

Hearing Date & Time: October 13, 2021 at 10:00 a.m. (prevailing Eastern Time)
Objection Deadline: October 6, 2021 at 4:00 p.m. (prevailing Eastern Time)

Dennis F. Dunne
Evan R. Fleck
Benjamin Schak
MILBANK LLP
55 Hudson Yards
New York, New York 10001
Telephone: (212) 530-5000
Facsimile: (212) 530-5219

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

*Counsel for Debtors and
Debtors-In-Possession*

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

-----X
In re: : Chapter 11
: :
AVIANCA HOLDINGS S.A. *et al.*,¹ : Case No. 20-11133 (MG)
: :
Debtors. : (Jointly Administered)
: :
-----X

**NOTICE OF HEARING ON DEBTORS' MOTION
FOR ORDER AUTHORIZING THEM TO ASSUME EXISTING
AIRCRAFT LEASES, AS AMENDED, WITH MUFG (MSNs 4100, 4167, AND 4381)**

¹ The Debtors in these chapter 11 cases (the "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 Loyalty Bermuda Ltd. (N/A); AV Taca International Holdco S.A. (N/A); Aviacorp Enterprises 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); Nicaragüense de Aviación, Sociedad Anónima (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.



PLEASE TAKE NOTICE that a hearing (the “Hearing”) will be held at **10:00 a.m. (prevailing Eastern Time) on October 13, 2021** before the Honorable Martin Glenn, United States Bankruptcy Judge, United States Bankruptcy Court for the Southern District of New York, One Bowling Green, New York, NY 10004 to consider the *Debtors’ Motion for an Order, Pursuant to Sections 105(a) and 365(a) of the Bankruptcy Code, Authorizing Them to Assume Existing Aircraft Leases, as Amended, with MUFG (MSNs 4100, 4167, and 4381)* (the “Motion”).

PLEASE TAKE NOTICE that the hearings scheduled for **October 13, 2021**, will be conducted using Zoom for Government (for audio and video purposes) before the Honorable Martin Glenn, United States Bankruptcy Judge.

PLEASE TAKE FURTHER NOTICE that the scheduled hearing will be conducted remotely using Zoom for Government. Parties wishing to appear at the Zoom Hearing, whether making a “live” or “listen only” appearance before the Court, must make an electronic appearance through the Court’s website at <https://ecf.nysb.uscourts.gov/cgi-bin/nysbAppearances.pl> on or before 4:00 p.m. (prevailing Eastern Time) on the business day before the day of the Zoom Hearing. After the deadline for parties to make electronic appearances has passed, parties who have made their electronic appearance through the Court’s website will receive an invitation from the Court with a Zoom link that will allow them to attend the Zoom Omnibus Hearing. Requests to receive a Zoom link should not be emailed to the Court, and **the Court will not respond to late requests that are submitted on the day of the hearing**. Further information on the use of Zoom for Government can be found at the Court’s website at <https://www.nysb.uscourts.gov/zoom-video-hearing-guide>.

PLEASE TAKE FURTHER NOTICE that, any objections or responses to the relief requested in the Motion shall: (a) be in writing; (b) conform to the Federal Rules of Bankruptcy

Procedure, the Local Bankruptcy Rules for the Southern District of New York, all General Orders applicable to chapter 11 cases in the United States Bankruptcy Court for the Southern District of New York, and the Case Management Order; (c) be filed electronically with this Court on the docket of *In re Avianca Holdings S.A.*, Case 20-11133 (MG) by registered users of this Court's electronic filing system and in accordance with the General Order M-399 (which is available on this Court's website at <http://www.nysb.uscourts.gov>) by **October 6, 2021 at 4:00 p.m. (prevailing Eastern Time)**; and (d) be promptly served on the following parties: (i) the Chambers of the Honorable Martin Glenn, United States Bankruptcy Court for the Southern District of New York, One Bowling Green, New York, NY 10004; (ii) the Debtors, c/o Richard Galindo (richard.galindo@avianca.com); (iii) Milbank LLP, 55 Hudson Yards, New York, NY 10001 (Attn: Evan R. Fleck, Esq., Gregory A. Bray, Esq., and Benjamin Schak, Esq. (efleck@milbank.com, gbray@milbank.com, and bschak@milbank.com)), counsel for the Debtors; (iv) Willkie Farr & Gallagher LLP, 787 Seventh Avenue, New York, NY 10019 (Attn: Brett H. Miller, Esq. and Todd M. Goren, Esq. (bmiller@willkie.com and tgoren@willkie.com)), counsel to the Official Committee of Unsecured Creditors (the "Committee"); (v) William K. Harrington, U.S. Department of Justice, Office of the U.S. Trustee, 201 Varick Street, Room 1006, New York, NY 10014 (Attn: Brian Masumoto, Esq. and Greg Zipes, Esq.); (vi) the Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549; and (vii) the Federal Aviation Administration, 800 Independence Ave. SW, Washington, DC 20591 (Attn: Office of the Chief Counsel); and (viii) Vedder Price P.C., 633 Broadway, 31st Floor, New York, NY 10019 (Attn.: Michael J. Edelman, Esq. (mjedelman@vedderprice.com)), counsel to MUFG Bank, LTD., London Branch.

PLEASE TAKE FURTHER NOTICE that copies of the Motion and other pleadings for subsequent hearings may be obtained free of charge by visiting the KCC website at <http://www.kccellc.net/avianca>. You may also obtain copies of any pleadings by visiting at <http://www.nysb.uscourts.gov> in accordance with the procedures and fees set forth therein.

PLEASE TAKE FURTHER NOTICE that *your rights may be affected*. You should read the Motion carefully and discuss it with your attorney, if you have one. If you do not have an attorney, you may wish to consult with one.

PLEASE TAKE FURTHER NOTICE that the Hearing may be continued or adjourned from time to time without further notice other than an announcement of the adjourned date or dates at the Hearing or at a later hearing.

PLEASE TAKE FURTHER NOTICE that you need not appear at the Hearing if you do not object to the relief requested in the Motion.

PLEASE TAKE FURTHER NOTICE that if you do not want the Court to grant the relief requested in the Motion, or if you want the Court to consider your view on the Motion, then you or your attorney must attend the Hearing. If you or your attorney do not take these steps, the Court may decide that you do not oppose the relief sought in the Motion and may enter orders granting the relief requested in the Motion with no further notice or opportunity to be heard.

Dated: September 20, 2021
New York, New York

/s/ Evan R. Fleck
Dennis F. Dunne
Evan R. Fleck
Benjamin Schak
MILBANK LLP
55 Hudson Yards
New York, New York 10001
Telephone: (212) 530-5000
Facsimile: (212) 530-5219

- and -

Gregory A. Bray
MILBANK LLP
2029 Century Park East, 33rd Floor
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Telephone: (424) 386-4000
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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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Debtors. : (Jointly Administered)
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**DEBTORS' MOTION FOR AN ORDER, PURSUANT TO SECTIONS 105(a) AND 365(a)
OF THE BANKRUPTCY CODE, AUTHORIZING THEM TO ASSUME EXISTING
AIRCRAFT LEASES, AS AMENDED, WITH MUFG (MSNs 4100, 4167, AND 4381)**

¹ The Debtors in these chapter 11 cases (the "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 Loyalty Bermuda Ltd. (N/A); AV Taca International Holdco S.A. (N/A); Aviacorp Enterprises 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); Nicaragüense de Aviación, Sociedad Anónima (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.

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) respectfully state as follows in support of this Motion.

Background

1. On May 10, 2020 (the “Initial Petition Date”), certain of the Debtors (the “Initial Debtors”) filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code (the “Initial Chapter 11 Cases”). On September 21, 2020 (together with the Initial Petition Date, as applicable to each Debtor, the “Petition Date”), each of AV Loyalty Bermuda Ltd. and Aviacorp Enterprises S.A. (collectively, the “Subsequent Debtors”) filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code (the “Subsequent Chapter 11 Cases” and together with the Initial Chapter 11 Cases, the “Chapter 11 Cases”).

2. The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. The Chapter 11 Cases are being jointly administered pursuant to Bankruptcy Rule 1015(b) and the *Amended Order (I) Directing Joint Administration of Chapter 11 Cases and (II) Granting Related Relief* [Docket No. 73] and the *Order Directing Certain Orders in Chapter 11 Cases of Avianca Holdings S.A., et al Be Made Applicable to Subsequent Debtors* [Docket No. 1030].

3. On May 22, 2020, the United States Trustee for the Southern District of New York appointed an official committee of unsecured creditors (the “Committee”). *See Notice of Appointment of Official Committee of Unsecured Creditors* [Docket No. 154]. No trustee or examiner has been appointed in these cases.

4. Additional information regarding the Debtors’ business, capital structure, and the circumstances leading to the filing of these cases is set forth in the *Declaration of Adrian Neuhauser in Support of the Debtors’ Chapter 11 Petitions and First Day Orders* [Docket No. 20].

5. As the Debtors have previously represented to the Court, the Debtors have taken significant steps to streamline their fleet profile. As part of these Chapter 11 Cases, the Debtors have commenced a process of amending and assuming, as so amended, their remaining aircraft leases on improved economic terms and entering into approximately 58 new leases with deliveries between 2021 and 2023. Many of the new and amended leases include “power by the hour” arrangements that will allow the Debtors to adjust their expenses depending on the level of demand for passenger travel. The Debtors are now in the final phases of negotiating with aircraft lessors and lenders to enter into new or amended agreements on terms consistent with the Debtors’ commercial objectives.

6. Now, as a result of substantial arm’s-length negotiations with the Aircraft Counterparties (as defined in each of Second Stipulations), the Debtors have agreed, and the Aircraft Counterparties have consented, to amend their existing leases between the Debtors and the Avianca-owned special purpose trusts. This aircraft transaction represents a significant continuation of the Debtors’ plans to redevelop a fleet and capital structure that will meet their short-term and long-term needs.

Relief Requested

7. By this Motion, pursuant to sections 105(a) and 365(a) of title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. (the “Bankruptcy Code”), Rules 6004 and 6006 the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 6006-1 of the Local Rules of the United States Bankruptcy Court for the Southern District of New York (the “Local Bankruptcy Rules”), the Debtors request entry of an order authorizing Aerovías del Continente Americano S.A. Avianca or its designated affiliates (the “Lessee”) and Avianca Holdings S.A. (the “Guarantor”) to amend and assume, as so amended, the unexpired aircraft leases with respect to three A320-214 aircraft bearing MSNs 4100, 4167, and 4381, dated November 28, 2018,

September 29, 2010, and August 23, 2010, as applicable (as currently in effect, the “Existing Leases”; as amended, the “Amended Leases”), as set forth in a letter of intent (the “LOI”) with respect to the Amended Leases. Pursuant to the *Standing Order Authorizing and Approving Procedures for Sealing and Redacting Confidential Information* [Dkt. No. 1475], the LOI is omitted from the publicly filed version of this Motion and is attached as **Exhibit B** to the sealed, unredacted version of this Motion.

8. A proposed form of order granting the relief requested herein is annexed hereto as **Exhibit A** (the “Proposed Order”).

Jurisdiction and Venue

9. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

10. Venue in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

11. The statutory bases for the relief requested herein are sections 105(a) and 365 of the Bankruptcy Code, Bankruptcy Rules 6004 and 6006, and Local Bankruptcy Rule 6006-1.

The Amended Leases

12. A summary of the principal terms and conditions of the LOI is set forth below:

	Amended Leases
Aircraft	Three A320-214 aircraft.
MSNs	4100, 4167, and 4381.
Term	<div></div> <div></div> <div></div>

	Amended Leases
Power-by-the-Hour Period	[REDACTED]
Power-by-the-Hour Pricing	[REDACTED] [REDACTED] [REDACTED]
Monthly Rent per Aircraft	Following PBH Period: [REDACTED] [REDACTED]

13. The Amended Leases feature “power-by-the-hour” pricing (i.e., payments based on actual usage instead of fixed monthly rates) for a period that will extend beyond the Chapter 11 Cases. This ensures that the Amended Leases will not burden the Debtors with fixed rents in the event of a low-demand period. The parties have also agreed that the cure due upon assumption of the Amended Leases will be \$0.00, and the only administrative claims with respect to the Amended Leases will be for power-by-the-hour rent and other obligations that arise under the Amended Leases and related transaction documents (and not under the Existing Leases, except those that arise out of the Second Stipulations (as defined in the Proposed Order)), including due to the occurrence of an Event of Default thereunder and in accordance therewith.

14. Any other claim not included as an administrative expense claim described in paragraph 13 above will be a non-priority unsecured claim against the Lessee, for which a proof of claim may be filed within thirty (30) days after entry of the Proposed Order. Lessor will have a non-priority unsecured claim against Lessee and Guarantor in an amount to be agreed or

adjudicated (with all parties' rights reserved) with respect to, without duplication, (I) any pre-Petition Date rent and other obligations owed to the Lessor under the Existing Leases (including, without limitation, rent deferred and unpaid prior to the Petition Date) and (II) the difference between the rent, maintenance payments and other obligations payable or performable by the Lessee under the Existing Leases (without, for the avoidance of doubt, giving effect to the amendments contemplated hereby) and the rent and maintenance payments or other obligations payable or performable under the Amended Leases. Lessee and Lessors have also agreed to attempt to negotiate the liquidated allowed amount of such claims. If those negotiations are successful, the Debtors will promptly file a motion to approve the settled amount unless some other order (such as a confirmation order or the claims procedures order at Docket No. 468) permits the Debtors to settle prepetition claims in some other manner.

Basis for Relief Requested

15. Section 365(a) of the Bankruptcy Code provides, in pertinent part, that a debtor in possession "subject to the court's approval, may assume . . . any executory contract or unexpired lease of the debtor." 11 U.S.C. § 365(a); see also NLRB v. Bildisco & Bildisco, 465 U.S. 513, 521 (1984); In re Lavigne, 114 F.3d 379, 386 (2d Cir. 1997). The purpose behind allowing the assumption of unexpired leases "is to permit the trustee or debtor in possession to use valuable property of the estate." Orion Pictures Corp. v. Showtime Networks, Inc. (In re Orion Pictures Corp.), 4 F.3d 1095, 1098 (2d Cir. 1993).

16. Courts defer to a debtor's business judgment in assuming an unexpired lease. See, e.g., In re Child World, Inc., 142 B.R. 87, 89 (Bankr. S.D.N.Y. 1992) (stating that a debtor may assume or reject an unexpired lease under section 365(a) of the Bankruptcy Code in the exercise of its "business judgment"). See also Bildisco & Bildisco, 465 U.S. at 523; Grp. of Inst. Investors v. Chicago Milwaukee, St. Paul & Pac. R.R. Co., 318 U.S. 523, 550 (1943); In re Market Square

Inn, Inc., 978 F.2d 116, 121 (3d Cir. 1992) (stating that the “resolution of [the] issue of assumption or rejection will be a matter of business judgment by the bankruptcy court”). Indeed, under the business judgment standard, a debtor’s decision to assume must be summarily affirmed unless it is the product of bad faith, whim, or caprice. In re Trans World Airlines, Inc., 261 B.R. 103, 121 (Bankr. D. Del. 2001) (quotation omitted).

17. The Debtors submit that their proposed assumption of the Amended Leases is in the best interest of their estates and constitutes a proper exercise of their sound business judgment. As described above, the Amended Leases are an important component of the Debtors’ long-term business plan. Assumption of the Amended Leases will enable the Debtors to continue to use the subject leased aircraft on a cost-effective basis, while minimizing disruption to their day-to-day operations and forging a path for a more stable operating environment.

18. Accordingly, the Debtors respectfully request that the Court enter an order, substantially in the form of Exhibit A attached hereto, authorizing the Debtors to assume the Amended Leases as an exercise of sound business judgment and in the interest of the estate.

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

19. Given the nature of the relief requested herein, the Debtors respectfully request that the Court enter an order providing that the notice of the relief requested herein satisfies Bankruptcy Rule 6004(a) and that the Debtors have established cause to exclude the relief requested herein from the fourteen (14) day stay period provided under Bankruptcy Rule 6004(h).

Notice

20. Notice of this Motion has been provided in accordance with the procedures set for in the *Order Implementing Certain Notice and Case Management Procedures* [Docket No. 47].

The Debtors respectfully submit that no further notice is required.

[Remainder of page intentionally left blank]

WHEREFORE, the Debtors respectfully request entry of the proposed Order granting the relief requested herein and such other and further relief as the Court may deem just and appropriate.

Dated: New York, New York
September 20, 2021

/s/ Evan R. Fleck

Dennis F. Dunne
Evan R. Fleck
Benjamin Schak
MILBANK LLP
55 Hudson Yards
New York, New York 10001
Telephone: (212) 530-5000
Facsimile: (212) 530-5219

- and -

Gregory A. Bray
MILBANK LLP
2029 Century Park East, 33rd Floor
Los Angeles, CA 90067
Telephone: (424) 386-4000
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Counsel for Debtors and Debtors-in-Possession

Exhibit A

Proposed Order

**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., <i>et al.</i> , ¹	:	Case No. 20-11133 (MG)
	:	
Debtors.	:	(Jointly Administered)
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**ORDER PURSUANT TO SECTIONS 105(a) AND 365(a) OF THE
BANKRUPTCY CODE AUTHORIZING THE DEBTORS TO ASSUME EXISTING
AIRCRAFT LEASES, AS AMENDED, WITH MUFG (MSNs 4100, 4167, AND 4381)**

Upon the motion (the “Motion”)² of the Debtors, pursuant to sections 105(a) and 365(a) of the Bankruptcy Code, authorizing the Debtors to assume the Amended Leases as set forth in the LOI with respect to the foregoing; and the Court having jurisdiction to decide the Motion and the grant 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 requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the relief sought in the Motion having been provided in accordance with the Case

¹ The Debtors in these chapter 11 cases (the “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 Loyalty Bermuda Ltd. (N/A); AV Taca International Holdco S.A. (N/A); Aviacorp Enterprises 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); Nicaragüense de Aviación, Sociedad Anónima (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 Capitalized terms not otherwise defined herein are shall be given the meanings ascribed to them in the Motion.

Management Order, 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 held a hearing to consider the relief requested in the Motion (the “Hearing”); and upon the record of the Hearing; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and it appearing that the relief requested in the Motion and granted herein is in the best interests of the Debtors, their estates, creditors, and all parties in interest; and upon all of the proceedings had before the Court 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. Pursuant to section 365 of the Bankruptcy Code, the Lessee and the Guarantor are authorized to amend the Existing Leases on the terms consistent with those set forth in the corresponding LOI and assume the Amended Leases. Upon execution the Amended Leases are deemed assumed, and all elements of section 365 of the Bankruptcy Code applicable to assumption of the Amended Leases shall be deemed satisfied upon execution of the Amended Leases.
3. The Debtors are authorized to execute all documentation necessary to assume the Amended Leases.
4. The automatic stay under section 362(a) of the Bankruptcy Code is modified to the extent necessary to implement the terms and conditions set forth in the Amended Leases. Subject to the terms and conditions in the Amended Leases, upon the occurrence of an event of default thereunder and the expiration of any applicable grace period, the applicable Lessor may file with the Court and deliver to the Lessee a written notice (a “Termination Notice”) effective as of five business days after its filing and delivery (the “Remedies Period”). Upon the expiration of the Remedies Period, the automatic stay shall be deemed lifted and the Lessor may undertake any

enforcement actions provided for under the applicable Lease without the need for any authorization from this Court or further notice (other than as expressly provided for under the relevant Amended Lease). During the Remedies Period, the Debtors may seek an emergency hearing at which they may contest the fact that an event of default under the applicable Amended Lease has occurred and is continuing. If the Debtors seek such an emergency hearing, the Remedies Period shall automatically extend to the earlier of (a) the conclusion of such a hearing and the issuance of a ruling on the matters contested thereat or (b) thirty (30) days after the issuance of the Termination Notice.

5. 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 Lessors, all other persons asserting interests in the relevant aircraft.

6. The cure (as defined in section 365(b) of the Bankruptcy Code) due upon assumption of the Amended Leases will be \$0.00. The Lessor's only post-petition administrative expense claims with respect to the Amended Leases and related transaction documents shall be those claims (i) for "PBH Rent" (as defined in the LOI for the Amended Leases), all other obligations under the Amended Leases (and definitive documents related to the Amended Leases), and other amounts under the Amended Leases resulting from an "Event of Default" (as defined therein) and in accordance therewith, and (ii) that are administrative claims pursuant to the Second Stipulations (as defined herein). Nothing herein waives the Debtors' right to contest any claims that are subject to bona fide dispute or any available defenses.

7. Upon assumption of the Amended Leases, any other claim not included as an administrative expense claim described in paragraph 6 above will be a non-priority unsecured claim against the Lessee. If the Lessor elects to supplement its existing proofs of claim to reflect further damages, Lessor shall file such proof of claim with respect to the Existing Leases no later than thirty (30) days after entry of this Order. Lessor shall have a non-priority unsecured claim against Lessee and Guarantor in an amount to be agreed or adjudicated (with all parties' rights reserved) with respect to, without duplication, (I) any pre-Petition Date rent and other obligations owed to the Lessor under the Existing Leases (including, without limitation, rent deferred and unpaid prior to the Petition Date) and (II) the difference between the rent, maintenance payments and other obligations payable or performable by the Lessee under the Existing Leases (without, for the avoidance of doubt, giving effect to the amendments contemplated hereby) and the rent and maintenance payments or other obligations payable or performable under the Amended Leases.

8. In addition, and regardless of whether the Lessor elects to file a supplemented claim for each Existing Lease, the Parties (as defined in the LOI) agree that they shall use reasonable good faith efforts to agree upon the liquidated allowed amount of the claim under each Existing Lease within ninety (90) days after the date of the Summary of Principal Terms and Conditions (as provided in the LOI) and, upon reaching such agreement, the Lessee shall promptly file a motion with the Bankruptcy Court seeking approval of such liquidated allowed amount of the Lessor's claim under each Existing Lease (which motion and proposed order related thereto shall be in form and substance reasonably acceptable to the Lessor) unless some other order (such as a confirmation order or the claims procedures order at Docket No. 468) permits the Debtors to settle prepetition claims in some other manner. If the parties do not reach such an agreement within such ninety (90) day period, all parties' rights, claims and defenses are reserved. Each Aircraft

Counterparty (as defined in the relevant Second Stipulation) on its behalf and on behalf of its successors and assigns agrees that its claims, whether pre-petition, administrative or otherwise, will receive treatment analogous to the claims of Lessor under Appendix B to the LOI and without duplication thereof and acknowledges that the claims of the related Interested Parties (as defined in the LOI) shall receive such treatment. The Debtors and the Aircraft Counterparties agree that any Interested Party's claim shall be resolved to the satisfaction of the parties in connection with definitive documentation in accordance herewith.

9. Except as expressly set forth herein, in the LOI, or in the Amended Leases, this Order is without prejudice to the rights and remedies of each party in interest under each *Second Stipulation and Order Between Debtors and Aircraft Counterparties Concerning Certain Aircraft* [Docket Nos. 419 and 421] (the "Second Stipulations").

10. To the extent that there may be any inconsistency between the terms of the Motion and the express terms of this Order, the express terms of this Order shall govern.

11. Notice of the Motion is adequate under Bankruptcy Rule 6004(a).

12. Notwithstanding the provisions of Bankruptcy Rule 6004(h), this Order shall be immediately effective and enforceable upon its entry.

13. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Order.

14. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, and/or enforcement of this Order.

Dated: _____, 2021
New York, New York

THE HONORABLE MARTIN GLENN
UNITED STATES BANKRUPTCY JUDGE

Exhibit B

LOI for Amended Leases

[Redacted from Public Filing]