

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

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In re :  
:  
AEROCENTURY CORP., *et al.*, : Chapter 11  
:  
Debtors.<sup>1</sup> : Case No. 21-10636 (\_\_\_\_)  
:  
: (Joint Administration Requested)  
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**DEBTORS' MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS  
(A) AUTHORIZING USE OF CASH COLLATERAL; (B) GRANTING  
ADEQUATE PROTECTION; AND (C) GRANTING RELATED RELIEF**

The debtors and debtors in possession in the above-captioned cases (together, the “Debtors,” and each individually, a “Debtor”), hereby submit this motion (the “Motion”) for the entry an interim order (the “Interim Order”), substantially in the form attached hereto as **Exhibit A**, (i) authorizing the Debtors, pursuant to sections 105(a), 361, 362, 363, 364 and 552 of title 11 of the United States Code (the “Bankruptcy Code”), Rule 4001(b) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Local Rule 4001-2 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), use of Cash Collateral (as defined below), (ii) granting adequate protection to Drake Asset Management Jersey Limited, a company incorporated in Jersey (Channel Islands), as lender (in its capacity as such, the “Prepetition Lender”) and UMB Bank, N.A., a national banking association formed under the laws of the United States, as Agent (in its capacity as such, “Agent”) in connection with the Prepetition Loan Documents (as defined below) upon the terms set forth in the Interim Order, (c) modifying the automatic stay as set forth in the Interim Order and waiving the

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of their federal employer identification number, are: AeroCentury Corp. (3974); JetFleet Holding Corp. (5342); and JetFleet Management Corp. (0292). The Debtors' mailing address is 1440 Chapin Avenue, Suite 310, Burlingame, CA 94010.



fourteen (14) day stay provisions of Bankruptcy Rules 4001(a)(3) and 6004(h); and (d) scheduling a final hearing on this motion (the “Final Hearing”). In support of this Motion, the Debtors rely upon the *Declaration of Harold M. Lyons in Support of Chapter 11 Petitions and First Day Relief* (the “First Day Declaration”),<sup>2</sup> which is incorporated herein by reference, and respectfully represent as follows:

### **JURISDICTION**

1. The Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334, and the Amended Standing Order of Reference from the United States District Court for the District of Delaware dated as of February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b), and the Debtors consent, pursuant to Local Rule 9013-1(f), to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution. Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief requested herein are sections 105, 361, 362, 363, 364, 506/(a), 507(b), 552, and 553 of the Bankruptcy Code, Bankruptcy Rules 2002, 4001, 6003, 6004, 7062, and 9014, and Local Rules 2002-1(b), 4001-2, and 9013-1(m).

### **BACKGROUND**

3. On the date hereof (the “Petition Date”), each of the Debtors commenced a bankruptcy case (collectively, the “Chapter 11 Cases”) by filing a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors are authorized to continue to operate their business

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<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the First Day Declaration or the Interim Order, as applicable, unless otherwise noted.

and manage their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No official committees have been appointed in the Chapter 11 Cases, and no request has been made for the appointment of a trustee or examiner.

4. Additional factual background relating to the Debtors' business, capital structure, and the commencement of the Chapter 11 Cases is set forth in further detail in the First Day Declaration.

### **PREPETITION SECURED DEBT OBLIGATIONS**

5. The Debtors' primary source of debt financing has been the Prepetition Loan (defined below), which was established pursuant to a revolving credit facility with a maximum borrowing amount of \$145,000,000.00.

6. MUFG Union Bank, N.A., Umpqua Bank, Zions Bancorporation, N.A. (f/k/a ZB, N.A.) d/b/a California Bank & Trust, and Columbia State Bank, each a lender (collectively, the "Original Lenders"), MUFG Union Bank, N.A., as original agent (the "Original Agent"), and Debtor AeroCentury Corp., as borrower, and the other Debtors, as guarantors, were parties to that certain *Fourth Amended and Restated Loan and Security Agreement dated as of May 1, 2020* (as it has been amended, restated, modified, supplemented, and from time to time prior to the Petition Date, and as assigned by the Original Lenders to the Prepetition Lender as new lender and Agent, the "Prepetition Loan Agreement"), and together with all agreements, documents, notes, mortgages, security agreements, pledges, guaranties, forbearance agreements, subordination agreements, instruments, amendments, and any other agreements and documents delivered pursuant thereto or in connection therewith, including that certain *Fourth Amended and Restated Mortgage and Security Agreement dated as of May 1, 2020* made by the Debtors in favor of the Original Agent (as amended, modified, supplemented and assigned, the "Mortgage"), each as amended, modified, restated or supplemented

from time to time and as assigned, the “Prepetition Loan Documents”) pursuant to which the Debtors obtained secured financing and other financial accommodations (the “Prepetition Loan”) from the Original Lenders

7. Pursuant to that certain *Loan Purchase and Sale Agreement* dated as of October 2, 2020, (the “Loan Purchase Agreement”) among the Prepetition Lender, the Agent, the Original Lenders, the Original Agent and MUFG Bank, Ltd., the Prepetition Loan was sold by the Original Lenders to the Prepetition Lender, and the Original Agent was replaced with the Agent. Concurrent with the sale of the Prepetition Loan: (a) the Prepetition Loan Agreement and Prepetition Loan Documents were assigned by the Original Lenders to the Prepetition Lender and by the Original Agent to the Agent; (b) the Mortgage and original financing statements were assigned by the Original Agent to the Agent, acting on behalf of the Prepetition Lender, and accordingly the Agent is now the holder of valid properly-perfected first priority liens on all of the Prepetition Collateral (as defined below); and (c) the Debtors executed and delivered the Deposit Account Control Agreements (as defined in the Prepetition Loan Agreement) in favor of the Agent, in place of the deposit account control agreements previously executed in favor of the Original Agent to perfect Agent’s security interest in the Accounts identified in the Deposit Account Control Agreements.

8. The Prepetition Loan is secured by valid, enforceable, duly perfected, and non-avoidable liens and security interests granted to the Agent (the “Prepetition Liens”) on the Collateral (as defined in the Mortgage) (the “Prepetition Collateral”). The Prepetition Liens are senior, first-priority liens on all of the Prepetition Collateral, except for any items of the Prepetition Collateral that are, as of the Petition Date, subject to valid, enforceable, duly perfected, and non-avoidable first-priority senior liens of third parties to the extent expressly permitted under the

Prepetition Loan Documents (the “Permitted Liens” and the items of Prepetition Collateral securing the Permitted Liens collectively, the “Permitted Lien Collateral”).

9. As of March 26, 2021, (a) the aggregate amount of principal and accrued interest owed under the Prepetition Loan Documents to the Prepetition Lender is approximately \$83,164,109 plus fees (including attorneys’ fees), expenses, and other additional amounts that are chargeable, reimbursable, or otherwise owing under the Prepetition Loan Documents (such obligations, collectively, the “Prepetition Obligations”).

10. As of the Petition Date, all of the Debtors’ cash, including, without limitation, the cash in its deposit accounts, securities accounts, and any other accounts, wherever located, whether as original collateral or as proceeds of other Prepetition Collateral, constitutes Cash Collateral of the Prepetition Lender.

#### **DEBTORS’ REQUEST TO USE CASH COLLATERAL**

11. It is essential to the Debtors’ efforts to preserve and maximize the value of their assets that they obtain the authority to use the cash derived from operating the businesses (the “Cash Collateral”). The Cash Collateral will be used to pay for expenses identified in the budget attached as **Exhibit A** to the Interim Order (the “Approved Budget”). Such expenses include, but are not limited to, employee payroll and other benefits, and other expenses related to the Debtors’ business operations. The Approved Budget was prepared by the Debtors, with the assistance of their professionals, and shows the Debtors’ projected expenditures during the period from the Petition Date through and including June 25, 2021, and estimates the period in which such cash expenditures will need to be paid. The Debtors believe that the use of Cash Collateral will be sufficient to fund

their operations and the costs of these Chapter 11 Cases without the need for debtor-in-possession financing.

12. The reasons supporting the Debtors' need to use Cash Collateral during the course of these cases are compelling. As the Debtors have essentially no unrestricted funds, use of Cash Collateral is required to fund the day-to-day operating expenses, including payments to employees and otherwise sustaining the going concern value of the Debtors' businesses. Unless the Court authorizes use of the Cash Collateral, the Debtors will be unable to pay for services and expenses necessary to preserve and maximize the value of the Debtors' assets. Indeed, absent sufficient funds to support the Debtors' business operations, the value of the Debtors' assets will quickly erode. Therefore, authorization to use Cash Collateral pending the Final Hearing is in the best interests of the Debtors' estates and creditors.

**BANKRUPTCY RULE 4001 AND LOCAL RULE 4001-2 CONCISE STATEMENT**

13. The Debtors and the Prepetition Lender have reached an agreement with respect to the Debtors' use of Cash Collateral upon the terms and conditions set forth in the Interim Order and summarized below. Pursuant to Bankruptcy Rules 4001(b)(1) and (d) and Local Rule 4001-2(a)(ii), the Debtors submit the following concise statement of the material terms of the Interim Order:<sup>3</sup>

SUMMARY OF MATERIAL TERMS		
<b>Commitment</b>	N/A	N/A
Bankruptcy Rule 4001(c)(1)(B)		

<sup>3</sup> The summary of key provisions of the Interim Order is qualified by the terms of the Interim Order. In the event of an inconsistency, the terms of the Interim Order shall control. Unless otherwise defined herein, all capitalized terms shall have the meanings ascribed to them in the Interim Order.

Local Rule 4001-2(a)(i)(A)		
<b>Maturity Date</b>  Bankruptcy Rule 4001(c)(1)(B)  Local Rule 4001-2(a)(i)	N/A	N/A
<b>Use of Proceeds</b>  Bankruptcy Rule 4001(c)(1)(B)  Local Rule 4001-2(a)(i)	The ability of the Debtors to use cash collateral is vital to the Debtors' Estates and their creditors, and the Debtors' agreement to the terms and conditions set forth in the Interim Order is a prudent exercise of the Debtors' sound business judgment. The use of Designated Cash Collateral will enable the Debtors to maximize and preserve the value of the Debtors' business pending the contemplated sale of substantially all of their assets, and the potential confirmation of a chapter 11 plan, and to satisfy payroll obligations and other working capital and general corporate purposes of the Debtors consistent with the terms set forth in the Interim Order and the Approved Budget. Among other things, entry of the Interim Order is necessary to maximize the value of the Debtor's assets and to avoid immediate and irreparable harm to the Debtors and their Estates and, accordingly, is in the best interests of the Debtors, their Estates, and their creditors.	Interim Order at H
<b>Interest Rate</b>  Bankruptcy Rule 4001(c)(1)(B)  Local Rule 4001-2(a)(i)	N/A	
<b>Fees and Expenses</b>  Bankruptcy Rule 4001(c)(1)(B)  Local Rule 4001-2(a)(i)(B), 4001-2(a)(i)(K)	N/A	

<b>Provisions Limiting Court's Power or Discretion to Enter Future Orders</b>  Local Rule 4001-2(a)(i)(C)	N/A	
<b>Provisions Providing for Funding of Non-Debtor Affiliates</b>  Local Rule 4001-2(a)(i)(D)	N/A	
<b>Material Conditions to Closing and Borrowing, Including Budgets</b>  Bankruptcy Rule 4001(c)(1)(B)  Local Rule 4001-2(a)(i)(E)	<p>Provided no Event of Default exists, and during any Remedies Notice Period, the Debtors are authorized to use certain Prepetition Collateral, including Cash Collateral but specifically excluding all Gross Revenue After ECD (as limited to exclude Gross Revenue After ECD, the "<u>Designated Cash Collateral</u>"), in accordance with the Approved Budget, subject to and in accordance with the terms, conditions, and limitations set forth in the Interim Order. From and after the Remedies Notice Period, the Debtors shall not be authorized to use any Prepetition Collateral except with respect to the Carve Out, including Cash Collateral or Designated Cash Collateral, unless such use is consented to by the Prepetition Lender in its sole and absolute discretion or unless otherwise ordered by the Court after notice and a hearing.</p> <p>Prior to its release under Section 8.4 of the Asset Purchase Agreement, any and all "cash proceeds" or Cash Collateral resulting from the non-ordinary course sale or disposition of any Prepetition Collateral not subject to sale in the Asset Purchase Agreement shall be held upon and from receipt by the Debtors subject to the Prepetition Liens and Replacement Liens, and may only be used pursuant to the Approved Budget or as otherwise agreed by the Prepetition Lender in writing in its sole discretion.</p> <p>The Debtors have delivered to the Prepetition Lender a 13-week Approved Budget for the time period commencing with the Petition Date. A copy of the Approved Budget is attached to the Interim Order as Exhibit A. Other than Permitted Variances, any revisions made by the Debtors to the budget from time to time shall be in form and substance acceptable to the Prepetition Lender and shall not be deemed to constitute the "Approved Budget" for purposes of the</p>	Interim Order at 2



	<p>Interim Order (i) until the Prepetition Lender's approval of such updated budget has been confirmed in writing by counsel to the Prepetition Lender or (ii) five (5) business days have passed since the counsel to the Prepetition Lender has received such revision without objection by the Prepetition Lender in writing. Designated Cash Collateral used under the Interim Order shall be used by the Debtors only in accordance with the Approved Budget and the Interim Order.</p> <p>The Debtors shall deliver to the Prepetition Lender biweekly on every other Monday following the Petition Date, an Approved Variance Report for the trailing two (2) week period. Each Approved Variance Report shall indicate whether there are any adverse variances that exceed the "Permitted Variances," which means, in each case measured on a cumulative basis, (x) up to 15% for cash disbursements measured weekly on a line-item basis, or (y) up to 10% in the aggregate for all cash disbursements; provided, however, that for purposes of calculating variances, cash disbursements shall not include disbursements made by the Debtors in payment of professional fees and expenses related to administration of the Chapter 11 Cases.</p> <p>The Prepetition Lender (i) may assume that the Debtors will comply with the Approved Budget, (ii) shall have no duty to monitor such compliance, and (iii) shall not be obligated to pay (directly, or indirectly from any Prepetition Collateral that has been paid, disbursed or distributed to the Prepetition Lender) any unpaid expenses incurred or authorized to be incurred pursuant to the Approved Budget; provided that the foregoing does not affect the Debtors' right, subject to the terms of the Interim Order, to use Designated Cash Collateral to make payments pursuant the Approval Budget.</p>	
<p><b>Carve Out</b></p> <p>Bankruptcy Rule 4001(b)(1)(B)(iii)</p> <p>Local Rule 4001-2(a)(i)(F)</p>	<p>(a) Generally. The liens and claims of the Prepetition Lender, including the Replacement Liens, the Adequate Protection Claim and the Prepetition Liens, shall be subject to the payment, without duplication, of the following fees and expenses (the amounts set forth below, together with the limitations set forth therein, collectively, the "<u>Carve-Out</u>") solely from the Designated Cash Collateral and in the priority set forth below:</p> <p>(i) the unpaid fees required to be paid by the Debtor to the Clerk of the Bankruptcy Court or to the Office of the United States Trustee under 28 U.S.C. § 1930(a)(6), plus statutory interest, if any, imposed under 31 U.S.C. § 3717, provided, however, that there is no limitation on the obligations of the Debtors and their Estates with respect to unpaid fees payable to the U.S. Trustee and</p>	Interim Order at 6

	<p>Clerk of the Bankruptcy Court pursuant to section 1930 of Title 28 of the United States Code.</p> <p>(ii) reasonable fees and expenses incurred by a trustee in any Successor Case under section 726(b) of the Bankruptcy Code in an aggregate cumulative amount not to exceed \$25,000; and</p> <p>(iii) the Court-approved fee and expense claims of the respective retained professionals of the Debtors and the Creditors' Committee which were incurred (A) on and after the Petition Date and before the Carve-Out Trigger Date but not to exceed the amounts set forth for each Retained Professional in the Approved Budget as of the Carve-Out Trigger Date and (B) on and after the Carve-Out Trigger Date, pursuant to the Approved Budget, in an aggregate cumulative amount not to exceed \$100,000. Nothing in the Interim Order shall waive or limit the right of the Prepetition Lender or any party in interest to object to the allowance of any such fees and expenses of Retained Professionals and Committee Member Expenses.</p> <p>(b) As used in the Interim Order, the term "Carve-Out Trigger Date" means the date on which the Prepetition Lender provides written notice to the Debtors, the U.S. Trustee and counsel to the Creditors' Committee of (i) the Termination Date, or (ii) an Event of Default.</p> <p>(c) Notwithstanding anything to the contrary set forth in the Interim Order, any obligations of the Prepetition Lender or Agent with respect to the Carve-Out shall terminate upon the earlier to occur of the Effective Date (as defined in the Asset Purchase Agreement) and the date a chapter 11 plan is confirmed in the Bankruptcy Cases.</p>	
<p><b>Security and Priority Under the DIP Facility</b></p> <p>Bankruptcy Rule 4001(c)(1)(B)(i), 4001(c)(1)(B)(ii)</p> <p>Local Rule</p> <p>4001-2(a)(i)(G), 4001-2(a)(i)(N), 4001-2(a)(i)(P)</p>	See "Adequate Protection" below.	

<b>Milestones</b>  Bankruptcy Rule 4001(c)(1)(B)(vi)  Local Rule 4001-2(a)(i)(H)	N/A	
<b>Prepayment</b>  Local Rule 4001-2(a)(i)(I)	N/A	
<b>Provisions Governing Joint Liability</b>  Local Rule 4001-2(a)(i)(J)	N/A	
<b>Provisions Requiring Debtors to Pay Agent or Lender's Expenses and Attorneys' Fees Without Notice or Review</b>  Local Rule 4001-2(a)(i)(K)	N/A	
<b>Provisions Prohibiting Use of Estate Funds to Investigate Liens and Claims of Prepetition Lender</b>  Local Rule 4001-2(a)(i)(L)	N/A	
<b>Termination or Events of Default</b>  Bankruptcy Rule 4001(c)(1)(B)  Local Rule 4001-2(a)(i)(M)	The Debtors' right, and the right of any other representative of the Estates, to use Designated Cash Collateral under the Interim Order shall terminate (other than in respect of the Carve Out as, and to the limited extent, expressly provided in Paragraph 6 of the Interim Order), automatically and without the need for notice or demand by the Prepetition Lender or any further order of the Court, on the earliest to occur of the following: (a) thirty-five (35) calendar days after the Petition Date if the Final Order has not been entered by such date; (b) the closing date of any sale of the Debtors' business or of substantially all of the assets of the Estate, other than a sale pursuant to the Asset Purchase Agreement without the consent of the Prepetition Lender; (c) the appointment of a chapter 11 trustee or of an examiner	Interim Order at 10

	<p>with expanded powers in the Chapter 11 Case (having powers beyond those set forth in sections 1106(a)(3) and (4) of the Bankruptcy Code); (d) the conversion of the Chapter 11 Case to a case under chapter 7 of the Bankruptcy Code; (e) the dismissal of the Chapter 11 Case; (f) (i) a determination by the Court that a material violation or breach (other than by the Prepetition Lender), of any of the provisions of the Interim Order has occurred, or (ii) the occurrence of any of the events described in Paragraph 23 of the Interim Order; (g) any other (i.e. not material) violation or breach by the Debtors of any of the provisions of the Interim Order that is not disputed or cured within five (5) business days of written notice from the Prepetition Lender (either (f)(i), (f)(ii), or (g), an “Event of Default”); (h) the occurrence of the Effective Date (as that term is defined in the Asset Purchase Agreement); and (i) the effective date of any plan of reorganization in the Chapter 11 Case that has been confirmed by an order of the Court. The date on which the earliest of clauses (a) through (i) occurs is referred to as the “Termination Date.” Upon the Termination Date, the Debtors shall fully reserve the Retained Professional Carve-Out from the Designated Cash to be held for the benefit of the Retained Professionals.</p>	
<p><b>Provisions (a) Granting Cross-Collateralization Protection, (b) Elevating Pre-petition Debt to Admin. Expense, or (c) Securing Pre-petition Debt with Liens on Postpetition Assets</b></p> <p>Local Rule 4001-2(a)(i)(N)</p>	N/A	
<p><b>“Roll-Up” Provisions</b></p> <p>Local Rule 4001- 2(a)(i)(O)</p>	<u>N/A.</u>	
<p><b>Priming Provisions</b></p> <p>Local Rule 4001-2(a)(i)(P)</p>	N/A	
<p><b>Provisions or Findings of Fact (i) Binding Estate or Parties in Interest w/r/t Validity, Perfection, or Amount of Prepetition Liens or</b></p>	See “Provisions Limiting What Parties in Interest (Other Than the Debtors) May Raise” below	

<p><b>the Waiver of Claims Against the Secured Creditor Without Giving Parties in Interest at Least Seventy-Five (75) Days from the Entry of the Initial Interim Order to Investigate Such Matters</b></p> <p>Local Rule 4001-2(a)(i)(Q)</p>		
<p><b>Provisions Immediately Approving All Terms and Conditions of the Postpetition Loan Agreement</b></p> <p>Local Rule 4001-2(a)(i)(R)</p>	<p>The Interim Order shall not be stayed and shall be valid and fully effective immediately upon entry, notwithstanding the possible application of Bankruptcy Rules 4001(a)(3), 6003(b), 6004(h), 7062, and 9014, or otherwise, and the Clerk of the Court is hereby directed immediately to enter the Interim Order on the Court's docket in this Chapter 11 Case.</p>	<p>Interim Order at 29</p>
<p><b>Waivers/Modification of Automatic Stay and Provisions Allowing Lenders to Enforce Remedies Without at Least Five (5) Days Written Notice</b></p> <p>Bankruptcy Rule 4001(c)(1)(B)(iv)</p> <p>Local Rule 4001-2(a)(i)(S)</p>	<p>The automatic stay provisions of section 362 of the Bankruptcy Code shall be deemed, and are hereby, modified, without the need for further order of the Court, solely to permit the Prepetition Lender upon, or at any time after, the occurrence of any Termination Date (including, without limitation, as a result of the occurrence of any Event of Default under the Interim Order) to deliver written notice by electronic mail to counsel for the Debtors, counsel for any Creditors' Committee, counsel for any trustee, and counsel for the U.S. Trustee, stating that the Prepetition Lender elects to commence the exercise of rights and remedies in respect of the Interim Order and the Prepetition Loan Documents, and under applicable bankruptcy and non-bankruptcy law, including, without limitation, in respect of its Prepetition Collateral and its Replacement Liens.</p> <p>Following the fifth (5th) business day following the delivery by the Prepetition Lender of a Remedies Notice, the automatic stay provisions of section 362 of the Bankruptcy Code shall be deemed, and are hereby, modified, without the need for further order of the Court, to permit the Prepetition Lender and Agent, to exercise all rights and remedies provided for in the Interim Order or in the Prepetition Loan Documents or under applicable bankruptcy or non-bankruptcy law, including, without limitation, the rights to (i) take any actions reasonably calculated to preserve or safeguard the assets and property subject to the Prepetition Liens and/or Replacement Liens and/or to prepare any or all</p>	<p>Interim Order at 11</p>

	<p>such assets and property for sale; (ii) foreclose or otherwise enforce the Prepetition Liens and the Replacement Liens; (iii) exercise collection rights in respect of the Prepetition Liens and the Replacement Liens, including, without limitation, in respect of deposit accounts, securities accounts, accounts receivable, payment intangibles, licenses, instruments, and/or any other rights to payment, proceeds, and Cash Collateral (including Designated Cash Collateral), and sweep Cash Collateral (including Designated Cash Collateral) as provided in the Prepetition Loan Documents or under applicable law; and (iv) exercise any other rights and remedies under the Interim Order, the Prepetition Loan Documents, applicable bankruptcy law, and/or applicable non bankruptcy law.</p> <p>Following the expiration of the Remedies Notice Period, the Debtors (or any trustee in the Chapter 11 Case or in a Successor Case) shall cooperate with the Prepetition Lender and Agent in connection with its exercise of rights and remedies by, among other things (in all instances subject to the Carve-Out), (i) providing access to the Prepetition Collateral and the Debtors' premises to the Prepetition Lender and its representatives and agents (including, without limitation, any collateral liquidator or consultant), (ii) providing access to the Debtors' books and records to the Prepetition Lender and its representatives and agents, (iii) providing any information or documents reasonably requested by the Prepetition Lender or its representatives or agents, (iv) performing the other obligations of the Debtors in connection with the Prepetition Lender's and Agent's exercise of rights and remedies as required by the Prepetition Loan Documents, and (v) taking reasonable steps to safeguard and protect the assets and property subject to the Prepetition Liens and/or Replacement Liens, and (vi) refraining from any interference with (and from any encouragement of others to interfere with) the Prepetition Lender's enforcement of its rights and remedies.</p> <p>The Court shall retain exclusive jurisdiction to hear and resolve any disputes arising under or related to the Interim Order, including, without limitation, matters relating to the application or continuation of the automatic stay of section 362(a) of the Bankruptcy Code or any other injunctive relief that may be requested in accordance with the Interim Order.</p>	
<b>Provisions Limiting What Parties in Interest (Other Than the Debtors) May Raise</b>  Local Rule	The Debtor's acknowledgements and stipulations set forth in Paragraph D of the Interim Order and the releases set forth in Paragraph 9 of the Interim Order are final and binding upon the Debtors in all circumstances upon entry of the Final Order. The Debtors' Stipulations shall be binding upon each other party in interest, including, without limitation, a Creditors' Committee,	Interim Order at 8

4001-2(a)(i)(T)	<p>unless a Challenge is commenced by a Creditors' Committee, or any other party with standing, within the Challenge Period and a final, non-appealable order is entered sustaining any such Challenge.</p> <p>"Challenge" and "Challenges" shall mean individually or collectively: (i) an adversary proceeding or contested matter against the Prepetition Lender or any other Lender Party challenging the admissions, stipulations, findings, or releases included in the Debtors' Stipulations, or (ii) an adversary proceeding or contested matter against the Prepetition Lender or any other Lender Party in connection with or related to (A) the Prepetition Loan; (B) the prepetition business relationship between any Lender Party and the Debtors, or the prepetition conduct of any Lender Party with respect to the Debtors; (C) alleged prepetition actions or inactions of the Prepetition Lender or any other Lender Party arising out of or related to the Prepetition Obligations or otherwise, including, without limitation, any claim against the Prepetition Lender or any other Lender Party in the nature of an "equitable subordination," "lender liability," "deepening insolvency," or "control person" liability; (D) any avoidance, offset, recoupment, counterclaim, or defense to the Prepetition Obligations (including, without limitation, those under sections 506, 544, 547, 548, 549, 550, and/or 552 of the Bankruptcy Code), or (E) any avoidance of or challenge (whether pursuant to chapter 5 of the Bankruptcy Code or otherwise) to any transfer made by or on behalf of the Debtors to or for the benefit of the Prepetition Lender or any other Lender Party.</p> <p>Any Challenge under Paragraph 8 of the Interim Order must be commenced by a party in interest, including, but not limited to, any Creditors' Committee, with standing and requisite authority to bring the Challenge by no later than the seventy-fifth (75th) calendar day following the entry of the Interim Order, provided, however, that if a trustee is appointed prior to the expiration of the Challenge Period, such trustee will have until the later of the expiration of the Challenge Period or ten (10) days after appointment (subject to a further order of this Court) to assert a Challenge.</p> <p>Upon the next calendar day following the expiration of the Challenge Period and for all purposes, including, without limitation, in this Chapter 11 Case and any Successor Case, (i) all payments made to or for the benefit of the Prepetition Lender or Agent (whether prior to, on, or after the Petition Date) shall be indefeasible and shall not be subject to counterclaim, offset, recoupment, subordination, recharacterization, defense, recovery, or avoidance; (ii) any and all Challenges not timely filed within the Challenge Period by any party whatsoever shall be deemed to be forever released,</p>	
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	<p>waived, and barred; (iii) the Prepetition Obligations shall be deemed to be secured by a valid, binding, enforceable, duly perfected, and non-avoidable security interest and lien in the Prepetition Collateral and Replacement Liens; (iv) the Prepetition Obligations shall be deemed to be a fully allowed claim; and (v) the Debtors' Stipulations shall be binding on all parties whatsoever, including, without limitation, any Creditors' Committee and any trustee or trustees appointed in this Chapter 11 Case or in any Successor Case.</p>	
<p><b>Liens on Avoidance Actions</b></p> <p>Bankruptcy Rule 4001(c)(1)(b)</p> <p>Local Rule 4001-2(a)(i)(U)</p>	N/A	
<p><b>Section 506(c), 552(b) "Equities of the Case," and Marshalling Waivers</b></p> <p>Bankruptcy Rule 4001(c)(1)(B)(x);</p> <p>Local Rule 4001-2(a)(i)(V)-(X)</p>	<p>Subject to the entry of the Final Order, no costs or expenses of administration that have been or may be incurred in this Chapter 11 Case or in any Successor Case at any time shall be surcharged against, and no person may seek to surcharge any costs or expenses of administration against, the Prepetition Lender or Agent, or any of its claims, or any assets or property subject to the Prepetition Liens and/or Replacement Liens, pursuant to section 506(c) or section 105 of the Bankruptcy Code or otherwise. Subject to the entry of the Final Order, no action, inaction, or acquiescence by the Prepetition Lender or Agent shall be deemed to be, or shall be considered evidence of, any alleged consent to a surcharge against the Prepetition Lender or Agent, any of its claims, or any assets or property subject to the Prepetition Liens and/or Replacement Liens.</p> <p>Subject to the entry of the Final Order, the Prepetition Lender and Agent shall not be subject to the equitable doctrine of "marshaling" or any other similar doctrine with respect to any of the assets or property subject to the Prepetition Liens and/or Replacement Liens, or otherwise. Without limiting the generality of the foregoing, subject to the entry of the Final Order, no party other than the Prepetition Lender or Agent shall be entitled, directly or indirectly, to direct the exercise of rights or remedies or to seek (whether by order of the Court or otherwise) to marshal or otherwise control the enforcement of the Prepetition Liens or Replacement Liens.</p> <p>Subject to the entry of the Final Order, the Prepetition Lender and Agent shall be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code,</p>	Interim Order at 12, 13 & 14



	and no person may assert an “equities of the case” claim under section 552(b) of the Bankruptcy Code against the Prepetition Lender or Agent with respect to any proceeds, product, offspring, or profits of any of the Collateral, or otherwise.	
<b>Adequate Protection</b>  Bankruptcy Rules 4001(b)(1)(B)(iv), 4001(c)(1)(B)(ii)  Local Rule 4001-2(a)(i)(B), 4001-2(a)(i)(K), 4001-2(a)(i)(N), 4001-2(a)(i)(P)	<p>Adequate Protection for Prepetition Lender and Agent. As adequate protection against, and limited to the extent of, any Diminution in Value of the Prepetition Collateral, the Prepetition Lender and Agent are hereby granted the following ((a), (b) and (c) below shall be referred to collectively as the “Adequate Protection Rights”):</p> <p>(a) Replacement Liens. To secure the Adequate Protection Claim, and pursuant to sections 361(2) and 363(e) of the Bankruptcy Code, and subject to the Permitted Liens, the Agent is hereby granted, solely to the extent of any Diminution in Value of the Prepetition Collateral, a first priority valid, binding, continuing, enforceable, fully perfected, and non-voidable postpetition security interests in and liens (collectively, the “Replacement Liens”) on the Prepetition Collateral and all of the Debtors’ and the Estates’ right, title, and interest in and to all tangible and intangible assets and property, including, without limitation, the postpetition assets and property of the Debtors or of the Estates, and all products and proceeds thereof, and proceeds of proceeds, in each case whether existing on or as of the Petition Date or thereafter acquired, including, without limitation, all accounts, receivables, rights to payment, cash, general intangibles, payment intangibles, instruments, contracts, securities, investment property, chattel paper, owned real estate, real property leaseholds, goods, inventory, fixtures, machinery, equipment, deposit accounts, securities accounts, patents, copyrights, trademarks, trade names, rights under license agreements (either as licensor or as licensee), intellectual property of any kind, the proceeds of all of the foregoing, and proceeds of such proceeds, but shall specifically exclude claims and causes of action (including, without limitation, those arising under section 549 of the Bankruptcy Code) and commercial tort claims. The Replacement Liens shall not be (i) subject or subordinate to (A) any lien or security interest that is avoided and preserved for the benefit of the Estates under section 551 of the Bankruptcy Code or (B) any lien or security interest arising after the Petition Date; or (ii) or made pari passu with, any other lien or security interest, now or hereafter existing and whether authorized under sections 363 or 364 of the Bankruptcy Code or otherwise, provided, however, in all circumstances any Replacement Liens shall be subject and subordinate to payment of the Carve Out. The Replacement Liens shall be and hereby are deemed fully perfected liens and</p>	Interim Order at 3

	<p>security interests, effective and perfected upon the date of the Interim Order, with the priorities set forth in the Interim Order, without the necessity of the execution, recordation, or filing of any mortgages, security agreements, pledge agreements, financing agreements, financing statements, filings in the U.S. or any foreign office, or any other agreements, instruments, documents, notices, recordations, or filings, domestic or foreign, such that no additional actions need be taken by the Prepetition Lender or Agent, by the Debtors, or by any other person or entity to grant or perfect such interests or to effect the priorities set forth in the Interim Order. For the avoidance of doubt, there shall be no Replacement Liens on Avoidance Actions pursuant to the Interim Order.</p> <p>(b) Adequate Protection Payments. To further secure the Adequate Protection Claim, and pursuant to sections 361(1) and 363(e) of the Bankruptcy Code, the Debtors shall pay, transfer or otherwise convey to the Prepetition Lender all Gross Revenue After ECD. The Debtors shall pay, transfer or otherwise convey such Gross Revenue After ECD currently in its possession within three (3) business days following the entry of the Interim Order, and thereafter within three (3) business days upon receipt.</p> <p>(c) Adequate Protection Superpriority Claim. As further adequate protection against, and limited to the extent of, any Diminution in Value, the Prepetition Lender is hereby granted a superpriority claim, which claim shall have priority over all administrative expense claims and all other unsecured claims against the Debtors or the Estates, now existing or hereafter arising, of any kind or nature whatsoever, including, without limitation, administrative expenses of the kind specified in or ordered pursuant to section 105, section 326, section 328, section 330, section 331, section 503(a), section 503(b), section 506(c), section 507(a), section 507(b), section 546(c), section 552(b), section 726, section 1113 or section 1114, or pursuant to any other provision of the Bankruptcy Code (the "Adequate Protection Claim"), provided, however, that in all circumstances any Adequate Protection Claim shall be subject and subordinate to payment of the Carve Out.</p>	
<b>Loan Covenants</b>  Bankruptcy Rule 4001(c)(1)(B)  Local Rule 4001-2(a)(i)	N/A	

<b>Indemnification</b>  Bankruptcy Rule 4001(c)(1)(B)(ix)	N/A	
<b>Variance Covenant</b>  Bankruptcy Rule 4001(c)(1)(B)  Local Rule 4001-2(a)(i)	<p>The Debtors have delivered to the Prepetition Lender a 13-week budget that has been approved by the Prepetition Lender for the time period commencing with the Petition Date. A copy of the Approved Budget is attached to the Interim Order as Exhibit A. Other than Permitted Variances, any revisions made by the Debtors to the budget from time to time shall be in form and substance acceptable to the Prepetition Lender and shall not be deemed to constitute the “Approved Budget” for purposes of the Interim Order (i) until the Prepetition Lender’s approval of such updated budget has been confirmed in writing by counsel to the Prepetition Lender or (ii) five (5) business days have passed since the counsel to the Prepetition Lender has received such revision without objection by the Prepetition Lender in writing. Designated Cash Collateral used under the Interim Order shall be used by the Debtors only in accordance with the Approved Budget and the Interim Order.</p> <p>The Debtors shall deliver to the Prepetition Lender, biweekly on every other Monday following the Petition Date, an Approved Variance Report for the trailing two (2) week period. Each Approved Variance Report shall indicate whether there are any adverse variances that exceed the “Permitted Variances,” which means, in each case measured on a cumulative basis, (x) up to 15% for cash disbursements measured weekly on a line-item basis, or (y) up to 10% in the aggregate for all cash disbursements; provided, however, that for purposes of calculating variances, cash disbursements shall not include disbursements made by the Debtors in payment of professional fees and expenses related to administration of the Chapter 11 Cases.</p>	Interim Order at 2(c) & (d)
<b>Use of Cash Collateral; Entities with Interest in Cash Collateral</b>  Bankruptcy Rule 4001(b)(1)(B)(i)	The Prepetition Lender.	
<b>Challenge Period</b>  Bankruptcy Rule 4001(c)(1)(B), 4001(c)(1)(B)(viii)	See “Provisions Limiting What Parties in Interest (Other Than the Debtors) May Raise” above.	

### **RELIEF REQUESTED**

14. By this motion, the Debtors seek: (a) authority pursuant to sections 105(a), 361, 362, 363, 364 and 552 of the Bankruptcy Code for use of the Cash Collateral pursuant to the terms of the Interim Order; (b) to grant the Prepetition Lender adequate protection in respect of its interests in the Prepetition Collateral and for claims arising from the diminution of value of the Prepetition Collateral from the Debtors' use of the Cash Collateral, and (c) to schedule the Final Hearing.

15. Bankruptcy Rule 4001(d) provides that the Court may fix the time within which objections to the approval of an agreement relating to cash collateral and adequate protection pursuant to section 363 of the Bankruptcy Code must be filed. In addition, the Court is empowered to conduct an expedited preliminary hearing on the motion and authorize the use of cash collateral to the extent necessary to avoid immediate and irreparable harm to the debtor's estate.

### **BASIS FOR RELIEF**

#### **A. The Debtors' Use of Cash Collateral Is Necessary**

16. Section 363(c)(2) of the Bankruptcy Code provides that a debtor may not use cash collateral unless "(A) each entity that has an interest in such cash collateral consents; or (B) the court, after notice and hearing, authorizes such use, sale, or lease in accordance with the provisions of this section." 11 U.S.C. § 363(c)(2). Further, Bankruptcy Code section 363(e) provides, in pertinent part, that "on request of an entity that has an interest in property . . . proposed to be used, sold, or leased, by the trustee, the court, with or without a hearing, shall prohibit or condition such use, sale, or lease as is necessary to provide adequate protection of such interest." 11 U.S.C. § 363(e). Examples of adequate protection are provided in section 361 of the Bankruptcy Code and include, but are not limited to: (a) lump sum or periodic cash payments to the extent that such use will result in a decrease in value of such entity's interest in the property; (b) provisions for an

additional or replacement lien to the extent that the use of the property will cause a decrease in the value of such entity's interest in the property; and (c) such other relief as will result in the realization by the entity of the indubitable equivalent of such entity's interest in the property. 11 U.S.C. § 361.

17. It is well-established that a bankruptcy court should, whenever possible, resolve issues in favor of allowing a debtor to continue its business as a going concern. Courts have recognized that “[a] debtor, attempting to reorganize a business under Chapter 11, clearly has a compelling need to use ‘cash collateral’ in its effort to rebuild. Without the availability of cash to meet daily operating expenses . . . the congressional policy favoring rehabilitation over economic failure would be frustrated.” *Chrysler Credit Corp. v. Ruggiere (In re George Ruggiere Chrysler-Plymouth, Inc.)*, 727 F.2d 1017, 1019 (11th Cir. 1984); *see also N.L.R.B. v. Bildisco and Bildisco*, 465 U.S. 513, 528 (1984) (“The fundamental purpose of reorganization is to prevent a debtor from going into liquidation, with an attendant loss of jobs and possible misuse of economic resources.”).

18. Accordingly, courts regularly authorize the use of cash collateral to enhance or preserve the debtor's going concern value. *See, e.g., In re 495 Cent. Park Ave. Corp.*, 136 B.R. 626, 631 (Bankr. S.D.N.Y. 1992) (“[T]here is no question that the property would be improved by the proposed renovations and that an increase in value will result. In effect, a substitution occurs in that the money spent for improvements will be transferred into value. This value will serve as adequate protection for [the creditor's] secured claim.”).

19. It is essential to the Debtors' sale and reorganization efforts and the preservation of going concern value that they have sufficient funds to operate in the ordinary course, and at a level that is on par or as close as possible to prepetition performance. Absent the use of Cash Collateral, the Debtors will not have sufficient working capital to: (a) make payments to employees, vendors, or suppliers, (b) satisfy operating costs, and (c) fund the administrative costs of

these Chapter 11 Cases. The ability to satisfy these expenses when due is essential to avoid immediate and irreparable harm to the Debtors' estates. In the normal course of business, the Debtors use cash on hand and cash flow from operations and other sources to fund working capital and capital expenditures, and operate and maintain their business and properties. Absent immediate access, the Debtors will not have adequate unencumbered cash on hand to pay these critical expenses.

20. The Prepetition Lender asserts that the cash received by the Debtors generated from the operation of their businesses in the ordinary course constitutes Cash Collateral. The Debtors' use of the Cash Collateral is necessary to maintain and maximize the value of the Debtors' assets during the pendency of these cases. To that end, the Debtors and the Prepetition Lender have negotiated the Interim Order to provide the Debtors with the consensual use of Cash Collateral. Absent the use of Cash Collateral, the Debtors will be unable to operate their businesses in a manner necessary to maintain and maximize the value of their assets pending the anticipated sale and restructuring transactions. Simply stated, without the use of the Cash Collateral as requested by this Motion, the Debtors will suffer immediate and irreparable harm, their business operations will cease, and the operational value of the business will not be realized.

**B. The Proposed Adequate Protection is Reasonable and Appropriate**

21. Courts have found a secured creditor adequately protected where either a sufficient equity cushion in the collateral exists to protect the secured creditor, or the level of the secured creditor's collateral is not decreasing over time. *In re Dynaco Corp.*, 162 B.R. 389, 394 (Bankr. D. N.H. 1993) (secured creditor was adequately protected and debtor was authorized to use cash collateral where level of collateral was not declining). *In re May*, 169 B.R. 462 (Bankr. S.D. Ga. 1994) (equity cushion in property may provide creditor with adequate protection of its interest,

sufficient to permit the debtor to use cash collateral). *In re Southwest Assocs.*, 140 B.R. 360 (Bankr. S.D.N.Y. 1992) (same). Even in those instances where its equity cushion is fluctuating, a secured creditor is adequately protected so long as an adequate cushion remains over and above its secured claim. *Dynaco Corp.*, 162 B.R. at 394 (Bankr. D. N.H. 1993).

22. In *Swedeland*, the Third Circuit pointedly noted that the purpose of adequate protection “is to insure that the creditor receives the value for which he bargained prebankruptcy.” *In re Swedeland Dev. Grp., Inc.*, 16 F.3d at 564 (quoting *In re O’Connor*, 808 F.2d 1393, 1396 (10th Cir. 1987)); see also *Shaw Indus., Inc. v. First Nat’l Bank of Pa. (In re Shaw Indus., Inc.)*, 300 B.R. 861, 865 (Bankr. W.D. Pa. 2003) (“The purpose of providing ‘adequate protection’ is to insure that a secured creditor receives in value essentially what he bargained for.”); *In re Beker Indus. Corp.*, 58 B.R. 725, 736 (Bankr. S.D.N.Y. 1986) (noting that the application of adequate protection “is left to the vagaries of each case, but its focus is protection of the secured creditor from diminution in the value of its collateral during the reorganization process”) (citation omitted), *rev’d on other grounds*, 89 B.R. 336 (S.D.N.Y. 1988). The Third Circuit has held that adequacy, “depends directly on how effectively it compensates the secured creditor for loss of value” caused by the priming lien granted to the new lender. *In re Swedeland Dev. Grp., Inc.*, 16 F.3d at 564 (quoting *In re Am. Mariner Inds., Inc.*, 734 F.2d 426, 432 (9th Cir. 1984)).

23. Nevertheless, adequate protection must be determined on a case-by-case basis, in light of the particular facts and circumstances presented, the focus being that which is required to protect a secured creditor from diminution in the value of its interest in the particular collateral during the use period. See *In re Ledgmere Land Corp.*, 116 B.R. 338, 343 (Bankr. D. Mass. 1990); *Delbridge v. Production Credit Assoc. & Federal Land Bank*, 104 B.R. 824, 827 (E.D. Mich.

1989); *In re Kain*, 86 B.R. 506, 513 (Bankr. W.D. Mich. 1988); *In re Beker Indus. Corp.*, 58 B.R. 725, 736 (Bankr. S.D.N.Y. 1986).

24. As more fully set forth in the Interim Order, as adequate protection for the use of Cash Collateral, the Debtors propose providing the Prepetition Lender with the Adequate Protection Rights, which include the Replacement Liens, certain payments, and the Adequate Protection Claim. The terms and conditions on which the Debtors may use Cash Collateral have been carefully designed to meet the dual goals of sections 361 and 363 of the Bankruptcy Code. If the Interim Order is entered, the Debtors will have working capital to operate their businesses and thus, maximize the value of the assets for the benefit of their stakeholders. At the same time, the Prepetition Lender will be adequately protected in a manner that it has agreed to for consenting to Debtors' use of Cash Collateral. Therefore, the Debtors respectfully submit that the use of Cash Collateral on the terms set forth in the attached proposed Interim Order provides the Prepetition Lender with adequate protection and is in the best interest of the Debtors, their estates, their creditors and all parties in interest and therefore should be authorized by this Court.

**C. The Scope of the Proposed Carve-Out Is Reasonable and Appropriate**

25. The Adequate Protection Rights are subject to the Carve-Out. Without the Carve-Out, the Debtors and other parties in interest may be deprived of certain rights and powers because the services for which such professionals may be paid in these Chapter 11 Cases would be restricted. See, e.g., *In re Ames Dept Stores, Inc.*, 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990) (observing that courts insist on carve-outs for professionals representing parties in interest because "[a]bsent such protection, the collective rights and expectations of all parties-in-interest are sorely prejudiced"). The Carve-Out does not directly or indirectly deprive the Debtors' estates or other parties in interest of possible rights



and powers. Additionally, the Carve-Out protects against administrative insolvency during the course of these Chapter 11 Cases by ensuring that assets remain for payment of the Clerk of the Court, U.S. Trustee fees, and professional fees of the Debtors and any statutory committee.

**D. Interim Relief Should be Granted**

26. Bankruptcy Rule 4001(b) permits a court to approve a debtor's request for use of cash collateral during the 14-day period following the filing of a motion requesting authorization to use cash collateral, "only . . . as is necessary to avoid immediate and irreparable harm to the estate pending a final hearing." Bankruptcy Rule 4001(b)(2). In examining requests for interim relief under this rule, courts apply the same business judgment standard applicable to other business decisions. *See, e.g., In re Simasko Production Co.*, 47 B.R. 444, 449 (D. Co. 1985), 47 B.R. at 449; *see also In re Ames Dep't Stores Inc.*, 115 B.R. 34, 38 (Bank S.D.N.Y. 1990) 115 B.R. at 38. After the 14-day period, the request for use of cash collateral is not limited to those amounts necessary to prevent destruction of the debtor's business. A debtor is entitled to use cash collateral that it believes prudent in the operation of its business. *See, e.g., Simasko*, 47 B.R. at 449; *Ames Dep't Stores*, 115 B.R. at 36.

27. As set forth above, pending the Final Hearing, the Debtors require immediate access to Cash Collateral to satisfy the day-to-day needs of the Debtors' business operations. Access to liquidity will address any concerns regarding the Debtors' financial health and ability to continue operations in light of these Chapter 11 Cases. The Debtors have an immediate need for liquidity to, among other things, maintain business relationships with their vendors and suppliers, pay payroll and certain benefits, and satisfy other essential working capital and operational needs, all of which are required to preserve and maintain the Debtors' going concern value for the benefit of all parties

in interest. In addition, the Approved Budget establishes that the Debtors' use of Cash Collateral will not prejudice the Prepetition Lender.

**E. The Automatic Stay Should Be Modified on a Limited Basis**

28. The relief requested herein contemplates a modification of the automatic stay solely to permit the Prepetition Lender to deliver written notice by electronic mail stating that the Prepetition Lender elects to commence the exercise of rights and remedies with respect of the Interim Order and the Prepetition Loan Documents, and under applicable bankruptcy and non-bankruptcy law, including, without limitation, in respect of its Prepetition Collateral and its Replacement Liens. Stay modifications of this kind are ordinary and standard features for the use of cash collateral, and in the Debtors' business judgment, are reasonable and fair under the circumstances.

**REQUEST FOR FINAL HEARING**

29. Pursuant to Bankruptcy Rule 4001(b)(2), the Debtors request the Court to set a date for the Final Hearing.

**IMMEDIATE RELIEF IS NECESSARY**

30. Pursuant to Bankruptcy Rule 6003(b), any motion seeking to use property of the estate pursuant to section 363 of the Bankruptcy Code or to satisfy prepetition claims within twenty-one days of the petition date requires the debtor to demonstrate that such relief "is necessary to avoid immediate and irreparable harm." Fed. R. Bankr. P. 6003(b). As described above, without access to Cash Collateral, the Debtors would be unable to operate their business and fund these Chapter 11 Cases. For this reason and those set forth above, the Debtors respectfully submit that Bankruptcy Rule 6003(b) has been satisfied and the relief requested herein is necessary to avoid immediate and irreparable harm to the Debtors and their estates.

**WAIVER OF ANY APPLICABLY STAY**

31. The Debtors also request that the Court waive the stay imposed by Bankruptcy Code, including any stay that may be imposed under Bankruptcy Rules 4001(a)(3) and 6004(h). Bankruptcy Rule 6004(h) provides that “[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 described above, the relief that the Debtors seek in this Motion is necessary for them to maintain their business without interruption and to preserve and maximize value for their estates. Accordingly, the Debtors respectfully request that the Court waive the fourteen-day stay imposed by Bankruptcy Rule 6004(h), as the exigent nature of the relief sought herein justifies immediate relief.

32. To implement the foregoing immediately, the Debtors also respectfully request a waiver of the notice requirements of Bankruptcy Rule 6004(a), to the extent they are applicable.

**RESERVATION OF RIGHTS**

33. Nothing in the Interim Order, the Final Order, or this Motion (i) is intended or shall be deemed to constitute an assumption of any agreement pursuant to section 365 of the Bankruptcy Code or an admission as to the validity of any claim against the Debtors and their estates, (ii) shall impair, prejudice, waive, or otherwise affect the rights of the Debtors and their estates with respect to the validity, priority, or amount of any claim against the Debtors and their estates, (iii) shall impair, prejudice, waive, or otherwise affect the rights of the Debtors and their estates with respect to any and all claims or causes of action against any party in interest, or (iv) shall be construed as a promise to pay a claim.

**NOTICE**

34. The Debtors will provide notice of this motion to: (i) the United States Trustee for the District of Delaware; (ii) the holders of the five (5) largest unsecured claims against the Debtors; (iii) counsel to the Prepetition Lender; (iv) the United States Attorney's Office for the District of Delaware; (v) the Internal Revenue Service; (vi) the United States Securities and Exchange Commission; (vii) all parties asserting a lien on the Debtors assets; and (viii) any party that requests service pursuant to Bankruptcy Rule 2002. Notice of this motion and any order entered hereon will be served in accordance with Local Rule 9013-1(m). In light of the nature of the relief requested herein, the Debtors respectfully submit that no other or further notice is required or necessary.

*[Remainder of Page Intentionally Left Blank]*

**CONCLUSION**

WHEREFORE, the Debtors respectfully request entry of the Interim Order, in the form annexed hereto as **Exhibit A**, granting the Debtors the relief requested herein, and such other and further relief as is just.

Dated: March 29, 2021  
Wilmington, Delaware

/s/ Joseph M. Mulvihill

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**EXHIBIT A**  
**Interim Order**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

	-X	
	:	Chapter 11
In re	:	
	:	Case No. 21-10636 ( )
AEROCENTURY CORP., <i>et al.</i> ,	:	
	:	(Joint Administration Requested)
Debtors. <sup>1</sup>	:	
	:	Re: Docket No. ____

**INTERIM ORDER UNDER 11 U.S.C. §§ 105, 361, 362, 363, AND 507, AND  
BANKRUPTCY RULES 2002, 4001, AND 9014 (I) AUTHORIZING  
DEBTORS TO USE CASH COLLATERAL, (II) GRANTING ADEQUATE  
PROTECTION TO SECURED LENDER, AND (III) SCHEDULING A  
FINAL HEARING PURSUANT TO BANKRUPTCY RULE 4001(b)**

This matter is before the Court pursuant to the motion (the “Motion”) filed by AeroCentury Corp. and the above-captioned debtors and debtors in possession (collectively, the “Debtors”), pursuant to sections 105, 361, 362, 363 and 507 of Title 11 of the United States Code, 11 U.S.C. §§ 101, et seq. (the “Bankruptcy Code”), Rules 2002, 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Rule 4001-2 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), seeking, among other relief, the entry of an interim order (this “Interim Order”):

(a) authorizing the Debtors to use Designated Cash Collateral (as defined below) as contemplated by § 363 of the Bankruptcy Code in accordance with the terms set forth herein (as defined below);

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of their federal employer identification number, are: AeroCentury Corp. (3974); JetFleet Holding Corp. (5342); and JetFleet Management Corp. (0292). The Debtors’ mailing address is 1440 Chapin Avenue, Suite 310, Burlingame, CA 94010.

(b) granting adequate protection to Drake Asset Management Jersey Limited, a company incorporated in Jersey (Channel Islands), as lender (in its capacity as such, the “Prepetition Lender”) and UMB Bank, N.A., a national banking association formed under the laws of the United States, as Agent (in its capacity as such, “Agent”) in connection with the Prepetition Loan Documents (as defined hereafter) upon the terms set forth herein;

(c) modifying the automatic stay to the extent hereinafter set forth and waiving the fourteen (14) day stay provisions of Bankruptcy Rules 4001(a)(3) and 6004(h); and

(d) scheduling a final hearing (the “Final Hearing”) on the Motion pursuant to Bankruptcy Rule 4001(b).

The Court having held an emergency hearing on March [ ], 2021 (the “Interim Hearing”) to consider the entry of an interim order approving the Motion pursuant to Bankruptcy Rule 4001(b)(2), and having found that, under the circumstances, adequate and sufficient notice of the Motion and the Interim Hearing was given by the Debtors in accordance with the Bankruptcy Rules and the Local Rules; and the Court having heard and resolved or overruled any and all objections to the interim relief requested in the Motion; and it appearing that the interim relief requested in the Motion is in the best interests of the Debtors, their estates (the “Estates”), and creditors; and upon the record herein and after due deliberation thereon; and good and sufficient cause appearing therefor,



**IT IS HEREBY FOUND AND DETERMINED THAT:<sup>2</sup>**

A. Petition Date. On March 26, 2021 (the “Petition Date”), the Debtors each commenced these chapter 11 cases (the “Chapter 11 Cases”) by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the “Court”). The Debtors are operating their businesses and managing their affairs as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. As of the date hereof, no trustee, examiner, or official committee of creditors holding unsecured claims (a “Creditors’ Committee”) has been appointed in the Chapter 11 Cases.

B. Jurisdiction and Venue. The Court has jurisdiction over this Chapter 11 Case, the parties, and the Debtors’ property pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(D). The Court is a proper venue for this Chapter 11 Cases and the Motion under 28 U.S.C. §§ 1408 and 1409.

C. Asset Purchase Agreement. Prior to the Petition Date, the Debtors and the Prepetition Lender executed that certain Asset Purchase Agreement (the “Asset Purchase Agreement”) pursuant to which the Debtors have, on notice to parties in interest, proposed a motion seeking the approval of bidding and sale procedures and naming the Prepetition Lender as the stalking horse bidder in connection with a sale of the substantially all of the Debtors’ assets.

D. Notice. The Interim Hearing is being held pursuant to Bankruptcy Rules 2002 and 4001 and Local Rule 4001-2(b). Notice of the Interim Hearing was given by the Debtors on March [ ], 2021 (Docket No. \_\_\_\_). Notice of the Motion was provided to: (i) the Office of the United

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<sup>2</sup> Findings of fact shall be construed as conclusions of law, and conclusions of law shall be construed as findings of fact, as applicable, and vice versa, pursuant to Bankruptcy Rule 7052.

States Trustee; (ii) the Office of the United States Attorney for the District of Delaware; (iii) the Internal Revenue Service; (iv) the Securities and Exchange Commission; (v) the Debtors' five (5) largest unsecured creditors; (vi) counsel to the Prepetition Lender; and (vii) all other known parties asserting a lien against any of the Debtors' assets, in each case by telecopy, email, overnight courier, and/or hand delivery and otherwise in accordance with Local Rule 9013(m). Under the circumstances, notice of the Interim Hearing and the interim relief requested in the Motion is adequate and sufficient under the circumstances and complies with the Bankruptcy Rules and the Local Rules.

E. Acknowledgments and Stipulations. In exchange for and as a material inducement for the Prepetition Lender to agree to the relief sought herein, the Debtors acknowledge, represent, stipulate and agree as follows:

(i) MUFG Union Bank, N.A., Umpqua Bank, Zions Bancorporation, N.A. (f/k/a ZB, N.A.) d/b/a California Bank & Trust, and Columbia State Bank, each a lender (collectively, the "Original Lenders"), MUFG Union Bank, N.A., as original agent (the "Original Agent"), Debtor AeroCentury Corp., as borrower, and the other Debtors, as guarantors, were parties to that certain *Fourth Amended and Restated Loan and Security Agreement* dated as of May 1, 2020 (as it has been amended, restated, modified, supplemented, and from time to time prior to the Petition Date, and as assigned by the Original Lenders to the Prepetition Lender as new lender and Agent, the "Prepetition Loan Agreement"), and together with all agreements, documents, notes, mortgages, security agreements, pledges, guaranties, forbearance agreements, subordination agreements, instruments, amendments, and any other agreements and documents delivered pursuant thereto or

in connection therewith, including that certain *Fourth Amended and Restated Mortgage and Security Agreement* dated as of May 1, 2020 made by the Debtors in favor of the Original Agent (as amended, modified, supplemented and assigned, the “Mortgage”), each as amended, modified, restated or supplemented from time to time and as assigned, the “Prepetition Loan Documents”) pursuant to which the Debtors obtained secured financing and other financial accommodations (the “Prepetition Loan”) from the Original Lenders.

(ii) Pursuant to that certain Loan Purchase and Sale Agreement dated as of October 2, 2020, (the “Loan Purchase Agreement”) among the Prepetition Lender, the Agent, the Original Lenders, the Original Agent and MUFG Bank, Ltd., the Prepetition Loan was sold by the Original Lenders to the Prepetition Lender and the Original Agent was replaced with the Agent. Concurrent with the sale of the Prepetition Loan, (a) the Prepetition Loan Agreement and Prepetition Loan Documents were assigned by the Original Lenders to the Prepetition Lender and by the Original Agent to the Agent, (b) the Mortgage and original financing statements were assigned by the Original Agent to the Agent, acting on behalf of the Prepetition Lender, and accordingly the Agent is now the holder of valid properly-perfected first priority liens on all of the Prepetition Collateral (as defined hereafter) and (c) the Debtors executed and delivered the Deposit Account Control Agreements (as defined in the Prepetition Loan Agreement) in favor of the Agent, in place of the deposit account control agreements previously executed in favor of the Original Agent to perfect Agent’s security interest in the Accounts identified in the Deposit Account Control Agreements.

(iii) The Prepetition Loan is secured by valid, enforceable, duly perfected, and non-avoidable liens and security interests granted to the Agent (the “Prepetition Liens”) on the Collateral (as defined in the Mortgage) (the “Prepetition Collateral”).

(iv) The Prepetition Liens are senior, first-priority liens on all of the Prepetition Collateral, except for any items of the Prepetition Collateral that are, as of the Petition Date, subject to valid, enforceable, duly perfected, and non-avoidable first-priority senior liens of third parties to the extent expressly permitted under the Prepetition Loan Documents and as permitted by section 546(b) of the Bankruptcy Code (the “Permitted Liens” and the items of Prepetition Collateral securing the Permitted Liens collectively, the “Permitted Lien Collateral”).

(v) As of March 25, 2021, (a) the aggregate amount of principal and accrued interest owed under the Prepetition Loan Documents to the Prepetition Lender is approximately \$83,164,109, *plus* fees (including attorneys’ fees), expenses, and other additional amounts that are chargeable, reimbursable, or otherwise owing under the Prepetition Loan Documents (such obligations, collectively, the “Prepetition Obligations”); (b) all of the Prepetition Obligations are unconditionally owing by the Debtors to the Prepetition Lender; and (c) the Prepetition Obligations are not subject to any avoidance, reductions, offset, recoupment, recharacterization, subordination (whether equitable, contractual, or otherwise), counterclaims, cross-claims, defenses, or any other challenges under the Bankruptcy Code or any applicable law or regulation by any person or entity, except as and to the limited extent expressly set forth in Paragraph 8 herein.

(vi) The Prepetition Liens constitute valid, binding, enforceable, and duly perfected liens and security interests, with priority over any and all other liens and security interests other

than (only in respect of the Permitted Lien Collateral) the Permitted Liens, and are not subject to any challenge or defense, including, without limitation, respectively, avoidance, reductions, recharacterization, subordination (whether equitable, contractual or otherwise), claims, counterclaims, cross-claims, offsets, recoupment, defenses, or any other challenges under the Bankruptcy Code or any applicable law or regulation by any person or entity, except as and to limited extent expressly set forth in Paragraph 8 herein.

(vii) The Debtors have waived, discharged, and released any right they may have to challenge the Prepetition Obligations or the Prepetition Liens on the Prepetition Collateral, or to assert any offsets, recoupment, defenses, claims, objections, challenges, Avoidance Actions (as defined below), causes of action, and/or choses of action against the Prepetition Lender or Agent, with respect to the Prepetition Obligations, the Prepetition Liens, or the Prepetition Collateral, or any matters arising therefrom or related thereto.

(viii) Any payments made on account of the Prepetition Obligations before the Petition Date were (a) payments out of the Prepetition Collateral, (b) made in the ordinary course of business and did not diminish any property otherwise available for distribution to unsecured creditors, or (c) otherwise not subject to any avoidance, offset, recoupment, counterclaim, or defense (including, without limitation, under sections 506, 544, 547, 548, 549, 550, and/or 552 of the Bankruptcy Code).

(ix) All of the Debtor's cash as of the Petition Date, including, without limitation, the cash in its deposit accounts, securities accounts, and any other accounts, wherever located, whether

as original collateral or as proceeds of other Prepetition Collateral, constitutes Cash Collateral of the Prepetition Lender.

F. Cash Collateral. For purposes of this Interim Order, the term “Cash Collateral” shall mean and include, without limitation, all “cash collateral,” as defined in section 363 of the Bankruptcy Code, in or on which the Prepetition Lender or Agent holds a lien, security interest, or other interest (including, without limitation, any adequate protection liens or security interests) whether existing on the Petition Date, arising pursuant to this Interim Order, or otherwise, and shall include, without limitation:

(i) all cash proceeds that constitute Prepetition Collateral arising from the collection, sale, lease, license, disposition, use, or conversion of any tangible or intangible property, including, without limitation, insurance policies,

(ii) all rent, maintenance reserves, power by the hour payments and all other revenue received in respect of the Aircraft under the lease documents proposed to be acquired by the Prepetition Lender pursuant to the Asset Purchase Agreement in respect of any period from (and including) February 1, 2021 (as defined in the Asset Purchase Agreement, the “Gross Revenue After ECD”);

(iii) all of the Debtors’ cash as of the Petition Date, and the proceeds of all Prepetition Collateral, including, without limitation, the cash in its deposit accounts, securities accounts, and any other accounts, wherever located, whether as original collateral or as proceeds of other Prepetition Collateral;

(iv) all of the Debtors' interests in respective deposits, refund claims, and retainers, in each case in or on which the Prepetition Lender has a lien or replacement lien, whether as part of the Prepetition Collateral or pursuant to an order of the Court or applicable law or otherwise;

(v) the proceeds of any sale of Prepetition Collateral in connection with any sale consummated prior to entry of the Interim Order; and

(vi) any and all other "cash proceeds" (as defined in the Uniform Commercial Code as enacted in the State of New York) of the Prepetition Collateral, or of any proceeds thereof; *provided, however*, that prior to its release under Section 8.4 of the Asset Purchase Agreement, any and all "cash proceeds" or Cash Collateral resulting from the non-ordinary course sale or disposition of any Prepetition Collateral not subject to sale in the Asset Purchase Agreement shall be held upon and from receipt by the Debtors subject to the Prepetition Liens and Replacement Liens, and may only be used pursuant to the Approved Budget or as otherwise agreed by the Prepetition Lender in writing in its sole discretion.

G. Adequate Protection. The Prepetition Lender and Agent are entitled, pursuant to sections 361 and 363(e) of the Bankruptcy Code, to adequate protection to the extent of any diminution occurring from and after the Petition Date in the value of its interests in the Prepetition Collateral as of the Petition Date, including, without limitation, the Cash Collateral, resulting from, among other things, (a) the use of Designated Cash Collateral, (b) the acquiescence of the Prepetition Lender and Agent in the Carve-Out (defined below), (c) any other diminution in the value of the Prepetition Collateral as a result of its use, lease, consumption or disposition, and (d)

the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code (collectively, the “Diminution in Value”).

H. Good Cause Shown. Good cause has been shown for entry of this Interim Order. The ability of the Debtors to use cash collateral is vital to the Debtors’ Estates and their creditors, and the Debtors’ agreement to the terms and conditions set forth in this Interim Order is a prudent exercise of the Debtors’ sound business judgment. The use of Designated Cash Collateral will enable the Debtors to maximize and preserve the value of the Debtors’ business pending the contemplated sale of substantially all of their assets, and the potential confirmation of a chapter 11 plan, and to satisfy payroll obligations and other working capital and general corporate purposes of the Debtors consistent with the terms set forth in this Interim Order and the Approved Budget (as defined below). Among other things, entry of this Interim Order is necessary to maximize the value of the Debtor’s assets and to avoid immediate and irreparable harm to the Debtors and their Estates and, accordingly, is in the best interests of the Debtors, their Estates, and their creditors.

I. Sections 506(c) and 552(b) Waivers; Marshaling Waiver. In light of the Prepetition Lender’s agreement to permit the use of Designated Cash Collateral for payments made in accordance with the Approved Budget and the terms of the Interim Order and the Final Order, subject to the entry of the Final Order, the Prepetition Lender is entitled to (1) a waiver of any “equities of the case” claims under section 552(b) of the Bankruptcy Code, (2) a waiver of the provisions of section 506(c) of the Bankruptcy Code, and (3) a waiver of any marshaling obligation and any right to seek to compel marshaling (if and to the extent applicable).

J. Immediate Entry of Order. The Debtors have requested immediate entry of this



Interim Order pursuant to Bankruptcy Rule 4001(b)(2) and Local Rule 4001-2(b). The permission granted herein to use Cash Collateral and grant adequate protection is necessary, essential, and appropriate to the preservation of the Debtors' assets. The Court concludes that immediate entry of this Interim Order is in the best interests of the Debtors' Estates and creditors, as its implementation will, among other things, sustain the continued operations of the Debtors' business and thereby enhance the Debtors' prospects for a reorganization following the sale.

Based upon the foregoing findings, acknowledgements, and conclusions, and upon the record made before this Court at the Interim Hearing, and the Prepetition Lender having expressly consented to the form and entry of this Interim Order, and good and sufficient cause appearing therefor,

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:**

1. Disposition. The Motion is granted on an interim basis on the terms set forth in this Interim Order. Any objection to the interim relief sought in the Motion that has not previously been withdrawn or resolved is hereby overruled on its merits. The use of Designated Cash Collateral authorized hereunder shall expire without further notice or hearing on the earlier of (a) April 30, 2021, if the Final Order has not been entered by the Court prior to such date; and (b) the Termination Date (as defined below).

2. Authorization for Use of Designated Cash Collateral.

(a) Provided no Event of Default exists, and during any Remedies Notice Period (as defined below), the Debtors are hereby authorized to use certain Prepetition Collateral, including Cash Collateral but specifically excluding all Gross Revenue After ECD (as limited to

exclude Gross Revenue After ECD, the “Designated Cash Collateral”), in accordance with the Approved Budget, subject to and in accordance with the terms, conditions, and limitations set forth in this Interim Order. From and after the Remedies Notice Period, the Debtors shall not be authorized to use any Prepetition Collateral except with respect to the Carve Out (as defined below), including Cash Collateral or Designated Cash Collateral, unless such use is consented to by the Prepetition Lender in its sole and absolute discretion or unless otherwise ordered by the Court after notice and a hearing.

(b) Prior to its release under Section 8.4 of the Asset Purchase Agreement, any and all “cash proceeds” or Cash Collateral resulting from the non-ordinary course sale or disposition of any Prepetition Collateral not subject to sale in the Asset Purchase Agreement shall be held upon and from receipt by the Debtors subject to the Prepetition Liens and Replacement Liens, and may only be used pursuant to the Approved Budget or as otherwise agreed by the Prepetition Lender in writing in its sole discretion.

(c) The Debtors have delivered to the Prepetition Lender a 13-week budget that has been approved by the Prepetition Lender (the “Approved Budget”) for the time period commencing with the Petition Date. A copy of the Approved Budget is attached hereto as **Exhibit A**. Other than Permitted Variances (as defined below), any revisions made by the Debtors to the budget from time to time shall be in form and substance acceptable to the Prepetition Lender and shall not be deemed to constitute the “Approved Budget” for purposes of this Interim Order (i) until the Prepetition Lender’s approval of such updated budget has been confirmed in writing by counsel to the Prepetition Lender or (ii) five (5) business days have passed since the counsel to the

Prepetition Lender has received such revision without objection by the Prepetition Lender in writing. Designated Cash Collateral used under this Interim Order shall be used by the Debtors only in accordance with the Approved Budget and this Interim Order.

(d) The Debtors shall deliver to the Prepetition Lender, biweekly on every other Monday following the Petition Date, a variance report in form and substance acceptable to the Prepetition Lender in its reasonable discretion (an “Approved Variance Report”) for the trailing two (2) week period. Each Approved Variance Report shall indicate whether there are any adverse variances that exceed the “Permitted Variances,” which means, in each case measured on a cumulative basis, (x) up to 15% for cash disbursements measured weekly on a line-item basis, or (y) up to 10% in the aggregate for all cash disbursements (“Permitted Variances”); *provided*, however, that for purposes of calculating variances, cash disbursements shall not include disbursements made by the Debtors in payment of professional fees and expenses related to administration of the Chapter 11 Cases.

(e) The Prepetition Lender (i) may assume that the Debtors will comply with the Approved Budget, (ii) shall have no duty to monitor such compliance, and (iii) shall not be obligated to pay (directly, or indirectly from any Prepetition Collateral that has been paid, disbursed or distributed to the Prepetition Lender) any unpaid expenses incurred or authorized to be incurred pursuant to the Approved Budget; *provided* that the foregoing does not affect the Debtors’ right, subject to the terms of this Interim Order, to use Designated Cash Collateral to make payments pursuant the Approval Budget.

3. Adequate Protection for Prepetition Lender and Agent. As adequate protection against, and limited to the extent of, any Diminution in Value of the Prepetition Collateral, the Prepetition Lender and Agent are hereby granted the following ((a), (b) and (c) below shall be referred to collectively as the “Adequate Protection Rights”):

(a) Replacement Liens. To secure the Adequate Protection Claim (as defined below), and pursuant to sections 361(2) and 363(e) of the Bankruptcy Code, and subject to the Permitted Liens, the Agent is hereby granted, solely to the extent of any Diminution in Value of the Prepetition Collateral, a first priority valid, binding, continuing, enforceable, fully-perfected, and non-voidable postpetition security interests in and liens (collectively, the “Replacement Liens”) on the Prepetition Collateral and all of the Debtors’ and the Estates’ right, title, and interest in and to all tangible and intangible assets and property, including, without limitation, the postpetition assets and property of the Debtors or of the Estates, and all products and proceeds thereof, and proceeds of proceeds, in each case whether existing on or as of the Petition Date or thereafter acquired, including, without limitation, all accounts, receivables, rights to payment, cash, general intangibles, payment intangibles, instruments, contracts, securities, investment property, chattel paper, owned real estate, real property leaseholds, goods, inventory, fixtures, machinery, equipment, deposit accounts, securities accounts, patents, copyrights, trademarks, trade names, rights under license agreements (either as licensor or as licensee), intellectual property of any kind, the proceeds of all of the foregoing, and proceeds of such proceeds, but shall specifically exclude claims and causes of action (including, without limitation, those arising under section 549 of the Bankruptcy Code) and commercial tort claims. The Replacement Liens shall

not be (i) subject or subordinate to (A) any lien or security interest that is avoided and preserved for the benefit of the Estates under section 551 of the Bankruptcy Code or (B) any lien or security interest arising after the Petition Date; or (ii) or made *pari passu* with, any other lien or security interest, now or hereafter existing and whether authorized under sections 363 or 364 of the Bankruptcy Code or otherwise, provided, however, in all circumstances any Replacement Liens shall be subject and subordinate to payment of the Carve Out. The Replacement Liens shall be and hereby are deemed fully perfected liens and security interests, effective and perfected upon the date of this Interim Order, with the priorities set forth in this Interim Order, without the necessity of the execution, recordation, or filing of any mortgages, security agreements, pledge agreements, financing agreements, financing statements, filings in the U.S. or any foreign office, or any other agreements, instruments, documents, notices, recordations, or filings, domestic or foreign, such that no additional actions need be taken by the Prepetition Lender or Agent, by the Debtors, or by any other person or entity to grant or perfect such interests or to effect the priorities set forth in this Interim Order. For the avoidance of doubt, there shall be no Replacement Liens on Avoidance Actions (as defined below) pursuant to this Interim Order.

(b) Adequate Protection Payments. To further secure the Adequate Protection Claim, and pursuant to sections 361(1) and 363(e) of the Bankruptcy Code, the Debtors shall pay, transfer or otherwise convey to the Prepetition Lender all Gross Revenue After ECD. The Debtors shall pay, transfer or otherwise convey such Gross Revenue After ECD currently in its possession

within three (3) business days following the entry of this Interim Order, and thereafter within three (3) business days upon receipt.

(c) Adequate Protection Superpriority Claim. As further adequate protection against, and limited to the extent of, any Diminution in Value, the Prepetition Lender is hereby granted a superpriority claim, which claim shall have priority over all administrative expense claims and all other unsecured claims against the Debtors or the Estates, now existing or hereafter arising, of any kind or nature whatsoever, including, without limitation, administrative expenses of the kind specified in or ordered pursuant to section 105, section 326, section 328, section 330, section 331, section 503(a), section 503(b), section 506(c), section 507(a), section 507(b), section 546(c), section 552(b), section 726, section 1113 or section 1114, or pursuant to any other provision of the Bankruptcy Code (the “Adequate Protection Claim”), provided, however, that in all circumstances any Adequate Protection Claim shall be subject and subordinate to payment of the Carve Out.

4. Survival of Replacement Liens, Adequate Protection Claim, and Other Adequate Protection Rights. The Replacement Liens, the Adequate Protection Claim, the other Adequate Protection Rights, and all other rights and remedies granted to the Prepetition Lender and Agent under the Interim Order, shall continue in this Chapter 11 Case and in any successor case under the Bankruptcy Code (including, without limitation, any case under chapter 7 of the Bankruptcy Code, a “Successor Case”), and shall be and remain valid and enforceable (i) against any chapter 11 trustee appointed in the Chapter 11 Case, (ii) against any chapter 7 trustee appointed in a Successor Case, (iii) against any other representative of the estates or any assignee of assets or

rights of the Estates, and (iv) upon any conversion or dismissal of the Chapter 11 Case or any Successor Case; and all Replacement Liens and security interests shall maintain their perfected status and respective priority as provided in this Interim Order until the Adequate Protection Claim has been indefeasibly paid in full in cash and satisfied.

5. Credit Bid. Nothing in this Interim Order shall be construed to deprive the Prepetition Lender of the right to “credit bid” the Prepetition Loan Obligations pursuant to section 363(k) and/or section 1129(b)(2)(A)(ii) of the Bankruptcy Code.

6. Carve-Out.

(a) Generally. The liens and claims of the Prepetition Lender, including the Replacement Liens, the Adequate Protection Claim and the Prepetition Liens, shall be subject to the payment, without duplication, of the following fees and expenses (the amounts set forth below, together with the limitations set forth therein, collectively, the “Carve-Out”) solely from the Designated Cash Collateral and in the priority set forth below:

(i) the unpaid fees required to be paid by the Debtor to the Clerk of the Bankruptcy Court or to the Office of the United States Trustee under 28 U.S.C. § 1930(a)(6), plus statutory interest, if any, imposed under 31 U.S.C. § 3717, provided, however, that there is no limitation on the obligations of the Debtors and their Estates with respect to unpaid fees payable to the U.S. Trustee and Clerk of the Bankruptcy Court pursuant to section 1930 of Title 28 of the United States Code.

(ii) reasonable fees and expenses incurred by a trustee in any Successor Case under section 726(b) of the Bankruptcy Code in an aggregate cumulative amount not to exceed \$25,000; and

(iii) the Court-approved fee and expense claims of the respective retained professionals of the Debtors and the Creditors' Committee (the Court approved professionals of the Debtors and any Creditors' Committee are collectively referred to as the "Retained Professionals," and such fee and expense claims, the "Retained Professional Carve-Out") which were incurred (A) on and after the Petition Date and before the Carve-Out Trigger Date (defined below) but not to exceed the amounts set forth for each Retained Professional in the Approved Budget as of the Carve-Out Trigger Date and (B) on and after the Carve-Out Trigger Date, pursuant to the Approved Budget, in an aggregate cumulative amount not to exceed \$100,000. Nothing in this Interim Order shall waive or limit the right of the Prepetition Lender or any party in interest to object to the allowance of any such fees and expenses of Retained Professionals and Committee Member Expenses.

(b) As used herein, the term "Carve-Out Trigger Date" means the date on which the Prepetition Lender provides written notice to the Debtors, the U.S. Trustee and counsel to the Creditors' Committee of (i) the Termination Date, or (ii) an Event of Default (as defined below).

(c) Notwithstanding anything to the contrary set forth in this Interim Order, any obligations of the Prepetition Lender or Agent with respect to the Carve-Out shall terminate upon the earlier to occur of the Effective Date (as defined in the Asset Purchase Agreement) and the date a chapter 11 plan is confirmed in the Bankruptcy Cases.

7. Restrictions on Use of Cash Collateral. Notwithstanding anything to the contrary in this Interim Order, no Prepetition Collateral (including, without limitation, Cash Collateral or



Designated Cash Collateral) may be used to pay any fees or expenses or claims for services rendered by any of the professionals retained by the Debtors, by a Creditors' Committee, by any creditor or other party in interest, by any other committee, by any trustee appointed in this Chapter 11 Case or in a Successor Case, or for any other party to:

(a) request authorization from the Court to obtain any postpetition loans or other financial accommodations pursuant to section 364(c) or (d) of the Bankruptcy Code without the consent of the Prepetition Lender; or

(b) investigate, assert, join, initiate, commence, support, or prosecute (i) any potential or actual causes of action or claim, counterclaim, cross-claim, proceeding, or (ii) any other contested matter or adversary proceeding, in each case seeking any order, judgment, determination, or similar relief against, or adverse to the interests of, in any capacity, the Prepetition Lender, the Agent, the Original Lender, the Original Agent (collectively, the "Lender Parties") and each individually, a "Lender Party"), or any of their respective officers, directors, employees, agents, attorneys, affiliates, partners, assigns, or successors, with respect to any transaction, occurrence, omission, or action, including, without limitation, (A) any avoidance actions or other actions arising under chapter 5 of the Bankruptcy Code ("Avoidance Actions"); (B) any action relating to any act, omission, or aspect of the relationship between any Lender Party, on the one hand, and the Debtors or any of their affiliates, on the other; (C) any action with respect to the validity or extent of the Prepetition Obligations, or the validity, extent, or priority of the Prepetition Liens or the Replacement Liens; (D) any action seeking to invalidate, set aside, avoid, or subordinate, in whole or in part, the Prepetition Liens or the Replacement Liens; or (E) any

action that has the effect of preventing, hindering, or delaying (whether directly or indirectly) the Prepetition Lender in respect of its liens and security interests in the Cash Collateral or the Prepetition Collateral, except to contest the occurrence or continuance of any Event of Default. Notwithstanding the above, a Creditors' Committee (if appointed) shall be permitted to use up to \$15,000 of the Approved Budget to investigate (but not prosecute or Challenge (as defined below)) any of the foregoing matters or the matters described in paragraph 8 of this Interim Order.

8. Reservation of Certain Third-Party Rights and Bar of Challenges and Claims.

(a) The Debtor's acknowledgements and stipulations set forth in Paragraph D above and the releases set forth in Paragraph 9 below (collectively, the "Debtors' Stipulations") are final and binding upon the Debtors in all circumstances upon entry of the Final Order. The Debtors' Stipulations shall be binding upon each other party in interest, including, without limitation, a Creditors' Committee, unless a Challenge (defined below) is commenced by a Creditors' Committee, or any other party with standing, within the Challenge Period and a final, non-appealable order is entered sustaining any such Challenge.

(b) "Challenge" and "Challenges" shall mean individually or collectively:

(i) an adversary proceeding or contested matter against the Prepetition Lender or any other Lender Party challenging the admissions, stipulations, findings, or releases included in the Debtors' Stipulations, or (ii) an adversary proceeding or contested matter against the Prepetition Lender or any other Lender Party in connection with or related to (A) the Prepetition Loan; (B) the prepetition business relationship between any Lender Party and the Debtors, or the prepetition conduct of any Lender Party with respect to the Debtors; (C) alleged prepetition actions or inactions of the

Prepetition Lender or any other Lender Party arising out of or related to the Prepetition Obligations or otherwise, including, without limitation, any claim against the Prepetition Lender or any other Lender Party in the nature of an “equitable subordination,” “lender liability,” “deepening insolvency,” or “control person” liability; (D) any avoidance, offset, recoupment, counterclaim, or defense to the Prepetition Obligations (including, without limitation, those under sections 506, 544, 547, 548, 549, 550, and/or 552 of the Bankruptcy Code), or (E) any avoidance of or challenge (whether pursuant to chapter 5 of the Bankruptcy Code or otherwise) to any transfer made by or on behalf of the Debtors to or for the benefit of the Prepetition Lender or any other Lender Party.

(c) Any Challenge under this Paragraph 8 must be commenced by a party in interest, including, but not limited to, any Creditors’ Committee, with standing and requisite authority to bring the Challenge by no *later* than the seventy-fifth (75th) calendar day following the entry of this Interim Order (the “Challenge Period”), *provided, however*, that if a trustee is appointed prior to the expiration of the Challenge Period, such trustee will have until the later of the expiration of the Challenge Period or ten (10) days after appointment (subject to a further order of this Court) to assert a Challenge.

(d) Upon the next calendar day following the expiration of the Challenge Period and for all purposes, including, without limitation, in this Chapter 11 Case and any Successor Case, (i) all payments made to or for the benefit of the Prepetition Lender or Agent (whether prior to, on, or after the Petition Date) shall be indefeasible and shall not be subject to counterclaim, offset, recoupment, subordination, recharacterization, defense, recovery, or avoidance; (ii) any and all Challenges not timely filed within the Challenge Period by any party whatsoever shall be deemed

to be forever released, waived, and barred; (iii) the Prepetition Obligations shall be deemed to be secured by a valid, binding, enforceable, duly perfected, and non-avoidable security interest and lien in the Prepetition Collateral and Replacement Liens; (iv) the Prepetition Obligations shall be deemed to be a fully allowed claim; and (v) the Debtors' Stipulations shall be binding on all parties whatsoever, including, without limitation, any Creditors' Committee and any trustee or trustees appointed in this Chapter 11 Case or in any Successor Case.

9. Release; Covenant Not to Sue. The releases, discharge, waivers, settlements, compromises, and agreements set forth in this Paragraph 9 shall be deemed effective upon entry of the Final Order, and shall be subject only to the Challenge rights set forth in Paragraph 8 above.

(a) The Debtors, on their own behalf and on behalf of each of their present and future predecessors, successors, heirs, subsidiaries, and assigns (the "Releasors") forever and irrevocably (i) releases, discharges, and acquits the Prepetition Lender, the Agent (in its capacity as such), the Original Lender and the Original Agent (in their capacity as such), and each of its respective former or current officers, employees, directors, affiliates, partners, agents, representatives, owners, members, partners, financial advisors, legal advisors, managers, consultants, accountants, attorneys, and predecessors in interest (the "Releasees") of and from any and all claims, controversies, demands, liabilities, responsibilities, disputes, remedies, causes of action, choses in action, Avoidance Actions, indebtedness, obligations, counterclaims, cross-claims, offsets, recoupments, subordinations, recharacterizations, defenses, recoveries, expenses (including, without limitation, attorneys' fees), debts, liens, and Challenges, of any and every nature whatsoever, whether arising in law or equity, and whether known or unknown, matured or

contingent, relating to, arising under or in connection with any aspect of the relationship between the Releasees, on the one hand, and the Debtors or the Releasors, on the other hand, arising out of or in any way relating to the Prepetition Loan Documents, the Prepetition Obligations, the Prepetition Liens, any attempt by the Debtors to restructure the Prepetition Obligations through the date hereof, including, without limitation (a) any so-called “lender liability” or equitable subordination claims or defenses, (b) any and all “claims” (as defined in the Bankruptcy Code) and causes of action arising under the Bankruptcy Code, and (c) any recharacterization, recoupment, subordination, avoidance, or other claim or cause of action arising under or pursuant to section 105 or chapter 5 of the Bankruptcy Code or under any other similar provisions of applicable state, federal, or foreign law, including, without limitation, any right to assert any disgorgement or recovery, in each case, with respect to the extent, amount, validity, enforceability, priority, security, perfection or avoidability of any of the Prepetition Obligations, the Prepetition Loan Documents, or the Prepetition Liens, and further waives and release any defense, right of counterclaim, crossclaim right of setoff, or deduction to the payment of the Prepetition Obligations that the Releasors now have or may claim to have against the Releasees arising under, in connection with, based upon, or released to any and all acts, omissions, conduct undertaken, or events occurring prior to entry of this Interim Order (collectively, the “Released Claims”).

(b) Each of the Releasors hereby absolutely, unconditionally, and irrevocably covenants and agrees with each Releasee that it will not sue (at law, in equity, or in any other proceeding) any Releasee on the basis of any Released Claims released and discharged by Releasors pursuant to this Interim Order.

10. Termination; Events of Default. The Debtors' right, and the right of any other representative of the Estates, to use Designated Cash Collateral under this Interim Order shall terminate (other than in respect of the Carve-Out as, and to the limited extent, expressly provided in Paragraph 6 of this Interim Order), automatically and without the need for notice or demand by the Prepetition Lender or any further order of the Court, on the earliest to occur of the following: (a) thirty-five (35) calendar days after the Petition Date if the Final Order has not been entered by such date; (b) the closing date of any sale of the Debtors' business or of substantially all of the assets of the Estate, other than a sale pursuant to the Asset Purchase Agreement without the consent of the Prepetition Lender; (c) the appointment of a chapter 11 trustee or of an examiner with expanded powers in the Chapter 11 Case (having powers beyond those set forth in sections 1106(a)(3) and (4) of the Bankruptcy Code); (d) the conversion of the Chapter 11 Case to a case under chapter 7 of the Bankruptcy Code; (e) the dismissal of the Chapter 11 Case; (f) (i) a determination by the Court that a material violation or breach (other than by the Prepetition Lender), of any of the provisions of this Interim Order has occurred, or (ii) the occurrence of any of the events described in Paragraph 23 below; (g) any other (i.e. not material) violation or breach by the Debtors of any of the provisions of this Interim Order that is not disputed or cured within five (5) business days of written notice from the Prepetition Lender (either (f)(i), (f)(ii), or (g), an "Event of Default"); (h) the occurrence of the Effective Date (as that term is defined in the Asset Purchase Agreement); and (i) the effective date of any plan of reorganization in the Chapter 11 Case that has been confirmed by an order of the Court. The date on which the earliest of clauses (a) through (i) occurs is referred to as the "Termination Date." Upon the Termination Date, the

Debtors shall fully reserve the Retained Professional Carve-Out from the Designated Cash to be held for the benefit of the Retained Professionals.

11. Remedies and Stay Modification.

(a) The automatic stay provisions of section 362 of the Bankruptcy Code shall be deemed, and are hereby, modified, without the need for further order of the Court, solely to permit the Prepetition Lender upon, or at any time after, the occurrence of any Termination Date (including, without limitation, as a result of the occurrence of any Event of Default under this Interim Order) to deliver written notice by electronic mail to counsel for the Debtors, counsel for any Creditors' Committee, counsel for any trustee, and counsel for the U.S. Trustee, stating that the Prepetition Lender elects to commence the exercise of rights and remedies in respect of this Interim Order and the Prepetition Loan Documents, and under applicable bankruptcy and non-bankruptcy law, including, without limitation, in respect of its Prepetition Collateral and its Replacement Liens (a "Remedies Notice").

(b) Following the fifth (5th) business day following the delivery by the Prepetition Lender of a Remedies Notice (the "Remedies Notice Period"), the automatic stay provisions of section 362 of the Bankruptcy Code shall be deemed, and are hereby, modified, without the need for further order of the Court, to permit the Prepetition Lender and Agent, to exercise all rights and remedies provided for in this Interim Order or in the Prepetition Loan Documents or under applicable bankruptcy or non-bankruptcy law, including, without limitation, the rights to (i) take any actions reasonably calculated to preserve or safeguard the assets and property subject to the Prepetition Liens and/or Replacement Liens and/or to prepare any or all

such assets and property for sale; (ii) foreclose or otherwise enforce the Prepetition Liens and the Replacement Liens; (iii) exercise collection rights in respect of the Prepetition Liens and the Replacement Liens, including, without limitation, in respect of deposit accounts, securities accounts, accounts receivable, payment intangibles, licenses, instruments, and/or any other rights to payment, proceeds, and Cash Collateral (including Designated Cash Collateral), and sweep Cash Collateral (including Designated Cash Collateral) as provided in the Prepetition Loan Documents or under applicable law; and (iv) exercise any other rights and remedies under this Interim Order, the Prepetition Loan Documents, applicable bankruptcy law, and/or applicable non-bankruptcy law.

(c) Following the expiration of the Remedies Notice Period, the Debtors (or any trustee in the Chapter 11 Case or in a Successor Case) shall cooperate with the Prepetition Lender and Agent in connection with its exercise of rights and remedies by, among other things (in all instances subject to the Carve-Out), (i) providing access to the Prepetition Collateral and the Debtors' premises to the Prepetition Lender and its representatives and agents (including, without limitation, any collateral liquidator or consultant), (ii) providing access to the Debtors' books and records to the Prepetition Lender and its representatives and agents, (iii) providing any information or documents reasonably requested by the Prepetition Lender or its representatives or agents, (iv) performing the other obligations of the Debtors in connection with the Prepetition Lender's and Agent's exercise of rights and remedies as required by the Prepetition Loan Documents, and (v) taking reasonable steps to safeguard and protect the assets and property subject to the Prepetition Liens and/or Replacement Liens, and (vi) refraining from any interference with



(and from any encouragement of others to interfere with) the Prepetition Lender's enforcement of its rights and remedies.

(d) This Court shall retain exclusive jurisdiction to hear and resolve any disputes arising under or related to this Interim Order, including, without limitation, matters relating to the application or continuation of the automatic stay of section 362(a) of the Bankruptcy Code or any other injunctive relief that may be requested in accordance with this Interim Order.

12. Limitation on Section 506(c) Claims. Subject to the entry of the Final Order, no costs or expenses of administration that have been or may be incurred in this Chapter 11 Case or in any Successor Case at any time shall be surcharged against, and no person may seek to surcharge any costs or expenses of administration against, the Prepetition Lender or Agent, or any of its claims, or any assets or property subject to the Prepetition Liens and/or Replacement Liens, pursuant to section 506(c) or section 105 of the Bankruptcy Code or otherwise. Subject to the entry of the Final Order, no action, inaction, or acquiescence by the Prepetition Lender or Agent shall be deemed to be, or shall be considered evidence of, any alleged consent to a surcharge against the Prepetition Lender or Agent, any of its claims, or any assets or property subject to the Prepetition Liens and/or Replacement Liens.

13. No Marshaling. Subject to the entry of the Final Order, the Prepetition Lender and Agent shall not be subject to the equitable doctrine of "marshaling" or any other similar doctrine with respect to any of the assets or property subject to the Prepetition Liens and/or Replacement Liens, or otherwise. Without limiting the generality of the foregoing, subject to the entry of the Final Order, no party other than the Prepetition Lender or Agent shall be entitled, directly or

indirectly, to direct the exercise of rights or remedies or to seek (whether by order of this Court or otherwise) to marshal or otherwise control the enforcement of the Prepetition Liens or Replacement Liens.

14. Equities-of-the-Case Waiver. Subject to the entry of the Final Order, the Prepetition Lender and Agent shall be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code, and no person may assert an “equities of the case” claim under section 552(b) of the Bankruptcy Code against the Prepetition Lender or Agent with respect to any proceeds, product, offspring, or profits of any of the Collateral, or otherwise.

15. Restrictions on Granting Post-Petition Liens. Other than the Carve-Out, or as otherwise provided in this Interim Order, it shall be an Event of Default if any claim or lien having a priority superior or pari passu with those granted by this Interim Order to the Prepetition Lender or Agent is granted or permitted by any order of this Court heretofore or hereafter entered in the Chapter 11 Cases, while any portion of the Prepetition Obligations are outstanding.

16. Additional Perfection Measures.

(a) All the Replacement Liens shall be deemed perfected by operation of law immediately upon entry of this Interim Order and shall have, and be entitled to, the priorities as provided in this Interim Order. Neither the Debtors, nor the Prepetition Lender or Agent, shall be required to enter into or obtain any landlord waivers, mortgagee waivers, bailee waivers, warehouseman waivers, or any other waiver or consent, or to file or record any financing statements, mortgages, deeds of trust, leasehold mortgages, notices of lien, or similar instruments in any domestic or foreign jurisdiction (or filings with any other federal, state, local, or foreign

agencies or authorities), or obtain consents from any licensor, licensee, or similarly situated party in interest, or take possession of any assets or property, or take any other action in order to validate and to perfect the Replacement Liens or to establish the priorities as provided in this Interim Order.

(b) If the Prepetition Lender or Agent, in its respective sole and absolute discretion, chooses to take any action to obtain consents from any other party in interest, or to file or record any mortgages, financing statements, notices of lien, or other notices, documents, or instruments, or to otherwise record or perfect such security interests and liens, the Prepetition Lender and Agent are hereby authorized, but not directed to, take such action and/or to request that the Debtors take such action on its behalf (and the Debtors are hereby authorized to take such action) and: (i) any such notices, documents, or instruments shall be deemed to have been recorded and filed as of the time and on the date of entry of this Interim Order; and (ii) no defect in any such act shall affect or impair the validity, perfection, and enforceability of the liens granted under this Interim Order.

(c) In lieu of obtaining such consents or filing or recording any such mortgages, financing statements, notices of lien, or similar documents or instruments, the Prepetition Lender or Agent may, in its respective sole and absolute discretion, choose to file or record a true and complete copy of this Interim Order in any place in which any such documents or instruments would or could be filed, together with a description of collateral, and such filing by the Prepetition Lender or Agent shall have the same effect as if such mortgages, deeds of trust, financing statements, notices of lien, or similar documents or instruments had been filed or recorded at the time and on the date of entry of this Interim Order.

17. Application of Collateral Proceeds. Following the occurrence of any Termination Date (including without limitation, as a result of the occurrence of any Event of Default under this Interim Order) and the expiration of the Remedies Notice Period, the Debtor is hereby authorized, subject only to the Carve-Out provisions of Paragraphs 6 and 10, to remit to the Prepetition Lender one-hundred percent (100%) of all collections on, and proceeds of, all assets and property subject to the Prepetition Liens and/or the Replacement Liens, including, without limitation, all Cash Collateral (including Designated Cash Collateral), and the automatic stay provisions of section 362 of the Bankruptcy Code are hereby modified, without the need for further order of the Court, to permit the Prepetition Lender to retain and apply all such collections, proceeds, and Cash Collateral (including Designated Cash Collateral) (a) first, to satisfy or reduce the Adequate Protection Claim, and (b) second to satisfy or reduce the Prepetition Obligations in accordance with the Prepetition Loan Documents, until indefeasibly satisfied in full. In furtherance of the foregoing (subject only to the Carve-Out provisions of Paragraphs 6 and 10), (x) all cash, checks, instruments, securities, investment property, and other items deposited by the Debtor (or other representative of the Estate) with any bank, brokerage firm, or other financial institution shall be subject to a valid, binding, enforceable, perfected, and non-avoidable first-priority security interest and Replacement Lien in favor of the Agent, and (y) each bank, brokerage firm, and other financial institution with an account of the Debtor, is hereby authorized and instructed to comply (without the need for consent of the Debtor or any other representative of the Estate) with any instructions originated by the Prepetition Lender (or its designee) to such bank, brokerage firm, or financial institution directing the disposition of cash, checks, instruments, securities, investment property,

or other items deposited by the Debtor (or other representative of the Estate) from time to time, including, without limitation, any instruction to send to the Prepetition Lender (or its designee) by wire transfer (to such account as the Prepetition Lender (or its designee) shall specify) or in such other manner as the Prepetition Lender (or its designee) shall direct, all cash and other property held for, or owed by it to (or for the credit or benefit of), the Debtors or the Estates.

18. Cash Management Systems. All Designated Cash Collateral shall be separately identified by the Debtors.

19. Delivery of Reports, Pleadings, and Documents. In addition to all other requirements set forth in this Interim Order, the Debtors shall deliver to the Prepetition Lender: (i) all financial reports, budgets, and forecasts as and when required under the Prepetition Loan Documents or as requested by the Prepetition Lender from time to time in its reasonable discretion; (ii) all notices or reports (including usage reports) received from any lessee of the Debtors or related to the Prepetition Collateral; (iii) all financial reports, budgets, and forecasts delivered by the Debtors to the U.S. Trustee or any Creditors' Committee, its professionals or advisors; and (iv) copies of all Consultation Documents (as that term is defined in the Asset Purchase Agreement).

20. Lender Parties Not Responsible Person. Subject to any applicable Challenge pursuant to Paragraph 8 above, in (a) consenting to the use of Designated Cash Collateral), (b) making the decision to make the loans and financial accommodations under the Prepetition Loan Documents, (c) administering the loans and financial accommodations extended under the Prepetition Loan Documents; (d) extending other financial accommodations to the Debtors under the Prepetition Loan Documents, (e) making the decision to collect the indebtedness and

obligations of the Debtors, (f) cooperating in the Debtors' efforts toward a reorganization, sale, and/or liquidation, or (g) otherwise engaging in transactions and communications with the Debtors, the Prepetition Lender, the Agent, the Original Lenders and Original Agent shall not by reason thereof be considered to have been or be exercising control over any operations of the Debtors or acting in any way as a responsible person, or as an owner or operator under any applicable law or regulation, including, without limitation, any environmental law, any labor law, or any other federal or state statute, regulation, or doctrine.

21. Binding Nature of Interim Order; Successors and Assigns. It shall be an Event of Default if the rights, remedies, powers, privileges, claims, liens, and priorities of the Prepetition Lender and Agent provided for in this Interim Order or otherwise are modified, altered, eliminated, or impaired in any manner by any subsequent order or judgment (including, without limitation, by any confirmation order or sale order), by any plan of reorganization or liquidation in this Chapter 11 Case, by the dismissal or conversion of this Chapter 11 Case, or in any Successor Case. The provisions of this Interim Order shall be binding upon, and shall inure to the benefit of, the Debtors, the Estates, the Prepetition Lender, the Agent, any Creditors' Committee, and each of their respective successors and assigns, including, without limitation, any trustee appointed under chapter 7 or chapter 11 of the Bankruptcy Code, any examiner with expanded powers, any responsible officer, any estate administrator or representative, any liquidation trustee, and any similar person appointed in a case for the Debtors under any chapter of the Bankruptcy Code. The provisions of this Interim Order shall also be binding on all of the Debtors' creditors and equity holders, and all other parties in interest.

22. No Waiver. This Interim Order shall not be construed in any way as a waiver or relinquishment of any rights that the Prepetition Lender may have to raise any matter or be heard on any matter brought before the Court. Except as expressly provided in this Interim Order, the Prepetition Lender retains and reserves all of its rights and remedies.

23. Sale; Conversion; Dismissal.

(a) So long as any Prepetition Obligations or Adequate Protection Claims remain unsatisfied, an Event of Default will occur in the event that the Debtors at any time seek (or support any other party in seeking) the entry of any order, or propose (or support any other party in proposing) any plan, in either case prior to the Termination Date that provides (1) for the sale or other disposition of substantially all of the Prepetition Collateral, or (2) for the transfer or issuance of any equity interest in the Debtors or in any successor to the Debtors, *unless*, in connection and concurrently with any such event described in (1) or (2) above, (i) the Prepetition Lender (including its nominee or assignee) is the purchaser at such sale pursuant to the terms of the Asset Purchase Agreement; (ii) the proceeds of such sale, transfer, issuance, plan, or other disposition are or will be sufficient to indefeasibly pay in full in cash the Prepetition Obligations and any Adequate Protection Claim, and the Prepetition Obligations and any such Adequate Protection Claim are required to be indefeasibly paid in full in cash and satisfied on the closing date of such sale, transfer, issuance, plan, or other disposition, or (iii) the Prepetition Lender consents to such sale in writing in its sole and absolute discretion. For the avoidance of doubt, the Prepetition Lender retains and reserves (x) subject to entry of the Final Order, the right to credit bid the Prepetition Obligations pursuant to section 363(k) and (y) of the Bankruptcy Code and the

right to file an objection to any proposed sale, transfer, issuance, plan, or other disposition on any basis.

(b) An Event of Default will occur if the Debtors at any time seek (or supports any other party in seeking) the entry of any order dismissing or converting this Chapter 11 Case under section 305 or section 1112 of the Bankruptcy Code, or appointing a chapter 11 trustee or an examiner with expanded powers (having powers beyond those set forth in sections 1106(a)(3) and (4) of the Bankruptcy Code), in each case unless and until (i) the Prepetition Obligations and Adequate Protection Claim are to be indefeasibly paid in full in cash and satisfied as a condition to the implementation of such order, or (ii) the Prepetition Lender expressly consents in writing to such relief in its sole and absolute discretion. For the avoidance of doubt, the Prepetition Lender retains and reserves the right to file an objection to any proposed dismissal, conversion, or appointment on any basis. If an order dismissing or converting this Chapter 11 Case under section 305 or section 1112 of the Bankruptcy Code or otherwise is at any time entered, this Court shall retain jurisdiction, notwithstanding such dismissal, for purposes of enforcing the Adequate Protection Rights.

24. Limits on Liability. Nothing in this Interim Order shall in any way be construed or interpreted to impose upon the Prepetition Lender or Agent any liability for any claims arising from any activities by the Debtors in the operation of its business or in connection with its restructuring efforts.



25. Priority of Terms. In the event of any conflict between (a) any term or provision of the Motion, on the one hand, and (b) the terms and provisions of this Interim Order, on the other hand, the terms and provisions of this Interim Order shall govern.

26. No Third-Party Beneficiary. Except as explicitly set forth herein, no rights are created hereunder for the benefit of any third party, any creditor, any equity holder, or any direct, indirect, or incidental beneficiary.

27. Survival. Except as otherwise provided herein, or by a further order of this Court after notice to the Prepetition Lender and Agent, (a) the protections afforded under this Interim Order, and any actions taken pursuant thereto, shall survive the entry of any order (i) dismissing this Chapter 11 Case or (ii) converting this Chapter 11 Case to a case pursuant to chapter 7 of the Bankruptcy Code; and (b) the Replacement Liens and the Adequate Protection Claim shall remain fully effective, binding, enforceable, duly perfected, and non-avoidable in this Chapter 11 Case, in any Successor Case, or after any such dismissal. Absent further order of this Court, after notice to the Prepetition Lender and Agent, the Replacement Liens and the Adequate Protection Claim shall maintain their priorities as provided in this Interim Order, and shall not be modified, altered, eliminated, or impaired in any way by any other financing, extension of credit, incurrence of indebtedness, or by any conversion of this Chapter 11 Case to a case under chapter 7 of the Bankruptcy Code, or by dismissal of this Chapter 11 Case, or by any other act or omission, until all of the Prepetition Obligations and Adequate Protection Claims have been indefeasibly paid in full in cash and completely satisfied. If any or all of the provisions of this Interim Order are hereafter reversed, modified, vacated, or stayed, that action will not affect (i) the validity of any

obligation, indebtedness or liability under this Interim Order prior to the date of receipt of written notice to the Prepetition Lender and Agent of the effective date of such action or (ii) the validity and enforceability of any lien, administrative expense, right, or priority authorized or created hereby or pursuant to this Interim Order.

28. Adequate Notice/Scheduling of Final Hearing. The notice given by the Debtors of the Interim Hearing, under the circumstances, was adequate and sufficient and complied with Bankruptcy Rules 2002 and 4001(c) and the Local Rules. No further notice of the request for the relief granted at the Interim Hearing is required. The Debtors shall promptly mail copies of this Interim Order and notice of the Final Hearing to: (i) the Office of the United States Trustee; (ii) the Office of the United States Attorney for the District of Delaware; (iii) the Internal Revenue Service; (iv) the Securities and Exchange Commission; (v) the Debtors' twenty (20) largest unsecured creditors; (vi) counsel to the Prepetition Lender; (vii) all other known parties asserting a lien against any of the Debtors' assets; and (viii) any party that has as of the date of this Interim Order requested special notice pursuant to Bankruptcy Rule 2002(i). Any objection to the relief sought at the Final Hearing shall be made in writing setting forth with particularity the grounds thereof, and shall be filed with the Court and served so as to be *actually received* no later than seven (7) days prior to the Final Hearing at 4:00 p.m. (Eastern) by the following: (a) proposed counsel to the Debtors, (i) Morrison & Foerster LLP, 250 West 55th Street, New York, New York 10019, Attn: Lorenzo Marinuzzi ([lmarinuzzi@mfo.com](mailto:lmarinuzzi@mfo.com)) and (ii) Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, Delaware 19801, Attn: Joseph Barry ([jbarry@ycst.com](mailto:jbarry@ycst.com)), Ryan Bartley ([rbartley@ycst.com](mailto:rbartley@ycst.com)), and Joseph M. Mulvihill

(jmulvihill@ycst.com); (ii) counsel to the Prepetition Lender, Vedder Price P.C., 222 North LaSalle Street, Chicago, Illinois 60601, Attn: Neil Poland ([npoland@vedderprice.com](mailto:npoland@vedderprice.com)) and David L. Kane ([dkane@vedderprice.com](mailto:dkane@vedderprice.com)); and (iii) if any statutory committee has been appointed in the Chapter 11 Case, counsel to such committee. The Court shall conduct a Final Hearing on the Motion commencing on [April] [\_\_\_], 2021, at \_\_:\_\_0 \_\_.m. (Eastern).

29. Immediate Binding Effect. This Interim Order shall not be stayed and shall be valid and fully effective immediately upon entry, notwithstanding the possible application of Bankruptcy Rules 4001(a)(3), 6003(b), 6004(h), 7062, and 9014, or otherwise, and the Clerk of the Court is hereby directed immediately to enter this Interim Order on the Court's docket in this Chapter 11 Case.

30. Proof of Claim. The Prepetition Lender shall not be required to file a proof of claim in the Chapter 11 Case or in any Successor Case. The Debtors' Stipulations shall be deemed to constitute a timely filed proof of secured claim for the Prepetition Lender upon entry of the Interim Order, and the Prepetition Lender shall be treated under section 502(a) of the Bankruptcy Code as though it had filed a timely proof of claim, notwithstanding any order entered by the Court concerning the establishment of a bar date for the filing of proofs of claim in this Chapter 11 Case or in any Successor Case. The Prepetition Lender is hereby authorized and entitled, in its sole discretion, but not required, to file a proof of claim in this Chapter 11 Case or in any Successor Case.

31. Retention of Jurisdiction. This Court shall retain exclusive jurisdiction over all matters pertaining to the implementation, interpretation, and enforcement of this Interim Order.

**EXHIBIT A**

**Approved Budget**

## AeroCentury Corp. and Affiliates

## 13 WEEK CASH FLOW FORECAST

Week	1	2	3	4	5	6	7	8	9	10	11	12	13	Total
Week Ended	2-Apr	9-Apr	16-Apr	23-Apr	30-Apr	7-May	14-May	21-May	28-May	4-Jun	11-Jun	18-Jun	25-Jun	
<b>Cash Receipts:</b>														
Rent	\$ -	\$ -	\$ 193,000	\$ -	\$ -	\$ -	\$ 193,000	\$ -	\$ -	\$ -	\$ -	\$ 193,000	\$ -	\$ 579,000
Asset Sale Proceeds	-	-	14,753	-	-	-	-	-	-	-	-	-	-	14,753
Total	\$ -	\$ -	\$ 207,753	\$ -	\$ -	\$ -	\$ 193,000	\$ -	\$ -	\$ -	\$ -	\$ 193,000	\$ -	\$ 593,753
<b>Cash Disbursements:</b>														
<i>Operating Disbursements</i>														
Maintenance	\$ -	\$ -	\$ -	\$ -	\$ (24,500)	\$ -	\$ -	\$ -	\$ (29,500)	\$ -	\$ -	\$ -	\$ -	\$ (54,000)
Jet/Fleet Expenses	(18,663)	(11,400)	(29,600)	(17,220)	(76,560)	(44,820)	(63,200)	(44,420)	(76,560)	(44,820)	(63,160)	(27,080)	(25,060)	(542,563)
Public Company Costs	(2,000)	-	(4,600)	-	-	(70,000)	(669)	-	-	-	-	-	-	(77,269)
Audit and Tax	(5,400)	(10,000)	(1,150)	-	-	(10,000)	(400)	(750)	-	-	-	(1,150)	-	(28,850)
Director Fees	-	-	-	-	-	(85,000)	-	-	-	-	-	-	-	(85,000)
Taxes	-	-	(40,866)	-	-	-	-	-	-	-	-	-	-	(40,866)
Other Operating	(1,000)	-	-	-	(1,000)	-	-	-	-	(1,000)	-	-	-	(3,000)
Total Operating Disbursements	\$ (27,063)	\$ (21,400)	\$ (76,216)	\$ (17,220)	\$ (102,060)	\$ (209,820)	\$ (64,269)	\$ (45,170)	\$ (106,060)	\$ (45,820)	\$ (63,160)	\$ (28,230)	\$ (25,060)	\$ (831,548)
<i>Financing Disbursements</i>														
Restructuring Fees (accrual basis)	(91,906)	(83,667)	(85,650)	(83,634)	(84,312)	(99,552)	(99,932)	(98,235)	(451,522)	(88,008)	(80,473)	(81,738)	(80,168)	(1,508,798)
Adequate Protection Payments to Prepetition Lender	(1,233,432)	-	(193,000)	-	-	-	(193,000)	-	-	-	-	(193,000)	-	(1,812,432)
Total Financing Disbursements	\$ (1,325,338)	\$ (83,667)	\$ (278,650)	\$ (83,634)	\$ (84,312)	\$ (99,552)	\$ (292,932)	\$ (98,235)	\$ (451,522)	\$ (88,008)	\$ (80,473)	\$ (274,738)	\$ (80,168)	\$ (3,321,230)
<b>Net Cash Flow</b>	<b>\$ (1,352,401)</b>	<b>\$ (105,067)</b>	<b>\$ (147,113)</b>	<b>\$ (100,854)</b>	<b>\$ (186,372)</b>	<b>\$ (309,372)</b>	<b>\$ (164,201)</b>	<b>\$ (143,405)</b>	<b>\$ (557,582)</b>	<b>\$ (133,828)</b>	<b>\$ (143,633)</b>	<b>\$ (109,968)</b>	<b>\$ (105,228)</b>	<b>\$ (3,559,025)</b>
<b>Consolidated Cash Balance</b>														
Beginning Cash Balance	\$ 3,755,511	\$ 2,403,110	\$ 2,298,043	\$ 2,150,930	\$ 2,050,077	\$ 1,863,704	\$ 1,554,332	\$ 1,390,131	\$ 1,246,726	\$ 689,144	\$ 555,316	\$ 411,683	\$ 301,715	\$ 3,755,511
+/- Cash Flow	(1,352,401)	(105,067)	(147,113)	(100,854)	(186,372)	(309,372)	(164,201)	(143,405)	(557,582)	(133,828)	(143,633)	(109,968)	(105,228)	(3,559,025)
<b>Ending Consolidated Cash Balance</b>	<b>\$ 2,403,110</b>	<b>\$ 2,298,043</b>	<b>\$ 2,150,930</b>	<b>\$ 2,050,077</b>	<b>\$ 1,863,704</b>	<b>\$ 1,554,332</b>	<b>\$ 1,390,131</b>	<b>\$ 1,246,726</b>	<b>\$ 689,144</b>	<b>\$ 555,316</b>	<b>\$ 411,683</b>	<b>\$ 301,715</b>	<b>\$ 196,486</b>	<b>\$ 196,486</b>

## Professional and US Trustee Fees

<b>Restructuring fees:</b>														
Debtors Advisors	\$ 63,828	\$ 65,333	\$ 65,333	\$ 65,333	\$ 65,333	\$ 80,161	\$ 80,161	\$ 80,161	\$ 430,161	\$ 71,688	\$ 65,333	\$ 65,333	\$ 65,333	\$ 1,263,495
Committee Advisors	11,398	11,667	11,667	11,667	11,667	11,290	11,290	11,290	11,290	11,505	11,667	11,667	11,667	149,731
Claims Agent	5,699	5,833	5,833	5,833	5,833	5,645	5,645	5,645	5,645	3,753	2,333	2,333	2,333	62,366
U.S. Trustee Fees	10,981	834	2,816	800	1,479	2,455	2,835	1,138	4,425	1,062	1,140	2,405	835	33,207
Total Accrual	\$ 91,906	\$ 83,667	\$ 85,650	\$ 83,634	\$ 84,312	\$ 99,552	\$ 99,932	\$ 98,235	\$ 451,522	\$ 88,008	\$ 80,473	\$ 81,738	\$ 80,168	\$ 1,508,798

Note: Weekly US Trustee quarterly fee (0.08%) calculated based on forecasted 2Q'21 disbursements  
For illustrative purposes, forecast assumes emergence from bankruptcy on June 30, 2021