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**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> , <sup>1</sup>	: Case No. 20-11133 (MG)
Debtors.	: (Joint Administration Requested)
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**DEBTORS' MOTION FOR INTERIM AND FINAL ORDERS  
(I) PURSUANT TO SECTIONS 105(a) AND 365 OF THE BANKRUPTCY  
CODE, AUTHORIZING DEBTORS TO ASSUME CERTAIN AGREEMENTS;  
(II) PURSUANT TO SECTIONS 105(a) AND 363 OF THE BANKRUPTCY CODE  
AUTHORIZING BUT NOT DIRECTING THE DEBTORS TO SATISFY  
(A) CERTAIN PREPETITION OBLIGATIONS PENDING ASSUMPTION AND  
(B) CERTAIN OBLIGATIONS TO OTHER AIRLINES SETTLED THROUGH  
CLEARINGHOUSES AND CERTAIN PREPETITION AIRLINE ALLIANCE**

<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.



**AND FREQUENT FLYER OBLIGATIONS; (III) MODIFYING AUTOMATIC  
STAY PURSUANT TO SECTION 362 OF BANKRUPTCY CODE TO  
EFFECTUATE FOREGOING; AND (IV) SCHEDULING FINAL HEARING**

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

Avianca Holdings S.A. and its affiliated debtors in the above-captioned chapter 11 cases (the “Chapter 11 Cases”), as debtors and debtors-in-possession (collectively, the “Debtors”), respectfully represent as follows in support of this motion (the “Motion”):<sup>2</sup>

**RELIEF REQUESTED**

1. By this Motion, the Debtors hereby move for interim and final orders, substantially in the forms annexed hereto as **Exhibit C** (the “Proposed Interim Order”) and **Exhibit D** (the “Proposed Final Order”), authorizing (but not directing) the Debtors (i) (a) pursuant to sections 105(a) and 365 of the Bankruptcy Code, to assume certain Interline Relationship Agreements (as defined below); (b) pursuant to sections 105(a) and 363 of the Bankruptcy Code, to satisfy certain prepetition obligations under the Interline Relationship Agreements, pending such assumption; (ii) pursuant to sections 105(a) and 363 of the Bankruptcy Code, to continue performance under the Airline Alliance Agreements and the LifeMiles Program Agreements (each as defined below), without assuming such agreements, including by satisfying any prepetition amounts outstanding thereunder; (iv) modifying the automatic stay to effectuate the foregoing; and (v) scheduling a final hearing (the “Final Hearing”) on the Motion. Notwithstanding the fact that the Debtors’ passenger transport business has been grounded, the Debtors must obtain, as set forth herein, immediate authority to (i) assume the Interline Relationship Agreements; and (ii) satisfy prepetition obligations under

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<sup>2</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to them in the First Day Declaration (as defined below).

the Interline, Airline Alliance and LifeMiles Program Agreements, in order to avoid irreparable harm to their businesses.

### **JURISDICTION**

2. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334.

3. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

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

5. The bases for the relief requested herein are sections 105(a), 363, and 365 of the Bankruptcy Code.

### **STATUS OF THE CASE**

6. On the date hereof (the "Petition Date"), each of the Debtors filed with this Court a voluntary petition for relief under chapter 11 of the Bankruptcy Code.

7. Each Debtor is continuing to operate its business and manage its properties as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

8. No creditors' committee has yet been appointed in these cases. No trustee or examiner has been appointed.

9. The Debtors have filed a motion requesting joint administration of the Debtors' Chapter 11 Cases pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (as amended, the "Bankruptcy Rules").

### **BACKGROUND**

10. Avianca is the second-largest airline group in Latin America and the most important carrier in the Republic of Colombia and in the Republic of El Salvador. It is the largest airline in the Republic of Colombia (the third largest Latin American economy), a code-

share partner of United Airlines, and a member of the Star Alliance which, with 26 members, is the world's largest global airline alliance. Established in 1919, Avianca has a 100-year legacy as a leading provider of air travel and cargo services in the Latin American market and around the globe. Avianca is well respected throughout Latin America and maintains significant customer brand equity and market share in the regions it services.

11. The Debtors operate an extensive network of routes from their primary hubs in Bogotá and San Salvador (in addition to other focus markets) and offer passenger services on more than 5,350 weekly flights to more than 76 destinations in 27 countries. With approximately 18,900 employees and approximately \$3.9 billion in annual revenues, the Debtors play a key role in the Latin American airline market.

12. Despite an effective debt reprofiling executed in the second half of 2019, a significant improvement in Avianca's liquidity position in early 2020, and the successful 2019 launch of the "Avianca 2021" transformation plan, the Debtors have been compelled to file these Chapter 11 Cases for one principal reason: the COVID-19 pandemic, which has affected the world's population and economies in ways that have never been experienced. The reduction in travel as a result of the virus, and the measures undertaken to combat the virus, including restrictions on commercial flights and on travel, have had and will continue to have an adverse impact on the Debtors. As a result of the ongoing pandemic and its consequences, the Debtors are facing significantly reduced revenues from ticket sales and ancillary revenues, government prohibitions globally on international flights, substantial ongoing contractual obligations to their lessors, lenders and other creditors, and a near complete standstill of the global economy—all with significant continued impact and limited visibility as to the potential market recovery.

13. On March 20, 2020, the Republic of Colombia, consistent with what numerous other governments around the world have done, announced that it would close its airspace to address the spread of COVID-19. As a result of the restrictions imposed by the Colombian government, as well as similar measures in various other of the Debtors' primary markets, on March 24, 2020 the Debtors announced that they were suspending all scheduled passenger flights from March 25, 2020 until at least the end of April 2020; this situation has now been extended and is ongoing, and no date has been established for the restart of flights.

14. Additional information regarding the Debtors' business, capital structure, and the circumstances leading to the commencement of these Chapter 11 Cases is set forth in the *Declaration of Adrian Neuhauser in Support of Chapter 11 Petitions and First Day Motions* (the "First Day Declaration"), which is being filed contemporaneously herewith and is incorporated by reference herein.

#### **BACKGROUND RELEVANT TO MOTION**

15. The Debtors seek by this Motion immediate authority to (i) assume the Interline Relationship Agreements; (ii) satisfy prepetition obligations, if any, under the Interline Relationship Agreement, pending such assumption; and (iii) continue performance under the Airline Alliance Agreements and the LifeMiles Program Agreements (each as defined below), without assuming such agreements, including by satisfying any prepetition amounts outstanding thereunder—all in order to avoid irreparable harm to their businesses. The Debtors request such relief notwithstanding the fact that the Debtors' passenger transport business has been grounded for a number of compelling reasons. The Debtors' cargo transport business remains in full operation, and generally has not been subject to the travel restrictions imposed by various governments in the markets where the Debtors operate. Moreover, the Debtors also must continue

to operate limited charter flights, repatriation flights, and “ferry flights” of their passenger aircraft, which involve the repositioning and relocation of various passenger aircraft depending on aircraft parking and storage availability in various locations.

16. The Debtors also continue to perform certain “lead time” operations in anticipation of a modest near-term resumption of passenger flights. Certain operations must be undertaken sufficiently in advance—such as the booking of tickets, the maintenance of frequent flyer programs, and monitoring of interline and clearinghouse relationships—to allow for passenger flights to timely resume when circumstances permit. All of the foregoing requires continued recourse by the Debtors to the agreements, relationships and programs as to which relief is requested herein, all of which are necessary and appropriate to accomplish the Debtors’ goals and to protect against further diminution in the value of the Debtors’ businesses.

**A. The Multilateral/Bilateral Agreements**

17. Certain of the Debtors are parties to (i) multilateral agreements with, or administered by, the International Air Transport Association (“IATA”), including the IATA Membership Agreement, the Interline Participation Agreement, and the IATA Multilateral Interline Traffic Agreement—Passenger (collectively, the “IATA Agreements”); (ii) the Air Transport Association of America (“ATA”) Membership Agreement (the “ATA Agreement”); and (iii) over 80 bilateral interline agreements with other airlines (the “Bilateral Agreements”). A non-exclusive list of the Multilateral/Bilateral Agreements is annexed hereto as **Exhibit A**.<sup>3</sup>

18. The Multilateral/Bilateral Agreements are an essential part of the Debtors’ transportation services. These agreements facilitate cooperation among airlines with respect to

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<sup>3</sup> The number of Multilateral/Bilateral Agreements to which the Debtors are parties makes it very difficult to identify each and every such agreement, but the Debtors are seeking relief with respect to all Interline Agreements, regardless of whether or not a particular agreement is listed in **Exhibit A**.

such critical activities as making reservations and transferring passengers, freight, baggage, and mail between airlines. Most major airlines participate in some form of Multiline/Bilateral Agreements because of the operating efficiencies obtained through their usage.

19. Pursuant to Multilateral/Bilateral Agreements, airlines agree to accept each other's tickets for transportation over the other airlines' systems. These agreements allow an airline passenger whose flight is late or canceled to use their ticket with another airline for a substitute flight. Multilateral/Bilateral Agreements also facilitate the purchase of tickets through travel agents and enable travel agents and airlines to issue tickets with itineraries that involve more than one airline. If a Multilateral/Bilateral Agreement is not in place, a traveler buying a ticket directly from an airline will be issued a ticket only for those segments of the itinerary that involve that airline, even though the desired itinerary might necessitate the use of a second airline. Similarly, if the traveler seeks to buy a ticket from a travel agent and no interline agreement is in place, the travel agent will be required to write separate tickets for each segment that involves distinct airlines, thus making it significantly less convenient for the travel agent to sell flights on an airline that is not part of the interline system.

20. Multilateral/Bilateral Agreements also allow passengers' luggage to be transferred from one airline to another. Requiring a passenger to retrieve his or her luggage and take it to the other airline would be an inefficient and time-consuming process. Multilateral/Bilateral Agreements permit airlines to accomplish the transfer of luggage without unduly burdening passengers.

21. In addition, airlines agree to provide cargo services for one another under Multilateral/Bilateral Agreements. These arrangements obviate extraneous cargo handling and the

need to have separate personnel and facilities devoted to cargo at each airport to which a carrier flies.

22. Some of the Multilateral/Bilateral Agreements terminate every year unless renewed by both parties and can be terminated by either party on thirty (30) days' written notice. Certain other of the Debtors' Multilateral/Bilateral Agreements have an indefinite term but can be terminated on thirty (30) days' written notice. Upon termination, revival of certain the Multilateral/Bilateral Agreements may require the payment of substantial fees or deposits by the Debtors.

23. The Debtors' continued ability to enforce and perform under the Multilateral/Bilateral Agreements is critical to the Debtors' ability to continue operating their business. The Debtors cannot afford the risk of any of the counterparties to the Multilateral/Bilateral Agreements questioning the Debtors' ability to continue participating in the Multilateral/Bilateral Agreements. Even the slightest interruption in the Debtors' ability to seamlessly integrate their ticketing, passenger, cargo, and other services with those of other airlines could be disastrous to the Debtors' businesses and cripple their opportunity to reorganize. Such risk exists notwithstanding the fact that most of the Debtors' flight operations are currently shut down because passengers book tickets months ahead of time and other airlines seek to accommodate their own passengers' connection needs in the same timeframe; allowing these agreements and relationships to go dark now would alienate passengers and airline partners and deprive the Debtors of much needed future cash streams.

**B. Industry Agreements**

24. In addition, certain of the Debtors are party to industry-standard fare publication and booking agreements, such as agreements with the Agent Reporting Corporation and the Airline

Tariff Publishing Company, Billing and Settlement Plan Agreements, and certain IATA agreements (the “Industry Agreements”) that facilitate transactions under the Interline Agreements and also provide for fare publication, appointment of travel agencies, and foreign currency clearing procedures. A non-exclusive list of the Industry Agreements is annexed hereto as part of **Exhibit B**.

**C. The Clearinghouse Agreements**

25. In addition, the participating airlines settle their mutual payment obligations arising under the Interline Agreements through the IATA Clearinghouse (the “ICH”) and the Airlines Clearing House, Inc. (the “ACH” and, together with the ICH, the “Clearinghouses”). The settlements through the Clearinghouses (the “Clearinghouse Settlements”) include passenger, airfreight, UATP (Universal Air Travel Plan), and non-transportation billings. The ACH conducts settlements primarily for participating airlines based in the United States and other countries in North America and the Caribbean. The ICH conducts settlements primarily for airlines in other countries.

26. As participants in the Clearinghouses, the Debtors settle interline obligations with other ACH participants through ACH, and interline obligations with other ICH participants through ICH. The Debtors’ participation in the Clearinghouses is governed by agreements with each Clearinghouse and agreements through which the Debtors provide invoicing and other billing information to the Clearinghouses (collectively, the “Clearinghouse Agreements,” and together with the Multilateral/Bilateral Agreements and the Industry Agreements, the “Interline Relationship Agreements”). A non-exclusive list of the Clearinghouse Agreements is annexed hereto as part of **Exhibit B**.

27. Settlement among ACH participants for billings attributable to transactions in any given period occurs seven (7) days after the close of that transaction period. Settlement among

ICH participants for billings attributable to transactions in any given period normally occurs within eight (8) to ten (10) business days after the close of the transaction period. As a result, billings that have been settled through the Clearinghouses remain subject to audit and adjustments under rejection/chargeback, rebilling, and dispute resolution procedures set forth in the applicable Clearinghouse rules.

28. For March 2020, the Debtors made cumulative net settlement payments of approximately \$7 million through the Clearinghouses. The Debtors are typically net creditors under the Clearinghouse Agreements because the Debtors and their agents issue fewer tickets for transportation on other airlines than other participating airlines and their agents issue for transportation on the Debtors' flights.

29. The Clearinghouse Agreements are critical to the Debtors' business operations. The Debtors' inability to preserve the Clearinghouse Agreements would make it impossible for the Debtors to perform under the Interline Relationship Agreements and provide necessary services to their customers.

**D. Airline Alliance Agreements**

30. The Debtors also have a number of relationships with other airlines under which obligations are settled through the Clearinghouses, pursuant to dedicated settlement agreements, or otherwise. Some of these relationships are described briefly below.

**(a) *Star Alliance***

31. Star Alliance is one of the world's largest global airline alliances with 28 full members. It currently serves over 750 million passengers annually with approximately 18,880

daily departures to 1,300 global destinations in more than 190 countries.<sup>4</sup> The Debtors joined Star Alliance as a full member in June 2012.

32. The Debtors have signed code sharing agreements with most Star Alliance members (the “Star Alliance Code Sharing Agreements”). A code sharing agreement is an arrangement whereby a marketing airline markets and sells air transportation to its passengers in conjunction with the scheduled services provided by another airline. In addition, the Debtors have implemented worldwide reciprocal lounge agreements with many Star Alliance members (the “Star Alliance Code Lounge Agreements,” and together with the Star Alliance Code Sharing Agreements, the “Star Alliance Agreements”). The Debtors’ customers are able to accrue and redeem frequent flyer miles in their Star Alliance accounts for travel on any of the airlines that belong to Star Alliance. This alliance affords customers the options and flexibility of traveling on multiple airlines while being treated as a customer traveling on one airline. The Debtors’ code share network affords customers access to more than 140 destinations and 215 additional routes that complement the network operated directly by the Debtors.

***(b) Agreements with Non-Star Alliance Airlines***

33. Certain of the Debtors are also party to numerous other agreements with airlines and rail companies that are not members of Star Alliance (collectively, the “Non-Star Alliance Partners”). Those agreements include code sharing, alliance, lounge access, and special prorate agreements regarding maintenance, de-icing, ground handling, and other services with other airlines and intermodal agreements with rail companies (collectively, the “Non-Star Alliance

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<sup>4</sup> These numbers are approximations and do not reflect the significant COVID-19-related decrease in flights in recent weeks.

Agreements”). These agreements allow the Debtors, among other things, to smoothly operate in areas where they do not otherwise have their own substantial support presence.

34. Among the Non-Star Alliance Agreements are agreements with certain airlines whereby these airlines offer, among other things, transportation of passengers and cargo under the Debtors’ flight designator codes, and under which the Debtors, in certain circumstances, carry passengers under other airlines’ designator codes. Maintaining a strong relationship with the Non-Star Alliance Partners is vital to the Debtors’ operations because those relationships enable the traveling public to make convenient connections at airports served by the Debtors for, among other things, various international flights and other destinations. Without these connections, the size and scope of the Debtors’ network would be significantly reduced and the Debtors would be unable to maintain competitive levels of passengers and cargo traffic when they seek to resume flights in the coming months.

*(c) Frequent Flyer Agreements*

35. The Debtors have frequent flyer agreements (the “Frequent Flyer Agreements,” together with the Star Alliance Agreements and the Non-Star Alliance Agreements, the “Airline Alliance Agreements”) with various airlines that are settled through the Clearinghouses or directly with the counterparty airline. Pursuant to the Frequent Flyer Agreements, each airline agrees to offer the members of its frequent flyer program the opportunity to accrue benefits and utilize program awards for travel on the other airlines’ flights.

36. In addition to frequent flyer arrangements with their Star Alliance partners, the Debtors have Frequent Flyer Agreements with several other carriers, including, but not limited to, Iberia Airlines and Aeroméxico and with their respective frequent flyer programs. The Frequent Flyer Agreements are important to the Debtors’ operations because they broaden the Debtors’

network of service capabilities by providing customers with the opportunity to earn frequent flyer miles on multiple airlines' flights. Maintaining the Frequent Flyer Agreement relationships is particularly important at this juncture because the high-revenue, high-frequency passengers that are parties to such agreement are anticipated to form the core of the Debtors' passenger ranks in the first months after they are able to resume flight operations.

37. Billing and payment of obligations under the Frequent Flyer Agreements are typically settled weekly through the Clearinghouse. On a weekly basis, the Clearinghouses aggregate the amounts invoiced by other airlines to the Debtors, and by the Debtors to other airlines, and calculate a net balance. Amounts invoiced for any given period are generally submitted to the Clearinghouses within that period. For any given period, the Debtors may be required to make net payments to the other participants, or they may be entitled to receive net payments from the other participants.

**E. LifeMiles Program**

38. The Debtors are also party to a number of agreements (the "LifeMiles Program Agreements") relating to the management, operation, and financing of their frequent flyer program, LifeMiles<sup>TM</sup>.<sup>5</sup> The LifeMiles program is a coalition loyalty program owned and operated

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<sup>5</sup> The LifeMiles Program Agreements include (i) Card Services Agreement dated as of August 14, 2015 between Avianca and LifeMiles; (ii) Card Services Agreement dated as of August 14, 2015 between certain Avianca affiliates and LifeMiles; (iii) Miles and Seats Purchase and Sale Agreement dated as of August 14, 2015 by and among Avianca Holdings S.A., and certain of its affiliates and LifeMiles; (iv) Contrato de Fiducia Mercantil Irrevocable de Administracion, Garantia y Fuente de Pago - Fideicomiso LifeMiles (Irrevocable Management, Security, Source of Payment Commercial Trust Agreement - LifeMiles Trust), dated as of September 7, 2015 by and among Avianca, LifeMiles, and Alianza Fiduciara, S.A., as amended and restated by the Modificacion ntegral al Contrato de Fiducia Mercantil Irrevocable de Administracion Garantia y Fuente de Pageidcomiso LifeMiles (Integral Modification to the Irrevocable Management, Security, Source of Payment Commercial Trust Agreement - LifeMiles Trust); and (v) Letter Agreement on Credit Card Collections dated October 19, 2019, between LifeMiles and Avianca and certain of its affiliates. The Debtors may be party to other agreements with LifeMiles; by this Motion, the Debtors seek authority, but not direction, to continue to perform under both the agreements enumerated above and any other agreements with LifeMiles deemed necessary by the Debtors to the continued operation of the LifeMiles loyalty program.

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by non-debtor LifeMiles Ltd., a limited liability company organized and existing under the laws of Bermuda (“LifeMiles Ltd.”). LifeMiles Ltd. is a majority-owned indirect subsidiary of the Debtors’ ultimate parent company, Avianca Holdings, S.A. Under the LifeMiles program, customers earn mileage credits by flying on Avianca or its alliance partners and by using the services of participating bank credit cards, hotels, car rental firms, and other non-airline commercial partners.

39. In the Customer Programs Motion, which is being filed simultaneously herewith, the Debtors have sought authority to (i) honor the LifeMiles program, including by providing travel miles to passengers and facilitating their redemption of miles; by redeeming miles earned in the LifeMiles program; and (ii) continue to perform with respect to obligations owed to other LifeMiles partners with respect to air mileage credits issued under the LifeMiles program. By this Motion, the Debtors seek authority to continue to perform under the LifeMiles Program Agreements, with LifeMiles itself, which make possible the broader LifeMiles relationship with its members and its partners.

40. Frequent flyer programs such as the LifeMiles program build and maintain a loyal customer base, especially among business travelers who pay higher fares than do leisure travelers. Approximately 32% of the Debtors’ total passenger revenues are generated from passengers who are members of the LifeMiles program (the LifeMiles program generated revenues in excess of \$353 million in 2019). The Debtors’ business would be negatively impacted if the Debtors were unable to continue the LifeMiles program, due to the loss of the revenues generated by the LifeMiles program and alienation of the Debtors’ most valued customers, their frequent flyers. In addition, the loss of the LifeMiles program would render the Debtors less competitive against the other major airlines that offer their own loyalty programs.



### **BASIS FOR RELIEF REQUESTED**

41. The worldwide airline business is an interdependent industry based upon a vast global network of agreements that govern virtually all aspects of air travel and airline operations. Without agreements for coordination between airlines and airline services, efficient service by the domestic and international airlines would be virtually impossible. While the vast majority of the Debtors' planes are not currently flying due to the COVID-19 pandemic, the Debtors need to maintain their relationships and relevant agreements in order to be in a position to quickly transition back to normal operations. Any interruption or cessation of the Debtors' ability to perform under the Interline Relationship Agreements, the Airline Alliance Agreements, and the LifeMiles Program Agreements would precipitate a disruption in performance and thus could have a material adverse effect on the Debtors' business and their prospects for successful reorganization.

#### **A. The Debtors Should be Authorized to Assume the Interline Relationship Agreements**

42. As a practical matter, there are no competing vendors that could provide the Debtors with a substitute for the vital services they receive under the Interline Relationship Agreements. The Interline Relationship Agreements are critical to the Debtors' operations. The non-renewal or termination of any of these agreements would result in severe disruptions of the Debtors' operations.

43. Section 365(a) of the Bankruptcy Code provides that a debtor in possession "subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor." 11 U.S.C. § 365(a). The United States Court of Appeals for the Second Circuit has stated that "[t]he purpose behind allowing the assumption or rejection of executory contracts is to permit the trustee or debtor in possession to use valuable property of the estate and to 'renounce title to and abandon burdensome property.'" Orion Pictures Corp. v. Showtime

Networks, Inc. (In re Orion Pictures Corp.), 4 F.3d 1095, 1098 (2d Cir. 1993) (quoting 2 Collier on Bankruptcy ¶ 365.01[1] (15th ed. 1993)).

44. In considering a motion to assume or reject an executory contract or unexpired lease, the court “should examine a contract and the surrounding circumstances and apply its best ‘business judgment’ to determine if [the contract or lease] would be beneficial or burdensome to the estate.” Orion, 4 F.3d at 1099; see also Nostas Assocs. v. Costich (In re Klein Sleep Prods., Inc.), 78 F.3d 18, 21 (2d Cir. 1996); Penn Traffic Co. v. Cor Route 5 Co. (In re Penn Traffic Co.), 2005 WL 2276879, at \*2 (S.D.N.Y. Sept. 16, 2005) (explaining that section 365(a) “allow[s] a debtor an opportunity to determine which of the pre-petition executory contracts are beneficial to the estate and which should be assumed or rejected”) (internal quotation marks and citation omitted).

45. A debtor’s decision to assume an executory contract based on its business judgment will generally not be disturbed “absent a showing of bad faith or abuse of business discretion.” In re Chipwich, Inc., 54 B.R. 427, 430-31 (Bankr. S.D.N.Y. 1985); see also In re G Survivor Corp., 171 B.R. 755, 757 (Bankr. S.D.N.Y. 1994), aff’d John Forsyth Co., Inc. v. G Licensing, Ltd., 187 B.R. 111 (S.D.N.Y. 1995). Upon finding that the debtor has exercised its sound business judgment in determining that the assumption of an agreement is in the best interests of the debtor, its creditors and all parties in interest, the court should approve the assumption under section 365(a) of the Bankruptcy Code. See, e.g., In re Gucci, 193 B.R. 411, 417 (S.D.N.Y. 1996); In re Child World, Inc., 142 B.R. 87, 89 (Bankr. S.D.N.Y. 1992).

46. As demonstrated above, the assumption, in the Debtors’ discretion, of the Interline Relationship Agreements is not only advantageous to the Debtors, it is also critical to their continued business operations. It is important to underscore that the Debtors’ request to

assume is limited to the Interline Relationship Agreements, and does **not** apply to the Airline Alliance Agreements and LifeMiles Program Agreements or implicate any of the third parties involved in transactions under such agreements. Accordingly, the Debtors have satisfied the business judgment test.

47. The debtor's right to assume an executory contract is expressly conditioned under section 365(b) of the Bankruptcy Code upon the debtor's (i) duty to cure any monetary defaults thereunder and (ii) providing adequate assurance of future performance. These conditions are intended to provide protections for the non-debtor counterparties.

48. The Debtors are current under the Interline Relationship Agreements (i.e., no amounts are presently due and payable thereunder). Accordingly, there are no monetary defaults to cure as a precondition to their assumption. As to the adequate assurance of future performance, the Debtors project earning sufficient revenues to meet their postpetition operating expenses.

49. In addition, the Debtors' request to assume the Interline Relationship Agreements is conditioned upon this Court's determination that no deposit or other form of security will be required (other than deposits, if any, acceptable to the Debtors).<sup>6</sup> Thus, there is little or no downside to the Debtors' assumption of these key business contracts at this time. The Interline Relationship Agreements do not impose any additional economic burdens on the Debtors' estates and, in large part, are freely terminable by the Debtors on short notice.

50. Requests to assume interline, industry, and/or clearinghouse agreements have been granted by courts in this and other districts in large chapter 11 cases involving airlines.

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<sup>6</sup> To the extent any of these agreements provide for the posting of a deposit or another security at the discretion of the counterparty, any demand for a "discretionary" deposit at this time could only be seen as an *ipso facto* financial condition demand, which would necessarily be deemed unenforceable pursuant to sections 365(e)(1)(A) and 365(b)(2)(A) of the Bankruptcy Code.

See, e.g., In re Republic Airways Holdings Inc., Case No. 16-10429 (SHL) (Bankr. S.D.N.Y. March 23, 2016); In re AMR Corp., Case No. 11-15463 (SHL) (Bankr. S.D.N.Y. Dec. 22, 2011); In re Northwest Airlines Corp., Case No 05-17930 (ALG) (Bankr. S.D.N.Y. Oct. 7, 2005); In re Hawaiian Airlines, Inc., Case No. 03-00817 (Bankr. D. Haw. Mar. 24, 2003); In re UAL Corp., Case No. 02-48191 (Bankr. N.D. Ill. Dec. 11, 2002).

**B. Debtors Should be Authorized to Perform All Obligations Under Interline Relationship Agreements, Airline Alliance Agreements, and LifeMiles Program Agreements**

51. The Debtors also seek authority, but not direction, to perform all obligations arising under the Interline Relationship Agreements, the Airline Alliance Agreements, and the LifeMiles Program Agreements, including making all payments owing to other airlines to the extent such obligations have historically been settled through the Clearinghouses and certain other prepetition payments under the enumerated agreements as described herein.

**1. Grounds for Relief**

52. The Court has authority, pursuant to sections 363(b) and 105(a) of the Bankruptcy Code and the “necessity of payment doctrine” established by case law, to authorize the Debtors to perform all such obligations and make any related payments. Indeed, courts have consistently permitted postpetition payment of prepetition obligations and continued performance under prepetition agreements where, as here, such payment and continued performance are necessary to preserve the value of the debtor’s estates for the benefit of its creditors.

53. The bankruptcy court may authorize a debtor in possession to utilize property of the estate under section 363 of the Bankruptcy Code. In determining whether to approve the debtor’s use of estate property, courts generally apply a business judgment test. Here, section 105(a) provides a statutory basis for the Court to permit the use of estate funds under

section 363 to authorize payment of a prepetition obligation, outside a plan of reorganization, when the payment is essential to the continued operation of the debtor. In re Boston & Maine Corp., 634 F.2d 1359, 1382 (1st Cir. 1980) (recognizing the existence of a judicial power to authorize trustees to pay claims for goods and services that are indispensably necessary to the debtors' continued operation); see also In re Just for Feet, Inc., 242 B.R. 821, 824 (D. Del. 1999) (“[C]ourts have used their equitable power under section 105(a) . . . to authorize the payment of pre-petition claims when such payment is deemed necessary to the survival of a debtor in a chapter 11 reorganization.”); In re CoServ, L.L.C., 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002) (reasoning that because the debtor-in-possession has fiduciary duties it must meet, it is logical that the bankruptcy court may “authorize satisfaction of the pre-petition claim in aid of preservation or enhancement of the estate” under section 105(a)); In re Synteen Techs., Inc., No. 00-02203-W, 2000 WL 33709667, at \*2 (Bankr. D.S.C. Apr. 14, 2000) (courts have permission to “allow payment of a pre-petition claim ‘when essential to the continued operation of the debtor’”) (citation omitted)).

54. In addition, section 105(a) of the Bankruptcy Code provides that the “court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a); see, e.g., Schwartz v. Aquatic Dev. Grp., Inc. (In re Aquatic Dev. Grp., Inc.), 352 F.3d 671, 680 (2d Cir. 2003) (“[I]t is axiomatic that bankruptcy courts are ‘courts of equity, empowered to invoke equitable principles to achieve fairness and justice in the reorganization process.’”) (citations omitted); Official Comm. of Unsecured Creditors v. PSS S.S. Co., Inc. (In re Prudential Lines, Inc.), 928 F.2d 565, 574 (2d Cir. 1991) (“This provision has been construed liberally to enjoin [actions] that might impede the reorganization process.”) (quoting MacArthur Co. v. Johns-Manville Corp. (In re Johns-Manville Corp.), 837 F.2d 89, 93

(2d Cir. 1988)). Such orders are appropriate where they are essential to the Debtors' reorganization efforts and do not pose a burden on the debtor's creditors. See U.S. Lines, Inc. v. Am. S.S. Owners Mut. Prot. & Indem. Ass'n, Inc. (In re U.S. Lines, Inc.), 197 F.3d 631, 640 (2d Cir. 1999); Momentum Mfg. Corp. v. Emp. Creditors Comm. (In re Momentum Mfg. Corp.), 25 F.3d 1132, 1136 (2d Cir. 1994) ("It is well settled that bankruptcy courts are courts of equity, empowered to invoke equitable principles to achieve fairness and justice in the reorganization process.").

55. Pursuant to a bankruptcy court's general equitable powers, as codified in section 105(a) of the Bankruptcy Code, courts have authorized the payment of prepetition debt when necessary to help preserve the debtor's operations and important business relationships. See, e.g., In re Ionosphere Clubs, Inc., 98 B.R. 174 (Bankr. S.D.N.Y. 1989) (recognizing the existence of the judicial power to authorize a debtor in a reorganization case to pay prepetition claims where such payment "is essential to the continued operation of the debtor"); In re Chateaugay Corp., 80 B.R. 279 (S.D.N.Y. 1987), appeal dismissed, 838 F.2d 59 (2d Cir. 1988) (approving bankruptcy court order authorizing payment of prepetition wages, salaries, expenses and benefits).

56. If the Debtors do not have the discretion to continue to perform, and satisfy related prepetition obligations, if any, under the Interline Relationship Agreements, the Airline Alliance Agreements, and the LifeMiles Program Agreements, then (i) their future revenues could suffer and their ability to serve their customers' needs and continue to operate within the airline industry and, thus, reorganize, would be in jeopardy; and (ii) the other airlines may not have any incentive to continue to provide services to the Debtors or may attempt unilateral self-help measures, including setoff or recoupment, to protect their interests. Regardless of whether

such actions are legally proper, any disruption to the Debtors' businesses, even for a short time, would be harmful to the necessary goodwill of their customers.

57. In addition, due to the manner in which transactions under the Interline Relationship Agreements, the Airline Alliance Agreements, and the LifeMiles Program Agreements are reconciled, the Debtors may not immediately know the exact nature or accuracy of the obligation they are satisfying when making a payment. Accordingly, all settlements or payments made under any Order authorizing the relief sought in this Motion should be subject to the normal payment reconciliation process. In addition, nothing in this Motion shall be deemed a waiver of the Debtors' ability to contest all or a portion of a settlement or payment in connection with such reconciliation process on any grounds, including that the settlement or payment of an obligation relating to the prepetition period was not identified by the Debtors, in their discretion, as an item to be paid under the authority of this Motion.

**2. Outstanding Prepetition Amounts**

58. More specifically, the Debtors seek authority, but not the direction, to pay prepetition obligations that have arisen under the Star Alliance Agreements. The Debtors estimate that, as of the Petition Date, they owe approximately \$200,000 on a net basis under the Star Alliance Agreements that are settled through the Clearinghouses (the "Star Alliance Obligations").

59. The Debtors also seek authority, but not the direction, to pay prepetition obligations that have arisen under the Non-Star Alliance Agreements. The Debtors estimate that, as of the Petition Date, they owe approximately \$1 million on a net basis under the Non-Star Alliance Agreements (the "Non-Star Alliance Obligations").

60. The Debtors also seek authority, but not the direction, to pay prepetition obligations that have arisen under the Frequent Flyer Agreements. The Debtors estimate that as of the Petition Date, they owe approximately \$300,000 on a net basis under the Frequent Flyer Agreements (the “Frequent Flyer Obligations”).

61. Finally, the Debtors seek authority, but not the direction, to satisfy any prepetition obligations that have arisen under the LifeMiles Program Agreements. The Debtors estimate that, as of the Petition Date, (i) the Debtors owe approximately \$43.3 million to LifeMiles; and (ii) LifeMiles owes approximately \$3.5 million to the Debtors under the LifeMiles Program Agreements (the “LifeMiles Program Obligations”). Consistent with past practice, the Debtors anticipate satisfying the LifeMiles Program Obligations on a cashless netting basis, as both the Debtors and LifeMiles continue to purchase and sell seats and miles under the LifeMiles Program Agreements. To the extent required, the Debtors seek authority to continue these practices.

62. While the Debtors believe they are current under the Interline Relationship Agreements, out of an abundance of caution, the Debtors seek the authority, but not the direction, to pay any prepetition amounts owed under these agreements pending this Court’s approval of their assumption (the “Interline Relationship Obligations”).

63. The Debtors seek this authority to pay the Star Alliance, the Non-Star Alliance, the Frequent Flyer, the LifeMiles Program, and the Interline Relationship Obligations to ensure that their transition into chapter 11 does not disrupt their customers’ travel experience, which depends in many instances on the cooperation between and among the airlines under all of the foregoing agreements. However, other than the Interline Relationship Agreements, the Debtors do not, by this Motion, seek to assume any agreements with third parties whose claims are settled

through the Clearinghouses or who are otherwise party to the Airline Alliance Agreements and the LifeMiles Program Agreements.

64. This Court has permitted payment of prepetition obligations relating to clearinghouse agreements in other airline chapter 11 cases. See, e.g., In re Republic Airways Holdings Inc., Case No. 16-10429 (SHL) (Bankr. S.D.N.Y. March 23, 2016); In re AMR Corp., Case No. 11-15463 (SHL) (Bankr. S.D.N.Y. Dec. 22, 2011); In re Delta Air Lines, Inc., Case No. 05-17923 (PCB) (Bankr. S.D.N.Y. Sept. 16, 2005); In re Northwest Airlines Corp., Case No. 05-17930 (ALG) (Bankr. S.D.N.Y. Sept. 16, 2005). This Court should do the same here.

**3. On-Going Obligations/Terms**

65. The parties to some of the Interline Relationship Agreements, the Airline Alliance Agreements, and LifeMiles Programs Agreements have certain performance obligations to the Debtors thereunder (the “Performance Obligations”) and/or the Debtors in the ordinary course of their businesses receive credit and other payment terms from these other airlines (the “Acceptable Terms”) and, together with the Performance Obligations the “On-Going Obligations/Terms”). Accordingly, the Debtors request authority to condition any prepetition payments to these counterparties on their continuing to provide the Debtors with, or otherwise comply with, the On-Going Obligations/Terms. Thus, the Debtors propose that the Court enter an order providing that:

- a. The Debtors are authorized, in their discretion and in the exercise of their business judgment, to make payments to the other airlines on the condition that, by accepting payment, each such airline agrees to maintain, reinstate, or otherwise comply with the On-Going Obligations/Terms during the pendency of these cases;
- b. Each airline’s acceptance of payment is deemed to be acceptance of the terms of the Proposed Interim Order, and if any airline thereafter does not provide the Debtors with, or otherwise comply with, the On-Going Obligations/Terms during the pendency of these cases, then any payment made after the Petition Date on account of its prepetition claims may be deemed to be an unauthorized postpetition transfer and automatically recoverable by the Debtors; and

- c. The Debtors are authorized, but not required, to obtain written verification of the On-Going Obligations/Terms from these airlines before issuing payment hereunder. The absence of such written verification shall not limit the Debtors' rights hereunder.

**C. Modification of the Automatic Stay**

66. Certain of the Interline Relationship Agreements, the Airline Alliance Agreements, and the LifeMiles Program Agreements provide for an ongoing mutual billing, settlement, and adjustment process. The Debtors submit that modification of the automatic stay, to the extent necessary to enable the airline counterparties to those agreements to participate in routine billings, settlements, and adjustments with respect to such settlements in accordance with the terms of such agreements, will aid in effectuating the relief requested and is appropriate and warranted as it will ensure that the Debtors' business will operate smoothly and on an uninterrupted basis.

67. Comparable relief has been granted in many prior airline-related chapter 11 cases in this District. See, e.g., In re Republic Airways Holdings Inc., Case No. 16-10429 (SHL) (Bankr. S.D.N.Y. Mar. 23, 2016); In re Pinnacle Airlines Corp., Case No. 12-11343 (REG) (Bankr. S.D.N.Y. Apr. 23, 2012); In re AMR Corp., Case No. 11-15643 (SHL) (Bankr. S.D.N.Y. Nov. 30, 2011); In re Frontier Airlines Holdings, Inc., Case No. 08-11298 (RDD) (Bankr. S.D.N.Y. Apr. 14, 2008); In re Delta Air Lines, Inc., Case No. 05-17923 (PCB) (Bankr. S.D.N.Y. Sept. 16, 2005).

**D. Request for Authority for Financial Institutions to Honor and Process Related Checks and Transfers**

68. The Debtors request that the Court authorize and direct the Debtors' banks and other financial institutions at which the Debtors maintain disbursement accounts at the Debtors' direction, to receive, process, honor, and pay, to the extent of funds on deposit, any and all checks drawn or electronic fund transfers requested or to be requested by the Debtors relating to

any payments or settlements under the Interline Relationship Agreements, the Airline Alliance Agreements, and the LifeMiles Programs Agreements, whether those checks were presented prior to or after the Petition Date. The Debtors also seek authority to issue new postpetition checks, or effect new electronic fund transfers, on account of such obligations to replace any prepetition checks or electronic fund transfer requests that may be lost, dishonored, or rejected as a result of the commencement of the Debtors' Chapter 11 Cases.

### **RESERVATION OF RIGHTS**

69. Nothing contained herein is intended to be or shall be construed as: (i) an admission as to the validity of any claim against the Debtors; (ii) a waiver of the Debtors' or any appropriate party in interest's right to dispute any claim; or (iii) an approval or assumption of any agreement, contract, program, policy, or lease under section 365 of the Bankruptcy Code (except as otherwise expressly requested herein with respect to certain Interline Agreements, Industry Agreements and Clearinghouse Agreements). Likewise, if the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended to be, and should not be construed as, an admission to the validity of any claim or waiver of the Debtors' rights to dispute such claim subsequently.

### **BANKRUPTCY RULE 6003 IS SATISFIED AND REQUEST FOR WAIVER OF STAY**

70. The Debtors further submit that because the relief requested in this Motion is necessary to avoid immediate and irreparable harm to the Debtors for the reasons set forth herein and in the First Day Declaration, Bankruptcy Rule 6003 has been satisfied and the relief requested herein should be granted.

71. Specifically, Bankruptcy Rule 6003 provides:

Except to the extent that relief is necessary to avoid immediate and irreparable harm, the court shall not, within 21 days after the filing of the petition, issue an order granting the

following: . . . (b) a motion to use, sell, lease, or otherwise incur an obligation regarding property of the estate, including a motion to pay all or part of a claim that arose before the filing of the petition, but not a motion under Rule 4001 . . . .

Fed. R. Bankr. P. 6003.

72. As described above, if the Debtors are not permitted to assume and/or honor their prepetition Interline Agreement obligations on an uninterrupted basis, it would cause immediate and irreparable harm by disrupting the necessary operational arrangements between the Debtors and the other airline participants. It may well also result in stranded planes and passengers. The Debtors request such relief notwithstanding the fact that the Debtors' passenger transport business has been grounded for a number of compelling reasons. The Debtors' cargo transport business remains in full operation, and generally has not been subject to the travel restrictions imposed by various governments in the markets where the Debtors operate. Moreover, the Debtors continue to perform certain "lead time" operations in anticipation of a modest near-term resumption of passenger flights—such as the booking of tickets, the maintenance of frequent flyer programs, and monitoring of interline and clearinghouse relationships—to allow for passenger flights to timely resume when circumstances permit. All of the foregoing requires continued recourse by the Debtors to the agreements, relationships and programs as to which relief is requested herein, plainly making such relief "necessary to avoid immediate and irreparable harm" to the Debtors' businesses and satisfying thereby Bankruptcy Rule 6003(b).

73. The Debtors further seek a waiver of any stay of the effectiveness of an order approving this Motion. Pursuant to Bankruptcy Rule 6004(h), "[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise." Fed. R. Bankr. P. 6004(h). As set forth above, the relief requested herein is essential to prevent immediate and irreparable damage to the

Debtors' operations, going concern value, and their efforts to pursue a resolution to these Chapter 11 Cases.

74. Accordingly, the relief requested herein is appropriate under the circumstances and under Bankruptcy Rules 6003 and 6004(h).

**NOTICE**

75. The Debtors will provide notice of this Motion to the following parties: (a) the Office of the United States Trustee for the Southern District of New York; (b) the holders of the forty (40) largest unsecured claims against the Debtors (on a consolidated basis); (c) the holders of the five (5) largest secured claims against the Debtors (on a consolidated basis); (d) the Internal Revenue Service; (e) the Securities and Exchange Commission; (f) the Federal Aviation Administration; (g) any party that requests service pursuant to Bankruptcy Rule 2002; and (h) all parties to the Interline Relationship Agreements, the Airline Alliance Agreements, and the LifeMiles Program Agreements. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

76. In light of the nature of the relief requested, the Debtors submit that no further notice need be given.

**NO PRIOR REQUEST**

77. No prior request for the relief sought in this Motion has been made to this or to any other court.

**CONCLUSION**

WHEREFORE, the Debtors request that this Court enter orders, substantially in the forms of the Proposed Interim Order and the Proposed Final Order, granting the relief requested herein and granting such other and further relief as is just and proper.

Dated: New York, New York  
May 10, 2020

MILBANK LLP

/s/ Evan R. Fleck

Dennis F. Dunne

Evan R. Fleck

MILBANK LLP

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New York, New York 10001

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Facsimile: (212) 530-5219

- and -

Gregory A. Bray

MILBANK LLP

2029 Century Park East, 33<sup>rd</sup> Floor

Los Angeles, CA 90067

Telephone: (424) 386-4000

Facsimile: (213) 629-5063

*Proposed Counsel for Debtors and  
Debtors-in-Possession*

**EXHIBIT A**

**Multiline Agreements**

Contract Name	Contact Information
IATA Membership Agreement	800 Place Victoria PO Box 113 Montreal H4Z 1M1 Quebec Canada Email: <a href="mailto:farrella@iata.org">farrella@iata.org</a> Attn: Ann Farrell, Mgr Airline Codes and Interline
Multilateral Interline Traffic Agreement (MITA) – Passenger	800 Place Victoria PO Box 113 Montreal H4Z 1M1 Quebec Canada Email: <a href="mailto:farrella@iata.org">farrella@iata.org</a> Attn: Ann Farrell, Mgr Airline Codes and Interline
Multilateral Interline Traffic Agreement (MITA) – Cargo	800 Place Victoria PO Box 113 Montreal H4Z 1M1 Quebec Canada Email: <a href="mailto:farrella@iata.org">farrella@iata.org</a> Attn: Ann Farrell, Mgr Airline Codes and Interline
Multilateral Proration Agreement - Passenger	800 Place Victoria PO Box 113 Montreal H4Z 1M1 Quebec Canada Email: <a href="mailto:farrella@iata.org">farrella@iata.org</a> Attn: Ann Farrell, Mgr Airline Codes and Interline
Multilateral Proration Agreement – Cargo	800 Place Victoria PO Box 113 Montreal H4Z 1M1 Quebec Canada Email: <a href="mailto:farrella@iata.org">farrella@iata.org</a> Attn: Ann Farrell, Mgr Airline Codes and Interline
IATA Interline Claims Agreement - Passenger	800 Place Victoria PO Box 113 Montreal H4Z 1M1 Quebec Canada Email: <a href="mailto:farrella@iata.org">farrella@iata.org</a> Attn: Ann Farrell, Mgr Airline Codes and Interline
IATA Interline Claims Agreement - Cargo	800 Place Victoria PO Box 113 Montreal H4Z 1M1 Quebec Canada Email: <a href="mailto:farrella@iata.org">farrella@iata.org</a> Attn: Ann Farrell, Mgr Airline Codes and Interline
IATA Currency Clearance Service	800 Place Victoria PO Box 113 Montreal H4Z 1M1 Quebec Canada Email: <a href="mailto:farrella@iata.org">farrella@iata.org</a> Attn: Ann Farrell, Mgr Airline Codes and Interline

IATA Counterindemnity Agreement Governing BSP Membership	800 Place Victoria PO Box 113 Montreal H4Z 1M1 Quebec Canada Email: <a href="mailto:farrella@iata.org">farrella@iata.org</a> Attn: Ann Farrell, Mgr Airline Codes and Interline
IATA Clearing House Membership	800 Place Victoria PO Box 113 Montreal H4Z 1M1 Quebec Canada Email: <a href="mailto:farrella@iata.org">farrella@iata.org</a> Attn: Ann Farrell, Mgr Airline Codes and Interline
IATA Pro-Rate Agency Agreement	800 Place Victoria PO Box 113 Montreal H4Z 1M1 Quebec Canada Email: <a href="mailto:farrella@iata.org">farrella@iata.org</a> Attn: Ann Farrell, Mgr Airline Codes and Interline

### Bilateral Agreements

Code	Airline Name	Title (MITA, Bilateral, Etc.)	Contact Email
EI	Aer Lingus	SPA	<a href="mailto:toby.hillier@iagcargo.com">toby.hillier@iagcargo.com</a>
AR	Aerolineas Argentinas	SPA	<a href="mailto:laura.fossati@aerolineas.com.ar">laura.fossati@aerolineas.com.ar</a>
AM	Aeroméxico Cargo	SPA	<a href="mailto:egana@aeromexico.com">egana@aeromexico.com</a>
6R	Aerounion	SPA	<a href="mailto:jaime.melara@aerounion.com.mx">jaime.melara@aerounion.com.mx</a>
VZ	Aerovip	SPA	<a href="mailto:nicolas@airclasscargo.com">nicolas@airclasscargo.com</a>
RU	Air Bridge Cargo	SPA	<a href="mailto:alexander.zagorodnyuk@airbridgecargo.com">alexander.zagorodnyuk@airbridgecargo.com</a>
AC	Air Canada	SPA	<a href="mailto:Francisco.Molina@aircanada.ca">Francisco.Molina@aircanada.ca</a>
1M	Air Cargo Pack	SPA	<a href="mailto:comercial3@aircargopack.com">comercial3@aircargopack.com</a>
CA	Air China Cargo	SPA	<a href="mailto:derekshi@airchinacargo.com">derekshi@airchinacargo.com</a>
UX	Air europa	SPA	<a href="mailto:jordi.pique@aireuropacargo.com">jordi.pique@aireuropacargo.com</a>
AF	AIR FRANCE	SPA	<a href="mailto:interline.cargo.hq@afklcargo.com">interline.cargo.hq@afklcargo.com</a>
AI	Air India	SPA	<a href="mailto:sushil.gigoo@airindia.in">sushil.gigoo@airindia.in</a>
KM	Air Malta	SPA	<a href="mailto:John.Gilfeather@network-airline.com">John.Gilfeather@network-airline.com</a>
NZ	AIR NEW ZEALAND	SPA	<a href="mailto:Scott.Attwood@airnz.co.nz">Scott.Attwood@airnz.co.nz</a>
JU	Air Serbia	SPA	<a href="mailto:Aleksandar.Stojkovic@airserbia.com">Aleksandar.Stojkovic@airserbia.com</a>
AZ	Alitalia	SPA	<a href="mailto:Marcelo.Ricciardulli@alitalia.com">Marcelo.Ricciardulli@alitalia.com</a>
NH	All Nippon Airways	SPA	<a href="mailto:interline@anacargo.jp">interline@anacargo.jp</a>
4W	Allied Air Cargo	SPA	<a href="mailto:Javier.Gonzalez@networkcargo.com">Javier.Gonzalez@networkcargo.com</a>
KH	Aloha Air Cargo	SPA	<a href="mailto:mmiura@alohaaircargo.com">mmiura@alohaaircargo.com</a>
AA	American Airlines	SPA	<a href="mailto:Jonathan.Bernstein@aa.com">Jonathan.Bernstein@aa.com</a>
M6	Amerijet	SPA	<a href="mailto:CDelPozo@amerijet.com">CDelPozo@amerijet.com</a>
OZ	Asiana	SPA	<a href="mailto:yewonsung@flyasiana.com">yewonsung@flyasiana.com</a>
5Y	Atlas Air	SPA	<a href="mailto:Maria.Chavez@AtlasAir.com">Maria.Chavez@AtlasAir.com</a>
OB	Boliviana de Aviacion	SPA	<a href="mailto:edelgado@boa.bo">edelgado@boa.bo</a>
BA	British Airways	SPA	<a href="mailto:toby.hillier@iagcargo.com">toby.hillier@iagcargo.com</a>
5C	C.A.L Cargo Airlines	SPA	<a href="mailto:RuthL@cal-cargo.com">RuthL@cal-cargo.com</a>
W8	Cargojet Airways	SPA	<a href="mailto:jshen@cargojet.com">jshen@cargojet.com</a>
CV	Cargolux	SPA	<a href="mailto:Conor.Brannigan@cargolux.com">Conor.Brannigan@cargolux.com</a>
BW	CaribbeanAirlines	SPA	<a href="mailto:ken.joseph@caribbean-airlines.com">ken.joseph@caribbean-airlines.com</a>
CX, KA	Cathay - Dragon Airlines	SPA	<a href="mailto:virginia_chan@cathaypacific.com">virginia_chan@cathaypacific.com</a>
CI	China Airlines	SPA	<a href="mailto:hsiao-chun.hsu@china-airlines.com">hsiao-chun.hsu@china-airlines.com</a>
CK	CHINA CARGO AIRLINES	SPA	<a href="mailto:liujiawei@ceair.com">liujiawei@ceair.com</a>
CZ	China Southern Air Logistics	SPA	<a href="mailto:lijk@csair.com">lijk@csair.com</a>
IX	Colombian Air Cargo	SPA	<a href="mailto:rodrigo.ibanez@colombian-air.com">rodrigo.ibanez@colombian-air.com</a>
DE	Condor	SPA	<a href="mailto:n.makope@ecsgroup.aero">n.makope@ecsgroup.aero</a>
CM	COPA AIRLINES	SPA	<a href="mailto:fagonzalez@copaair.com">fagonzalez@copaair.com</a>
SS	Corsair	SPA	<a href="mailto:SDRIEU@corsair.fr">SDRIEU@corsair.fr</a>
DL	Delta Airlines	SPA	<a href="mailto:manuel.tavares@delta.com">manuel.tavares@delta.com</a>

7T, V4, L3, D5	DHL Aviation	SPA	<a href="mailto:Carmen.Goehrig@dhl.com">Carmen.Goehrig@dhl.com</a>
LY	El Al Israel Airlines	SPA	<a href="mailto:moshebe@elal.co.il">moshebe@elal.co.il</a>
EK	Emirates	SPA	<a href="mailto:idacardoz@emirates.com">idacardoz@emirates.com</a>
ET	Ethiopian Airlines	SPA	<a href="mailto:DerejeHg@ethiopianairlines.com">DerejeHg@ethiopianairlines.com</a>
EY	Etihad	SPA	<a href="mailto:HBahaj@etihad.ae">HBahaj@etihad.ae</a>
BR	Eva Airways	SPA	<a href="mailto:shirleylin@evaair.com">shirleylin@evaair.com</a>
AY	Finnair	SPA	<a href="mailto:Margred.Koima@finnair.com">Margred.Koima@finnair.com</a>
GF	Gulf Airlines	SPA	<a href="mailto:batool.ali@gulfair.com">batool.ali@gulfair.com</a>
RH	HONG KONG AIR CARGO CARRIER LIMITED	SPA	<a href="mailto:kathyst.leung@hkaircargo.com">kathyst.leung@hkaircargo.com</a>
HX	HONG KONG AIRLINES LIMITED	SPA	<a href="mailto:kathyst.leung@hkaircargo.com">kathyst.leung@hkaircargo.com</a>
IB	Iberia	SPA	<a href="mailto:toby.hillier@iagcargo.com">toby.hillier@iagcargo.com</a>
FI	Icelandair	SPA	<a href="mailto:smh@icelandaircargo.is">smh@icelandaircargo.is</a>
JL	Japan Airlines	SPA	<a href="mailto:uchida.ptwn@jal.com">uchida.ptwn@jal.com</a>
9W	Jet Airways	SPA	<a href="mailto:pmiranda@jetairways.com">pmiranda@jetairways.com</a>
KL	KLM ROYAL DUTCH AIRLINES	SPA	<a href="mailto:interline.cargo.hq@afklcargo.com">interline.cargo.hq@afklcargo.com</a>
KE	Korean Air Cargo	SPA	<a href="mailto:seoyeonkim@koreanair.com">seoyeonkim@koreanair.com</a>
4L	Líneas Aéreas Suramericanas LAS S.A	SPA	<a href="mailto:zaida.martinez@lascargo.com">zaida.martinez@lascargo.com</a>
LO	LOT Polish	SPA	<a href="mailto:M.Kasiak@lot.pl">M.Kasiak@lot.pl</a>
LH	Lufthansa	SPA	<a href="mailto:gustavo.franklin@dlh.de">gustavo.franklin@dlh.de</a>
MH	Malaysia Airlines	SPA	<a href="mailto:ariza.abuseman@malaysiaairlines.com">ariza.abuseman@malaysiaairlines.com</a>
MB	MNG Airlines	SPA	<a href="mailto:sehnaz.mutlu@mngairlines.com">sehnaz.mutlu@mngairlines.com</a>
KZ	Nippon Cargo Airlines	SPA	<a href="mailto:masayoshi.tsuneoka@nca.aero">masayoshi.tsuneoka@nca.aero</a>
WY	Oman Air	SPA	<a href="mailto:Mani.Subramanian@omanair.com">Mani.Subramanian@omanair.com</a>
PR	PHILIPPINE AIRLINES	SPA	<a href="mailto:Jan_Baniqued@pal.com.ph">Jan_Baniqued@pal.com.ph</a>
PO	POLAR AIR CARGO	SPA	<a href="mailto:Jeffrey.Wong@PolarAirCargo.com">Jeffrey.Wong@PolarAirCargo.com</a>
QF	Qantas	SPA	<a href="mailto:dalebaxter@qantas.com.au">dalebaxter@qantas.com.au</a>
QR	Qatar	SPA	<a href="mailto:evelicezzedini@qatarairways.com.qa">evelicezzedini@qatarairways.com.qa</a>
FV	Rossiia Airlines	SPA	<a href="mailto:a.bogoryad@rossiya-airlines.com">a.bogoryad@rossiya-airlines.com</a>
AT	Royal Air Maroc	SPA	<a href="mailto:MCHADLI@RoyalAirMaroc.com">MCHADLI@RoyalAirMaroc.com</a>
BI	Royal Brunei	SPA	<a href="mailto:FRELMIW@rba.com.bn">FRELMIW@rba.com.bn</a>
SV	Saudi Arabian Airlines	SPA	<a href="mailto:AALRIZOI@saudiacargo.com">AALRIZOI@saudiacargo.com</a>
7L	SILK WAY	SPA	<a href="mailto:lily@silkwayltd.com">lily@silkwayltd.com</a>
SQ	Singapore Airlines	SPA	<a href="mailto:zhiyong_xu@singaporeair.com.sg">zhiyong_xu@singaporeair.com.sg</a>
GG	Skylease Cargo	SPA	<a href="mailto:mmontoya@skylease.aero">mmontoya@skylease.aero</a>
SA	South African Airways Cargo	SPA	<a href="mailto:KekeletsoMokwena@flysaa.com">KekeletsoMokwena@flysaa.com</a>
LX	Swiss International	SPA	<a href="mailto:Daniel.Barben@swiss.com">Daniel.Barben@swiss.com</a>
DT	TAAG	SPA	<a href="mailto:ronel@flytaag.co.za">ronel@flytaag.co.za</a>
TP	TAP	SPA	<a href="mailto:cbandeira@tap.pt">cbandeira@tap.pt</a>

RO	TAROM SA	SPA	<a href="mailto:loredana.ristache@tarom.ro">loredana.ristache@tarom.ro</a>
MT	Thomas Cook Airlines LTD	SPA	<a href="mailto:f.guenot@ecsgroup.aero">f.guenot@ecsgroup.aero</a>
TB	TUI AIRLINES	SPA	<a href="mailto:f.guenot@ecsgroup.aero">f.guenot@ecsgroup.aero</a>
TK	Turkish Airlines	SPA	<a href="mailto:FITNATK@THY.COM">FITNATK@THY.COM</a>
UA	United Airlines	SPA	<a href="mailto:tanya.cornell@united.com">tanya.cornell@united.com</a>
5X	UPS	SPA	<a href="mailto:eduardoacosta@ups.com">eduardoacosta@ups.com</a>
VN	Vietnam Airlines	SPA	<a href="mailto:trangnguyen@vietnamairlines.com">trangnguyen@vietnamairlines.com</a>
VS	Virgin Atlantic	SPA	<a href="mailto:Joseph.Ellis@fly.virgin.com">Joseph.Ellis@fly.virgin.com</a>
EB	Wamos Air	SPA	<a href="mailto:MLozano@wamosair.com">MLozano@wamosair.com</a>
WS	WestJet Cargo	SPA	<a href="mailto:Wayne.Davidson@westjet.com">Wayne.Davidson@westjet.com</a>

**EXHIBIT B**

**Clearinghouse/Industry Agreements**

<b>Contract Name</b>	<b>Contact Information</b>
All BSP regions to which AV entities are participants	800 Place Victoria PO Box 113 Montreal H4Z 1M1 Quebec Canada Email: <a href="mailto:farrella@iata.org">farrella@iata.org</a> Attn: Ann Farrell, Mgr Airline Codes and Interline
All CASS regions to which AV entities are currently participants	800 Place Victoria PO Box 113 Montreal H4Z 1M1 Quebec Canada Email: <a href="mailto:farrella@iata.org">farrella@iata.org</a> Attn: Ann Farrell, Mgr Airline Codes and Interline
IATA Counterindemnity Agreement Governing BSP Membership	800 Place Victoria PO Box 113 Montreal H4Z 1M1 Quebec Canada Email: <a href="mailto:farrella@iata.org">farrella@iata.org</a> Attn: Ann Farrell, Mgr Airline Codes and Interline
IATA Clearing House Membership	800 Place Victoria PO Box 113 Montreal H4Z 1M1 Quebec Canada Email: <a href="mailto:farrella@iata.org">farrella@iata.org</a> Attn: Ann Farrell, Mgr Airline Codes and Interline
IATA Currency Clearance Service	800 Place Victoria PO Box 113 Montreal H4Z 1M1 Quebec Canada Email: <a href="mailto:farrella@iata.org">farrella@iata.org</a> Attn: Ann Farrell, Mgr Airline Codes and Interline
IATA Pro-Rate Agency Agreement	800 Place Victoria PO Box 113 Montreal H4Z 1M1 Quebec Canada Email: <a href="mailto:farrella@iata.org">farrella@iata.org</a> Attn: Ann Farrell, Mgr Airline Codes and Interline
Agreement Relating to the Settlement of Interline Accounts through Airlines Clearing House, Inc.	Airlines Clearing House 1275 Pennsylvania Ave. NW Suite 1300 Washington, DC 20004 Email: <a href="mailto:ltully@airlines.org">ltully@airlines.org</a> Attn: Lori Tully, Managing Director
ARC Carrier Services Agreement	Airlines Reporting Corporation 3000 Wilson Boulevard Suite 300 Arlington, VA 22201-3862 Email: <a href="mailto:ahd@arccorp.com">ahd@arccorp.com</a>
ARC Agent Reporting Agreement	Airlines Reporting Corporation 3000 Wilson Boulevard Suite 300 Arlington, VA 22201-3862

	Email: <a href="mailto:ahd@arccorp.com">ahd@arccorp.com</a>
Subscription Agreement ATPCO Electronic Government Filing System	Airline Tariff Publishing Company 45005 Aviation Drive Dulles, VA 20166 Email: <a href="mailto:jbrawley@atpco.net">jbrawley@atpco.net</a>
Subscription Agreement ATPCO Passenger Interline Pricing/Prorate System (PIPPS)	Airline Tariff Publishing Company 45005 Aviation Drive Dulles, VA 20166 Email: <a href="mailto:jbrawley@atpco.net">jbrawley@atpco.net</a>
Agreement for TCN Exchange Services	Airline Tariff Publishing Company 45005 Aviation Drive Dulles, VA 20166 Email: <a href="mailto:jbrawley@atpco.net">jbrawley@atpco.net</a>
Amended and Restated Universal Air Travel Plan Participation Agreement	UATP 1425 K Street Suite 700 Washington, DC 20005

**EXHIBIT C**

**Proposed Interim Order**

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

-----X  
In re: : Chapter 11  
: :  
AVIANCA HOLDINGS S.A., *et al.*,<sup>1</sup> : Case No. 20-11133 (MG)  
: :  
Debtors. : (Joint Administration Requested)  
: :  
-----X

**INTERIM ORDER (I) PURSUANT TO SECTIONS  
105(a) AND 365 OF THE BANKRUPTCY CODE, AUTHORIZING DEBTORS TO  
ASSUME CERTAIN AGREEMENTS; (II) PURSUANT TO SECTIONS 105(a) AND 363  
OF THE BANKRUPTCY CODE AUTHORIZING BUT NOT DIRECTING THE  
DEBTORS TO SATISFY (A) CERTAIN PREPETITION OBLIGATIONS PENDING  
ASSUMPTION AND (B) CERTAIN OBLIGATIONS TO OTHER AIRLINES SETTLED  
THROUGH AIRLINE CLEARINGHOUSES AND CERTAIN PREPETITION  
AIRLINE ALLIANCE OBLIGATIONS; (III) MODIFYING THE AUTOMATIC  
STAY PURSUANT TO SECTION 36 OF THE BANKRUPTCY CODE TO  
EFFECTUATE FOREGOING; AND (IV) SCHEDULING FINAL HEARING**

Upon consideration of the motion (the “Motion”)<sup>2</sup> of the above-captioned debtors and debtors-in-possession (the “Debtors”), seeking entry of an order (this “Interim Order”) authorizing (but not directing) the Debtors to (a) pursuant to section 365 of the Bankruptcy Code, assume

<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.

<sup>2</sup> Capitalized terms not defined herein shall have the meanings ascribed to them in the Motion.

certain Interline Relationship Agreements; and (b) pursuant to sections 105(a) and 363 of the Bankruptcy Code, (i) satisfy certain prepetition obligations under Interline Relationship Agreements pending assumption; and (ii) satisfy certain prepetition obligations under the Airline Alliance Agreements and the LifeMiles Program Agreements; (b) modifying the automatic stay; and (c) scheduling the Final Hearing, all as described more fully in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, dated February 1, 2012; and it appearing that venue of these Chapter 11 Cases and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b); and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and upon the Motion and the *Declaration of Adrian Neuhauser in Support of the Debtors' Chapter 11 Petitions and First Day Pleadings*, dated as of the Petition Date; and upon the statements of counsel in support of the relief requested in the Motion at the hearing before the Court; and all of the proceedings had before the Court; and this Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors and other parties-in-interest; and after due deliberation thereon; and good and sufficient cause appearing therefor,

**IT IS HEREBY ORDERED THAT:**

1. The Motion is hereby **GRANTED** on an interim basis, as set forth herein.
2. The Final Hearing shall be held on \_\_\_\_\_, 2020, at \_\_:\_\_.m., prevailing Eastern Time. Any objections or responses to entry of the Propose Final Order shall be filed on or before 4:00 p.m., prevailing Eastern Time, on \_\_\_\_\_, 2020, and shall be served on: (a) the

Debtors; (b) proposed counsel to the Debtors; (c) counsel to any statutory committee appointed in these cases; and (d) the Office of the United States Trustee for the Southern District of New York. In the event no objections to entry of the Proposed Final Order are timely received, this Court may enter the Final Order without need for the Final Hearing.

3. The Debtors are authorized (but not required) to assume those of the Interline Relationship Agreements as the Debtors deem, in their sole discretion, to be in the best interest of their estates, without the necessity of further hearing, upon the submission of an order to the Court approving the specific assumptions, on notice to the applicable counterparties (the “Counterparties”), which order shall provide that, pursuant to section 365(e) of the Bankruptcy Code, the Counterparties may not demand any deposit or other form of security from the Debtors, as requested and more fully described in the Motion.

4. The Counterparties shall have twenty (20) days from the service of the Proposed Interim Order to object to the assumption of the applicable Interline Relationship Agreement. If an objection to the assumption of the applicable Interline Relationship Agreement by the Objection Deadline, and is not consensually resolved by the parties, a hearing shall be scheduled for the Court to resolve any issue identified in the objection.

5. The Debtors are authorized, but not directed, to pay or otherwise honor their prepetition obligations under the Interline Relationship Agreements, the Airline Alliance Agreements and the LifeMiles Program Agreements in the ordinary course of the Debtors’ business, provided that such authority shall not be deemed to be an assumption by the Debtors of any agreement or contract.

6. All applicable banks and other financial institutions are authorized and directed, when requested by the Debtors and in the Debtors’ sole discretion, to receive, process, honor, and

pay any and all checks and electronic funds transfer requests from the Debtors' accounts to the parties to the Interline Relationship Agreements, the Airline Alliance Agreements, and LifeMiles Programs Agreements, whether those checks were presented or funds transfer requests initiated prior to or after the Petition Date, provided that sufficient funds are available in the applicable accounts to make the payments.

7. Pursuant to section 362(d) of the Bankruptcy Code, the automatic stay is hereby modified solely to the extent necessary to enable the Debtors and the other counterparties to the Interline Relationship Agreements, the Airline Alliance Agreements, and the LifeMiles Program Agreements to participate, in the ordinary course of business, in routine billings, settlements, and adjustments with respect to settlements in accordance with the terms and conditions of such agreements, whether arising prior to the commencement of these chapter 11 cases or thereafter.

8. This Order shall not be construed to limit, or in any way affect, the Debtors' ability to contest any invoice or other charge or claim on any grounds.

9. Any payment made pursuant to this Order is not, and shall not be, deemed an admission to the validity of the underlying obligation or waiver of any rights the Debtors may have to subsequently dispute such obligation.

10. Notwithstanding entry of this Order, the Debtors' rights to enforce the automatic stay provisions of section 362(a) of the Bankruptcy Code with respect to any creditor who demands payment of their prepetition debts as a condition to doing business with the Debtors postpetition are preserved.

11. Notwithstanding the relief granted herein and any actions taken hereunder, nothing herein shall create, nor is intended to create, any rights in favor of, or enhance the status of any claim held by, any party.

12. The Debtors are authorized, in their discretion and in the exercise of their business judgment, to make payment to the other airlines on the condition that, by accepting payment, such airlines agree to maintain, reinstate or otherwise comply with the On-Going Obligations/Terms during the pendency of these cases.

13. Any counterparty's acceptance of payment hereunder shall be deemed to be acceptance of the terms of this Order, and if such counterparty thereafter does not provide the Debtors with, or otherwise complies with, the On-Going Obligations/Terms during the pendency of these cases, then any payments made to such airline after the Petition Date on accounts of its prepetition claims shall be deemed to be an unauthorized postpetition transfer and automatically recoverable by the Debtors in their discretion.

14. The Debtors are authorized, but not required, to obtain written verification of the On-Going Obligations/Terms from the other airlines before issuing payment hereunder, provided however that the absence of such written verification shall not limit the Debtors' rights hereunder.

15. The Debtors did not seek in the Motion, and the relief herein does not authorize the Debtors, to assume obligations to third parties under the Airline Alliance Agreements and the LifeMiles Program Agreements.

16. This Order is effective from the date of entry through this Court's disposition of the Motion on a final basis; provided that the Court's ultimate disposition of the Motion on the final basis shall not impair or otherwise affect any action taken pursuant to this Order.

17. Bankruptcy Rule 6003(b) has been satisfied because the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors.

18. Notwithstanding any applicability of Bankruptcy Rule 6004, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

19. The Debtors are authorized and empowered to take all actions necessary to implement the relief requested in this Order.

20. This Court shall retain jurisdiction with respect to any matters, claims, rights or disputes arising from or related to the implementation of this Order.

Dated: \_\_\_\_\_, 2020

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UNITED STATES BANKRUPTCY JUDGE

**EXHIBIT D**

**Proposed Final Order**

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

-----X  
In re: : Chapter 11  
: :  
AVIANCA HOLDINGS S.A., *et al.*,<sup>1</sup> : Case No. 20-11133 (MG)  
: :  
Debtors. : (Joint Administration Requested)  
: :  
-----X

**FINAL ORDER ON THE DEBTORS' MOTION FOR INTERIM AND FINAL ORDERS  
(I) PURSUANT TO SECTIONS 105(a) AND 365 OF THE BANKRUPTCY  
CODE, AUTHORIZING DEBTORS TO ASSUME CERTAIN AGREEMENTS;  
(II) PURSUANT TO SECTIONS 105(a) AND 363 OF THE BANKRUPTCY CODE  
AUTHORIZING BUT NOT DIRECTING THE DEBTORS TO SATISFY  
(A) CERTAIN PREPETITION OBLIGATIONS PENDING ASSUMPTION AND  
(B) CERTAIN OBLIGATIONS TO OTHER AIRLINES SETTLED THROUGH  
AIRLINE CLEARINGHOUSES AND CERTAIN PREPETITION AIRLINE  
ALLICANCE OBLIGATIONS; AND (III) MODIFYING AUTOMATIC STAY  
PURSUANT TO SECTION 362 OF BANKRUPTCY CODE**

Upon consideration of the motion (the "Motion")<sup>2</sup> of the above-captioned debtors and debtors-in-possession (the "Debtors"), seeking entry of an order (this "Final Order") (a) pursuant to section 365 of the Bankruptcy Code authorizing the Debtors to assume certain Interline

<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.

<sup>2</sup> Capitalized terms not defined herein shall have the meanings ascribed to them in the Motion.

Relationship Agreements; and (b) pursuant to sections 105(a) and 363 of the Bankruptcy Code (i) immediately authorizing, but not directing, the Debtors to satisfy certain prepetition obligations under Interline Relationship Agreements pending assumption; (ii) immediately authorizing, but not directing, the Debtors to satisfy certain prepetition obligations under the Airline Alliance Agreements and the LifeMiles Program Agreements; and (iii) modifying the automatic stay, all as described more fully in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, dated February 1, 2012; and it appearing that venue of these chapter 11 cases and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b); and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and upon the Motion and the *Declaration of Adrian Neuhauser in Support of the Debtors' Chapter 11 Petitions and First Day Pleadings*, dated as of the Petition Date; and upon the statements of counsel in support of the relief requested in the Motion at the hearing before the Court; and all of the proceedings had before the Court; and this Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors and other parties-in-interest; and after due deliberation thereon; and good and sufficient cause appearing therefor,

**IT IS HEREBY ORDERED THAT:**

1. The Motion is hereby **GRANTED** on a final basis.
2. The Debtors are authorized (but not required) to assume those of the Interline Relationship Agreements as the Debtors deem, in their sole discretion, to be in the best interest of their estates, without the necessity of further hearing, upon the submission of an order to the Court

approving the specific assumptions, on notice to the applicable counterparties (the “Counterparties”), which order shall provide that, pursuant to section 365(e) of the Bankruptcy Code, the Counterparties may not demand any deposit or other form of security from the Debtors, as requested and more fully described in the Motion

3. The Debtors are authorized, but not directed, to pay or honor prepetition obligations under the Interline Relationship Agreements, the Airline Alliance Agreements and the LifeMiles Program Agreements in the ordinary course of the Debtors’ business, provided that such authority shall not be deemed to be an assumption by the Debtors of any agreement or contract.

4. All applicable banks and other financial institutions are authorized and directed, when requested by the Debtors and in the Debtors’ sole discretion, to receive, process, honor, and pay any and all checks drawn on the Debtors’ accounts to the parties to the Interline Relationship Agreements, the Airline Alliance Agreements and the LifeMiles Program Agreements, whether those checks were presented prior to or after the Petition Date, and make other transfers provided that sufficient funds are available in the applicable accounts to make the payments.

5. This Order shall not be construed to limit, or in any way affect, the Debtors’ ability to contest any invoice or other charge or claim on any grounds.

6. Any payment made pursuant to this Order is not, and shall not be, deemed an admission to the validity of the underlying obligation or waiver of any rights the Debtors may have to subsequently dispute such obligation.

7. Pursuant to section 362(d) of the Bankruptcy Code, the automatic stay is hereby modified solely to the extent necessary to enable the Debtors and the airline counterparties to the Interline Relationship Agreements, the Airline Alliance Agreements and the LifeMiles Program Agreements to participate, in the ordinary course of business, in routine billings, settlements, and

adjustments with respect to such settlements in accordance with the terms and conditions of such agreements, whether arising prior to the commencement of Debtors' chapter 11 cases or thereafter.

8. Notwithstanding entry of this Order, the Debtors' rights to enforce the automatic stay provisions of section 362(a) of the Bankruptcy Code with respect to any creditor who demands payment of their prepetition debts as a condition to doing business with the Debtors postpetition are preserved.

9. Notwithstanding the relief granted herein and any actions taken hereunder, nothing herein shall create, nor is intended to create, any rights in favor of, or enhance the status of any claim held by, any party.

10. The Debtors are authorized, in their discretion and in the exercise of their business judgment, to make payment to the parties to under the Interline Relationship Agreements, the Airline Alliance Agreements and the LifeMiles Program Agreements on the condition that by accepting payment, such parties agree to maintain, reinstate or otherwise comply with the On-Going Obligations/Terms during the pendency of these cases.

11. The acceptance by the parties to the Interline Relationship Agreements, the Airline Alliance Agreements and the LifeMiles Program Agreements of payment is deemed to be acceptance of the terms of this Order, and if such parties thereafter do not provide the Debtors with, or otherwise comply with, the On-Going Obligations/Terms during the pendency of these cases, then any payments of prepetition claims made after the Petition Date will be deemed to be unauthorized postpetition transfers and automatically recoverable by the Debtors in their discretion.

12. The Debtors are authorized, but not required, to obtain written verification of the On-Going Obligations/Terms from the parties to the Interline Relationship Agreements, the

Airline Alliance Agreements and the LifeMiles Program Agreements before issuing payment hereunder, provided however that the absence of such written verification shall not limit the Debtors' rights hereunder.

13. Other than with respect to the Interline Relationship Agreements, nothing contained in this Order shall constitute a rejection or assumption by the Debtors, as debtors in possession, of any executory contract or unexpired lease by virtue of reference of any such contract or lease in the Motion.

14. The Debtors did not seek in the Motion, and the relief herein does not authorize the Debtors, to assume obligations to third parties that are settled through the Clearinghouses.

15. Notwithstanding any applicability of Bankruptcy Rule 6004, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

16. The Debtors are authorized and empowered to take all actions necessary to implement the relief requested in this Order.

17. This Court shall retain jurisdiction with respect to any matters, claims, rights or disputes arising from or related to the implementation of this Order.

Dated: \_\_\_\_\_, 2020

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UNITED STATES BANKRUPTCY JUDGE