that is uncured and results in such Engine Agreements being rejected or such Engine Equipment being abandoned as set forth in paragraph C. The Engine Counterparties shall have until the later

of (x) 30 days after the effective date of rejection of the applicable Engine Agreements or the abandonment of the relevant Engine Equipment and (y) any claims bar date set by the Court to file a proof of claim for any claims arising out of or relating to the rejection of such Engine Agreement or the abandonment of such Engine Equipment pursuant to paragraph C or paragraph D, as applicable, above. The Debtors and any representative of the Debtors' estates reserve all defenses, rights and remedies with respect to any claim asserted by any Engine Counterparty. This paragraph shall survive the termination of this Stipulation.

G. The execution of this Stipulation and the PBH Agreement is not an assumption or cure under any applicable provision of the Bankruptcy Code by the Debtors in respect of any Engine Agreements between the Debtors, as applicable, and the Engine Counterparties. The rights of the Debtors, as applicable, (i) to assume any Engine Agreements under Bankruptcy Code Section 365(b)(1), including, without limitation, ascertaining the cure amounts and other obligations required with respect to such assumptions, (ii) to reinstate any Engine Agreement or otherwise leave any Engine Counterparty unimpaired under Bankruptcy Code Sections 1124, or (iii) to provide the "indubitable equivalent" under Bankruptcy Code Section 1129(b)(2)(A)(iii), shall be based upon the Original Engine Agreements (ignoring in their entirety any changes, revisions or modifications to the terms of the Engine Agreements effected by this Stipulation and the PBH Agreement). In addition, the Engine Counterparties' right to seek adequate protection in the event of proposed debtor-in-possession financing by the Debtors that seeks to prime any Engine Counterparty's liens on property of the estates, or to interpose objections to any sale by the Debtors of any property of the estates in which such Engine Counterparty has an Engine Interest, are reserved, as are all of the Debtors' rights, remedies and defenses with respect to any such matters.

H. Except as provided in this Stipulation, all rights and defenses of the parties are reserved and preserved. All rights and defenses of the parties provided in this Stipulation shall survive the termination of the Stipulation.

I. 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 Engine Counterparties and their respective successors and assigns and (with respect to those Engine Counterparties 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.

J. This Stipulation may be changed, modified, or otherwise altered in a writing executed by the parties to this Stipulation. Oral modifications are not permitted.

K. This Stipulation and the PBH Agreement contain 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. In the event of any conflict between any provision of any Engine Agreement and any provision of the PBH Agreement, any schedule thereto or this Stipulation, the provisions of the PBH Agreement, such schedule or this Stipulation, as applicable, shall control. In the event of any conflict between this Stipulation and the PBH Agreement, this Stipulation shall control. In the event of any conflict between this Stipulation and any other Court order governing the assumption or rejection of the applicable Engine Agreements (including, without limitation, any order granting the Debtors' Motion for Entry of an Order (I) Authorizing and Approving Procedures to Reject or Assume Executory Contracts and Unexpired Leases and (II) Granting Related Relief [ECF no. 261]), this Stipulation shall control.

L. 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.

M. By signing the below, the undersigned Engine Counterparties hereby authorize, as applicable, each of their facility trustee, security trustee, owner trustee, agent and/or other trustee to execute this Stipulation.

N. 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 or the PBH Agreement.

SO ORDERED.

Dated: September 14, 2020
New York, New York

/s/ Martin Glenn
MARTIN GLENN
United States Bankruptcy Judge

Stipulated and agreed to by:

Dated: New York, New York
September 3, 2020

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

By: /s/ Gregory Bray

Dennis F. Dunne
Evan R. Fleck
MILBANK LLP
55 Hudson Yards
New York, New York 10001
Telephone: (212) 530-5000
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-and-

Gregory Bray
MILBANK LLP
2029 Century Park East, 33rd Floor
Los Angeles, CA 90067
Telephone: (424) 386-4000
Facsimile: (213) 629-5063

BANK OF UTAH, not in its individual capacity but
solely as Borrower and Lessor

By: 

Name: Jon Croasmun

Title: Senior Vice President

WELLS FARGO TRUST COMPANY, NATIONAL
ASSOCIATION, not in its individual capacity but
solely as Security Trustee

By: _____

Name: _____

Title: _____


Todd Duncan
Vice President

CREDIT AGRICOLE CORPORATE AND
INVESTMENT BANK, as Initial Lender

By: _____



Thomas Jean
Director

Name:

Title:

By: _____



Brian Bolotin
Managing Director

Name:

Title:

EXHIBIT A

Engine Counterparties

1. Bank of Utah, not in its individual capacity but solely as owner trustee, as Borrower and Lessor
2. Wells Fargo Trust Company, National Association, as Security Trustee
3. Credit Agricole Corporate and Investment Bank, as Initial Lender

Engine Equipment

1. One (1) CFM International model CFM56-5B4/3 aircraft engine bearing manufacturer's serial number 699510.
2. One (1) CFM International model CFM56-5B4/3 aircraft engine bearing manufacturer's serial number 699661.
3. One (1) CFM International model CFM56-5B7/3 aircraft engine bearing manufacturer's serial number 697723.
4. One (1) CFM International model CFM56-5B7/3 aircraft engine bearing manufacturer's serial number 645479.
5. One (1) IAE International Aero Engines model V2527E-A5 aircraft engine bearing manufacturer's serial number V17503.
6. One (1) IAE International Aero Engines model V2527E-A5 aircraft engine bearing manufacturer's serial number V16653.
7. One (1) Rolls-Royce model Trent 772B aircraft engine bearing manufacturer's serial number 42180.
8. One (1) Rolls-Royce model Trent 772B aircraft engine bearing manufacturer's serial number 41573.
9. One (1) Rolls-Royce model Trent 772B aircraft engine bearing manufacturer's serial number 41869.
10. One (1) Rolls-Royce model Trent 1000-D aircraft engine bearing manufacturer's serial number 10572.

Engine Agreements

- A. Facility Agreement dated as of March 13, 2015 (the "Facility Agreement"), among Credit Agricole Corporate and Investment Bank, as initial lender, Bank of Utah, not in its individual capacity but solely as owner trustee, as borrower, Wells Fargo Trust Company, National

Association, as security trustee, Aerovias del Continente Americano S.A. Avianca, as owner participant, and Aerovias del Continente Americano S.A. Avianca, Avianca Holdings S.A. and TACA International Airlines, S.A., as guarantors, as amended and supplemented from time to time.

- B. International Aircraft Engine Lease Agreement dated as of March 31, 2015 between Borrower, as lessor, and Aerovias del Continente Americano S.A. Avianca, as lessee, in relation to the Engine Equipment, as amended and supplemented from time to time.
- C. Engine Mortgage and Security Agreement dated as of March 31, 2015 between Borrower, as mortgagor, and the Security Trustee, as mortgagee.
- D. Guaranty dated as of March 31, 2015 between Aerovias del Continente Americano S.A. Avianca, as guarantor, and the Security Trustee.
- E. Guaranty dated as of March 31, 2015 between Avianca Holdings, S.A., as guarantor, and the Security Trustee.
- F. Guaranty dated as of March 31, 2015 between TACA International Airlines, S.A., as guarantor, and the Security Trustee.
- G. Beneficial Interest Pledge Agreement dated as of March 31, 2015 between Avianca Holdings S.A., as pledgor, and the Security Trustee.
- H. International Aircraft Engine Sublease Agreement dated as of March 31, 2015 among Avianca Peru S.A. (f/k/a Trans American Airlines, S.A.), Avianca Costa Rica S.A. (f/k/a Líneas Aéreas Costarricenses, S.A.), TACA International Airlines, S.A., Aerolíneas Galápagos S.A. Aerogal, Tampa Cargo S.A.S., as sublessees, and Aerovias del Continente Americano S.A. Avianca, as sublessor, as amended and supplemented from time to time.
- I. Sublease Security Assignment dated as of March 31, 2015 among Aerovias del Continente Americano S.A. Avianca, as lessee and assignor, and Bank of Utah, not in its individual capacity but solely as owner trustee, as lessor and assignee.

EXHIBIT B

[Redacted]

EXHIBIT C

[Redacted]

EXHIBIT D

[Redacted]