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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> , <sup>1</sup>	:	Case No. 20-11133 (MG)
	:	
Debtors and Reorganized Debtors.	:	(Jointly Administered)
	:	
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**REPLY IN SUPPORT OF  
 REORGANIZED DEBTORS' TWENTY-FOURTH AND TWENTY-FIFTH OMNIBUS  
OBJECTIONS TO PROOFS OF CLAIM**

<sup>1</sup> The Debtors and Reorganized Debtors in these chapter 11 cases, and each Debtor's and Reorganized Debtor's 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.



The Reorganized Debtors<sup>1</sup> hereby submit this reply (the “Reply”) in support of the *Reorganized Debtors’ Twenty-Fourth Omnibus Objection to Proofs of Claim* [ECF No. 2661] (the “Twenty-Fourth Objection”) and the *Reorganized Debtors’ Twenty-Fifth Omnibus Objection to Proofs of Claim* [ECF No. 2663] (the “Twenty-Fifth Objection” and, together with the Twenty-Fourth Objection, the “Objections”), and in response to *Burnham Sterling and Company LLC and Babcock & Brown Securities LLC’s Consolidated Reply (I) In Response to Reorganized Debtors’ Twenty-Fourth and Twenty-Fifth Omnibus Objections to Proofs of Claim and (II) In Further Support of Motion to Compel* [ECF No. 2689] (the “Response”). In support of the Reply, the Reorganized Debtors respectfully state as follows:

### **PRELIMINARY STATEMENT**

1. The Response significantly narrows the dispute before the Court. In it, Burnham and Babcock (the “Claimants”) concede that (i) they have filed numerous duplicative claims, (ii) there is no support for either their Purported Priority Claims or Purported Secured Claims, and (iii) their Purported Administrative Expense Claims are not “actual, necessary costs and expenses of preserving the estate” pursuant to section 503(b)(1) of the Bankruptcy Code. All that remains in dispute is whether the initiator fees, which the Claimants concede are on account of services rendered entirely prepetition, are entitled only to unsecured status, as the Reorganized Debtors contend, or administrative status, as the Claimants contend.

2. The Claimants’ sole argument for administrative treatment is that the initiator fees, though in fact payment for services rendered years prepetition, are denominated as “supplemental” or “additional” rent under various transaction documents related to aircraft leases, and are therefore entitled, without further analysis or inquiry, to administrative status under section 365(d)(5) of the

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<sup>1</sup> Terms not defined herein shall have the same meaning ascribed to them in the Objections.

Bankruptcy Code. The Claimants are wrong, and the Court should reject the Claimants' attempt to elevate form over the substance of the Debtors' obligations.

3. Despite the "supplemental rent" label, the Claimants' initiator fees are not rent. The Claimants did not provide any ongoing services to the Debtors during the Chapter 11 Cases, and the required payments do not resemble an obligation typically associated with a personal property lease. In this context, section 365(d)(5) should not be treated as a back door to administrative status simply because the lease documents label the initiator fees as "rent." The Claimants' approach would encourage parties to denominate all payments as lease obligations, even when those payments have nothing to do with the ongoing operation of leased property.

4. No cases identified by the parties have addressed this specific issue in the context of section 365(d)(5). However, case law interpreting section 365(d)(3), a parallel provision for real, rather than personal, property, clarifies that lease "obligations" within the meaning of the statute are limited to those essential to the ongoing operation of the lease: namely, rental payments made to landlords. Merely denominating the obligation as "rent" will not suffice. This Court should find that personal property lease "obligations" protected under section 365(d)(5) are similarly limited to obligations integral to the ongoing function of the lease.

5. In addition to failing to establish that the claims on account of the initiator fees are entitled to administrative status, the Response also mischaracterizes certain arguments raised in the Objections. The Reorganized Debtors do not contend that a "benefit to the estate" must be demonstrated to warrant administrative treatment under section 365(d)(5). The Reorganized Debtors only noted the need to establish a "benefit to the estate" in response to the Claimants' initial position that the initiator fees are "actual, necessary costs and expenses of preserving the estate" under section 503(b)(1) of the Bankruptcy Code, and were entitled to administrative

priority for that additional reason.<sup>2</sup> Recognizing that this argument cannot be supported, the Claimants have abandoned it in their Response. The Claimants' concession renders the Reorganized Debtors' "benefit to the estate" argument moot.

6. Accordingly, all Claimants' non-duplicative Disputed Claims should be treated as general unsecured claims, as appropriate for the prepetition nature of such claims.

### **REPLY**

#### **I. Initiator Fees Are Not "Lease Obligations" Within the Meaning of Section 365(d)(5).**

7. The Claimants do not dispute that they provided all initiator services before the Petition Date and did not provide any services during these Chapter 11 Cases. The question now before the Court is whether an obligation unrelated to the lessee's ongoing possession of personal property, but arising in a lease document (or in a document related to a lease transaction), must receive administrative status under section 365(d)(5). While neither party to this dispute has identified case law interpreting "obligation" under section 365(d)(5), courts have considered parallel language in section 365(d)(3), concerning "obligations" under leases of real property.<sup>3</sup> Those cases, including those that the Claimants cite in their Response, support the conclusion that the Claimants' fees for prepetition services should be treated as general unsecured claims.

##### **a. Initiator Fees Are Not Protected Obligations Under Section 365(d).**

8. *In re Child World Inc.*, despite the Claimants' attempts to distinguish it, is particularly instructive here, for the parties in that case similarly "focused their disagreement on

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<sup>2</sup> "[Claimant] is entitled to an administrative expense claim from the Petition Date through the Rejection Date pursuant to Bankruptcy Code section 503(b)(1). Bankruptcy Code section 503(b)(1) provides that the actual, necessary costs and expenses of preserving the Debtors' estate constitute administrative expenses, and that a party may file a request for payment of administrative expenses. 11 U.S.C. § 503(b)(1)." Proofs of Claim 4043, 4046, and 4038, ¶¶ 19-20 (Burnham); Proofs of Claim 4033, 4035, and 4037, ¶¶ 20-21 (Babcock).

<sup>3</sup> As Claimants note, courts often look to decisions construing section 365(d)(3) when construing section 365(d)(5). *See* Response at n.7; *see also CIT Comm. Fin. Corp. v. Midway Airlines Corp. (In re Midway Airlines Corp.)*, 406 F.3d 229, 234 (4th Cir. 2005).

the interpretation of the word ‘obligations.’” *Child World v. The Campbell/Massachusetts Tr. (In re Child World Inc.)*, 161 B.R. 571, 572 (S.D.N.Y. 1993). In that case, the “rent” of the leased real property in question consisted of a monthly base charge, a percentage of the gross profits, and a proportion of the real estate taxes. *See id.* at 572. After the petition date, the lessor demanded payment of real estate taxes under section 365(d)(3), even though certain of those taxes arose prepetition. *See id.* at 572-574. The bankruptcy court held that Child World was required to reimburse the lessor for the full amount of real estate taxes, even though the majority of those taxes arose prepetition, finding that “the billing date in the lease determines when an obligation arises” under section 365(d)(3). *Id.* at 573.

9. But on appeal, the district court disagreed. It reversed, holding that a mechanical application of when “obligations” came due under a lease was not what Congress intended in drafting section 365: “[t]he legislative history makes clear that Congress did not intend for courts applying § 365(d)(3) to rely mechanically on the billing date in determining which postpetition, prerejection obligations under nonresidential leases must be timely paid.” *Id.* at 575-77 (internal quotations omitted). The district court went on to state:

Allowing landlords to recover for items of rent which are billed during the postpetition, prerejection period, ***but which represent payment for services rendered by the landlord outside this time period, would grant landlords a windfall payment, to the detriment of other creditors, without any support from legislative history.*** This conclusion is reinforced by the policy of narrowly construing statutory priority in order to treat creditors as equally as possible[.]

*Id.* at 576 (emphasis added).

10. The Claimants seek just such a “windfall” here. They argue that they must receive administrative treatment “for services rendered . . . outside [the postpetition, prerejection] period”—indeed, for services rendered entirely prepetition. *Id.* But as the Southern District of New York noted, section 365(d)(3) was not enacted to protect, mechanically, any payments that

happen to come due during the postpetition, prerejection period. Rather, section 365(d)(3)'s special provision for lease obligations is meant to protect “the landlord [that] is forced to provide **current services**—the use of its property, utilities, security, and other services—without current payment,” for “[n]o other creditor is put in this position.” *Id.* at 572 (emphasis added). This is not applicable to the Claimants. All services the Claimants provided—arranging the financing of the leases—were completed prepetition. The Disputed Claims arising from those services should be afforded the same status afforded to other claims arising from prepetition services: a general unsecured claim.

11. Another case cited heavily in the Response, *In re Pudgie's Dev. of NY, Inc.*, 202 B.R. 832 (Bankr. S.D.N.Y. 1996), is similarly instructive. There, the bankruptcy court also recognized that not all contractual obligations arising from a lease are protected under section 365(d)(3). *See id.* at 836-837. The bankruptcy court held that attorneys' fees, although contracted for in a lease agreement, were **not** “obligations” within the scope of section 365(d)(3). *Id.* at 837. The court reasoned that construing such fees as a qualifying “obligation” would not “make sense,” for such an obligation “may fortuitously arise before or after the time period in question [the postpetition, prerejection period]”; this “fortuitous” timing is insufficient to merit such a significant difference in claim status. *Id.*

12. The same logic applies on all fours here. All of the Claimants' services were completed prepetition, but certain portions of the fees for those services were “fortuitously” billed postpetition—a simple choice made by the parties in designing the fee payment schedule. But the Claimants did not provide the type of “current services,” nor were they forced to shoulder current burdens, that would merit administrative treatment of their claims under section 365(d)(5). *See Child World*, 161 B.R. at 572.

13. The applicable case law therefore recognizes a distinction between “obligations” necessary for the lease’s ongoing operation (principally, rent) and ancillary obligations that may arise in a lease document—and may even be denominated as “rent”—but are not entitled to administrative treatment (prepetition taxes;<sup>4</sup> lessor’s attorneys’ fees related to lease enforcement<sup>5</sup>). The Claimants decline to acknowledge this distinction, relying only on the mechanical claim that the initiator fees arise from leases, and therefore qualify: because “the Initiator Fees are due on a fixed, contractually agreed to schedule as Additional Rental Payments *pursuant to the Lease Agreements* . . . [t]he Initiator Fees owed are precisely the kind of lease obligations contemplated by Congress and the court in *Pudgie* [sic].” See Response ¶ 10 (emphasis added).

14. But Claimants neglect to mention the initiator fees at issue here do not, in fact, always arise in a “Lease Agreement.” Instead, depending on the transaction, the Debtors’ obligation to pay the initiator fees arises under either a loan agreement, a side letter, or a sublease agreement.<sup>6</sup> The fact that such fees do not arise under a lease agreement, but in a side letter or in a different document within the transaction’s closing set, is a further indication that the initiator fees are not among those core lease obligations Congress sought to protect in section 365(d)(5).

**b. Whether the Initiator Fees Provide a Benefit to the Estates Is Now Irrelevant, as the Claimants Do Not Invoke Section 503(b)(1).**

15. To save their argument, Claimants muddy the instruction of *Pudgie*’s. They focus on the court’s rejection of the debtor’s argument in that case, which was that the debtor was not

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<sup>4</sup> See *Child World*, 161 B.R. at 572 (real estate taxes included as portion of the rent), 576 (real estate taxes accrued prepetition were not protected “obligations” under section 365(d)(3)).

<sup>5</sup> See *Pudgie*’s, 202 B.R. at 836-837 (landlord’s “counsel fees incurred to enforce the lease are to be considered part of the rent”; however, “the obligation to pay attorneys’ fees is not one of the obligations within the scope of section 365(d)(3)”).

<sup>6</sup> See, e.g., **Exhibit A** (relevant excerpts of Loan Agreement governing aircraft in the EAIV 2015 transaction); **Exhibit B** (relevant excerpts of MSN 7284 Loan Agreement) (EAIV 2016 transaction); **Exhibit C** (MSN 65315 Initiator Fee Letter) (JOLCO 2018 transaction) (filed under seal); **Exhibit D** (relevant excerpts of MSN 7887 Sub-Lease Agreement) (JOLCO 2017 transaction).

required to provide timely prerejection lease payments for abandoned leased property because the property did not provide a benefit to the estate. *See id.* at 834.

16. This issue—whether the initiator fees provided a benefit to the estates—is no longer relevant here. The Reorganized Debtors do not argue, and have never argued, that the Claimants’ services must provide a benefit to the estate in order to satisfy section 365(d)(5).

17. The Objections did raise a “benefit to the estate” argument in relation to the Claimants’ initial position that the initiator fees were entitled to administrative treatment under section 503(b)(1). As the Claimants have abandoned this argument, however, there need be no further discussion of whether Claimants’ services provided any postpetition benefit.

18. What section 365(d)(3) does require, as the Claimants’ cases confirm, is that the relevant obligation be of the kind that section is intended to protect—payment for “current services.” *Child World*, 161 B.R. at 572. For example, the obligation that the *Pudgie*’s debtors sought to avoid was rent itself, owed to the lessor—the primary “obligation” under any lease—which squarely falls within the purview of section 365(d)(3). *See id.* That makes the *Pudgie*’s holding regarding rent entirely distinguishable, for here, the initiator fees arose from ancillary, prepetition services. *See* Objections ¶ 22. Any initiator fees that happened to fall due, “fortuitously,” during the postpetition but prerejection period, are not entitled to the same administrative treatment as traditional rent owing to a lessor. *See Pudgie’s*, 202 B.R. at 837.

## **II. The Lease Parties Did Not Continue to Operate Under the Lease Agreements Following Their Entry into the Second Stipulations and PBH Agreements.**

19. The Claimants also argue that the Second Stipulations, entered into postpetition by the Debtors and their aircraft lessors, do not impact their Purported Administrative Claims: that notwithstanding the Second Stipulations, which modified the obligations under the various aircraft lease agreements, the Debtors’ obligations to continue making current payments to Claimants



remained in force. *See* Response ¶¶ 17-18. But the Second Stipulations did have meaningful effect. They modified the terms of each of the lease agreements at issue, and—once so-ordered by the Court—they took precedence over the lease agreements and suspended the operation thereof, including payment of the initiator fees. *See* Objections ¶ 22.

20. It is telling that only now, years after the approval of the Second Stipulations, the Claimants raise issues with them. The Claimants had every opportunity to object or to be heard at the time the Second Stipulations were filed and approved: the Second Stipulations were filed openly on the docket. The Debtors even raised a clarification regarding the Second Stipulations at an omnibus hearing before the Court at the request of a different party in interest. *See* Hr’g Tr. (July 15, 2020) at 18:7-25, 19:1-15 [ECF No. 620]. The Claimants had ample notice and opportunity to make arguments regarding the Second Stipulations. They did not.

21. Moreover, that the Claimants are not party to the Second Stipulations further demonstrates that any remaining “obligation” owed to the Claimants was not necessary to the ongoing operation of the lease, and further supports that those obligations are not the type of lease “obligations” that section 365(d)(5) protects.

**III. No Claims Warrant Secured or Priority Status, and Duplicative Claims Should Be Expunged.**

22. The Response narrows the set of Disputed Claims and acknowledges that no claim is entitled to secured or priority status.

23. *First*, the Claimants concede that they have filed duplicative Disputed Claims. *See* Response ¶¶ 20-21. Accordingly, the parties agree that all of the following duplicative Disputed Claims should be disallowed in their entirety and be automatically expunged from the Claims Register: Proofs of Claim 4022 (filed as a priority claim), 4026 (filed as a priority claim), 4027

(filed as a priority claim),<sup>7</sup> 4034 (filed as an administrative claim), and 4036 (filed as an administrative claim).

24. *Second*, the Claimants concede that there is no support for the claimed status of their Purported Secured Claims, and that any such non-duplicative Claims should be reclassified as general unsecured Claims. *See* Response ¶ 19. As such, Proofs of Claim 2055 (filed as a secured claim) and 2057 (filed as a secured claim) should be reclassified as general unsecured claims.<sup>8</sup>

25. The Claimants fail to address in their Response two additional duplicative Disputed Claims. In the Twenty-Fifth Objection, the Reorganized Debtors argued that as Claim 4035 (filed as an administrative claim against Taca) and Claim 4037 (filed as an administrative claim against Aerovías) are duplicative of Claim 4033 (filed as an administrative claim against Avianca), Claims 4035 and 4037 should be disallowed and expunged, particularly as Taca, Aerovías, and Avianca have been substantively consolidated. *See* Twenty-Fifth Objection ¶¶ 10, 18. The Claimants do not address this argument in the Response and therefore do not contest that Claims 4035 and 4037 are duplicative of Claim 4033. For this reason and reasons set forth in the Twenty-Fifth Objection, Claims 4035 and 4037 should be disallowed and expunged.

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<sup>7</sup> As Claimants have agreed that all of the Purported Priority Claims are duplicative of other Claims, no surviving Claims are alleged to have priority status. Accordingly, no dispute remains over the priority status of any Claims.

<sup>8</sup> The Claimants “reserve the right to argue that the Court should not allow the Debtors to retroactively reject their obligations,” citing to *In re Midway Airlines Corp.*, 406 F.3d at 240. *See* Response at n.5. The Reorganized Debtors have not sought such relief, because unlike the debtors in *In re Midway Airlines Corp.*, the Debtors sought the court-approved Second Stipulations, whereby the Debtors continued to pay rent to the lease counterparties pursuant to the PBH Agreements. In contrast, the debtors in *In re Midway Airlines Corp.*, “did nothing for thirteen months” and “should have asked the bankruptcy court to reduce its obligations under the lease immediately after the [60-day] grace period because it needed more time to decide whether to assume the lease, but could not afford to make full payments.” *Id.* at 241.

**NOTICE**

26. Notice of the Reply has been provided to (i) the Claimants at the addresses and email addresses listed on their Disputed Claims; (ii) the Office of the U.S. Trustee; and (iii) all other parties entitled to notice pursuant to Bankruptcy Rule 2002. The Reorganized Debtors submit that no other or further notice need be given.

**RESERVATION OF RIGHTS**

27. The Reorganized Debtors reserve the right to amend, modify, or supplement this Reply, and to file additional replies or objections to the Disputed Claims on any other ground that bankruptcy or non-bankruptcy law permits. In the event that the Claimants pursue the Disputed Claims in any forum other than this Court, the Reorganized Debtors also expressly reserve the right to contest the Disputed Claims on the grounds set forth in this Reply or on any other ground.

WHEREFORE, the Reorganized Debtors respectfully request entry of the Proposed Order, attached to each of the Objections as Exhibit A thereto, and such other and further relief as the Court may deem just and appropriate.

Dated: January 18, 2023  
New York, New York

/s/ John G. McCarthy

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*Counsel for Debtors and Reorganized Debtors*

**Exhibit A**

**Excerpts of EAIIV-2 Loan Agreement**

**EXECUTION COPY**

**LOAN AGREEMENT [AVIANCA EAIV 2015-2 TRUST]**

**dated as of July 30, 2015**

**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 2015-2 Trust,  
as Borrower

**OCTO-AIRCRAFT LEASING LLC**  
as Owner Participant

**AVIANCA HOLDINGS S.A.,**  
as Guarantor

**THE LENDERS IDENTIFIED ON SCHEDULE I HERETO,**

**and**

**WELLS FARGO BANK, NATIONAL ASSOCIATION,**  
as Security Trustee

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**Up to \$178,000,000 in Secured Loan Certificates**

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***Burnham Sterling & Company LLC,***  
***Initiator***

(i) Subject to the terms and conditions of this Agreement, on the Drawdown Date of the Series of Loan Certificates relating to a Designated Aircraft specified in the relevant Notice of Issuance, each Lender agrees, and hereby directs the Security Trustee, to pay the amount of its Commitment Amount for such Designated Aircraft to the Borrower by wire transferring such amounts to the Manufacturer's account identified by the Borrower in such Notice of Issuance, or to such other account as the Borrower shall direct the Security Trustee in writing, immediately prior to the transfer of title to such Designated Aircraft to the Borrower.

### 2.3 Termination of Commitments.

(a) The amount of each Lender's Commitment in respect of a Designated Aircraft shall be automatically reduced to zero on the Commitment Termination Date for such Designated Aircraft.

(b) The Borrower shall have no right at any time to terminate the aggregate unused amount of the Commitments.

(c) The Commitments once terminated may not be reinstated.

### 2.4 Fees.

(a) The Borrower agrees to pay to the Security Trustee, for account of the Lenders, the Commitment Fee on the amount of their respective unfunded Commitments; provided, that any Lender not having complied with its obligation to fund any of its Commitment as and when required to do so hereunder shall not be entitled to receive the same until it has funded such amounts.

(b) The Borrower agrees to pay to the Security Trustee, for account of the Lenders, as and when due, the Upfront Fee. The Upfront Fee, once paid, shall not be refundable under any circumstance.

(c) Subject to paragraph (d) below, the Borrower agrees to pay to the Security Trustee, for account of the Initiator, as and when due, the Initiator Fee.

(d) If an Initiator Fee Event of Default occurs and is continuing, the Initiator may, for such long as such Initiator Fee Event of Default is continuing, at its option, declare by written notice to the Borrower (copied to the Guarantor) that (i) an Initiator Fee Event of Default has occurred which is continuing and (ii) the Accelerated Initiator Fee in respect of a Loan Certificate specified in such Notice is due and payable on the date specified in such notice, whereupon the Borrower agrees to pay to the Security Trustee on the date so specified, for the account of the Initiator, the Accelerated Initiator Fee with respect to such Loan Certificate. Following payment in full of the Accelerated Initiator Fee in respect of a Loan Certificate, the Borrower shall have no further obligation to pay any Initiator Fee or Initiator Prepayment Fee with respect to such Loan Certificate.

(e) The Borrower agrees to pay to the Security Trustee, for account of the Initiator, at any time a Loan Certificate is prepaid in full in accordance with Section 2.7 hereof, accelerated in accordance with Section 10 hereof or becomes subject to a mandatory

prepayment under Section 2.8 hereof, the Initiator Prepayment Fee associated with such prepayment, in each case, in accordance with the applicable section of this Agreement, unless such prepayment or acceleration is in respect of a Loan Certificate in respect of which the Accelerated Initiator Fee has been paid to the Initiator, in which case, no Initiator Prepayment Fee shall be payable.

(f) The fees payable to the Initiator under the previous paragraphs (c), (d), and (e), once paid, shall not be refundable under any circumstance.

2.5 Several Obligations; Remedies Independent. The failure of any Lender to fund its Commitment Amount and make the relevant Loan evidenced by a Loan Certificate on the Drawdown Date thereof shall not relieve any other Lender of its obligation on such date, but no Lender shall be responsible for the failure of any other Lender to fund its Commitment or any part thereof and make its Loans hereunder, and no Lender shall have any obligation to any other Lender for such Lender's failure to fund any part of its Commitment or make any Loan when required hereunder. The amounts payable by the Borrower at any time hereunder and under the Loan Certificates to each Lender shall be a separate and independent debt and each Lender shall be entitled solely through the Security Trustee to protect and enforce its rights to receive such payments arising out of this Agreement and the Loan Certificates, and it shall not be necessary for any other Lender to consent to, or be joined as an additional party in, any proceedings for such purposes. Nothing in this Section 2.5 or in any of the Basic Documents is intended to give any Lender any right to exercise remedies in respect of any Collateral or to exercise any other remedies other than through the Security Trustee. In the event any Lender shall fail to fund any Commitment Amount or make any Loan as and when required to do so hereunder, Borrower, upon consultation with Lessee and the other Lenders may, but shall not be required to replace such Lender upon such terms as it shall deem advisable.

2.6 Loan Certificates; Amortization.

(a) Each Loan Certificate in respect of an Aircraft shall be substantially in the form of Exhibit A hereto, dated the Drawdown Date thereof, payable to each Lender in a principal amount equal to its Commitment for the relevant Series and Tranche. Annex A to the Loan Supplement for each Series of Loan Certificates (including any Loan Certificates issued by exchange in accordance with Section 2.1(c)) shall be prepared by the Lenders in consultation with the Borrower and shall reflect an amortization of the principal amount of each Tranche of such Series as provided in Section 3.1. Such Annex A as so prepared shall be prima facie evidence of the amounts referred to therein absent manifest error.

(b) No Lender shall be entitled to have its Loan Certificates subdivided, by exchange for promissory notes of lesser denominations or otherwise, except in connection with a permitted assignment of all or any portion of such Lender's Loan Certificates pursuant to and in accordance with the provisions of Section 12.6 hereof.

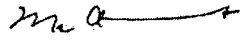
2.7 Voluntary Prepayments.

(a) The Borrower shall have the right to prepay all of the Loan Certificates, in full or in part, in amounts, with respect to any partial prepayment, of no less than

[Loan Agreement [Avianca EAIV 2015-X Trust]]

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed and delivered as of the day and year first above written.

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

By:   
Name: Michael Arsenault  
Title: Vice President

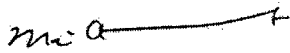
**OCTO-AIRCRAFT LEASING LLC**, as  
Owner Participant

By \_\_\_\_\_  
Name:  
Title:

**AVIANCA HOLDINGS S.A.**, as  
Guarantor

By \_\_\_\_\_  
Name:  
Title:

**WELLS FARGO BANK, NATIONAL  
ASSOCIATION**, as Security Trustee

By:   
Name: Michael Arsenault  
Title: Vice President



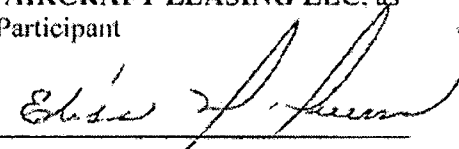
[Loan Agreement [Avianca EAIV 2015-X Trust]]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered as of the day and year first above written.

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

By: \_\_\_\_\_  
Name:  
Title:

**OCTO-AIRCRAFT LEASING LLC**, as  
Owner Participant

By:   
Name: **Elisa Murgas de Moreno**  
Title: **Secretary General- Officer**

**AVIANCA HOLDINGS S.A.**, as  
Guarantor

By:   
Name: **Elisa Murgas de Moreno**  
Title: **Secretary**

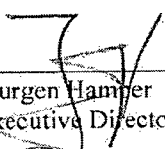
**WELLS FARGO BANK, NATIONAL  
ASSOCIATION**, as Security Trustee

By: \_\_\_\_\_  
Name:  
Title:

IN WITNESS WHEREOF, the parties hereto have caused this Loan Agreement to  
be duly executed and delivered as of the day and year first above written.

**LENDERS**

**DEKABANK DEUTSCHE**  
**GIROZENTRALE, as a Lender**

By   
Name: Jurgen Hamper  
Title: Executive Director

By   
Name: Jens Epping  
Title: Vice President

**THE KOREA DEVELOPMENT BANK**  
**as a Lender**

By \_\_\_\_\_  
Name: Hanvit Kim  
Title: Manager

**SIEMENS FINANCIAL SERVICES**  
**INC., as a Lender**

By \_\_\_\_\_  
Name:  
Title:

IN WITNESS WHEREOF, the parties hereto have caused this Loan Agreement to be  
duly executed and delivered as of the day and year first above written.

**LENDERS**

**DEKABANK DEUTSCHE**  
**GIROZENTRALE**, as a Lender

By \_\_\_\_\_  
Name: Jurgen Hamper  
Title: Executive Director

By \_\_\_\_\_  
Name: Jens Epping  
Title: Vice President

**THE KOREA DEVELOPMENT BANK,**  
as a Lender

By \_\_\_\_\_  
Name: *Joong Gun Kim*  
Title: *Team Head*

**SIEMENS FINANCIAL SERVICES**  
**INC., as a Lender**

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**IN WITNESS WHEREOF**, the parties hereto have caused this Loan Agreement to be duly executed and delivered as of the day and year first above written.

**LENDERS**

**DEKABANK DEUTSCHE  
GIROZENTRALE, as a Lender**

By \_\_\_\_\_  
Name: Jurgen Hamper  
Title: Executive Director

By \_\_\_\_\_  
Name: Jens Epping  
Title: Vice President

**THE KOREA DEVELOPMENT BANK,  
as a Lender**

By \_\_\_\_\_  
Name: Hanvit Kim  
Title: Manager

**SIEMENS FINANCIAL SERVICES,  
INC., as a Lender**

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Dhairyasheel Borde  
Vice President

\_\_\_\_\_  
Kevin S. Keaton  
Director, Operations

## **SCHEDULE II**

### **CERTAIN DEFINED TERMS**

**“Accelerated Initiator Fee”** shall mean, in respect of a Loan Certificate, the present value, as of the date of the relevant Accelerated Initiator Fee is declared to be due and payable in accordance with Section 2.4(d) of this Agreement, of the sum of the remaining installments of Initiator Fee for the Aircraft Allocated To such Loan Certificate payable in respect of such Loan Certificate from the date such Accelerated Initiator Fee is declared to be due and payable in accordance with Section 2.4(d) of this Agreement to (and including) the Maturity Date for such Loan Certificate, plus accrued interest thereon calculated using the applicable Post-Default Rate. Such present value shall be determined by discounting the amounts of such installments semi-annually (assuming a 360-day year of twelve 30-day months) from their respective Payment Dates to the date such Accelerated Initiator Fee is declared to be due and payable in accordance with Section 2.4(d) of this Agreement at a rate equal to the Fixed Rate or Floating Rate for each Loan Certificate, as the case may be.

**“Applicable Margin”** shall mean (1) in the case of a Tranche A-1 Loan Certificate, 1.90% per annum, (2) in the case of a Tranche A-2 Loan Certificate, 1.836% per annum, and (3) in the case of a Tranche A-3 Loan Certificate, 1.83% per annum.

**“Commitment Fee”** shall mean 0.50% per annum, payable on each Drawdown Date, accruing from the date of the Framework Agreement to but excluding such Drawdown Date. Such amount shall be calculated on the basis of a year of 360 days and the actual number of days elapsed, in respect of the aggregate of the unutilized Commitment Amounts.

**“Initiator Fee”** shall mean, in respect of an Aircraft and each Payment Date occurring after the Drawdown Date for such Aircraft, an amount equal to 0.15% of the Commitment Amount (non-amortizing) for such Aircraft, payable on such Payment Date.

**“Initiator Fee Event of Default”** shall mean the failure of the Borrower to pay the Initiator Fee as and when due and such failure continues for a period of 30 days.

**“Initiator Prepayment Fee”** shall mean, in respect of a Loan Certificate as at any date of determination, the present value, as of the date of the relevant prepayment of such Loan Certificate, of the installments of Initiator Fee for the Aircraft Allocated To such Loan Certificate that, but for such prepayment, would have been payable on the Payment Dates after such prepayment. Such present value shall be determined by discounting the amounts of such installments semi-annually (assuming a 360-day year of twelve 30-day months) from their respective Payment Dates to the date of such prepayment at a rate equal to the Fixed Rate or Floating Rate applicable to each Tranche of Loan Certificates.

**“Prepayment Fee”** shall mean, in respect of a Loan Certificate as at any date of determination, the sum of (i) the Initiator Prepayment Fee, plus (ii) the Break Amount, if expressed as a positive number, plus (iii) LIBOR Break Amount.

**“Upfront Fee”** shall mean, in respect of each Designated Aircraft, an amount equal to (1) 0.25% of the Commitment Amount for such Aircraft in the case of a Tranche A-1 Loan

**Exhibit B**

**Excerpts of MSN 7284 Loan Agreement**

**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***

(ii) may request to reschedule the Drawdown Date for the Designated Aircraft subject to the generally applicable policies and procedures of such Lenders (including the fixing of the interest rate in accordance with this Section 2.2) and the applicable Lenders shall use reasonable efforts to accommodate such request.

(i) Subject to the terms and conditions of this Agreement, on the Drawdown Date of the Loans relating to the Designated Aircraft specified in the Notice of Borrowing, each Lender agrees, and hereby directs the Security Trustee, to pay the amount of its Commitment Amount for the Designated Aircraft to the Borrower by wire transferring such amounts to the Manufacturer's account identified by the Borrower in such Notice of Borrowing, or to such other account as the Borrower shall direct the Security Trustee in writing, immediately prior to the transfer of title to the Designated Aircraft to the Borrower.

### 2.3 Termination of Commitments.

(a) The amount of each Lender's Commitment in respect of the Designated Aircraft shall be automatically reduced to zero on the Commitment Termination Date for the Designated Aircraft.

(b) The Borrower shall have no right at any time to terminate the aggregate unused amount of the Commitments.

(c) The Commitments once terminated may not be reinstated.

### 2.4 Fees.

(a) The Borrower agrees to pay to the Security Trustee in accordance with the relevant Fee Letter, (i) for account of the Senior Lenders, the Tranche A Commitment Fee on the amount of their respective unfunded Tranche A Commitments and (ii) for account of the Junior Lenders, the Tranche B Commitment Fee on the amount of their respective unfunded Tranche B Commitments; provided, that any Lender not having complied with its obligation to fund any of its Commitment as and when required to do so hereunder shall not be entitled to receive the same until it has funded such amounts.

(b) The Borrower agrees to pay to the Security Trustee in accordance with the relevant Fee Letter, (i) for account of the Senior Lenders, as and when due, the Tranche A Upfront Fee and (ii) for account of the Junior Lenders, as and when due, the Tranche B Upfront Fee; provided, that any Lender not having complied with its obligation to fund any of its Commitment as and when required to do so hereunder shall not be entitled to receive the same until it has funded such amounts. The Upfront Fees, once paid, shall not be refundable under any circumstance.

(c) The Borrower agrees to pay to the Security Trustee, for account of the Initiator, as and when due, the Initiator Fee.

(d) The Borrower agrees to pay to the Security Trustee, for account of the Initiator, at any time a Loan is prepaid in full in accordance with Section 2.7 hereof, accelerated in accordance with Section 10 hereof or becomes subject to a mandatory prepayment



under Section 2.8 hereof, the Initiator Prepayment Fee associated with such prepayment, in each case, in accordance with the applicable section of this Agreement and subject in all cases to the terms of the Intercreditor Agreement.

(e) The fees payable to the Initiator under the previous paragraphs (c) and (d), once paid, shall not be refundable under any circumstance.

2.5 Several Obligations; Remedies Independent. The failure of any Lender to fund its Commitment Amount and make the relevant Loan evidenced by a Loan Certificate on the Drawdown Date thereof shall not relieve any other Lender of its obligation on such date, but no Lender shall be responsible for the failure of any other Lender to fund its Commitment or any part thereof and make its Loans hereunder, and no Lender shall have any obligation to any other Lender for such Lender's failure to fund any part of its Commitment or make any Loan when required hereunder. The amounts payable by the Borrower at any time hereunder and under the Loan Certificates to each Lender shall be a separate and independent debt and each Lender shall be entitled solely through the Security Trustee to protect and enforce its rights to receive such payments arising out of this Agreement and the Loan Certificates, and it shall not be necessary for any other Lender to consent to, or be joined as an additional party in, any proceedings for such purposes. Nothing in this Section 2.5 or in any of the Basic Documents is intended to give any Lender or the Initiator any right to exercise remedies in respect of any Collateral or to exercise any other remedies other than through the Security Trustee. In the event any Lender shall fail to fund any Commitment Amount or make any Loan as and when required to do so hereunder, Borrower, upon consultation with Lessee and the other Lenders may, but shall not be required to replace such Lender upon such terms as it shall deem advisable.

2.6 Loan Certificates; Amortization.

(a) Each Tranche A Loan Certificate in respect of the Designated Aircraft shall be substantially in the form of Exhibit A-1 hereto, dated the Drawdown Date thereof, payable to each Senior Lender in a principal amount equal to its Tranche A Commitment. Each Tranche B Loan Certificate in respect of the Designated Aircraft shall be substantially in the form of Exhibit A-2 hereto, dated the Drawdown Date thereof, payable to each Junior Lender in a principal amount equal to its Tranche B Commitment. Annex A to the Loan Supplement for the Loan Certificates (including any Loan Certificates issued by exchange in accordance with Section 2.1(a)(iii) or 2.1(b)(iii)) shall be prepared by the applicable Lenders in consultation with the Borrower and Lessee and shall reflect an amortization of the principal amount of each Tranche as provided in Section 3.1. Such Annex A as so prepared shall be conclusive evidence of the amounts referred to therein absent manifest error.

(b) No Lender shall be entitled to have its Loan Certificates subdivided, by exchange for promissory notes of lesser denominations or otherwise, except in connection with a permitted assignment of all or any portion of such Lender's Loan Certificates pursuant to and in accordance with the provisions of Section 12.6 hereof.

2.7 Voluntary Prepayments.

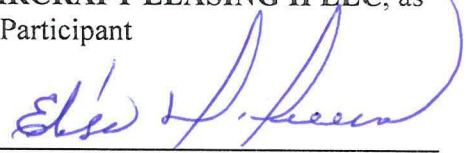
**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed and delivered as of the day and year first above written.

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

By:   
Name: Lane Molen  
Title: Vice President

**TRI-AIRCRAFT LEASING II LLC, as**  
Owner Participant

By



Name: **Elisa Murgas de Moreno**  
Title: **Secretary General- Officer**

AVIANCA HOLDINGS S.A., as  
Guarantor

By



Name:

Elisa Murgas de Moreno

Title:

Secretary

**WILMINGTON TRUST COMPANY, as**  
Security Trustee

By \_\_\_\_\_  
Name:  
Title:




**Matthew C. Bosnjak**  
Financial Services Officer

IN WITNESS WHEREOF, the parties hereto have caused this Loan Agreement to be duly executed and delivered as of the day and year first above written.

**LENDERS**

**NORDDEUTSCHE LANDESBANK  
GIROZENTRALE ACTING THROUGH  
ITS NEW YORK BRANCH, as a Senior  
Lender**

By   
Name: **Claudia Ziemer**  
Title: **Senior Director**

By   
Name: **Oliver Gruenke**  
Title: **MANAGING DIRECTOR**

**TAMWEEL AVIATION FUNDING L.P.,**  
as a Junior Lender

By  \_\_\_\_\_

Name: Mamoun Kuzbari

Title: Director

By \_\_\_\_\_

Name:

Title:

## **SCHEDULE II**

### **CERTAIN DEFINED TERMS**

**“Applicable Margin”** shall mean, in the case of a Tranche A Loan, 2.00% per annum.

**“Bail-In Action”** shall mean the exercise of any Write-Down and Conversion Powers by the applicable EEA Resolution Authority in respect of any liability of an EEA Financial Institution.

**“Bail-In Legislation”** shall mean, with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule.

**“EEA Financial Institution”** shall mean (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

**“EEA Member Country”** shall mean any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

**“EEA Resolution Authority”** shall mean any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

**“EU Bail-In Legislation Schedule”** shall mean the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

**“Fee Letter”** means, either or both, as the context may require, of the Senior Fee Letter and the Junior Fee Letter.

**“Fixed Rate”** shall mean in respect of (A) a Tranche A Loan, the fixed rate of interest determined by the Senior Lenders pursuant to Section 2.2(b) of the Loan Agreement, taking into account such Senior Lender’s Hedging Transaction and Applicable Margin, and (B) a Tranche B Loan, 7.00% per annum. The Fixed Rate for each Tranche shall be as specified on the face of the Loan Certificates evidencing the Loans.

**“Funding Breakage”** shall mean the amount, if any, required to compensate each Lender for any losses, costs or expenses (excluding loss of profit) which it may incur as the result of any payment or prepayment (by acceleration or otherwise) of principal or interest on any Loan held by it not being made on the date irrevocably scheduled therefor (including a prepayment that is not received by the Security Trustee on the date specified in a notice delivered by the Borrower pursuant to Section 2.7 of the Loan Agreement) or the failure to make any such payment on the



date scheduled therefor, including, without limitation, losses, costs or expenses incurred in connection with unwinding or liquidating any deposits, refinancing or funding arrangements with its funding sources (a) to the extent any payment is made on a day other than a Payment Date, from such date of payment to the next Payment Date with respect to the Senior Lenders and the Loans, (b) from the date of an acceleration of the Loans following the occurrence of a Loan Event of Default to the Maturity Date with respect to the Lenders and the Loans, in each case as reasonably determined by such Lender in accordance with customary industry practices applicable to loans similar to the relevant Loan(s), which determination shall be conclusive absent manifest error, (c) as a consequence of any prepayment of the Loans, in each case as reasonably determined by the applicable Lender in accordance with customary industry practices applicable to loans similar to the relevant Loan(s), which determination shall be conclusive absent manifest error, (d) if for any reason the Drawdown Date for any Tranche A Loan does not occur on the Proposed Drawdown Date for such Tranche A Loan (or, if for any reason such Drawdown Date shall not occur on a Proposed Drawdown Date, the applicable Cutoff Date) other than as a result of the failure of any Lender to comply with the terms of Section 2.2 of the Loan Agreement or (e) if for any reason the Drawdown Date for all Loans in respect of the Designated Aircraft does not occur on or prior to the Commitment Termination Date (or such earlier date as requested in writing by the Borrower) other than as a result of the failure of any Lender to comply with the terms of Section 2.2 of the Loan Agreement.

**“FX Breakage”** shall mean the amount, if any, required to compensate the Quoting Bank for any losses, costs or expenses which it may incur, including, without limitation, losses, costs or expenses incurred in connection with unwinding or liquidating the FX Hedge or any related deposits, refinancing, funding or currency arrangements, if for any reason the Drawdown Date for any Loan does not occur on the Proposed Drawdown Date for such Loan.

**“Initiator Fee”** shall mean, in respect of the Aircraft and each Payment Date occurring after the Drawdown Date for the Aircraft, an amount equal to the sum of 0.15% (payable in Euro) of the Tranche A Commitment Amount and 0.15% (payable in USD) of the Tranche B Commitment Amount for the Aircraft, in each case payable quarterly in arrears, in equal installments, on each such Payment Date.

**“Initiator Prepayment Fee”** shall mean, in respect of a Loan as at any date of determination, the present value, as of the date of the relevant prepayment of such Loan, of the remaining installments of Initiator Fee for the Aircraft Allocated To such Loan that, but for such prepayment, would have been payable on the Payment Dates after such prepayment. Such present value shall be determined by discounting the amounts of such installments semi-annually (assuming a 360-day year of twelve 30-day months) from their respective Payment Dates to the date of such prepayment at a rate equal to the Fixed Rate applicable to the Tranche A Loans.

**“Junior Fee Letter”** shall mean that certain Junior Fee Letter dated as of August 24, 2016 among the Borrower, the Junior Lenders and the Guarantor.

**“Prepayment Fee”** means, either or both, as the context may require, of the Tranche A Prepayment Fee and the Tranche B Prepayment Fee.

**Exhibit C**

**MSN 65315 Initiator Fee Letter**

**[FILED UNDER SEAL]**

**Exhibit D**

**Excerpts of MSN 7887 Sub-Lease Agreement**

30 November 2017

**WILMINGTON TRUST COMPANY,**  
NOT IN ITS INDIVIDUAL CAPACITY, BUT SOLELY AS OWNER TRUSTEE FOR AVIANCA  
JOLCO I TRUST  
AS SUB-LESSOR

AND

**AEROVÍAS DEL CONTINENTE AMERICANO S.A. AVIANCA.**  
AS SUB-LESSEE

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AIRCRAFT SUB-LEASE AGREEMENT FOR  
ONE (1) AIRBUS MODEL A320-251N AIRCRAFT,  
BEARING MANUFACTURER'S SERIAL NO. 7887  
AND REGISTRATION MARK N764AV  
WITH TWO CFM INTERNATIONAL S.A. MODEL  
LEAP-1A26 ENGINES

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**THIS AIRCRAFT SUB-LEASE AGREEMENT** (this “**Agreement**”) is made on 30 November 2017

**BETWEEN:**

- (1) **WILMINGTON TRUST COMPANY**, a Delaware trust company, not in its individual capacity, but solely as Owner Trustee for AVIANCA JOLCO I TRUST (the “**Sub-Lessor**”); and
- (2) **AEROVÍAS DEL CONTINENTE AMERICANO S.A. AVIANCA**, a *sociedad anónima* organized under the laws of Colombia (the “**Sub-Lessee**”)

**WHEREAS:**

- (A) Pursuant to the Lease (as hereinafter defined), the Sub-Lessor has leased from the Lessor (as hereinafter defined) one (1) Airbus Model A320-251N aircraft bearing Manufacturer's Serial No. 7887 on the terms and conditions contained in the Lease.
- (B) The Sub-Lessor has agreed to sublease to the Sub-Lessee, and the Sub-Lessee has agreed to sublease from the Sub-Lessor, the Aircraft on the terms and conditions set out herein.

**IT IS AGREED** as follows:

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In this Agreement, the following words and expressions shall have the respective meanings shown opposite them:

“**A Account**” means the Dollar current account of the Lessor number [REDACTED] with the Account Bank ([REDACTED]) or such other account as the Lessor (with the agreement of the Security Agent) may from time to time designate in writing to the Sub-Lessor.

“**A Additional Rental**” means, in respect of any Rental Payment Date, the amount of interest payable under the Loan Agreement on the corresponding Payment Date (as defined in the Loan Agreement).

“**A Basic Rental**” means, in respect of any Rental Payment Date, the amount shown opposite such Rental Payment Date in Column (2) (*A Rental*) of Exhibit 1 to the Lease Schedule Supplement.

“**A Rental**” means the aggregate of the A Basic Rental and the A Additional Rental.

Critical Part shall include any Landing Gear, Engine, Engine accessory, life limited Part and hard time component.

“**Cycle**” means one take off and landing of the Aircraft, such period elapsing from the moment the Aircraft wheels leave the runway on take off until the time that the Aircraft wheels next touch the runway.

“**Damage Notification Threshold**” means \$1,000,000 or the equivalent in any other currency;

“**Debt Fee**” means each payment instalment set out in column (A) of Schedule 3;

“**Default Rate**” means the rate *per annum* which is two per cent. (2.00%) *per annum* over the Interest Rate (as defined in the Loan Agreement).

“**Delivery**” means the time at which the Aircraft is delivered from the Sub-Lessor to the Sub-Lessee hereunder.

“**Delivery Date**” means, in respect of the Aircraft, the date on which Delivery takes place.

“**DER**” means designated engineering representative.

“**De-registration Power of Attorney**” means the de-registration power of attorney from the Sub-Lessee and/or the Sub-Lessor authorising certain individuals indicated by the Security Agent to do anything or act or to give any consent or approval which may be required to obtain de-registration of the Aircraft and export the Aircraft from the State of Registration substantially in the form of Schedule 6 (*Form of De-registration Power of Attorney*) or such other form as is necessary or desirable in the State of Registration or as may be issued following the end of the Security Period pursuant to Clause 15.5(d).

“**Discount Rate**” means the Fixed Rate minus the Margin;

“**Dollars**” and the sign “\$” and “**USD**” mean the lawful currency for the time being of the United States and in respect of all payments to be made under this Agreement in Dollars, means funds which are for same day settlement in the New York Clearing House Interbank Payments System (or such other US Dollar funds as may at the relevant time be customary for the settlement in New York City of international banking transactions denominated in United States dollars).

“**EASA**” means the European Aviation Safety Agency and any successor thereof.

**“Engine”** means either or both (as the context may require) of the two (2) engines installed on the Airframe at the Delivery Date and described in Schedule 1 (*Aircraft Description*) (or any other engine which replaces such engine or is substituted therefor and of which title vests in the Lessor in accordance with the terms of this Agreement) whether or not installed on the Airframe or installed or not installed on any other airframe for so long as title thereto shall remain vested in the Lessor in accordance with the terms of this Agreement, together in each case with any and all Parts incorporated in, installed on or attached to, such Engine (or any other engine which replaces such Engine or is substituted therefor and of which title vests in the Lessor in accordance with the terms of this Agreement) when delivered and leased hereunder or from time to time thereafter, or which, after removal therefrom, remain the property of the Lessor and all replacements, renewals and additions made in accordance with the terms of this Agreement.

**“Engine Manufacturer”** means CFM International, S.A..

**“Engine Performance Restoration Shop Visit”** means at a minimum, in respect of an Engine, the performance of off-wing engine maintenance and repair accomplished for that Engine including the complete visual inspection and repair as necessary in accordance with the Engine Manufacturer's then current revision of the engine manual and workscope planning guide (or equivalent) of all the modules of such Engine, including (without limitation) complete destacking of the fan, compressor, combustion and turbine modules, complete deblading of all rotor assemblies and complete visual, dimensional and non-destructive testing (NDT) inspection of all parts to overhaul level inspection, with repair and replacement, as required, followed by re-assembly, balancing and testing.

**“Engine Warranties”** means the warranties granted by the Engine Manufacturer in relation to the Engines, as more particularly defined in the Engine Warranties Agreement.

**“Engine Warranties Agreement”** means the engine warranties agreement entered, or to be entered, into between the Engine Manufacturer, the Sub-Lessee, the Sub-Lessor, the Lessor and the Security Agent in relation to the warranties relating to the Engines.

**“Equity Fee”** means each payment instalment set out in column (B) of Schedule 3;

**“Event of Default”** means any of the events and/or circumstances referred to in Clause 18 (*Events of Default*).

**“Excepted Reason”** means:

(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] ([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).



including making any filing, recording or registration with the Aviation Authority, Aerocivil or any other Government Entity or as required to comply with any applicable law.

**4.3 Delivery Cut-Off Date**

If for any reason Delivery shall not have occurred at or before 11:59 p.m. (Tokyo time) on [●] or such later date as the Sub-Lessor, the Lessor, the Security Agent and the Sub-Lessee may agree, the obligations of the Sub-Lessor to lease the Aircraft under this Agreement shall (unless otherwise agreed by the Sub-Lessor, the Lessor and the Sub-Lessee) automatically terminate and the Sub-Lessee shall be released from its obligation to lease the Aircraft hereunder, but without prejudice to any other accrued liabilities or obligations of the Sub-Lessee.

**5. PAYMENT PROVISIONS**

**5.1 Rental Payments**

- (a) The Sub-Lessee shall on each Rental Payment Date during the Lease Period pay to the Sub-Lessor instalments of the Rental.

**5.2 Additional rental**

- (a) On each Additional Rental Payment Date, the Sub-Lessee shall pay to the Initiator Account, by way of additional rental payment, the corresponding amount of Debt Fee as set out in Schedule 3; and
- (b) On each Additional Rental Payment Date, the Sub-Lessee shall pay to the Initiator Account, by way of additional rental payment, the corresponding amount of Equity Fee as set out in Schedule 3.
- (c) The Sub-Lessee acknowledges that the Initiator has already provided services prior to the Delivery Date, and accordingly agrees that the Sub-Lessee's obligations to pay the Initiator Fees 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 Sub-Lessee 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 Sub-Lessee 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 Sub-Lessee shall have no

further obligation to pay any Initiator Fee under this Agreement. The Initiator Fees payable under this Agreement, once paid, shall not be refundable in any circumstances.

For purposes of this Clause 5.2(d):

**“Accelerated Initiator Fee”** means, as of the date when a notice is served declaring the same to be due and payable pursuant to Clause 5.2(d), the present value of the sum of the remaining instalments of Initiator Fee payable from the date of such notice to the final scheduled date of the last instalment of Debt Fee and 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 Loan under the 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 Value or the Special Termination Value being expressed to fall due and payable under the Lease for any reason;
  - (iii) the Lease Period ending under the Lease or the Lease Term ending under this Agreement for any reason; or
  - (iv) the Sub-Lessee fails to pay any amount of Initiator Fee 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 Sub-Lessee to pay any amount of Initiator Fee on the due date (if such amount remains unpaid for three (3) Business Days) shall constitute an “event of default” under this Agreement.
- (f) Sub-Lessor 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.
- (g) The agreement as to the payment of the Initiator Fees under this Sub-Lease is a bilateral matter as between the Sub-Lessee and the Initiator, and no consent or act is required by the Sub-Lessor for the Initiator to enforce its rights hereunder, or for the Sub-Lessee and the Initiator to agree any amendment or variation of any

payment of Initiator Fees. For the avoidance of doubt, the Initiator acknowledges and agrees that no consent or act is required by the Initiator for the Sub-Lessor (or any assignee) to enforce its rights under this Agreement, or for the Sub-Lessor and the Sub-Lessee to agree any amendment or variation of this Agreement, the Lease or any other Operative Document, provided that no such amendment may reduce, terminate or amend the Initiator's rights under this Agreement or the Guarantee (Initiator).

- (h) Any amendment to the terms of the Lease or this Agreement shall not affect the obligation of the Sub-Lessee to make payments to the Initiator in the manner and on the dates set out in this Agreement unless consented to by Initiator in writing.
- (i) The Initiator acknowledges that neither the Lessor nor any Financing Party shall have any fiduciary duty to the Initiator.
- (j) The Initiator shall have no right to exercise any remedy (including the right to terminate this Agreement) with respect to any Collateral or (other than to claim against the Guarantor under the Guarantee (Initiator)) to take action under any other Operative Document.
- (k) The Initiator shall be entitled to enforce its rights against the Sub-Lessee under and in connection with this Clause 5.2 as a third party, notwithstanding that the Initiator is not a signatory to this Agreement, pursuant to the Contracts (Rights of Third Parties) Act 1999.

### 5.3 **Rental Payable in Addition**

For the avoidance of doubt: (a) if a date on which any Termination Value, Special Termination Value or Purchase Option Price falls due is also a Rental Payment Date, the Rental due on such Rental Payment Date shall also be payable; and (b) the leasing of the Aircraft shall cease upon the occurrence of a Total Loss with respect to the Aircraft or the Airframe, **provided** that the Rental shall continue to be due and payable up until and including the date on which all amounts payable on the Total Loss Payment Date pursuant to Clause 17.1 have been fully paid and discharged.

### 5.4 **Currency of Payments**

All payments hereunder:

**SCHEDULE 3  
INITIATOR FEES**

	(A)	(B)	(C)
<b>Rental Payment Date</b>	<b>Debt Fee (US\$)</b>	<b>Equity Fee (US\$)</b>	<b>Total Fee (\$)</b>
12/4/2017	0	0	-
12/31/2017	4,522.50	5,653.13	10,175.63
3/31/2018	15,075.00	18,843.75	33,918.75
6/30/2018	15,242.50	19,053.13	34,295.63
9/30/2018	15,410.00	19,262.50	34,672.50
12/31/2018	15,410.00	19,262.50	34,672.50
3/31/2019	15,075.00	18,843.75	33,918.75
6/30/2019	15,242.50	19,053.13	34,295.63
9/30/2019	15,410.00	19,262.50	34,672.50
12/31/2019	15,410.00	19,262.50	34,672.50
3/31/2020	15,242.50	19,053.13	34,295.63
6/30/2020	15,242.50	19,053.13	34,295.63
9/30/2020	15,410.00	19,262.50	34,672.50
12/31/2020	15,410.00	19,262.50	34,672.50
3/31/2021	15,075.00	18,843.75	33,918.75
6/30/2021	15,242.50	19,053.13	34,295.63
9/30/2021	15,410.00	19,262.50	34,672.50
12/31/2021	15,410.00	19,262.50	34,672.50
3/31/2022	15,075.00	18,843.75	33,918.75
6/30/2022	15,242.50	19,053.13	34,295.63
9/30/2022	15,410.00	19,262.50	34,672.50

	(A)	(B)	(C)
<b>Rental Payment Date</b>	<b>Debt Fee (US\$)</b>	<b>Equity Fee (US\$)</b>	<b>Total Fee (\$)</b>
12/31/2022	15,410.00	19,262.50	34,672.50
3/31/2023	15,075.00	18,843.75	33,918.75
6/30/2023	15,242.50	19,053.13	34,295.63
9/30/2023	15,410.00	19,262.50	34,672.50
12/31/2023	15,410.00	19,262.50	34,672.50
3/31/2024	15,242.50	19,053.13	34,295.63
6/30/2024	15,242.50	19,053.13	34,295.63
9/30/2024	15,410.00	19,262.50	34,672.50
12/31/2024	15,410.00	19,262.50	34,672.50
3/31/2025	15,075.00	18,843.75	33,918.75
6/30/2025	15,242.50	19,053.13	34,295.63
9/30/2025	15,410.00	19,262.50	34,672.50
12/31/2025	15,410.00	19,262.50	34,672.50
3/31/2026	15,075.00	18,843.75	33,918.75
6/30/2026	15,242.50	19,053.13	34,295.63
9/30/2026	15,410.00	19,262.50	34,672.50
12/31/2026	15,410.00	19,262.50	34,672.50
3/31/2027	15,075.00	18,843.75	33,918.75
6/4/2027	10,887.50	13,609.38	24,496.88
6/30/2027	4,355.00	-	4,355.00
9/30/2027	15,410.00	-	15,410.00
12/31/2027	15,410.00	-	15,410.00

	(A)	(B)	(C)
<b>Rental Payment Date</b>	<b>Debt Fee (US\$)</b>	<b>Equity Fee (US\$)</b>	<b>Total Fee (\$)</b>
3/31/2028	15,242.50	-	15,242.50
6/30/2028	15,242.50	-	15,242.50
9/30/2028	15,410.00	-	15,410.00
12/31/2028	15,410.00	-	15,410.00
3/31/2029	15,075.00	-	15,075.00
6/30/2029	15,242.50	-	15,242.50
9/30/2029	15,410.00	-	15,410.00

**The Sub-Lessor:**

**SIGNED** for and on behalf of:

**WILMINGTON TRUST COMPANY**

**(not in its individual capacity but solely as Owner Trustee for Avianca JOLCO I Trust)**

By:



Name:

Title:

Matthew C. Bosnjak  
Financial Services Officer

**The Sub-Lessee:**

**SIGNED** for and on behalf of:

**AEROVÍAS DEL CONTINENTE AMERICANO S.A. AVIANCA**

By:



Name: Roberto Held Otero

Title: CFO