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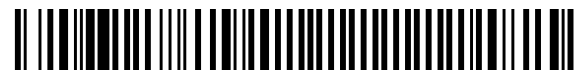
*Counsel for Debtors and Reorganized
Debtors*

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

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In re:	:	Chapter 11
	:	
AVIANCA HOLDINGS S.A. <i>et al.</i> , ¹	:	Case No. 20-11133 (MG)
	:	
Debtors and Reorganized Debtors.	:	(Confirmed)
	:	
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**DECLARATION OF JOHN G. MCCARTHY IN SUPPORT OF THE REORGANIZED
DEBTORS' TWENTY-FIFTH OMNIBUS OBJECTION TO PROOFS OF CLAIM**

¹ The Debtors and Reorganized Debtors in these chapter 11 cases, and each Debtors' and Reorganized Debtors' federal tax identification number (to the extent applicable), are as follows: Avianca Holdings S.A. (N/A) n/k/a HVA Associated Corp.; 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, Aéreo 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' and Reorganized Debtors' principal offices are located at Avenida Calle 26 # 59 – 15 Bogotá, Colombia.



I, JOHN G. MCCARTHY, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am a member of the law firm Smith, Gambrell & Russell, LLP, counsel to Avianca Holdings S.A. and its reorganized debtor affiliates in the above-captioned action (collectively, the “Reorganized Debtors”). I submit this declaration in support of the *Reorganized Debtors’ Twenty-Fifth Omnibus Objection to Proofs of Claim* (the “Objection”), filed contemporaneously herewith.

2. Attached to this declaration as **Exhibit A** is a true and correct copy of an excerpt of the *Framework Agreement [Avianca EAIIV 2015-1&2 Trusts]*, dated as of July 30, 2015, among Wells Fargo Bank Northwest, National Association (“Wells Fargo Bank Northwest”), OCTO-Aircraft Leasing LLC, Avianca EAIIV 2015-1 Trust, Avianca EAIIV 2015-2 Trust, Avianca Holdings S.A., Aerovías Del Continente Americano S.A. Avianca (“Aerovías”), Wells Fargo Bank, National Association, and the financiers party thereto.

3. Attached to this declaration as **Exhibit B**, redacted for commercially sensitive information, is a true and correct copy of an excerpt of the *Initiator Fee Letter (MSN 65315)*, dated as of September 28, 2018, from Aerovías to Burnham Sterling & Company LLC.

4. Attached to this declaration as **Exhibit C** is a true and correct copy of an excerpt of the *Loan Agreement (MSN 7284)*, dated as of August 24, 2016, among Wells Fargo Bank Northwest, Tri-Aircraft Leasing II LLC, the lenders identified on Schedule I thereto, and Wilmington Trust Company (“Wilmington”).

5. Attached to this declaration as **Exhibit D**, redacted for commercially sensitive information, is a true and correct copy of an excerpt of *Aircraft Sub-Lease Agreement for One (1) Airbus Model A320-251N Aircraft, Bearing Manufacturer’s Serial No. 7928 and Registration Mark N765AV with Two CFM International S.A. Model Leap-1A26 Engines*, dated as of December 4, 2017, among Wilmington and Aerovías.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 2, 2022

/s/ John G. McCarthy
John G. McCarthy

Exhibit A

**to the Declaration of John G. McCarthy in Support of the Reorganized Debtors’
Twenty-Fifth Omnibus Objection to Proofs of Claim**

EXECUTION COPY

FRAMEWORK AGREEMENT [AVIANCA EAIV 2015-1&2 TRUSTS]

dated as of July 30, 2015 by

WELLS FARGO BANK NORTHWEST, NATIONAL ASSOCIATION,
not in its individual capacity, except as otherwise expressly provided herein,
but solely as owner trustee

OCTO-AIRCRAFT LEASING LLC,
as Trust 1 Owner Participant
and
as Trust 2 Owner Participant

AVIANCA EAIV 2015-1 Trust,
as Borrower

AVIANCA EAIV 2015-2 Trust,
as Borrower

AVIANCA HOLDINGS S.A.,
as Guarantor

AEROVÍAS DEL CONTINENTE AMERICANO S.A. AVIANCA,
as Lessee

WELLS FARGO BANK, NATIONAL ASSOCIATION,
as Security Trustee

and

THE FINANCIERS PARTY HERETO.

Up to \$379,160,000 in Secured Notes and Loan Certificates

Burnham Sterling & Company LLC and Burnham Sterling Securities LLC,
as Initiators

DekaBank Deutsche Girozentrale & The Korea Development Bank,
as Arrangers

[Framework Agreement [Avianca EAIIV 2015-1&2 Trusts]]

by the trust name therefor specified on Schedule IV. The Owner Participants shall be special purpose vehicles, identified in Schedule V hereto (with each being the owner participant for the specified associated Borrower), and will be affiliates of the Guarantor.

2.5 Remedy Coordination. Notwithstanding anything to the contrary in the Basic Documents, any direction to the Security Trustee to accelerate the Loans under a Loan Agreement of any Borrower shall be deemed a direction to the Security Trustee to also demand repayment of the Notes issued under the NPA to which such Borrower is a party pursuant to Section 2.8(a)(y) of such NPA and any direction to the Security Trustee to demand repayment of the Notes issued under the NPA to which a Borrower is a party pursuant to Section 2.8(a)(y) of such NPA shall be deemed a direction to the Security Trustee to also accelerate the Loans under the Loan Agreement to which such Borrower is a party.

2.6 Documentation. The primary documentation to finance each Aircraft (the “Primary Documents”) will be:

- (a) The Guaranty by the Guarantor for the applicable Borrower, substantially in the form of Exhibit A hereto.
- (b) The NPA, substantially in the form of Exhibit B hereto, and the Loan Agreement, substantially in the form of Exhibit C hereto, for the applicable Borrower;
- (c) The Lease for each Aircraft, each substantially in the form of Exhibit D hereto; and
- (d) The Mortgage for the applicable Borrower, substantially in the form of Exhibit E hereto.

In addition, the financing of each Aircraft will be subject to the delivery of the other documentation referred to in Section 7 of the NPA and Loan Agreement for such Aircraft and the satisfaction of the other conditions precedent set forth in the Primary Documents. The Primary Documents for each Borrower and Aircraft will be completed in compliance with the Schedules hereto.

2.7 Fees. The Guarantor agrees to pay to each Financier, as and when due as provided in the Financing Documents (whether or not executed and delivered) the Commitment Fees and Upfront Fees specified therein. In addition, the Guarantor agrees to pay as and when due the agreed fees and expenses of the institution acting as Borrower and Security Trustee.

2.8 Initiator. The Initiator is entitled to compensation under the Primary Documents as and to the extent provided therein. As such, the Initiator is and shall be a third party beneficiary thereunder as and to the extent expressly provided therein and in Section 2.10 hereof. No Financier shall have any fiduciary duty to the Initiator nor shall any Financier be subject to or take on any credit risk of the Initiator, including as to any agreements by the Initiator to pay for certain costs and expenses; any such agreement being a bilateral matter as between the Initiator and the Guarantor.

Exhibit B (REDACTED)

**to the Declaration of John G. McCarthy in Support of the Reorganized Debtors’
Twenty-Fifth Omnibus Objection to Proofs of Claim**

upfront fee equal to [REDACTED], (the “**Initiator Upfront Fee**”), which is [REDACTED] of the Equity Contribution [REDACTED]

4. We agree that payment of the Initiator Upfront Fee hereunder shall be made to you in full, without any set-off, deduction or withholding of any kind (except as required by law), and in immediately available, freely transferable, cleared funds to the following account:

[REDACTED]	[REDACTED]
	[REDACTED]
	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

5. Additional Rental

(a) Definitions.

- (i) “**Additional Rental Payment Date**” means each originally scheduled “Payment Date” under the Sublease, notwithstanding any subsequent amendment of the Sublease and notwithstanding the early termination of the leasing of the Aircraft under the Lease or the Sublease or the purchase of the Aircraft or the termination of the Sublease.
 - (ii) “**Discount Rate**” means the Fixed Rate minus the ECA Applicable Margin;
 - (iii) “**Equity Fee**” means each payment instalment set out in column (A) of Schedule 1 to this Letter Agreement;
 - (iv) “**Guarantee (Initiator)**” means the unconditional and irrevocable guarantee granted, or to be granted, by the Avianca Holdings SA (“**Guarantor**”) in favour of the Initiator relating to the obligations of the Sublessee pursuant to the Sublease.
 - (v) “**Initiator Account**” means the Dollar current account of the Sublessor number [REDACTED] with Wilmington Trust Company, or such other account as the Initiator may from time to time designate in writing to the Sublessee;
 - (vi) “**Initiator Compensation**” means each instalment of the Equity Fee;
- (b) The Sublessee shall on each Additional Rental Payment Date pay to the Sublessor at the Initiator Account, by way of additional rental payment, instalments of the Initiator Compensation in accordance with Schedule 1 to this Letter Agreement.
- (c) The Sublessee acknowledges that the Initiator has already provided investment banking services to Sublessee prior to the Delivery Date, and accordingly agrees

that the Sublessee's obligations to pay the Initiator Compensation hereunder are unconditional.

- (d) If an Initiator Acceleration Event occurs, the Initiator will be entitled (without being obliged to first take any other action or make any claim against the Guarantor), at its option, to declare by written notice to the Sublessee that an Initiator Acceleration Event has occurred and that the Accelerated Initiator Fee is due and payable on the date specified in such notice, whereupon the Sublessee agrees to pay to the Initiator Account on the date so specified the Accelerated Initiator Fee. Following payment in full of the Accelerated Initiator Fee, the Sublessee shall have no further obligation to pay any Initiator Compensation under the Sublease. The Initiator Compensation payable under this Letter Agreement, once paid, shall not be refundable in any circumstances.

For purposes of this Clause (d):

"Accelerated Initiator Fee" means, as of the date when a notice is served declaring the same to be due and payable pursuant to this clause (d), the present value of the sum of the remaining instalments of Initiator Compensation payable from the date of such notice to the final scheduled date of the last instalment of Equity Fee due on the final Additional Rental Payment Date, discounted to present value using the Discount Rate, plus accrued interest thereon from the date of such notice to the date of actual receipt at the Default Rate.

"Initiator Acceleration Event" means any of the following:

- (i) The ECA Loan under the ECA Loan Agreement being accelerated or declared to be due and payable prior to its stated maturity, whether by reason of an Event of Default, a Mandatory Prepayment Event or otherwise;
 - (ii) the Termination Amount being expressed to fall due and payable under the Lease for any reason;
 - (iii) the Lease Period ending under the Lease or the Sublease Period ending under the Sublease for any reason; or
 - (iv) the Sublessee fails to pay any amount of Initiator Compensation on the due date and such amount remains unpaid more than three (3) Business Days after its due date.
- (e) The Parties hereby agree that failure by the Sublessee to pay any amount of Initiator Compensation on the due date (if such amount remains unpaid for three (3) Business Days) shall constitute an "event of default" under this Letter Agreement.
- (f) Sublessor agrees to account to Initiator for all amounts received into, and standing to the credit of, the Initiator Account from time to time upon the request of the Initiator.

Exhibit C

**to the Declaration of John G. McCarthy in Support of the Reorganized Debtors’
Twenty-Fifth Omnibus Objection to Proofs of Claim**

LOAN AGREEMENT (MSN 7284)

dated as of August 24, 2016

among

WELLS FARGO BANK NORTHWEST, NATIONAL ASSOCIATION,
not in its individual capacity, except as otherwise expressly provided herein, but solely as owner
trustee (referred to herein as Avianca EAIV 2016-1 Trust),
as Borrower

TRI-AIRCRAFT LEASING II LLC
as Owner Participant

AVIANCA HOLDINGS S.A.,
as Guarantor

THE LENDERS IDENTIFIED ON SCHEDULE I HERETO,

and

WILMINGTON TRUST COMPANY,
as Security Trustee

Up to Euro equivalent of \$28,000,000 in Secured Tranche A Loans

Up to \$5,000,000 in Secured Tranche B Loans

Burnham Sterling & Company LLC,
Initiator

be binding upon each Lender at the time outstanding, each future Lender and, only if signed by an Obligor, such Obligor.

12.5 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. The Initiator shall be a third party beneficiary of this Agreement and each other Basic Document.

12.6 Assignments and Participations.

(a) No Obligor may assign any of its rights or obligations hereunder, under the Loan Certificates or under the other Basic Documents without the prior consent of all of the Lenders.

(b) Subject to Section 12.6(f), each Lender may assign or transfer any or all of its Loans, provided that, (i) each such assignment by a Lender of its Loans or Commitment shall be made in such manner so that the same portion of its Loans and Commitment is assigned to the respective assignee; (ii) no assignment shall be permitted if the assignee shall be entitled (including on the basis of any change in Applicable Law that has been announced but is not yet effective) to any greater indemnification or compensation under Section 5 (immediately after giving effect to such assignment) than the assignor was entitled to (immediately prior to giving effect to such assignment) or which would otherwise result in an increase of any Obligor's obligations (including, without limitation, in respect of Taxes) (as determined by reference to laws enacted or in effect as of the effective time of such assignment) or restrict any Obligor's rights under any Basic Document; (iii) the costs of effecting such a transfer or assignment shall be borne by the assigning or transferring Lender; (iv) such assignment shall be effected by the execution and delivery by the assignee and assignor of an agreement in the form of the Loan Certificate Assignment Agreement (wherein, inter alia, such additional Lenders shall agree to use a single common counsel for all matters involving the Loans); (v) no assignment shall be permitted to an airline which is a competitor of Lessee or an Affiliate of a competitor of Lessee; and (vi) no Obligor's obligations under any Basic Document shall be increased nor shall any Obligor suffer or incur any additional obligation (in each case, including without limitation in respect of Taxes) and no Obligor's rights under any Basic Document shall be diminished, as a result thereof. Prior to the applicable Commitment Termination Date, the Lenders may not assign their Commitments without the prior written consent of the Borrower, not to be unreasonably withheld. Upon execution and delivery by the assignee to the Borrower and the Security Trustee of the Loan Certificate Assignment Agreement pursuant to which such assignee agrees to become a "Lender" hereunder (if not already a Lender) having the Commitment and/or Loan Certificates specified in such instrument, and upon consent thereto by the Borrower and the Lenders (to the extent required above), the assignee shall have, to the extent of such assignment (unless otherwise provided in such assignment with the consent of the Borrower, the Security Trustee and the Lenders), the obligations, rights and benefits of a Lender hereunder holding the Commitment

Exhibit D (REDACTED)

**to the Declaration of John G. McCarthy in Support of the Reorganized Debtors’
Twenty-Fifth Omnibus Objection to Proofs of Claim**

(a) all tasks with a threshold / interval of 144 months, 48,000 Flight Hours and / or 24,000 Cycles or lower system, zonal inspection program tasks and structural program tasks (as may be escalated from time to time), all other tasks which for planning and access reasons would be performed at this check, all lower level checks, cabin refurbishment, out of phase work and cleaning and repair; and

(b) all C Check and other tasks sufficient to clear the Aircraft for a full C Check interval as applicable in the then latest revision of the Maintenance Planning Document.

“Holding Company” means, in relation to any person, any other person of which it is a Subsidiary.

“IDERA” means the irrevocable deregistration and export request authorisation executed and delivered by the the Sub-Lessor in favour of the Security Agent pursuant to the Cape Town Convention and filed with the Aviation Authority in the form Schedule 9 (Form of IDERA) to the Lease.

“Indemnatee” has the meaning given to it in Clause 23.1 (General Indemnity).

“Initiator” means Burnham Sterling & Company LLC.

“Initiator Account” means the Dollar current account of the Sub-Lessor number [REDACTED] with Wilmington Trust Company, or such other account as the Initiator may from time to time designate in writing to the Sub-Lessee;

“Initiator Fees” means, together, each instalment of Debt Fee and Equity Fee;

“Inspection Agent” means SMBC Aviation Capital Limited or any replacement inspection agent appointed for the purposes of this Agreement by the Lessor and notified to the Sub-Lessee in writing from time to time.

“Insurance Claims Threshold” means \$1,000,000 or the equivalent in any other currency.

“Insurances” means any and all contracts or policies of insurance required to be effected and maintained in accordance with the provisions of this Agreement, which expression includes, where the context so admits, any relevant reinsurance(s).

relating to the enforcement of rights and interests relating to the Aircraft, the Airframe and/or any Engine.

26.4 Third Parties

Any person which is a Relevant Person, a Financing Party, an Indemnatee, a Tax Indemnatee or an Additional Insured from time to time and is not a party to this Agreement, and the Initiator (in connection with its rights under Clause 5.2 of this Agreement) shall be entitled to enforce such terms of this Agreement as provided for the obligations of the Sub-Lessee to such Financing Party, Indemnatee, Tax Indemnatee or Additional Insured, or to the Initiator, as the case may be, in each case, subject to the provisions of Clauses 26.1 (*Law*) and 26.2 (*Jurisdiction*) and the Contracts (Rights of Third Parties) Act 1999 (the “**Third Parties Act**”). The Third Parties Act applies to this Agreement as set out in this Clause 26.4 (*Third Parties*). Save as provided above, a person who is not a party to this Agreement has no right to use the Third Parties Act to enforce any term of this Agreement and, subject to the other provisions of the other Operative Documents, the parties to this Agreement do not require the consent of any third party (including, without limitation, any Indemnatee, Tax Indemnatee or Additional Insured who is not a party to this Agreement) to amend or rescind this Agreement at any time.

IN WITNESS WHEREOF this Agreement has been duly executed by the duly authorised representatives of the parties hereto on the date first above written.