

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: (A) AN ORDER (I)  
APPROVING BIDDING PROCEDURES IN CONNECTION WITH THE SALE OF  
SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS, (II) AUTHORIZING THE  
DEBTORS TO ENTER INTO THE STALKING HORSE PURCHASE AGREEMENT,  
(III) SCHEDULING AN AUCTION FOR AND HEARING TO APPROVE THE SALE,  
(IV) APPROVING NOTICE OF RESPECTIVE DATE, TIME AND PLACE FOR  
AUCTION AND FOR HEARING ON APPROVAL OF SALE, (V) APPROVING  
PROCEDURES FOR THE ASSUMPTION AND ASSIGNMENT OF CERTAIN  
EXECUTORY CONTRACTS AND UNEXPIRED LEASES, (VI) APPROVING FORM  
AND MANNER OF NOTICE THEREOF, AND (VII) GRANTING RELATED RELIEF;  
AND (B) AN ORDER AUTHORIZING AND APPROVING (I) THE SALE FREE AND  
CLEAR OF LIENS, CLAIMS, RIGHTS, ENCUMBRANCES, AND OTHER INTERESTS,  
AND (II) THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY  
CONTRACTS AND UNEXPIRED LEASES AND (III) RELATED RELIEF**

The above-captioned debtors and debtors in possession (the "Debtors") hereby submit this motion (the "Motion"), pursuant to sections 105(a), 363, 365, and 503 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "Bankruptcy Code"), and Rules 2002, 6004, 6006, 9006, and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") for entry of: (a) an order, substantially in the form annexed hereto as **Exhibit A** (the "Bidding Procedures Order"), (i) authorizing and approving the proposed bidding procedures to be used (the "Bidding Procedures") in connection with the sale free and clear of all liens, claims, interests, and encumbrances (the "Sale") of all or substantially all of the Debtors' aircraft and related assets (the

<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. (0929). The Debtors' mailing address is 1440 Chapin Avenue, Suite 310, Burlingame, CA 94014.



“Assets”); (ii) authorizing the Debtors to enter into that certain asset purchase agreement with Drake Asset Management Jersey Limited (“Drake” or the “Stalking Horse Bidder”, and the asset purchase agreement, as amended, supplemented or otherwise modified by the parties thereto, and including the disclosure, schedules and exhibits attached thereto, the “Stalking Horse Purchase Agreement”) in the form annexed hereto as **Exhibit B**; (iii) setting the dates for the Bid Deadline (as defined below), the auction of the Assets (the “Auction”), and the hearing for approving the Sale (the “Sale Hearing”), (iv) approving all forms of notice and notice procedures related thereto (the “Notice Procedures”), (v) authorizing certain procedures (the “Assignment Procedures”) related to the assumption and assignment of certain executory contracts and unexpired leases (the “Designated Contracts”), and (vi) granting related relief; and (b) an order (the “Sale Order”), (i) authorizing the Sale free and clear of all liens, claims, interests, and encumbrances (except for any permitted liens and encumbrances), (ii) authorizing the assumption and assignment of the Designated Contracts, and (iii) granting related relief. In support of this Motion, the Debtors respectfully represent as follows:

### **JURISDICTION AND VENUE**

1. This 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 rule 9013-1(f) of the Local Rules of Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), 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 this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory and legal predicates for the relief requested herein are sections 105(a), 363, 365, and 503 of the Bankruptcy Code, as complemented by Bankruptcy Rules 2002, 6004, 6006, 9006, and 9014.

### **GENERAL BACKGROUND**

3. On March 29, 2021 (the “Petition Date”), the Debtors commenced these bankruptcy cases by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code (the “Chapter 11 Cases”). 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. The events leading up to the Petition Date are set forth in the *Declaration of Harold M. Lyons in Support of the Debtors’ Chapter 11 Petition and First Day Pleadings* (the “First Day Declaration”), filed contemporaneously herewith.<sup>2</sup>

5. The Debtors are seeking approval of the Bidding Procedures to establish a clear and open process for the solicitation, receipt, and evaluation of bids on a timeline that allows the Debtors to consummate the Sale of the Assets prior to confirmation of a chapter 11 plan that will contemplate a restructuring of the Debtors around their remaining assets, business platform, and tax attributes.

### **SALE PROCESS**

#### **A. The Debtors’ Prepetition Activities**

6. As set forth in more detail in the declaration of Adam M. Rosen in support of this Motion (the “Rosen Declaration”), filed concurrently herewith, the Debtors retained B. Riley Securities, Inc. (“B. Riley”) in October 2019 to assist in analyzing options to address their capital structure, including strategic and financing alternatives to restructure their indebtedness and other

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<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings given to such terms in the First Day Declaration.

contractual obligations, including on the Debtors' default under a credit facility (the "MUFG Credit Facility") for which MUFG Union Bank, N.A. ("MUFG") acted as agent. Obligations owed under the MUFG Credit Facility were held by five separate institutions (the "MUFG Lending Group") and were secured by substantially all of the Debtors' assets.

7. With the assistance of B. Riley, the Debtors negotiated a forbearance agreement, including three subsequent amendments to the forbearance agreement, with the MUFG Lending Group. In December 2019, the Debtors embarked on a dual-track process to raise capital and/ or sell some or all of the Debtors' assets. In connection with this dual-track process, the B. Riley team, contacted approximately 90 parties. All prospective parties were encouraged and permitted to submit proposals for a variety of potential transactions, including debt financings, equity investments, or to acquire any of the Debtors' assets, including any combination thereof. To that end, the Debtors set up a robust electronic data room to facilitate information sharing on a confidential basis with prospective parties. The data room included over 250 documents regarding financial information, operations, leases, key contracts, maintenance reserves, employees and human resources, safety, legal issues, insurance, aircraft maintenance and other liabilities. The initial deadline to submit bids was March 2, 2020 (the "Initial IOI Deadline"), providing potentially interested parties approximately ten weeks to perform their initial diligence.

8. The Debtors ultimately received eight (8) indications of interests ("IOIs"), including two (2) that would have repaid the outstanding principal and accrued interest owed on the MUFG Credit Facility. Unfortunately, this marketing process and the Initial IOI Deadline coincided with the onset of the COVID-19 pandemic. Within two weeks following the Initial IOI Deadline, all 50 states had declared a State of Emergency and 46 states had imposed Stay-At-Home Orders. Global travel restrictions and a collapse in consumer demand resulting from the

COVID-19 pandemic have caused unprecedented harm to the global aviation and transportation industry. Operators such as United Airlines have described the pandemic as “the most disruptive, global crisis in the history of aviation.”<sup>3</sup> As a result, each party who initially submitted an IOI ultimately informed the Debtors that they were no longer interested in proceeding on the terms set forth in their original IOIs due to the uncertainty caused by the COVID-19 pandemic.

9. The Debtors remained in default, however, and continued to negotiate with the MUFG Lending Group to determine a viable path forward despite the impact of the COVID-19 pandemic. Following extensive negotiations, as a condition for continuing to allow the Debtors to operate while still in default under the MUFG Credit Facility, the MUFG Lending Group required the Debtors to restart the sales and marketing process beginning in early April of 2020 to solicit highest and best offers. Again, prospective parties were able to submit proposals for a variety of potential transactions, including debt financings, equity investments, or the acquisition of any of the Debtors’ assets, including any combination of assets. Interested parties had approximately six weeks to refresh their diligence and submit a revised IOI. By mid-May 2020, the Debtors received four offers from potentially interested parties.

10. The Debtors, with the assistance of B. Riley, determined that the proposal by Drake Asset Management Jersey Limited (“Drake”) to acquire all of the accrued and outstanding obligations owed under the MUFG Credit Facility (together with the assignment of the valid, enforceable, duly perfected, and non-avoidable liens and security interests related thereto, the “Drake Debt Purchase”) was far and away the best offer submitted. Drake’s offer provided the highest value but also had the fewest contingencies and proposed the earliest closing. In the

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<sup>3</sup> United Airlines, *United Expects To Have Approximately \$17 Billion In Available Liquidity By September 2020*, United Airlines Hub, June 15, 2020, <https://hub.united.com/2020-06-15-united-expects-to-have-approximately-17-billion-in-available-liquidity-by-september-2020-2646173793.html>.

subsequent months, Drake worked with the MUFG Lending Group, the Debtors, and B. Riley to document the debt acquisition and a subsequent amendment to the MUFG Credit Facility to be effective upon Drake's purchase of the outstanding obligations from the MUFG Lending Group.

## **B. The Prepetition Sale**

11. In December 2020, Drake made a proposal to acquire the three aircraft owned by ACY E-175, LLC ("E-175"), a special purpose entity owned by the Debtors, and leased to Republic Airways (the "Republic Aircraft").<sup>4</sup> Following several weeks of negotiations, the Debtors and Drake agreed to a process by which the Debtors would conduct a prepetition sales process for the three Republic Aircraft.

12. In late December of 2020, the Debtors, through B. Riley, reached out to nine potentially interested parties, all but one of whom had already performed substantial diligence on these aircraft in connection with the previous marketing and sale processes for the Debtors' assets. Eight parties executed NDAs and were provided access to a data room. Parties had three weeks to perform diligence and to submit their bids. The primary driver of this sale timeline was the Debtors' significant liquidity constraints. And as noted above, parties were already familiar with the Republic Aircraft and had already had ample opportunity to diligence them. The Debtors further submit that their aircraft assets do not require extensive diligence in first place; a potential bidder can easily analyze the terms and payment streams associated with the Debtors' aircraft leases, and can largely evaluate the condition of the physical aircraft through their service and maintenance records. Despite their liquidity constraints, the Debtors ultimately agreed to extend

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<sup>4</sup> Drake's liens and security interests attached to the Debtors' membership interests in E-175 (the "Membership Interests") but did not attach to the Republic Aircraft owned by E-175.

the bid deadline for two of the parties. At the conclusion of this extended marketing period, the Debtors received six offers.

13. The Debtors, with the assistance of B. Riley, determined that Drake's bid for the Membership Interests in E-175 was the highest and best offer received. Drake's bid provided the highest economic consideration to the Debtors and provided both the fastest and the most certain closing. Most importantly, Drake proposed a closing date at least a month sooner than any other bidder. Further, as part of the sale of the E-175 aircraft, Drake agreed to allow the Debtors to retain \$2.1 million of sale proceeds, which would be used to fund the Debtors' continued business operations and further sale and restructuring efforts. After discussion by the Debtors' Board of Directors, the Debtors selected Drake as the winning bidder. The sale of the Membership Interests in E-175 to Drake closed on March 16, 2021.

#### **C. The Stalking Horse Bid**

14. As noted above, Drake agreed to allow the Debtors to retain \$2.1 million of cash from the sale of the E-175 membership interests to continue their business operations. The Debtors determined that a sale of their remaining aircraft and other assets under section 363 could provide the most-value, and the Debtors voluntarily commenced these cases to pursue such a sale.

15. The Debtors submit that the Stalking Horse Agreement provides the best option to maximize value for stakeholders. The Debtors, with the assistance of B. Riley and the Debtors' other professional advisors, engaged in hard-fought, good-faith, arm's-length negotiations with the Stalking Horse regarding the Stalking Horse Agreement. The Debtors further submit that entry into the Stalking Horse Agreement permits the Debtors to conduct a value-maximizing sale process that is backstopped by the proposed Stalking Horse Bid. The Stalking Horse Bid is a credit bid in the amount of the Stalking Horse Bidder's Secured Obligations (as defined in the Stalking Horse Agreement), which are approximately \$83,164,109 as of the Petition Date. Importantly, the credit

bid does not include any break-up fee or expense reimbursement. The Debtors' ultimate consummation of the Stalking Horse Agreement is subject to higher or otherwise better offers (in whole or through a combination of bids) that the Debtors may receive for the Assets pursuant to the Bidding Procedures. Accordingly, there is a strong business justification for the Debtors' entry into the Stalking Horse Agreement.

16. Further, the Stalking Horse Bid benefits the Debtors by serving as a floor for an overbid process to ensure that the Debtors receive the highest or otherwise best offer for the Assets. Accordingly, if the Debtors were to market the assets without the benefit of a Stalking Horse Bid serving as the floor, the Debtors might encounter greater challenges in their pursuit of the highest or otherwise best offer for the Assets.

#### **D. The Bidding Procedures and Sale Timeline**

17. The Debtors are seeking approval of the Bidding Procedures to establish a clear and open process for the solicitation, receipt, and evaluation of bids on a timeline that allows the Debtors to consummate a sale of their remaining aircraft prior to confirmation of a chapter 11 plan that will contemplate a restructuring of the Debtors around their remaining assets, business platform, and tax attributes.

18. The proposed Bidding Procedures and the sale timeline (the "Sale Timeline") will allow the Debtors to obtain the highest or otherwise best value for the their assets under the circumstances of the Chapter 11 Cases. The Debtors extensively marketed all of their assets and business for a period commencing more than a year ago, and therefore, the Debtors submit that establishing a Bid Deadline approximately 21 days after the Bid Procedures Hearing will provide more than ample time for potentially interested parties to review the Debtors' assets and formulate a bid. As described in more detail above, the Debtors' assets do not require extensive diligence, and such diligence can generally be performed remotely.



19. The Debtors have already commenced marketing their assets, and already have reached out to 86 potential buyers and commenced negotiating non-disclosure agreements with potential interested purchasers. The Debtors now seek to formalize that marketing process. The proposed Bidding Procedures make clear that the Debtors will run a comprehensive marketing process and may accept offers for individual assets and for sub-groups of assets that are less than all of the Debtors' assets. If the Debtors determine in their business judgment that such a bid or bids represent a higher or better offer, then the Debtors may pursue an alternative transaction.

20. Accordingly, as set forth in further detail below, approval of the proposed Bidding Procedures and Sale Timeline will enable the Debtors to obtain the highest or otherwise best offer for their assets under the circumstances and will thereby maximize value for the benefit of all stakeholders in the Chapter 11 Cases. The Debtors therefore respectfully request that the Court approve the relief requested in this motion.

### **RELIEF REQUESTED**

21. By this Motion, the Debtors seek entry of the Bidding Procedures Order:

- a. authorizing and approving the Bidding Procedures in connection with the receipt and analysis of competing bids for the Assets, substantially in the form attached as **Exhibit 1** to the Bidding Procedures Order;
- b. authorizing the Debtors to enter into the Stalking Horse Purchase Agreement in the form annexed hereto as **Exhibit B**;
- c. approving the form and manner of notice of the Auction and Sale and hearing thereon, substantially in the form attached to the Bidding Procedures Order as **Exhibit 2** (the "Notice of Auction and Sale Hearing");
- d. authorizing and approving the Assignment Procedures for the assumption and assignment of the Designated Contracts, as applicable, in connection with the Sale;
- e. approving the form and manner of notice of the potential assumption and assignment of Designated Contracts, substantially in the form attached to the Bidding Procedures Order as **Exhibit 3** (the "Notice of Assumption and Assignment");

- f. authorizing the Debtors to enter into that certain Stalking Horse Asset Purchase Agreement, as amended, supplemented or otherwise modified by the parties thereto, and including the disclosure of schedules and exhibits attached thereto with the Stalking Horse Bidder;
- g. establishing the following dates and deadlines, subject to modification as needed, relating to competitive bidding and approval of the Sale:
  - **Bid Deadline:** 21 days after the hearing to consider the Bid Procedures (the “Bid Procedures Hearing”), as the deadline by which all binding bids must be actually received pursuant to the Bidding Procedures (the “Bid Deadline”);
  - **Auction:** three (3) Business Days following the Bid Deadline, as the date and time of the Auction if more than one competing Qualified Bid (as defined in the Bidding Procedures) is received with respect to the Assets, which will be held telephonically, by videoconference, or at the offices of Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, Delaware 19801;
  - **Sale Objection:** seven days before the Sale Hearing, as the deadline to object to the Sale (the “Sale Objection Deadline”);
  - **Cure Cost/Assignment Objection Deadline:** fourteen days after service of the Notice of Cure Cost/Assignment as the deadline to object to the assumption and assignment of Designated Contracts or cure amounts related thereto, other than objections related to the specific identity of the Successful Bidder (in the event that the Stalking Horse Bidder is not the Successful Bidder) with respect to the applicable Designated Contract (the “Cure Cost/Assignment Objection Deadline”);
  - **Post-Auction Objection Deadline:** two (2) Business Days following the Auction shall be the deadline to object only solely with respect to the Non-Debtor Counterparties (defined below) to the Designated Contracts, to the specific identity of and adequate assurance of future performance provided by the Successful Bidder with respect to the applicable Designated Contract; provided, however, that any objection of a Non-Debtor Counterparty related to the Stalking Horse Bid (including with respect to the identity of and adequate assurance of future performance provided by the Stalking Horse Bidder) must be filed as a Cure Cost/Assignment Objection by the Cure Cost/Assignment Objection Deadline; and
  - **Sale Hearing:** 30 days after the Bid Procedures Hearing, as the date of the sale hearing (the “Sale Hearing”) to be held before the Court.

22. Additionally, by this Motion, the Debtors seek entry of the Sale Order authorizing:

(a) the sale of the Assets free and clear of all claims, liens, liabilities, rights, interests and encumbrances (except for any permitted liens and encumbrances); (b) the Debtors to assume and assign the Designated Contracts; and (c) any and all related relief requested herein. The Debtors will file a proposed form of the Sale Order no later than 14 days prior to the Sale Hearing, subject to modifications by the Debtors and the Successful Bidder following the Auction.

**OVERVIEW OF BIDDING PROCEDURES, NOTICE PROCEDURES  
AND ASSIGNMENT PROCEDURES**

**A. Bidding Procedures**

23. The Bidding Procedures are intended to permit a fair and efficient competitive sale process, consistent with the timeline of the Chapter 11 Cases, and to promptly identify the bid that constitutes the highest or otherwise best offer for the Assets. The Sale may be for all of the Assets or for a portion thereof, as potential purchasers direct. The Bidding Procedures establish, among other things:<sup>5</sup>

- the requirements a Potential Bidder must satisfy to be entitled to participate in the bidding process and become a Qualified Bidder;
- the requirements for submitting bids and the method and criteria by which such bids become entitled to be a Qualified Bid;
- the availability of, access to, and conduct during due diligence by Potential Bidders;
- the deadline by which bids must be submitted;
- the procedures for conducting the Auction;
- the criteria by which a Successful Bidder will be selected by the Debtors; and

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<sup>5</sup> To the extent that there is any conflict between this summary and the Bidding Procedures, the latter governs in all respects. Capitalized terms used but not defined in this paragraph shall have the meanings set forth in the Bidding Procedures.

- various other matters relating to the sale process generally, the Sale Hearing, the return of any Good Faith Deposits, and the designation of Next-Highest Bidders.

24. Importantly, the Bidding Procedures recognize the Debtors' fiduciary obligations to maximize sale value, and, as such, do not impair the Debtors' ability to consider all qualified bid proposals and preserve the Debtors' right to modify the Bidding Procedures as necessary or appropriate to maximize value for the estates in consultation with key parties set forth therein (the "Consultation Parties").

25. With respect to all Assets that are subject to the Stalking Horse Bid, all Potential Bidders on the relevant Assets will be required to submit a bid in the amount of at least the sum of (i) the Stalking Horse Bid, and (ii) a reasonable minimum overbid amount to be calculated by the Debtors, in consultation with the Consultation Parties, based on the aggregate price set forth in the Stalking Horse Bid (clauses (i) through (ii), the "Stalking Horse Overbid") in order to meet the criteria of a Qualified Bid for the relevant Assets.

26. The Bidding Procedures contain the following provisions that are to be highlighted pursuant to Local Rule 6004-1(c), which are more fully described in the Bidding Procedures and the proposed Bidding Procedures Order:

- a. **Credit Bidding.** Pursuant to section 363(k) of the Bankruptcy Code, the Stalking Horse Bidder, as a secured lender, has the right (but not the obligation) to credit bid any and all amounts due and owing to it under the Secured Obligations (as defined in the Stalking Horse Agreement). Any and all bids, other than those submitted by or on behalf of the Stalking Horse Bidder, shall be in cash.
- b. **Provisions Governing Qualification of Bidders.** To become a "Potential Bidder," each person or entity, must deliver to the Debtors, on or before the Bid Deadline, an executed confidentiality agreement in form and substance satisfactory to the Debtors. Each Potential Bidder must, on or before the Bid Deadline, satisfy the "Bid Requirements" by submitting to the Debtors certain documents, including, among others, a duly executed binding agreement for the Sale of the Assets and information about the Potential Bidder's financial

condition evidencing the financial wherewithal of the Potential Bidder to consummate the Sale.

c. **Provisions Governing Qualified Bids.** To participate in the Auction, each Potential Bidder must:

- i. deliver to the Debtors by the Bid Deadline an irrevocable, good faith and bona fide offer to purchase the Assets, which Bid is accompanied by a letter: (A) disclosing the identity of the person or entity disclosing the bid; (B) stating with specificity the Assets such Potential Bidder wishes to bid on, the liabilities and obligations to be assumed by the Potential Bidder and the amount of the cash consideration included in the bid and the value the Potential Bidder ascribes to any non-cash consideration; (C) acknowledging and representing that the Potential Bidder (I) has had an opportunity to conduct any and all due diligence regarding the Assets prior to submitting the Bid; (II) has relied solely upon its own independent review, investigation, and/or inspection of any documents and/or the Assets in making its Bid; and (III) did not rely upon any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied by operation of law, or otherwise, regarding the Assets or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in the Bid; (E) agreeing that the Potential Bidder's offer is binding and irrevocable until the later of (x) the Closing Date, or (y) the date that is twenty (20) days after entry of the Sale Order (unless it is the Next Highest Bid in which case such offer will remain open until the Closing Date); (F) providing for a Closing Date that is consistent with the schedule contemplated in the Bidding Procedures; (G) providing that such Bid is not subject to or conditioned on (x) obtaining any financing, (y) shareholder, board of directors, or other internal approval, or (z) the outcome or completion of a due diligence review by the Potential Bidder; (H) disclaiming any right to receive a break-up fee, expense reimbursement, termination fee, or any other similar form of compensation; (I) providing that the Potential Bidder agrees to serve as a backup bidder (the "Next-Highest Bidder") if the Potential Bidder's Qualified Bid is the next highest or otherwise best bid after the Successful Bid (the "Next-Highest Bid") with respect to the relevant Assets; and (J) providing that the Potential Bidder submits to the jurisdiction of the Court and waives any right to a jury trial in connection with any disputes relating to Debtors' qualification of Bids, the Auction, the construction and enforcement of these Bidding Procedures, the Sale documents, and the closing of the Sale, as applicable.

- ii. provide adequate assurance of future performance information (the “Adequate Assurance Information”), including (A) information about the Potential Bidder’s financial condition, such as federal tax returns, a current financial statement, bank account statements, and equity and financing commitment letters; (B) information demonstrating (in the Debtors’ reasonable business judgment) that the Potential Bidder has the financial capacity to consummate the proposed Sale, and (C) such additional information regarding the Potential Bidder as the Potential Bidder may elect to include, or that the Debtors, in their sole discretion, require. By submitting a bid, Potential Bidders agree that the Debtors may disseminate their Adequate Assurance Information to contract counterparties, as applicable, in the event that the Debtors determine such bid to be a Qualified Bid; and
- iii. deliver (A) a Good Faith Deposit in the form of a certified check or wire transfer, payable to the order of the Debtors, in an amount equal to ten percent (10%) of the total cash and non-cash consideration of the Bid, which funds will be deposited into an escrow account to be identified and established by the Debtors;<sup>6</sup> (B) written evidence, documented to the Debtors’ satisfaction, that demonstrates the Potential Bidder has available cash, a commitment for financing if selected as the Successful Bidder (as defined below) with respect to the Assets, and such other evidence of ability to consummate the transaction satisfactory to the Debtors, including proof that such funding commitments or other financing are not subject to any internal approvals, syndication requirements, diligence or credit committee approvals (provided that such commitments may have covenants and conditions acceptable to the Debtors, as determined after consultation with the Consultation Parties); and (C) evidence that the Potential Bidder has obtained all required organizational authorization and approval with respect to the submission of its Bid.

d. **Provisions Providing Bid Protections to any Stalking Horse Bidder.** None.

e. **Modification of Bid and Auction Procedures.** The Debtors may, in consultation with the Consultation Parties, announce at the Auction additional procedural rules (e.g., the amount of time to make Subsequent Bids, the amount of the Incremental Overbid, or the requirement that parties submit “best and final” Bids) for conducting the Auction or otherwise modify the Bidding

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<sup>6</sup> The Successful Bidder and Next-Highest Bidder (as such terms are defined Bidding Procedures) shall be required to supplement their Good Faith Deposits, if necessary, within one (1) business day of the close of the Auction so that such Good Faith Deposits shall be equal to an amount that is ten percent (10%) of the Successful Bid or Next-Highest Bid, as applicable. The Debtors reserve the right to increase or decrease the Good Faith Deposit for one or more Qualified Bidders (as defined Bidding Procedures) in their sole discretion after consulting with the Consultation Parties.

Procedures; provided that such rules (1) are not materially inconsistent with the Bidding Procedures, the Bankruptcy Code, or any order of the Court, and (2) disclosed to each Qualified Bidder at the Auction. The Debtors and their estates, in consultation with the Consultation Parties, reserve the right to modify the Bidding Procedures at or prior to the Auction, including, without limitation, to extend the deadlines set forth in the Bidding Procedures, modify bidding increments, waive terms and conditions set forth herein with respect to any or all Potential Bidders (including, without limitation, the Bid Requirements), impose additional terms and conditions with respect to any or all potential bidders, adjourn, postpone or cancel the Auction at or prior to the Auction, and adjourn the Sale Hearing.

- f. **Closing with Alternative Backup Bidders.** At the Auction, the Debtors may, in consultation with the Consultation Parties, designate the Next-Highest Bid (and the corresponding Next-Highest Bidder) in the event that a Successful Bidder does not close the Sale. In the event that a Successful Bidder fails to close prior to the date designated specified in the applicable Purchase Agreement (or such date as may be extended by the Debtors), the Debtors, upon written notice to the Next-Highest Bidder, may designate the applicable Next-Highest Bid as the Successful Bid for the Assets, the Next-Highest Bidder will be deemed to be a Successful Bidder for such Assets, and the Debtors will be authorized, but not directed, to close with the Next-Highest Bidder subject to the terms of the Next-Highest Bid without the need for further order of the Court and without the need for further notice to any interested parties.
- g. **Provisions Governing the Auction.** If more than one Qualified Bid is submitted by the Bid Deadline with regard to the Assets, the Debtors will conduct an auction telephonically, by videoconference, or at the offices of proposed counsel to the Debtors, Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, Delaware 19801 three (3) Business Days after the Bid Deadline (or such later time or such other place as the Debtors shall designate and notify to all Qualified Bidders who have submitted Qualified Bids) for consideration of the Qualified Bids, each as may be increased at such Auction. For the avoidance of doubt, the Debtors reserve the right, upon consultation with the Consultation Parties, to conduct the Auction telephonically.

## **B. Summary of Key Terms of the Stalking Horse Purchase Agreement**

27. Pursuant to the Local Rules, the key terms and conditions of the Stalking Horse Purchase Agreement are listed below:<sup>7</sup>

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<sup>7</sup> This summary is provided for the convenience of the Court and parties in interest. To the extent there is any conflict between this summary and the Stalking Horse Purchase Agreement, the latter governs in all respects. Capitalized

- (a) **Parties.** The Stalking Horse Purchase Agreement is between Debtor AeroCentury Corp., as Seller, and Drake Asset Management Jersey Limited, as Buyer.
- (b) **Purchase Price.** The aggregate consideration for the purchase of the Equipment and the related Lease Documents shall be an amount equal to the amount of the then-outstanding Secured Obligations as of the Closing Date. *See* Stalking Horse Purchase Agreement at § 3.1.
- (c) **Acquired Assets.** All of the Debtors' right, title and interest in and to applicable Equipment and the relevant Lease Documents free and clear of all Encumbrances (other than Permitted Liens). *See* Stalking Horse Purchase Agreement at § 2.1
- (d) **Excluded Assets.** (i) the Gross Revenue Before ECD; (ii) any cash balances in each Account as of the Effective Date; (iii) any proceeds payable under any consignment contract to which any of the Excluded Equipment is subject; (iv) other than the Equipment and the Assumed Leases, all other assets of Debtor AeroCentury Corp., including but not limited to, the Excluded Equipment; and (v) any proceeds of sale or other funds received in respect of items (i) to (iv) above. *See* Stalking Horse Purchase Agreement, at § 8.4.
- (e) **Assumed Liabilities.** any (a) Cure Costs required to be paid pursuant to section 365 of the Bankruptcy Code in connection with the assumption and assignment of the Assumed Leases (in each case, as such costs may be reduced pursuant to agreement with the applicable counterparty); (b) all costs of obtaining necessary consents thereto (to the extent not assignable pursuant to contract or applicable law); (c) Transfer Legal Fees; (d) Transfer Taxes that are not Excluded Taxes; (e) Maintenance Reserve Obligations; and (f) any unsatisfied liabilities as of the Closing Date with respect to Customer Programs. *See* Stalking Horse Purchase Agreement, at § 2.4
- (f) **Excluded Liabilities.** Notwithstanding any provision in the Stalking Horse Purchase Agreement to the contrary, other than the Assumed Liabilities, the Buyer is not assuming, and shall not be deemed to have assumed, any other liabilities of the Debtors of whatever nature, including but not limited to: (a) Any and all liabilities of the Debtors relating to or otherwise arising, whether before, on or after the Closing Date, out of, or in connection with, any of the Excluded Assets; (b) Any and all liabilities of the Debtors to its creditors, except for those related to the Lease Documents in respect of an Aircraft after the Delivery Date in respect of that Aircraft; (c) Other than the Transfer Tax liabilities assumed by Buyer under Section 4, any and all liabilities for Taxes including, without limitation: (i) Any and all Taxes

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terms used but not otherwise defined in this summary shall have the meanings set forth in the Stalking Horse Purchase Agreement.



(irrespective of when asserted) of the Debtors for any taxable period (including any such Taxes or related liabilities that may be imposed or asserted against the Buyer or any of its affiliates by reason of contract, assumption, transferee or successor liability, operation of law, pursuant to Treasury Regulation Section 1.1502-6 (or any similar provision of any state or local law) or otherwise); (ii) Any and all Taxes related to or arising from the Equipment or the Lease Documents, in each case, for any taxable period (or portion thereof) ending on or before the applicable Delivery Date, including, without limitation, any Taxes set forth in Schedule E/F filed in the Bankruptcy Case; (iii) Any and all Taxes imposed on any Person that are the responsibility of the Debtors; (iv) Any and all Taxes arising from or in connection with an Excluded Asset; and (v) Any and all Taxes imposed on or suffered by the Buyer in respect of the Debtors, the Equipment or the transactions contemplated by the Operative Documents arising from the failure by the Debtors to comply with or obtain a certificate under any bulk sales laws (including with respect to the transactions contemplated by the Operative Documents); (d) Any and all liabilities related to payroll, vacation or sick leave, or with respect to employment or other provision of services, compensation, severance, benefits or payments of any nature owed to any current or former employee, officer, director, member, partner or independent contractor of the Debtors or any ERISA Affiliate (or any beneficiary or dependent of any such individual), whether or not employed by the Buyer after the Closing Date, including without limitation, any liability that: (i) Arises out of or relates to the employment, service provision or other relationship between the Debtors or any ERISA Affiliate and any such individual, including but not limited to the termination of such relationship; and (ii) Arises out of or relates to events or conditions occurring on or before the Closing Date; (e) Any and all liabilities under any common law doctrine of de facto merger or transferee or successor liability or otherwise by operation of contract or law; (f) Any and all liabilities arising under or related to the Federal Worker Adjustment and Retraining Notification Act, 29 U.S.C. § 2101 et seq. (1988) and any similar laws, including laws of any state, country or other locality that is applicable to a termination of employees, in each case to the extent applicable, for any action resulting from employees' separation of employment prior to or on the Closing Date; (g) Any and all liabilities of the Debtors to its equity holders respecting dividends, distributions in liquidation, redemptions of interests, option payments or otherwise; (h) Any and all liabilities relating (i) to claims, actions, suits, arbitrations, litigation matters, proceedings, investigations or other actions (in each case, whether involving private parties, authorities, or otherwise) involving, against, or affecting any of the Equipment or Lease Documents, or any assets or properties of the Debtors, whether commenced, filed, initiated, or threatened before or after the Closing Date, which was or could have been asserted on or prior to the Closing Date or to the extent the basis of which arose or accrued on or prior to the Closing Date or (ii) violations of law by the Debtors; (i) Any and all

liabilities obligations of the Debtors arising or to be performed prior to the Closing Date arising from or related to the Equipment or the Lease Documents, other than as expressly assumed herein; (j) Any and all liabilities of the Debtors or its predecessors arising out of any contract, agreement, permit, franchise or claim that is not transferred to the Buyer as part of transactions contemplated hereby, or, is not transferred to the Buyer because of any failure to obtain any third-party or governmental consent required for such transfer; and (j) Any and all liabilities related to any failure to perform, improper performance, breach of warranty or other breach, default, violation, act or omission by the Debtors on or prior to the Closing Date, whether under or with respect to any contract (other than liabilities for the payment of the Cure Costs and other cure obligations under the Assumed Leases), in tort or otherwise. *See Stalking Horse Purchase Agreement at § 2.6 (a)-(k).*

- (g) **The Buyer's Conditions Precedent.** The obligation of the Buyer to perform its obligations is subject to the satisfaction (or waiver by the Buyer) of the following conditions: (a) the Stalking Horse Purchase Agreement shall have been duly authorized, executed and delivered by the Debtors and shall be in full force and effect with respect to the Debtors; (b) the Buyer shall have received the following documents from the Debtors: (i) a certificate of an officer of the Debtors, certifying that this Agreement and each Operative Document to which it is or will be, a party have been, or will be, duly authorized, executed and delivered by the Debtors and is, or will be, in full force and effect with respect to the Debtors and (ii) an incumbency certificate of the Debtors as to the officers of the Debtors authorized to execute and deliver this Agreement and each other Operative Document to which the Debtors is or will be a party, including the signatures of each such officers; and (c) the Sale Order shall have been entered by the Bankruptcy Court in these Chapter 11 Cases. *See Stalking Horse Purchase Agreement at §6.1 (a)-(c).*
- (h) **The Seller's Conditions Precedent.** The obligation of the Debtors to perform its obligations is subject to the satisfaction (or waiver by the Debtors) of the following conditions: (a) this Agreement shall have been duly authorized, executed and delivered by the Buyer and shall be in full force and effect with respect to the Buyer; (b) the Debtors shall have received the following documents from the Buyer: (i) a certificate of an officer of the Buyer, certifying that this Agreement and each Operative Document to which it is or will be, a party have been, or will be, duly authorized, executed and delivered by the Buyer and is, or will be, in full force and effect with respect to the Buyer (ii) an incumbency certificate of the Buyer as to the persons authorized to execute and deliver this Agreement and each other Operative Document to which the Buyer is or will be a party, including the signatures of each such person and (iii) a certified copy of the resolutions of the board of directors and/or shareholders, as applicable, of the Buyer authorizing the transactions contemplated hereby and the

execution and delivery of this Agreement and each other Operative Document to which the Buyer is a party; and (c) the Sale Order shall have been entered by the Bankruptcy Court. *See* Stalking Horse Purchase Agreement at §6.3 (a)-(c).

- (i) **Representations and Warranties of the Buyer.** The Stalking Horse Purchase Agreement contains customary representation and warranties by the Buyer including but not limited to: organization, authorization, no violations, approvals and valid binding agreement. *See* Stalking Horse Purchase Agreement § 9.2.
- (j) **Representations and Warranties of the Seller.** The Stalking Horse Purchase Agreement contains customary representations warranties by the Debtors, including but not limited to: title; organization; authorization; no violation; approvals; valid and binding agreement; and relationship of the Debtors and the Buyer. *See* Stalking Horse Purchase Agreement § 9.1.

**C. Notice Procedures for the Sale, Auction and Sale Hearing**

28. The Debtors request approval of the Notice of Auction and Sale Hearing, substantially in the form attached to the Bidding Procedures Order as **Exhibit 2**. Within two (2) business days of entry of the Bidding Procedures Order, the Debtors will serve the Notice of Auction and Sale Hearing by first-class mail upon: (a) the United States Trustee for the District of Delaware (the “U.S. Trustee”); (b) counsel to any official committee(s) appointed in these chapter 11 cases; (c) counsel for Drake; (d) any party known to assert a lien on assets; (e) any party to any litigation with the Debtors; (f) the Securities and Exchange Commission; (g) the Internal Revenue Service; (h) counsel to UMB Bank, N.A. (the “Agent”); (i) any party that has requested notice pursuant to Bankruptcy Rule 2002 (the Debtors, together with the parties identified in clause (a) through (h) are, collectively, the “Notice Parties”); and (g) all of the Debtors’ known creditors and known equity holders.

29. The Debtors shall also post the Notice of Auction and Sale Hearing and the Bidding Procedures Order on the website of the Debtors’ claims and noticing agent.

30. Not later than five (5) business days following the entry of the Bidding Procedures Order, the Debtors shall cause the Notice of Auction and Sale Hearing to be published once in the national edition of the New York Times or another nationally circulated newspaper, with any modifications necessary for ease of publication, and post the Notice of Auction and Sale Hearing and the Bidding Procedures Order on the website of the Debtors' claims and noticing agent.

31. As soon as reasonably practicable following conclusion of the Auction, the Debtors propose to file a notice on the Court's docket identifying the Successful Bidder(s) for the Assets and any applicable Next-Highest Bidder(s).

#### **D. Assignment Procedures**

32. To facilitate the Sale, the Debtors seek authority to assume and assign to the Successful Bidder certain executory contracts and unexpired leases, as selected by such Successful Bidder in its Successful Bid, in accordance with the Assignment Procedures. The proposed Assignment Procedures are as follows:

- a. On or before the date that is ten days prior to the Bid Deadline, the Debtors shall file with the Court and serve on each Non-Debtor counterparty to any existing contract with the Debtor (each a "Non-Debtor Counterparty"), the Notice of Assumption and Assignment, regardless of whether the contract has been listed as a Designated Contracts. In the event that the Debtors identify any Non-Debtor Counterparties which were not served with the Notice of Assumption and Assignment, the Debtors may subsequently serve (by overnight mail) such Non-Debtor Counterparty with a Notice of Assumption and Assignment, and the following procedures will nevertheless apply to such Non-Debtor Counterparty; provided, however, that the Cure Cost/Assignment Objection Deadline with respect to such Non-Debtor Counterparty shall be fourteen (14) days following service of the Notice of Assumption and Assignment.
- b. The Notice of Assumption and Assignment served on each Non-Debtor Counterparty shall: (i) identify each Designated Contract; (ii) list the proposed calculation of the cure amounts that the Debtors believe must be paid to cure all defaults outstanding under the Designated Contract as of such date (the "Cure Costs"); (iii) include a statement that assumption and assignment of such Designated Contract is not required or guaranteed; and (iv) inform such Non-Debtor Counterparty of the requirement to file any Cure Cost/Assignment Objections by the Cure Cost/Assignment Objection Deadline. Service of a

Notice of Assumption and Assignment does not constitute an admission that a particular Designated Contract is an executory contract or unexpired lease of property, or confirm that the Debtors are required to or will assume and/or assign such Designated Contract as a part of any transaction.

- c. Objections (a “Cure Cost/Assignment Objection”), if any, to (i) the scheduled Cure Costs, and/or (ii) the potential assumption, assignment and/or transfer of such Designated Contract (including the transfer of any related rights or benefits thereunder), other than objections that relate specifically to the identity of the Successful Bidder (in the event that the Stalking Horse Bidder is not the Successful Bidder), must (x) be in writing, (y) state with specificity the nature of such objection, including the amount of Cure Costs in dispute, and (z) be filed with the Court and properly served on the Notice Parties (as defined in the Bidding Procedures Order) so as to be received no later than fourteen (14) days following the Notice of Assumption and Assignment (the “Cure Cost/Assignment Objection Deadline”).
- d. Objections (a “Post-Auction Objection”) of any Non-Debtor Counterparty related solely to the identity of and adequate assurance of future performance provided by the Successful Bidder must (x) be in writing, (y) state with specificity the nature of such objection, and (z) be filed with the Court and properly served on the Notice Parties so as to be received no later than 2 (two) Business Days after the Auction (the “Post-Auction Objection Deadline”); provided, however, that any objection of a Non-Debtor Counterparty related to the Stalking Horse Bid (including with respect to the identity of and adequate assurance of future performance provided by the Stalking Horse Bidder) must be filed by the Cure Cost/Assignment Objection Deadline.
- e. Any Non-Debtor Counterparty to a Designated Contract who fails to timely file and properly serve a Cure Cost/Assignment Objection or Post-Auction Objection as provided herein will (i) be forever barred from objecting to the Cure Costs and from asserting any additional cure or other amounts with respect to such Designated Contract in the event it is assumed and/or assigned by the Debtors and the Debtors and any successor to the Debtors on any such Designated Contract shall be entitled to rely solely upon the Cure Costs, and (ii) be deemed to have consented to the assumption, assignment and/or transfer of such Designated Contract (including the transfer of any related rights and benefits thereunder) to the relevant Successful Bidder and shall be forever barred and estopped from asserting or claiming against the Debtors or such Successful Bidder that any additional amounts are due or defaults exist, or conditions to assumption, assignment, and/or transfer must be satisfied under such Designated Contract, or that any related right or benefit under such Designated Contract cannot or will not be available to the Successful Bidder.
- f. Consideration of unresolved Cure Cost/Assignment Objections and Post-Auction Objections relating to all Designated Contracts, if any, will be held at the Sale Hearing, provided, however, that (i) any Designated Contract that is

the subject of a Cure Cost/Assignment Objection with respect solely to the amount of the Cure Cost may be assumed and assigned prior to resolution of such objection and (ii) the Debtors, in consultation with the Consultation Parties, may adjourn a Cure Cost/Assignment Objection in their discretion.

- g. A timely filed and properly served Cure Cost/Assignment Objection or Post-Auction Objection will reserve the filing Non-Debtor Counterparty's rights relating to the Designated Contract, but will not be deemed to constitute an objection to the relief generally requested in the Motion with respect to the approval of the Sale.
- h. The Debtors' decision to assume and assign the Designated Contracts to the relevant Successful Bidder is subject to the Court's approval and the closing of the Sale. Accordingly, absent the Court's approval and the closing of the Sale, the Designated Contracts shall not be deemed assumed or assumed and assigned, and shall in all respects be subject to further administration by the Debtors and their estates under the Bankruptcy Code in connection with the Chapter 11 Cases.

### **BASIS FOR RELIEF REQUESTED**

#### **I. The Bidding Procedures Are Appropriate and in the Best Interests of the Debtors, Their Estates, and Creditors.**

##### **A. The Bidding Procedures Are Reasonable, Appropriate and Will Maximize Value.**

33. The paramount goal in any proposed sale of property of the estate is to maximize the proceeds received by the estate. *See In re Mushroom Transp. Co.*, 382 F.3d 325, 339 (3d Cir. 2004) (noting debtor in possession "had a fiduciary duty to protect and maximize the estate's assets"); *Official Comm. of Unsecured Creditors of Cybergenics, Corp v. Chinery*, 330 F.3d 548, 573 (3d Cir. 2003) (same); *Four B. Corp. v. Food Barn Stores, Inc. (In re Barn Stores, Inc.)*, 107 F.3d 558, 564–65 (8th Cir. 1997) (observing in bankruptcy sales, "a primary objective of the Code [is] to enhance the value of the estate at hand").

34. To that end, courts uniformly recognize that procedures to enhance competitive bidding are consistent with the goal of maximizing the value received by the estate and therefore are appropriate in the context of bankruptcy transactions. *See In re O'Brien Envtl. Energy, Inc.*,

181 F.3d 527, 537 (3d Cir. 1999); *see also Official Comm. of Subordinated Bondholders v. Integrated Res. Inc. (In re Integrated Res. Inc.)*, 147 B.R. 650, 659 (S.D.N.Y. 1992) (stating Bidding Procedures “encourage bidding and . . . maximize the value of the Debtors’ assets”).

35. The Debtors believe that the Bidding Procedures will provide an orderly and uniform mechanism by which interested buyers and investors can submit offers for the Assets, and will ensure a competitive and fair bidding process. The Debtors also believe that the Bidding Procedures will promote active bidding from seriously interested parties and will confirm the best and highest offer reasonably available for such assets. The Bidding Procedures will allow the Debtors to conduct the Auction, subject to the terms of the Bidding Procedures, in a controlled, fair and open manner that will encourage participation by financially capable bidders that demonstrate the ability to close a transaction. The Debtors believe that the Bidding Procedures will encourage bidding, are consistent with other procedures routinely approved by courts in this and other districts, and are appropriate under the relevant standards governing auction proceedings and bidding incentives in bankruptcy proceedings.

**B. The Qualified Bid Requirements Are Reasonable and Appropriate.**

36. The Bidding Procedures recognize and comply with the Debtors’ fiduciary obligations to maximize sale value, because they do not impair the Debtors’ ability to consider all Qualified Bids made at or prior to the Auction, and they preserve the Debtors’ right to modify the Bidding Procedures as necessary or appropriate to maximize value for the Debtors’ estates.

37. In the event that the Debtors obtain more than one competing Qualified Bid with respect to the Assets and the Auction is held, bidding shall commence at the amount of the highest or otherwise best bid received for such assets, which determination will be communicated to Qualified Bidders prior to the commencement of the Auction, and the relevant Qualified Bidders

may submit successive bids in higher increments (in amounts to be determined at or prior to the Auction).

**C. The Notice Procedures for the Sale, Bidding Procedures, Auction, and Sale Hearing Are Reasonable and Appropriate.**

38. Pursuant to Bankruptcy Rules 2002(a) and (c), the Debtors are required to notify creditors of the Sale, including a disclosure of the time and place of any auction, the terms and conditions of the sale, and the deadline for filing any objections. The Debtors submit that the notice procedures described above fully comply with Bankruptcy Rule 2002 and are reasonably calculated to provide timely and adequate notice of the Sale, Bidding Procedures, Auction, and Sale Hearing to the Debtors' creditors and all other parties in interest that are entitled to notice, as well as those parties that have expressed a bona fide interest in acquiring the Assets.

39. Accordingly, the Debtors respectfully request that the Court approve the notice procedures set forth in this Motion, including the form and manner of service and publication of the Notice of Auction and Sale Hearing, and that no other or further notice of the Sale, Bidding Procedures, Auction, or Sale Hearing is necessary or required.

**D. The Assignment Procedures Are Reasonable and Appropriate.**

40. As part of this Motion, the Debtors also seek authority under sections 105(a) and 365 of the Bankruptcy Code to assume and assign the Designated Contracts to the Successful Bidder. The Bidding Procedures Order specifies the process by which the Debtors will serve the Notice of Assumption and Assignment and the procedures and deadlines for Non-Debtor Counterparties to file Cure Cost/Assignment Objections and/or Post-Auction Objections.

41. The Assignment Procedures ensure that each Non-Debtor Counterparty will have sufficient notice of such potential assumption and assignment, and an opportunity to contest the Cure Amount, if any, for its Designated Contract, as well as the ability of the relevant Successful



Bidder to provide adequate assurance of future performance with respect to such Designated Contract.

42. Accordingly, the Debtors submit that the Assignment Procedures are fair and reasonable, and request that the Court approve such procedures.

## **II. Approval of the Sale Is Appropriate and in the Best Interests of the Debtors' Estates.**

### **A. The Sale Is Authorized by Section 363 of the Bankruptcy Code as a Sound Exercise of the Debtors' Business Judgment.**

43. Section 363 of the Bankruptcy Code provides that a Debtors, "after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate . . . ." 11 U.S.C. § 363(b). Although section 363 does not specify a standard for determining when it is appropriate for a court to authorize the use, sale, or lease of property of the estate, courts routinely authorize sales of a debtor's assets if such sale is based upon the debtor's sound business judgment. *See Meyers v. Martin (In re Martin)*, 91 F.3d 389, 395 (3d Cir. 1996); *In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999); *In re Delaware & Hudson Ry. Co.*, 124 B.R. 169, 175–76 (D. Del. 1991); *In re Trans World Airlines, Inc.*, No. 01-00056 (PJW), 2001 WL 1820326, at \*10 (Bankr. D. Del. Apr. 2, 2001).

44. Courts typically consider the following factors in determining whether a proposed sale satisfies this standard: (a) whether a sound business justification exists for the sale; (b) whether adequate and reasonable notice of the sale was given to interested parties; (c) whether the sale will produce a fair and reasonable price for the property; and (d) whether the parties have acted in good faith. *See In re Decora Indus., Inc.*, No. 00-4459 (JJF), 2002 WL 32332749, at \*2 (D. Del. May 20, 2002) (citing *In re Delaware & Hudson Ry. Co.*, 124 B.R. at 176); *In re United Healthcare Sys. Inc.*, No. 97-1159, 1997 WL 176574, at \*4 & n. 2 (D.N.J. Mar. 26, 1997).

45. A sound business purpose for the sale of a debtor's assets outside the ordinary course of business may be found where such a sale is necessary to preserve the value of assets for the estate, its creditors or interest holders. *See, e.g., In re Abbotts Dairies of Pa., Inc.*, 788 F.2d 143 (3d Cir. 1986); *In re Lionel Corp.*, 722 F.2d 1063 (2d Cir. 1983); *see also In re Food Barn Stores, Inc.*, 107 F.3d 558, 564–65 (8th Cir. 1997) (stating that the paramount goal in any proposed sale of property of the estate is to maximize value).

46. Furthermore, “[w]here the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the Debtors’ conduct.” *Comm. of Asbestos-Related Litigants and/or Creditors v. Johns-Manville Corp. (In re Johns-Manville Corp)*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986). There is a presumption that “in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action was in the best interests of the company.” *In re Integrated Res., Inc.*, 147 B.R. at 656 (quoting *Smith v. Van Gorkcom*, 488 A.2d 858, 872 (Del. 1985)). Thus, if a debtor’s actions satisfy the business judgment rule, then the transaction in question should be approved under section 363(b)(1) of the Bankruptcy Code. Indeed, when applying the business judgment standard, courts show great deference to a debtor’s business decisions. *See Pitt v. First Wellington Canyon Assocs. (In re First Wellington Canyon Assocs.)*, No. 89 C 593, 1989 WL 106838, at \*3 (N.D. Ill. Sept. 8, 1989) (“Under this test, the debtor’s business judgment . . . must be accorded deference unless shown that the bankrupt’s decision was taken in bad faith or in gross abuse of the bankrupt’s retained discretion.”).

47. Pursuant to the Bidding Procedures, the Debtors, in consultation with their advisors and the Consultation Parties, will reserve the right to disregard and disqualify any bid that does

not contain a fair and adequate price or the acceptance of which would not be in the best interests of the estates or the Auction. In addition, the value of the Assets will be tested through the Auction and Sale process provided for in the Bidding Procedures. Consequently, the fairness and reasonableness of the consideration to be paid by the Successful Bidder for the Assets ultimately will be demonstrated by adequate “market exposure” and an open and fair auction and sale process—the best means for establishing whether a fair and reasonable price is being paid. The Successful Bid will constitute the highest or best offer for the Assets, and may provide a greater recovery for the Debtors’ estates than is likely to be provided by any other available alternative. As a result, the Debtors’ determination to sell the Assets through an auction and sale process, as provided for in the Bidding Procedures, is a valid and sound exercise of the Debtors’ business judgment. Accordingly, the Debtors respectfully request that the Sale be approved.

**B. The Sale, Free and Clear of All Encumbrances, Is Authorized by Section 363(f) of the Bankruptcy Code.**

48. In the interest of attracting the highest and best bids for the Assets, the Debtors submit that the Sale should be free and clear of all encumbrances in accordance with section 363(f) of the Bankruptcy Code, with any such encumbrances attaching to the net proceeds of the Sale.

49. Section 363(f) of the Bankruptcy Code authorizes a debtor to sell assets free and clear of liens, claims, interests, and encumbrances if:

(1) applicable non-bankruptcy law permits sale of such property free and clear of such interests;

(2) such entity consents;

(3) such interest is a lien and the price at which such property is to be sold is greater than the value of all liens on such property;

(4) such interest is in bona fide dispute; or

(5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f).

50. Section 363(f) is supplemented by section 105(a) of the Bankruptcy Code, which provides that “[t]he Court may issue any order, process or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” 11 U.S.C. § 105(a).

51. Because section 363(f) of the Bankruptcy Code is drafted in the disjunctive, satisfaction of any one of its five requirements will suffice to permit the sale of the Assets “free and clear” of all encumbrances. *See In re Kellstrom Indus., Inc.*, 282 B.R. 787, 793 (Bankr. D. Del. 2002) (“Section 363(f) is written in the disjunctive, not the conjunctive, and if any of the five conditions are met, the Debtors has the authority to conduct the sale free and clear of all liens.”); *see also Citicorp Homeowners Servs., Inc. v. Elliot (In re Elliot)*, 94 B.R. 343, 345 (E.D. Pa. 1988) (same); *In re Dundee Equity Corp.*, No. 89-10233 (FGC), 1992 WL 53743, at \*4 (Bankr. S.D.N.Y. Mar. 6, 1992) (same).

52. The Debtors submit that one or more of the conditions set forth in section 363(f) of the Bankruptcy Code will be satisfied with respect to the Sale. In particular, the Debtors believe that at least section 363(f)(2) will be satisfied because each of the parties holding liens on the Assets will consent, or absent any objection to the Sale, will be deemed to have consented to, the Sale. Any lienholder also will be adequately protected by having its liens, if any, attach to the proceeds of the Sale, in the same order of priority, with the same validity, force and effect that such creditor had prior to such sale, subject to any claims and defenses that the Debtors and their estates may possess with respect thereto. For the avoidance of doubt, nothing in this Motion, the Bidding Procedures, or the Bidding Procedures Order waives or modifies any parties’ right to object to any sale proposed in connection herewith, with all such rights being expressly preserved.

53. Accordingly, the Debtors respectfully request that the Assets be sold free and clear of any liens, claims, interests and other encumbrances pursuant to section 363(f) of the Bankruptcy Code.

**C. The Successful Bidder(s) Will be Entitled to the Full Protection of Section 363(m) of the Bankruptcy Code, and the Sale Does Not Violate Section 363(n) of the Bankruptcy Code.**

54. Section 363(m) of the Bankruptcy Code protects the sale of a Debtors' property to a good faith purchaser. Specifically, section 363(m) provides:

The reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

11 U.S.C. § 363(m).

55. While the Bankruptcy Code does not define "good faith," the Third Circuit in *In re Abbotts Dairies of Pennsylvania, Inc.* held that the misconduct that would destroy a purchaser's good faith status at a judicial sale typically involves "fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders." 788 F.2d at 147 (citation omitted); *see also Kabro Assocs. of West Islip, L.L.C. v. Colony Hill Assocs. (In re Colony Hill Assocs.)*, 111 F.3d 269, 276 (2d Cir. 1997) ("Typically, the misconduct that would destroy a [buyer]'s good faith status at a judicial sale involves fraud, collusion between the [buyer] and other bidders or the trustee or an attempt to take grossly unfair advantage of other bidders.").

56. The Debtors submit, and the testimony presented at the Sale Hearing will demonstrate, that the terms and conditions of the Sale will have been negotiated by the Debtors and the Successful Bidder at arm's length and in good faith, with the assistance of the Debtors'

professional advisors, and that the parties did not engage in any conduct that would cause or permit the Sale to be avoided under section 363(n) of the Bankruptcy Code.

57. Accordingly, the Debtors requests that the Court make a finding at the Sale Hearing that the Successful Bidder purchased the Assets in good faith and that such purchase will be entitled to the full protections of section 363(m) of the Bankruptcy Code.

### **III. Assumption and Assignment of the Designated Contracts Is Authorized by Section 365 of the Bankruptcy Code.**

#### **A. The Debtors' Sound Business Judgment Supports the Assumption and Assignment of the Designated Contracts.**

58. Sections 365(a) and (b) of the Bankruptcy Code authorize a debtor in possession to assume, subject to the court's approval, executory contracts or unexpired leases of the Debtors. Under section 365(a) of the Bankruptcy Code, a debtor, "subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor." 11 U.S.C. § 365(a). Section 365(b)(1) of the Bankruptcy Code, in turn, codifies the requirements for assuming an unexpired lease or executory contract of a debtor, providing that:

(b)(1) If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee-

(A) cures or provides adequate assurance that the trustee will promptly cure, such default . . . ;

(B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and

(C) provides adequate assurance of future performance under such contract or lease.

11 U.S.C. § 365(b)(1).

59. The standard applied by the Third Circuit in determining whether an executory contract or unexpired lease should be assumed is the “business judgment” test, which requires a debtor to determine that the requested assumption or rejection would be beneficial to its estate. *See Sharon Steel Corp. v. Nat’l Fuel Gas Distrib. Corp.*, 872 F.2d 36, 40 (3d Cir. 1989); *see also NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 523 (1984) (describing business judgment test as “traditional”) (superseded in part by 11 U.S.C. § 1113).

60. Courts generally will not second-guess a debtor’s business judgment concerning the assumption of an executory contract. *See In re Decora Indus., Inc.*, No. 00-4459 (JJF), 2002 WL 32332749, at \*8; *Official Comm. for Unsecured Creditors v. Aust (In re Network Access Sols., Corp.)*, 330 B.R. 67, 75 (Bankr. D. Del. 2005) (“The standard for approving the assumption of an executory contract is the business judgment rule”); *In re Exide Techs.*, 340 B.R. 222, 239 (Bankr. D. Del. 2006) (“The propriety of a decision to reject an executory contract is governed by the business judgment standard”).

61. To determine if the business judgment standard is met, the court is “required to examine whether a reasonable business person would make a similar decision under similar circumstances.” *In re AbitibiBowater Inc.*, 418 B.R. 815, 831 (Bankr. D. Del. 2009). “This is not a difficult standard to satisfy and requires only a showing that rejection will benefit the estate.” *Id.* (citations omitted). Specifically, a court should find that the assumption or rejection is elected on “an informed basis, in good faith, and with the honest belief that the assumption . . . [is] in the best interests of [the Debtors] and the estate.” *Network Access Sols.*, 330 B.R. at 75. Under this standard, a court should approve a debtor’s business decision unless that decision is the product of bad faith or a gross abuse of discretion. *See In re Federal Mogul Global, Inc.*, 293 B.R. 124, 126 (D. Del. 2003).

62. In the present case, the Debtors' assumption and assignment of the Designated Contracts to the relevant Successful Bidder will meet the business judgment standard and satisfy the requirements of section 365 of the Bankruptcy Code. The assumption and assignment will likely be necessary for the Successful Bidder to conduct business going forward, and since it is anticipated that no Successful Bidder would take the Assets without certain Designated Contracts, the assumption and assignment of such agreements is essential to securing the highest or best offer for the Assets.

63. Consequently, the Debtors submit that the Assignment Procedures are fair and reasonable, and respectfully request that the Court approve such procedures and authorize the Debtors to assume and assign the Designated Contracts in the manner provided for herein.

**B. Adequate Assurance of Future Performance Will Be Demonstrated with Respect to the Designated Contracts.**

64. A debtor in possession may assign an executory contract or an unexpired lease if it assumes the agreement in accordance with section 365(a) of the Bankruptcy Code and provides adequate assurance of future performance by the assignee, whether or not there has been a default under the agreement. *See* 11 U.S.C. § 365(c)(2).

65. The meaning of "adequate assurance of future performance" depends on the facts and circumstances of each case but should be given "practical, pragmatic construction." *EBG Midtown South Corp. v. McLaren/Hart Env'tl. Eng'g Corp. (In re Sanshoe Worldwide Corp.)*, 139 B.R. 585, 592 (S.D.N.Y. 1992) (citations omitted), *aff'd*, 993 F.2d 300 (2d Cir. 1993); *In re Prime Motor Inns Inc.*, 166 B.R. 993, 997 (Bankr. S.D. Fla. 1994); *In re Rachels Indus. Inc.*, 109 B.R. 797, 803 (Bankr. W.D. Tenn. 1990); *Carlisle Homes, Inc. v. Azzari (In re Carlisle Homes, Inc.)*, 103 B.R. 524, 538 (Bankr. D.N.J. 1988).



66. Significantly, among other things, adequate assurance of future performance may be provided by demonstrating the assignee's financial health and experience in managing the type of enterprise or property assigned. *See, e.g., In re Bygaph, Inc.*, 56 B.R. 596, 605-06 (Bankr. S.D.N.Y. 1986) (stating that adequate assurance of future performance is present when the prospective assignee of a lease from the debtor has financial resources and has expressed willingness to devote sufficient funding to the business in order to give it a strong likelihood of succeeding).

67. Pursuant to the Bidding Procedures, the Potential Bidders are required to provide to the Debtors such financial and other information providing adequate assurance of future performance under any executory contracts and unexpired leases to be assumed pursuant to section 365 of the Bankruptcy Code in connection with the Sale, in a form requested by the Debtors, in consultation with the Consultation Parties, to allow the Debtors to serve, within one (1) business day after such receipt, such information on any Non-Debtor Counterparty that has requested, in writing, such information. Moreover, under the Assignment Procedures, the Non-Debtor Counterparties will have the opportunity to object to adequate assurance of future performance by the relevant Successful Bidder.

68. Accordingly, the Debtors submit that the assumption and assignment of the Designated Contracts as set forth herein should be approved pursuant to section 365 of the Bankruptcy Code.

#### **REQUEST FOR WAIVER OF BANKRUPTCY RULES 6004(h) AND 6006(d)**

69. 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). Similarly, Bankruptcy Rule 6006(d) provides that "[a]n order authorizing the [debtor] to assign an executory contract or

unexpired . . . is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6006(d).

70. The Debtors submit that cause exists to justify a waiver of the fourteen (14) day stays under Bankruptcy Rules 6004(h) and 6006(d), as promptly closing the Sale is of critical importance. The Debtors therefore requests that the Sale Order be effective immediately by providing that the fourteen (14) day stays under Bankruptcy Rules 6004(h) and 6006(d) be waived.

### **RESERVATION OF RIGHTS**

71. Nothing contained herein is intended, or should be construed, as an admission of the validity of any claim against the Debtors or a waiver of the Debtors’ rights to dispute any claim. Nothing contained herein is intended, or should be construed, as an approval, assumption, or rejection of any agreement, contract, or lease under section 365 of the Bankruptcy Code.

### **NOTICE**

72. The Debtors has provided notice of this Motion to: (a) the U.S. Trustee; (b) the holders of the five (5) largest unsecured claims against the Debtors; (c) counsel to Drake; (d) all persons known or reasonably believed to have asserted an interest in any of the Assets; (e) the Non-Debtor Counterparties to applicable Designated Contracts; (f) the Attorneys General in the State(s) where the Assets are located; (g) all state and local taxing authorities in the State(s) where the Assets are located; (h) the Internal Revenue Service; (i) all parties that have asserted liens against the Assets, if any; and (j) all parties that have filed a notice of appearance and request for service of papers pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is necessary.

WHEREFORE, the Debtors respectfully request that the Court enter the Bidding Procedures Order and the Sale Order, granting the relief requested herein and such other and further relief as the Court may deem just and proper.

Dated: March 29, 2021  
Wilmington, Delaware

/s/ Joseph M. Mulvihill

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*Proposed Counsel to the Debtors and Debtors in Possession*

**EXHIBIT A**

**Proposed Bidding Procedures Order**

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

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

**ORDER (I) APPROVING BIDDING PROCEDURES IN CONNECTION WITH THE  
SALE OF SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS; (II) AUTHORIZING  
THE DEBTORS TO ENTER INTO THE STALKING HORSE PURCHASE  
AGREEMENT, (III) SCHEDULING AN AUCTION FOR AND HEARING TO  
APPROVE THE SALE; (IV) APPROVING NOTICE OF RESPECTIVE DATE, TIME  
AND PLACE FOR AUCTION AND FOR HEARING ON APPROVAL OF SALE; (V)  
APPROVING PROCEDURES FOR THE ASSUMPTION AND ASSIGNMENT OF  
CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES; (VI)  
APPROVING FORM AND MANNER OF NOTICE THEREOF; AND (VII) GRANTING  
RELATED RELIEF**

Upon the motion (the "Motion")<sup>2</sup> of the above-captioned debtors and debtors in possession (the "Debtors") for, among other relief, entry of an order authorizing or approving (a) the bidding procedures (in the form attached hereto as Exhibit 1, the "Bidding Procedures") in connection with the sale or disposition (the "Sale") of the Debtors' assets (the "Assets"), (b) entry into the asset purchase agreement (the "Stalking Horse Purchase Agreement") and the bid represented therein, the "Stalking Horse Bid") with Drake Asset Management Jersey Limited (the "Stalking Horse Bidder"); (c) the notice of the Auction and Sale and hearing thereon (in the form attached hereto as Exhibit 2, the "Notice of Auction and Sale Hearing"), (d) the procedures (the "Assignment Procedures"), as set forth below, for the assumption and assignment of certain of 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. (0929). The Debtors' mailing address is 1440 Chapin Avenue, Suite 310, Burlingame, CA 94014.

<sup>2</sup> Capitalized terms used but not otherwise defined herein are to be given the meanings ascribed to them in the Motion.

Debtors' executory contracts or unexpired leases, as applicable (the "Designated Contracts"), and (e) the notice of the potential assumption and assignment of the Designated Contracts (in the form attached hereto as Exhibit 3, the "Notice of Assumption and Assignment"); and this Court having found that it has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334(b) and 157, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012; and this Court having found that venue of the Chapter 11 Cases and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b); and this Court having found that it may enter a final order consistent with Article III of the United States Constitution; and this Court having found that notice of the Motion has been given as set forth in the Motion and that such notice is adequate and no other or further notice need be given except as set forth herein with respect to the Auction, the Sale Hearing and the potential assumption and assignment of the Designated Contracts; and a reasonable opportunity to object to or be heard regarding the relief provided herein has been afforded to parties-in-interest pursuant to Bankruptcy Rule 6004(a); and this Court having considered the First Day Declaration and the Rosen Declaration; and this Court having found that the relief sought in the Motion is in the best interests of the Debtors, their estates, their creditors and all other parties in interest; and this Court having found that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor,

**THE COURT HEREBY FINDS AS FOLLOWS:<sup>3</sup>**

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<sup>3</sup> The findings and conclusions set forth herein constitute this Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

A. The Bidding Procedures attached hereto as **Exhibit 1** are fair, reasonable and appropriate, and are designed to maximize the value to be achieved from the Sale.

B. The Bidding Procedures comply with the requirements of Local Rule 6004-1(c).

C. The Assignment Procedures provided for herein are fair, reasonable and appropriate, and are consistent with the provisions of section 365 of the Bankruptcy Code.

D. The Debtors have articulated good and sufficient business reasons for this Court to approve (i) the Bidding Procedures, including the scheduling of bid deadlines, an auction and a sale hearing with respect to the proposed Sale; and (ii) the establishment of procedures to assume and assign the Designated Contracts and fix the Cure Costs (as defined below) to be paid pursuant to section 365 of the Bankruptcy Code.

E. The Stalking Horse Bid was negotiated by the parties at arm's length and in good faith by the Debtors and the Stalking Horse Bidder. Furthermore, the Stalking Horse Bid will serve as a minimum or floor bid on which the Debtors, their creditors, suppliers, vendors, and other bidders may rely. The Stalking Horse Bidder is providing a material benefit to the Debtors and their creditors by increasing the likelihood that, given the circumstances, the best possible price for the Assets will be received. Accordingly, the Stalking Horse Bid is reasonable and appropriate, and represents the best method for maximizing value for the benefit of the Debtors' estates.

F. The Notice of Auction and Sale Hearing, and the Debtors' proposed publication thereof, is appropriate and reasonably calculated to provide all interested parties with timely and proper notice of the Auction, the Sale, the Bidding Procedures, and the Assignment Procedures to be employed in connection therewith, including, without limitation: (i) the date, time and place of the Auction (if one is held); (ii) the Bidding Procedures and the dates and deadlines related thereto; (iii) the objection deadline for the Sale and the date, time and place of the Sale Hearing;

(iv) reasonably specific identification of the Assets; and (v) representations describing the Sale as being free and clear of liens, claims, interests and other encumbrances, with all such liens, claims, interests and other encumbrances attaching with the same validity and priority to the proceeds of the Sale; and no other or further notice of the Sale shall be required.

G. The Notice of Assumption and Assignment is appropriate and reasonably calculated to provide each non-debtor party to any Designated Contracts (such parties, collectively, the “Non-Debtor Counterparties”) with proper notice of the Assignment Procedures. The inclusion of any Designated Contract on a Notice of Assumption and Assignment does not constitute an admission that a particular Designated Contract is an executory contract or unexpired lease of property or require, or guarantee, that such Designated Contracts will be assumed and assigned, and all rights of the Debtors with respect thereto are reserved.

H. No further notice beyond that described in the foregoing paragraphs is required in connection with the Sale.

I. The entry of this order (this “Bidding Procedures Order”) is in the best interests of the Debtors, their estates, their creditors, and other parties in interest.

**IT IS HEREBY ORDERED THAT:**

1. The Motion is GRANTED as set forth herein.
2. All objections to the Motion or the relief provided herein, as they pertain to the entry of this Order, that have not been withdrawn, waived or settled, and all reservations of rights included therein, are hereby overruled and denied on the merits.
3. The Debtors are authorized to enter into the Stalking Horse Purchase Agreement with the Stalking Horse Bidder. The Stalking Horse Purchase Agreement is a Qualified Bid, and



the Stalking Horse Bidder is a Qualified Bidder, for all purposes and requirements (including the Bid Requirements) pursuant to the Bidding Procedures.

4. Pursuant to section 363(k) of the Bankruptcy Code, the Stalking Horse Bidder is authorized to credit bid any and all amounts due and owing to it under the Secured Obligations (as defined in the Stalking Horse Purchase Agreement).

#### **The Bidding Procedures**

5. The Bidding Procedures attached hereto as **Exhibit 1** are incorporated herein and approved, and shall apply with respect to the Sale. The Debtors are authorized to take all reasonable actions necessary or appropriate to implement the Bidding Procedures.

6. The Debtors are authorized to conduct the bidding process in accordance with the Bidding Procedures and the terms hereof, without the necessity of complying with any state or local bulk transfer laws or requirements applicable to the Debtors.

7. Potential Bidders or Qualified Bidders (other than the Stalking Horse Bidder), shall not be allowed any break-up, termination or similar fee with respect to the Assets. Moreover, all Potential Bidders, Qualified Bidders, and the Stalking Horse Bidder waive any right to seek a claim for substantial contribution pursuant to section 503 of the Bankruptcy Code, or the payment of any broker fees or costs, unless specifically agreed to by the Debtors upon consultation with the Consultation Parties and ultimately approved by this Court.

#### **Assignment Procedures**

8. The following Assignment Procedures shall govern the assumption and assignment of the Designated Contracts in connection with the Sale, and any objections related thereto:

- a. On or before the date that is ten days prior to the Bid Deadline, the Debtors shall file with the Court and serve on each Non-Debtor counterparty to any existing contract with the Debtor (each a "**Non-Debtor Counterparty**"), the Notice of Assumption and Assignment, regardless of whether the contract

has been listed as a Designated Contracts. In the event that the Debtors identify any Non-Debtor Counterparties which were not served with the Notice of Assumption and Assignment, the Debtors may subsequently serve (by overnight mail) such Non-Debtor Counterparty with a Notice of Assumption and Assignment, and the following procedures will nevertheless apply to such Non-Debtor Counterparty; provided, however, that the Cure Cost/Assignment Objection Deadline (defined below) with respect to such Non-Debtor Counterparty shall fourteen (14) days following service of the Notice of Assumption and Assignment.

- b. The Notice of Assumption and Assignment served on each Non-Debtor Counterparty shall: (i) identify each Contract; (ii) list the proposed calculation of the cure amounts that the Debtors believe must be paid to cure all defaults outstanding under the Designated Contract as of such date (the “Cure Costs”); (iii) include a statement that assumption and assignment of such Designated Contract is not required or guaranteed; and (iv) inform such Non-Debtor Counterparty of the requirement to file any Cure Cost/Assignment Objections (defined below) by the Cure Cost/Assignment Objection Deadline (defined below). Service of a Notice of Assumption and Assignment does not constitute an admission that a particular Designated Contract is an executory contract or unexpired lease of property, or confirm that the Debtors are required to or will assume and/or assign such Designated Contract as a part of any transaction.
- c. Objections (a “Cure Cost/Assignment Objection”), if any, to (i) the scheduled Cure Costs, and/or (ii) the potential assumption, assignment and/or transfer of such Designated Contract (including the transfer of any related rights or benefits thereunder), other than objections that relate specifically to the identity of the Successful Bidder (in the event that the Stalking Horse Bidder is not the Successful Bidder), must (x) be in writing; (y) state with specificity the nature of such objection, including the amount of Cure Costs in dispute and (z) be filed with the Court and properly served on the Notice Parties (as defined herein) so as to be received no later than fourteen (14) days after Service of Notice of Assumption and Assignment (the “Cure Cost/Assignment Objection Deadline”).
- d. Objections (a “Post-Auction Objection”) of any Non-Debtor Counterparty related solely to the identity of and adequate assurance of future performance provided by the Successful Bidder must: (x) be in writing; (y) state with specificity the nature of such objection; and (z) be filed with the Court and properly served on the Notice Parties so as to be received no later than two (2) Business Days following the Auction (the “Post-Auction Objection Deadline”); provided, however, that any objection of a Non-Debtor Counterparty related to the Stalking Horse Bid (including with respect to the identity of and adequate assurance of future performance provided by the Stalking Horse Bidder) must be filed by the Cure Cost/Assignment Objection Deadline.

- e. Any Non-Debtor Counterparty to a Designated Contract who fails to timely file and properly serve a Cure Cost/Assignment Objection or Post-Auction Objection as provided herein will (i) be forever barred from objecting to the Cure Costs and from asserting any additional cure or other amounts with respect to such Designated Contract in the event it is assumed and/or assigned by the Debtors and the Debtors and any Success of such Designated Contract shall be entitled to rely solely upon the Cure Costs, and (ii) be deemed to have consented to the assumption, assignment and/or transfer of such Designated Contract (including the transfer of any related rights and benefits thereunder) to the Successful Bidder and shall be forever barred and estopped from asserting or claiming against the Debtors or such Successful Bidder that any additional amounts are due or defaults exist, or conditions to assumption, assignment, and/or transfer must be satisfied under such Designated Contract, or that any related right or benefit under such Designated Contract cannot or will not be available to the relevant Successful Bidder.
- f. Consideration of unresolved Cure Cost/Assignment Objections and Post-Auction Objections relating to all Designated Contracts, if any, will be held at the Sale Hearing, provided, however, that (i) any Designated Contract that is the subject of a Cure Cost/Assignment Objection solely with respect to the amount of the Cure Cost may be assumed and assigned prior to resolution of such objection and (ii) the Debtors, in consultation with the Consultation Parties, may adjourn a Cure Cost/Assignment objection in their discretion, in consultation with the Consultation Parties.
- g. A timely filed and properly served Cure Cost/Assignment Objection or Post-Auction Objection will reserve the Non-Debtor Counterparty's rights relating to the Designated Contract, but will not be deemed to constitute an objection to the relief generally requested in the Motion with respect to the approval of the Sale.
- h. The Debtors' decision to assume and assign the Designated Contracts to the relevant Successful Bidder is subject to the Court's approval and the closing of the Sale. Accordingly, absent the Court's approval and the closing of the Sale, the Designated Contracts shall not be deemed assumed or assumed and assigned, and shall in all respects be subject to further administration by the Debtors and their estates under the Bankruptcy Code in connection with the Chapter 11 Cases.

### **Notice Procedures**

- 9. Service and publication of the Notice of Auction and Sale Hearing are sufficient to provide effective notice to all interested parties of, *inter alia*, the Bidding Procedures, the Auction,

the Sale Hearing, the Sale, and the Assignment Procedures in accordance with Bankruptcy Rules 2002 and 6004, as applicable, and are approved.

10. On or before two (2) business days after entry of this Bidding Procedures Order, the Debtors will cause the Notice of Auction and Sale Hearing to be sent by first-class mail postage prepaid, to (a) the United States Trustee for the District of Delaware (the “U.S. Trustee”); (b) counsel to any official committee(s) appointed in these chapter 11 cases; (c) counsel for Drake; (d) any party known to assert a lien on assets; (e) any party to any litigation with the Debtors; (f) the Securities and Exchange Commission, (g) the Internal Revenue Service; (h) counsel to UMB Bank, N.A., (the “Agent”); and (i) any party that has requested notice pursuant to Bankruptcy Rule 2002 (the Debtors, together with the parties identified in clauses (a) through (h) are collectively, the “Notice Parties” and (g) all of the Debtors’ known creditors and known equity holders).

11. In addition to the foregoing, on or before five (5) business days after entry of the Bidding Procedures Order, the Debtors shall, subject to applicable submission deadlines, publish the Notice of Auction and Sale Hearing once in the national edition of the New York Times or another nationally circulated newspaper, with any modifications necessary for ease of publication, and post the Notice of Auction and Sale Hearing and the Bidding Procedures Order on the website of the Debtors’ claims and noticing agent.

12. As soon as reasonably practicable following conclusion of the Auction, the Debtors shall file a notice on this Court’s docket identifying the Successful Bidder(s) for the Assets and any applicable Next-Highest Bidder(s).

13. The Notice of Assumption and Assignment, and the other Assignment Procedures set forth herein, are sufficient to provide effective notice pursuant to Bankruptcy Rules 2002(a)(2),

6004(a) and 6006(c) to the Non-Debtor Counterparties to the Designated Contracts of the Debtors' intent to potentially assume and assign some or all of the Designated Contracts and are approved.

### **Auction and Sale Hearing**

14. **Bid Deadline.** The deadline for submitting bids for the Assets (the "Bid Deadline") shall be 5:00 p.m. (ET) on [●], 2021. No bid shall be deemed to be a Qualified Bid unless such bid meets the requirements set forth in the Bidding Procedures or is otherwise accepted by the Debtors, after consultation with the Consultation Parties.

15. **Auction.** The Debtors may sell the Assets by conducting an Auction in accordance with the Bidding Procedures. If at least two Qualified Bids (or one Qualified Bid in addition to the Stalking Horse Bid) are received by the Bid Deadline with regard to the Assets, the Debtors will conduct an Auction in accordance with the Bidding Procedures, which Auction shall take place three (3) Business Days after the Bid Deadline telephonically, by videoconference, or at the offices of proposed counsel to the Debtors, Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, Delaware 19801, or such later time or such other place as the Debtors shall designate upon consultation with the Consultation Parties. For the avoidance of doubt, the Debtors may, in their sole discretion, upon consultation with the Consultation Parties, conduct the Auction telephonically or by video conference.

16. If no Qualified Bids other than the Stalking Horse Bid are received with regard to the Assets: (a) the Debtors shall not hold an Auction; (b) the Stalking Horse Bid will be deemed the Successful Bid; and (c) the Stalking Horse Bidder will be named the Successful Bidder.

17. Each Qualified Bidder participating in the Auction will be required to confirm, in writing, that (a) it has not engaged in any collusion with respect to the bidding process or on the record at the Auction, (b) its Qualified Bid is a good faith bona fide offer that it intends to

consummate if selected as the Successful Bidder, and (c) such Qualified Bidder irrevocably agrees to serve as a Next-Highest Bidder if the Qualified Bidder's Qualified Bid is the next highest and best bid after the Successful Bid with respect to the Assets.

18. The Debtors may, after consultation with the Consultation Parties, announce at the Auction additional procedural rules (e.g. the amount of time to make Subsequent Bids, the amount of the Incremental Overbid, or the requirement that parties submit "best and final" bids) for conducting the Auction or otherwise modify these Bidding Procedures; provided that such rules (1) are not materially inconsistent with these Bidding Procedures, the Bankruptcy Code or any order of the Bankruptcy Court, and (2) are disclosed to each Qualified Bidder during the Auction. The bidding at the Auction shall be transcribed, audio recorded, and/or videotaped, and the Debtors shall maintain a transcript of all bids made and announced at the Auction.

19. **Sale Hearing**. The Sale Hearing shall be held before this Court on [●], 2021 at [●] (ET). The Debtors shall file a form of Sale Order no later than 14 days before the Sale Hearing. At the Sale Hearing, the Debtors will seek the entry of the Sale Order approving and authorizing the Sale to the Successful Bidder and, if applicable, the Next-Highest Bidder as determined in accordance with the Bidding Procedures. The Sale Hearing (or any portion thereof) may be adjourned by this Court or the Debtors from time to time without further notice other than by announcement in open court, on this Court's calendar or through the filing of a notice or other document on this Court's docket.

20. **Sale Objection Deadline**. The deadline to object to the relief requested in the Motion, including entry of the proposed Sale Order (a "Sale Objection") is [●], 2021 at 4:00 p.m. (ET) (the "Sale Objection Deadline"). A Sale Objection must be filed with this Court and served

in the manner set forth below such that it is *actually received* no later than the Sale Objection Deadline.

### **Sale Objection Procedures**

21. Any party that seeks to object to the relief requested in the Motion pertaining to approval of the Sale shall file a formal written objection that complies with the objection procedures set forth herein.

22. Objections, if any, must: (i) be in writing; (ii) be signed by counsel or attested to by the objecting party; (iii) be in conformity with the applicable provisions of the Bankruptcy Rules and the Local Rules; (iv) state with particularity the legal and factual basis for the objection and the specific grounds therefor; (v) be filed with this Court; and (vi) be served on the Notice Parties.

23. Failure to file a Sale Objection on or before the Sale Objection Deadline: (a) shall forever bar the assertion, whether at any Sale Hearing or thereafter, of any objection to the Motion, to entry of the Sale Order, and/or to the consummation and performance of the Sale with a Successful Bidder, and (b) for purposes of section 363(f)(2) of the Bankruptcy Code, shall be deemed to be “consent” to entry of the Sale Order and consummation of the Sale and all transactions related thereto.

### **Other Relief Granted**

24. Absent an Order of this Court to the contrary, this Order shall be binding in all respects upon any trustees, examiners, “responsible persons” or other fiduciaries appointed in the Debtors’ bankruptcy cases or upon a conversion to chapter 7 under the Bankruptcy Code.

25. Nothing herein shall be deemed to or constitute the assumption, assignment or rejection of any executory contract or unexpired lease.

26. Notwithstanding any provision in the Bankruptcy Rules to the contrary, the stays provided for in Bankruptcy Rules 6004(h) and 6006(d) are waived, and this Order shall be effective immediately and enforceable upon its entry.

27. In the event of any conflict between this Order and the Bidding Procedures, this Order shall govern in all respects.

28. The requirements set forth in Local Rules 6004-1, 9006-1, and 9013-1 are hereby satisfied or waived.

29. This Court shall retain exclusive jurisdiction over any matters related to or arising from the implementation of this Order.



**EXHIBIT 1**

**Bidding Procedures**

## **BIDDING PROCEDURES**

Set forth below are the bidding procedures (the “Bidding Procedures”) to be used with respect to the sale or disposition (the “Sale”) of the assets (the “Assets”) of AeroCentury Corp. and its affiliated chapter 11 debtors and debtors in possession (collectively, the “Debtors”). The Debtors have entered into an Asset Purchase Agreement, dated as of March 26, 2021 (the “Stalking Horse Agreement” and the bid represented therein the “Stalking Horse Bid”), with Drake Asset Management Jersey Limited (the “Stalking Horse Bidder”) to acquire the Debtors aircraft-related Assets, included leases, as further described in the Stalking Horse Agreement. The Stalking Horse Bid is a Qualified Bid, and the Stalking Horse Bidder is a Qualified Bidder, for all purposes and requirements (including the Bid Requirements) pursuant to the Bidding Procedures.

### **I. Introduction**

On March 29, 2021 (the “Petition Date”), the Debtors filed voluntary petitions for relief under title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”). On [●], 2021, the Bankruptcy Court entered an order (the “Bidding Procedures Order”) authorizing the Debtors to market the Assets through, among other means, these Bidding Procedures. As part of the Bidding Procedures, the Bankruptcy Court has scheduled a hearing to consider approval of the sale of the Assets to the Successful Bidder (as defined below), to be conducted on [●], 2021 at [●] (ET) (the “Sale Hearing”).

### **II. Timeline**

<b>Date</b>	<b>Event</b>
7 Days before Sale Hearing	Sale Objection Deadline
14 days after Service of Notice of Cure Cost/Assignment	Cure Cost/Assignment Objection Deadline
[●], 2021 at [●] (ET)	Bid Deadline
[●], 2021 at [●] (ET)	Bid Qualification Deadline
3 Business Days after Bid Deadline	Auction
2 Business Days after the Auction	Post-Auction Objection Deadline
30 Days after Bid Procedures Hearing	Sale Hearing

### **III. Confidentiality Agreement**

Unless otherwise ordered by the Bankruptcy Court for cause shown, to participate in the bidding process, each person or entity must enter into (unless previously entered into) with the

Debtor, on or before the Bid Deadline (as defined below), an executed confidentiality agreement in form and substance reasonably satisfactory to the Debtors (the “Confidentiality Agreement”). Each person or entity that enters into the Confidentiality Agreement with the Debtors on or before the Bid Deadline is hereinafter referred to as a “Potential Bidder.”

After a Potential Bidder enters into the Confidentiality Agreement with the Debtors, the Debtors shall deliver or make available (unless previously delivered or made available) to each Potential Bidder certain designated information (including, if applicable, financial data) with respect to the Assets.

The Stalking Horse Bidder shall not be required to execute a Confidentiality Agreement in connection with its participation as a Consultation Party (as defined below).

#### **IV. Determination by the Debtors; Joint Bidding**

As appropriate throughout the bidding process, the Debtors will consult with the Prepetition Lender and any official committee(s) appointed in the Debtors’ chapter 11 cases (a “Committee”) and, solely if the Stalking Horse Bidder affirmatively and irrevocably withdraws as a bidder, the Debtors’ prepetition secured lender (the “Prepetition Lender”), and collectively with the Committee “Consultation Parties” and each, a “Consultation Party”) and shall: (a) coordinate the efforts of Potential Bidders in conducting their respective due diligence; (b) evaluate bids from Potential Bidders on the Assets; (c) negotiate any bid made to acquire the Assets; and (d) make such other determinations as are provided in these Bidding Procedures. Neither the Debtors nor their representatives shall be obligated to furnish any information of any kind whatsoever relating to the Assets to any party that is not a Potential Bidder or a Consultation Party.

At any time prior to the conclusion of the Auction, the Debtors may negotiate with any two or more Potential Bidders or Qualified Bidders to join them into a joint bid for purposes of submitting a joint or combined bid, including joining Qualified Bids at the Auction.

#### **V. Due Diligence**

Up to and including the Bid Deadline (as defined below), the Debtors shall afford any Potential Bidder such available due diligence access or additional information as may be reasonably requested by the Potential Bidder or Consultation Party, as applicable, that the Debtors, in their business judgment, determine to be reasonable and appropriate under the circumstances. The Debtors will provide, in an electronic data room to be established for these purposes, the Stalking Horse Purchase Agreement, and will grant each Potential Bidder, access to such data room. Notwithstanding the foregoing, the Debtors reserve the right, in their reasonable discretion and following consultation with the Consultation Parties, to withhold or limit access to any information that the Debtors determine not appropriate to disclose to any Potential Bidder.

#### **VI. Bid Deadline**

A Potential Bidder that desires to make a Bid shall deliver no later than [●], 2021 at 5:00 p.m. (ET) (the “Bid Deadline”) copies of its Bid, by email to: (a) proposed counsel to the Debtors, care of:

(a) the Debtors' Investment Banker, B. Riley (Attn: Adam Rosen ([arosen@brileyfin.com](mailto:arosen@brileyfin.com))); and

(b) the Debtors' counsel, (i) Morrison & Forrester (Attn: Lorenzo Marinuzzi ([lmarinuzzi@mofo.com](mailto:lmarinuzzi@mofo.com))), and (ii) Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, Delaware 19801 (Attn: Joseph M. Barry, Esq. ([jbarry@ycst.com](mailto:jbarry@ycst.com)) and Ryan M. Bartley, Esq. ([rbartley@ycst.com](mailto:rbartley@ycst.com)) and Joseph M. Mulvihill ([jmulvihill@ycst.com](mailto:jmulvihill@ycst.com))).

## VII. Bid Requirements

All bids (each hereinafter, a "Bid"), must (collectively, the "Bid Requirements"):

- (a) be accompanied by a letter or email:
  - (i) disclosing the identity of the person or entity submitting the Bid, as well as any party participating in or otherwise supporting the Bid, and the terms of any such participation or support (including any equity holder or other financial backer if the Potential Bidder is an entity formed for the purpose of consummating the proposed transaction contemplated by the Bid);
  - (ii) stating with specificity the Assets such Potential Bidder wishes to bid on and the liabilities and obligations (including applicable cure costs) to be assumed by the Potential Bidder in the Sale, the amount of the cash consideration included in the bid and the value the Potential Bidder ascribed to any non-cash consideration included in the Bid;
  - (iii) acknowledging and representing that the Potential Bidder; (a) has had an opportunity to conduct any and all due diligence regarding the Assets prior to submitting the Bid; (b) has relied solely upon its own independent review, investigation, and/or inspection of any documents and/or the Assets in making its Bid; and (c) did not rely upon any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied by operation of law, or otherwise regarding the Assets or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in the Bid;
  - (iv) agreeing that the Potential Bidder's offer is binding and irrevocable until the later of (i) the Closing Date (as defined herein), or (ii) twenty (20) days after the Sale Hearing (unless selected as the Next-Highest Bidder (as defined below) in which case such offer will remain open until the Closing Date);
  - (vii) providing for a Closing Date that occurs on or before [●], 2021;
  - (viii) providing that such Bid is not subject to or conditioned on (x) obtaining any financing, (y) shareholder, board of directors, or other internal approval, or (z) the outcome or completion of a due diligence review by the Potential

Bidder. Notwithstanding the foregoing, a Bid may be subject to (a) the accuracy at the closing of the Sale of specified representations and warranties, or (b) the satisfaction at the closing of the Sale of specified conditions, which, in each instance, shall not be more burdensome, as determined in the Debtors' business judgment in timely consultation with the Consultation Parties, than those set forth in the Stalking Horse Purchase Agreement;

- (ix) disclaiming any right to receive a break-up fee, expense reimbursement, termination fee, or any other similar form of compensation. For the avoidance of doubt, no Potential Bidder will be permitted to request, nor be granted by the Debtors, at any time, whether as part of the Auction or otherwise, a break-up fee, expense reimbursement, termination fee, or any other similar form of compensation, and by submitting its Bid is agreeing to refrain from and waive any assertion or request for reimbursement on any basis, including under section 503(b) of the Bankruptcy Code;
- (x) providing that the Potential Bidder agrees to serve as a backup bidder (the "Next-Highest Bidder") if the Potential Bidder's Qualified Bid (as defined below) is the next highest and best bid after the Successful Bid (as defined below) (the "Next-Highest Bid"); and
- (xi) providing that the Potential Bidder submits to the jurisdiction of the Court and waives any right to a jury trial in connection with any disputes relating to Debtors' qualification of Bids, the Auction, the construction and enforcement of these Bidding Procedures, the Sale documents, and the closing of the Sale, as applicable.

(b) be on terms that are not more burdensome than the terms of the Stalking Horse Purchase Agreement, as determined in the Debtors' reasonable business judgment, in timely consultation with the Consultation Parties. Each Bid must include duly executed, non-contingent transaction documents necessary to effectuate the Sale and shall include a schedule of assumed executory contracts and/or unexpired leases, and a copy of the Stalking Horse Purchase Agreement clearly marked to show all changes requested by the Potential Bidder, including those related to the respective Purchase Price and assets to be acquired by such Qualified Bidder, as well as all other material documents integral to such bid;

(c) be accompanied by adequate assurance of future performance information (the "Adequate Assurance Information"), including (i) information about the Potential Bidder's financial condition, such as federal tax returns, a current financial statement, bank account statements and equity and financing commitment letters; (ii) information demonstrating (in the Debtors' reasonable business judgment) that the Potential Bidder has the financial capacity to consummate the proposed Sale; and (iii) such additional information regarding the Potential Bidder as the Potential Bidder may elect to include, or that the Debtors, in their sole discretion, [] requires. By [●], 2021, the Stalking Horse Bidder shall provide Adequate Assurance Information to requesting parties.

By submitting a Bid, Potential Bidders agree that the Debtors may disseminate their Adequate Assurance Information to affected contract counterparties and the Consultation Parties that request such in formats, in the event that the Debtors determine such bid to be a Qualified Bid (as defined below); provided, however, that each counterparty receiving Adequate Assurance Information shall keep such Adequate Assurance information confidential, and shall be restricted from using or disclosing such information to any third party other than in connection with a Cure Cost/Assignment Objection, and in the event such counterparty files any such Cure Cost/Assignment Objection, it shall be permitted to file any portion of such pleading containing any Adequate Assurance Information under seal without any further order of the Court; and

(d) be accompanied by a deposit in the form of a certified check or wire transfer, payable to the order of the Debtors, in an amount equal to ten percent (10%) of the total cash and non-cash consideration of the Bid, which funds will be deposited into an escrow account to be identified and established by the Debtors (a “Good Faith Deposit”). The Successful Bidder (as defined below) and Next-Highest Bidder shall be required to supplement their Good Faith Deposits, if necessary, within one (1) business day of the close of the Auction so that such Good Faith Deposits shall be equal to an amount that is ten percent (10%) of the Successful Bid or Next-Highest Bid, as applicable. The Debtors reserve the right to increase or decrease the Good Faith Deposit for one or more Qualified Bidders (as defined below) in their sole discretion after consulting with the Consultation Parties.

(e) be accompanied by written evidence, documented to the Debtors’ satisfaction, that demonstrates the Potential Bidder has available cash, a commitment for financing if selected as the Successful Bidder (as defined below) (provided, however, that the closing shall not be contingent in any way on the Successful Bidder’s financing) and such other evidence of ability to consummate the transaction satisfactory to the Debtors may request, including proof that such funding commitments or other financing are not subject to any internal approvals, syndication requirements, diligence or credit committee approvals (*provided* that such commitments may have covenants and conditions acceptable to the Debtors, as determined after consultation with the Consultation Parties) (“Evidence of Financial Wherewithal”). Potential Bidders are encouraged to provide the Debtors with their Evidence of Financial Wherewithal in advance of the Bid Deadline to ensure that the Evidence of Financial Wherewithal is sufficient; and

(f) be accompanied by evidence that the Potential Bidder has obtained all required organizational authorization and approval with respect to the submission of its Bid.

The Debtors, in consultation with the Consultation Parties, will review each Bid received from a Potential Bidder to determine, in their discretion, whether it meets the requirements set forth above. A Bid received from a Potential Bidder that meets the above requirements, and is otherwise satisfactory to the Debtors, will be considered a “Qualified Bid” and each Potential Bidder that submits a Qualified Bid will be considered a “Qualified Bidder.” No later than 48 hours after the Bid Deadline, the Debtors shall (a) inform Qualified Bidders that their bids have been designated as Qualified Bids and (b) share copies of all such Qualified Bids with the Stalking Horse Bidder. For the avoidance of doubt, the Stalking Horse Purchase Agreement is a Qualified Bid, and the Stalking Horse Bidder is a Qualified Bidder, for all purposes and requirements (including the Bid Requirements) pursuant to the Bidding Procedures.

A Qualified Bid will be valued by the Debtors based upon any and all factors that the Debtors, in consultation with the Consultation Parties, reasonably deem pertinent in their business judgment, including, among others: (a) the amount of the Qualified Bid; (b) the risks and timing associated with consummating the transaction with the Qualified Bidder; (c) any excluded assets or executory contracts and leases; and (d) any other factors that the Debtors (in consultation with the Consultation Parties) may reasonably deem relevant.

The Debtors, in their business judgment, and in consultation with the Consultation Parties, reserve the right to reject any Bid (other than the Stalking Horse Bid) if such Bid, among other things:

- (a) is on terms that are more burdensome or conditional than the terms of the Stalking Horse Agreement;
- (b) requires any indemnification of the Potential Bidder in its Purchase Agreement;
- (c) is not received by the Bid Deadline;
- (d) is subject to any contingencies (including representations, warranties, covenants and timing requirements) of any kind or any other conditions precedent to such party's obligation to acquire the Assets;
- (e) seeks any bid protections; or
- (f) does not, in the Debtors' determination (after consultation with the Consultation Parties), include a fair and adequate price or the acceptance of which would not be in the best interests of the Debtors' estates.

Any Bid rejected pursuant to this paragraph shall not be deemed to be a Qualified Bid; *provided, however*, if a Bid submitted timely by the Bid Deadline is determined not to be a Qualified Bid, such Potential Bidder shall have the opportunity to cure the alleged defects in the Bid within 48 hours immediately following the Bid Deadline. In the event that any Bid is so rejected and not cured to become a Qualified Bid, the Debtors shall cause the Good Faith Deposit of such Potential Bidder to be refunded to it within five (5) business days after the Bid Deadline.

#### **VIII. Auction**

Unless otherwise ordered by the Bankruptcy Court for cause shown, only the Qualified Bidders (including the Stalking Horse Bidder) are eligible to participate at the Auction (as defined below). The Consultation Parties shall be permitted to attend the Auction. If the only Qualified Bid the Debtors receive is the Stalking Horse Bid, (a) the Debtors shall not hold an Auction; (b) the Stalking Horse Bid will be deemed the Successful Bid; and (c) the Stalking Horse Bidder will be named the Successful Bidder.

If the Debtors obtain more than one Qualified Bid by the Bid Deadline, the Debtors will conduct an auction (the "Auction") and shall determine in their reasonable business judgment, after consultation with the Consultation Parties, which Qualified Bid is the highest or otherwise

best Qualified Bid (the “Starting Bid”), which determination will be communicated to Qualified Bidders prior to the commencement of the Auction. The Debtors shall hold an open Auction three (3) Business Days after the Bid Deadline telephonically, by videoconference, or at the offices of proposed counsel to the Debtors, Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, Delaware 19801, or such later time or such other place as the Debtors shall designate upon consultation with the Consultation Parties in a filing with the Court and provide notice of to all Qualified Bidders who have submitted Qualified Bids. For the avoidance of doubt, and upon consultation with the Consultation Parties, the Debtors reserve the right to conduct the Auction telephonically or by video conference. Professionals and principals for the Debtors, the Stalking Horse Bidder, each Qualified Bidder and the Consultation Parties shall be able to attend and observe the Auction, along with any other creditor, and any other party the Debtors deem appropriate (provided, however, that any party other than the Qualified Bidders and the Consultation Parties shall be required to provide notice to the Debtors at least five (5) days prior to the Auction by sending an email to Michelle Smith, paralegal for proposed counsel to the Debtors, at [msmith@ycst.com](mailto:msmith@ycst.com)).

Each Qualified Bidder participating in the Auction will be required to confirm, in writing, and on the record at the Auction, that (a) it has not engaged in any collusion with respect to the bidding process, and (b) its Qualified Bid is a good faith *bona fide* offer that it intends to consummate if selected as the Successful Bidder (as defined below).

Bidding at the Auction will begin with the Starting Bid and continue, in one or more rounds of bidding, so long as during each round at least one Subsequent Bid (defined below) is submitted by a Qualified Bidder that (i) improves on such Qualified Bidder’s immediately prior Qualified Bid (a “Subsequent Bid”) and (ii) the Debtors reasonably determine, in consultation with the Consultation Parties, that such Subsequent Bid is (a) for the first round, a higher or otherwise better offer than the Starting Bid, and (b) for subsequent rounds, a higher or otherwise better offer than the Leading Bid (as defined below). Each Subsequent Bid at the Auction shall provide net value to the estates in an amount to be announced at or prior to the Auction (“Incremental Overbid”) over the Starting Bid or the Leading Bid (as defined below), as the case may be, as determined by the Debtors in the exercise of their reasonable business judgment and in consultation with the Consultation Parties. After the first round of bidding and between each subsequent round of bidding, the Debtors shall announce the bid that they determine to be the highest or otherwise best offer (the “Leading Bid”). A round of bidding will conclude after each participating Qualified Bidder has had the opportunity to submit a Subsequent Bid with full knowledge of the Leading Bid, subject to the Debtors’ authority to revise the Auction procedures as set forth below.

The Debtors may, in consultation with the Consultation Parties, announce at the Auction additional procedural rules (e.g., the amount of time to make Subsequent Bids, the amount of the Incremental Overbid, or the requirement that parties submit “best and final” bids) for conducting the Auction or otherwise modify these Bidding Procedures; provided that such rules (1) are not materially inconsistent with these Bidding Procedures, the Bankruptcy Code, or any order of the Bankruptcy Court, and (2) are disclosed to each Qualified Bidder during the Auction. The bidding at the Auction shall be transcribed or videotaped, and the Debtors shall maintain a transcript of all bids made and announced at the Auction.



Immediately prior to the conclusion of the Auction, the Debtors, in consultation with the Consultation Parties, will: (a) determine, consistent with the Bidding Procedures, which bid constitutes the highest or otherwise best bid (the “Successful Bid”); and (b) notify all Qualified Bidders at the Auction, prior to its conclusion, of the name of the maker of the Successful Bid (the “Successful Bidder”), and the amount and other material terms of the Successful Bid. The Debtors may, in consultation with the Consultation Parties, designate the Next-Highest Bid (and the corresponding Next-Highest Bidder) to close, in the event that the Successful Bidder does not close the Sale. Unless the Bankruptcy Court orders otherwise upon application by the Debtors, the Debtors shall not consider any bids or Subsequent Bids submitted after the conclusion of the Auction, and any and all such bids and Subsequent Bids shall be deemed untimely and shall under no circumstances constitute a Qualified Bid.

Within twenty-four (24) hours following conclusion of the Auction, the Debtors shall file a notice on the Bankruptcy Court’s docket identifying (with specificity) the Successful Bidder for the Assets and any applicable Next-Highest Bidder. Notwithstanding the selections of the Successful Bidder and the Next-Highest Bidder (the binding and irrevocability of which is governed by Section VII(a)(iv) hereof) all Bids are **binding and irrevocable** at least until entry of the Sale Order.

#### **IX. Jurisdictional Consent**

All bidders at the Auction will be deemed to have consented to the core jurisdiction of the Bankruptcy Court and waived any right to jury trial in connection with any disputes relating to the Auction, the Sale, and the construction and enforcement of their bids and all documents submitted under the Bidding Procedures, and all other agreements entered into in connection with any proposed Sale transaction. Such consent and waiver shall apply to the extent that it is later determined that the Bankruptcy Court, absent consent, cannot enter final orders or judgments with regard to the foregoing matters consistent with Article III of the United States Constitution.

#### **X. Acceptance of Qualified Bids**

The Debtors may reject at any time, before entry of an order of the Bankruptcy Court approving the Sale, any Bid that, in the Debtors’ judgment, upon considering any comments of the Consultation Parties, is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bankruptcy Code or the Bidding Procedures, or (iii) contrary to the best interests of the Debtors and their estates.

The Debtors’ presentation to the Bankruptcy Court for approval of a selected Qualified Bid as a Successful Bid does not constitute the Debtors’ acceptance of such Bid. The Debtors will have accepted a Successful Bid only when such Successful Bid has been approved by the Bankruptcy Court at the Sale Hearing. The Debtors intend to close the Sale (the “Closing Date”) on or before [●], 2021 unless another time or date, or both, are agreed to in writing by the Debtors and the Successful Bidder or (if applicable) the Next-Highest Bidder.

#### **XI. Sale Hearing**

Each Successful Bid and any Next-Highest Bid will be subject to approval by the Bankruptcy Court. The hearing to approve a Successful Bid and any Next-Highest Bid will take

place on [●], 2021 at [●] (ET) (the “Sale Hearing”). The Sale Hearing may be adjourned by the Debtors from time to time without further notice to creditors or other parties in interest other than by announcement of the adjournment in open court on the date scheduled for the Sale Hearing or by filing a notice, which may be a hearing agenda stating the adjournment, on the docket of the Debtors’ chapter 11 cases.

At the Sale Hearing, the Debtors will seek entry of an order that, among other things: (i) authorizes and approves the Sale to the Successful Bidder and/or the Next-Highest Bidder, free and clear of all liens, claims and encumbrances; and (ii) includes a finding that the Successful Bidder and/or the Next-Highest Bidder is a good faith purchaser pursuant to section 363(m) of the Bankruptcy Code.

## **XII. Return of Good Faith Deposit and Reservation of Rights**

The Good Faith Deposits of all Potential Bidders shall be held in escrow by the Debtors, but shall not become property of the Debtors’ estates absent further order of the Bankruptcy Court. The Good Faith Deposits of all Potential Bidders shall be retained by the Debtors, notwithstanding Bankruptcy Court approval of the Sale, until three (3) business days after the earlier of (a) the Closing Date, or (b) ten (10) days following the Sale Hearing; provided, however, that the Good Faith Deposit of the Next-Highest Bidder shall be retained until three (3) business days after the Closing Date, or if applicable, applied in accordance with the Next-Highest Bid. The Debtors shall retain any Good Faith Deposit submitted by the Successful Bidder. At the closing of a Sale contemplated by a Successful Bid, the applicable Successful Bidder will be entitled to a credit for the amount of its Good Faith Deposit to the extent such a deposit was provided.

If a Successful Bidder (or, if the Sale is to be closed with a Next-Highest Bidder, then the Next-Highest Bidder) fails to consummate the Sale because of a breach or failure to perform on the part of such bidder, then the Debtors and their estates shall be entitled to retain the Good Faith Deposit of such Successful Bidder (or, if the Sale is to be closed with the Next-Highest Bidder, then such Next-Highest Bidder) as part of the damages resulting to the Debtors and their estates for such breach or failure to perform, in addition to any and all other rights, remedies, or causes of action that may be available to the Debtors.

## **XIII. Reservation of Rights and Modifications**

Notwithstanding any of the foregoing, the Debtors and their estates, in consultation with the Consultation Parties, and with the consent of Drake, which consent shall not be unreasonably withheld, reserve the right to modify these Bidding Procedures at or prior to the Auction, including, without limitation, to extend the deadlines set forth herein, modify bidding increments, waive terms and conditions set forth herein with respect to any or all Potential Bidders (including, without limitation, the Bid Requirements), impose additional terms and conditions with respect to any or all potential bidders, adjourn or cancel the Auction at or prior to the Auction, and adjourn the Sale Hearing.

The Debtors shall consult with the Consultation Parties as explicitly provided for in these Bidding Procedures; provided, however, that the Debtors shall not be required to consult with any Consultation Party (or its advisors) that submits a Bid or has a Bid submitted on its behalf, or that has an affiliate that submits a Bid or has a Bid submitted on its behalf, for so long as such Bid remains open, if the Debtors determine, in their reasonable business judgment, that consulting with

such Consultation Party regarding any issue, selection, or determination is (a) likely to have a chilling effect on the potential bidding or (b) otherwise contrary to the goal of maximizing value from the sale process for the Debtors' estates, their creditors, and all other parties in interest.

**XIV. Next-Highest Bidder**

Notwithstanding any of the foregoing, in the event that a Successful Bidder fails to close a Sale prior to such date as specified in the applicable Purchase Agreement (or such date as may be extended by the Debtors), the Debtors, upon written notice to the Next-Highest Bidder, may designate the applicable Next-Highest Bid as the Successful Bid, the Next-Highest Bidder will be deemed to be the Successful Bidder, and the Debtors will be authorized, but not directed, to close the Sale to the Next-Highest Bidder subject to the terms of the Next-Highest Bid without the need for further order of the Bankruptcy Court and without the need for further notice to any interested parties.

**EXHIBIT 2**

**Notice of Auction and Sale Hearing**

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

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

**NOTICE OF SALE, BIDDING PROCEDURES, AUCTION AND SALE HEARING**

**PLEASE TAKE NOTICE OF THE FOLLOWING:**

1. On [●], 2021, the debtors and debtors in possession in the above-captioned cases (the “Debtors”) filed with the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”) their motion (the “Motion”) for the entry of: (A) an order (the “Bidding Procedures Order”),<sup>2</sup> (i) approving bidding procedures in connection with the sale of the Debtors’ assets (the “Bidding Procedures”); (ii) authorizing the Debtors to enter into the Stalking Horse Purchase Agreement; (iii) scheduling an auction for (the “Auction”) and hearing (the “Sale Hearing”) on the approval of the proposed sale or disposition (the “Sale”) of the Debtors’ assets (the “Assets”); (iv) approving notice of respective date, time and place for the Auction and for the Sale Hearing; (v) approving procedures for the assumption and assignment of certain executory contracts and unexpired leases; (vi) approving form and manner of notice; and (vii) granting related relief; and (B) an order authorizing and approving (i) the Sale free and clear of liens, claims, rights, encumbrances, and other interests; and (ii) the assumption and assignment of certain executory contracts and unexpired leases (collectively, the “Contracts”) and (iii) related relief. The Assets constitute nine (9) aircraft owned by the Debtors and related leases with third-party lessees.

2. For ease of reference following chart has been included to indicate the dates relevant to this Notice:

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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. (0929). The Debtors’ mailing address is 1440 Chapin Avenue, Suite 310, Burlingame, CA 94014.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Bidding Procedures Order (including the Bidding Procedures). Any summary of the Bidding Procedures and the Bidding Procedures Order contained herein is qualified in its entirety by the actual terms and conditions thereof. To the extent that there is any conflict between any such summary and such actual terms and conditions, the actual terms and conditions shall control.

Date	Event
7 Days before Sale Hearing	Sale Objection Deadline
14 days after Service of Notice of Cure Cost/Assignment	Cure Cost/Assignment Objection Deadline
[●], 2021 at [●] (ET)	Bid Deadline
[●], 2021 at [●] (ET)	Bid Qualification Deadline
3 Business Days after Bid Deadline	Auction
2 Business Days after the Auction	Post-Auction Objection Deadline
30 Days after Bid Procedures Hearing	Sale Hearing

3. On [●], 2021, the Bankruptcy Court entered the Bidding Procedures Order [Docket No. ●]. Pursuant to the Bidding Procedures, bids for the Acquired Assets, or any subset thereof, must be received on or before [●], 2021 at 5:00 p.m. (ET) (the “Bid Deadline”) and otherwise comply with the Bidding Procedures. **FAILURE TO ABIDE BY THE BIDDING PROCEDURES MAY RESULT IN A BID BEING REJECTED. ANY PARTY INTERESTED IN BIDDING ON THE ACQUIRED ASSETS SHOULD CONTACT ADAM M. ROSEN, OF B. RILEY FINANCIAL, INC., THE DEBTORS’ INVESTMENT BANKER AT 646.367.2412 AND AROSEN@BRILEYFIN.COM.**

4. Pursuant to the Bidding Procedures, in the event that the Debtors receive more than one Qualified Bid by the Bid Deadline, the Debtors will conduct the Auction, which shall take place on [●], 2021 at [●] (ET) telephonically, by videoconference, or at the offices of proposed counsel to the Debtors, Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, Delaware 19801, or such later time or such other place as the Debtors shall designate and provide notice of to all Qualified Bidders who have submitted Qualified Bids and by filing a notice on the docket of the Debtors’ chapter 11 cases. Only Qualified Bidders (including any Stalking Horse Bidder), shall be entitled to participate at the Auction. For the avoidance of doubt, the Debtors may, upon consultation with the Consultation Parties, conduct the Auction telephonically or by video conference.

5. Each Successful Bid and any Next-Highest Bid (or if no Qualified Bid other than that of a Stalking Horse Bidder is received, then the Stalking Horse Bid) will be subject to approval by the Bankruptcy Court. The Sale Hearing shall take place [●], 2021 at [●] (ET). The Sale Hearing may be adjourned by the Debtors from time to time without further notice to creditors or other parties in interest other than by announcement of the adjournment in open court on the date scheduled for the Sale Hearing or by filing a notice, which may be a hearing agenda, stating the adjournment, on the docket of the Debtors’ chapter 11 cases.

6. Any objections to the Sale or the relief requested in connection with the Sale, including objections to entry of the proposed Sale Order (a “Sale Objection”), other than a Post-Auction Objection (as defined below) or a Cure Cost/Assignment Objection (which shall be governed by the Assignment Procedures) must: (i) be in writing; (ii) be signed by counsel or attested to by the objecting party; (iii) be in conformity with the applicable provisions of the Bankruptcy Rules and the Local Rules; (iv) state with particularity the legal and factual basis for the objection and the specific grounds therefor; (v) be filed with the Clerk of the Court, 824 N. Market Street, 3rd Floor, Wilmington, DE 19801, together with proof of service, **[●], 2021 at [●] (ET)**. (the “Sale Objection Deadline”); and (vi) be served, so as to be actually received on or before the Sale Objection Deadline, upon: (a) the United States Trustee for the District of Delaware (the “U.S. Trustee”); (b) counsel to any official committee(s) appointed in the chapter 11 cases; (c) counsel for Drake; and (d) any party that has requested notice pursuant to Bankruptcy Rule 2002 (collectively, the “Notice Parties”).

7. Any objections solely with respect to conduct at the Auction (a “Post-Auction Objection”) must: (i) be in writing; (ii) be signed by counsel or attested to by the objecting party; (iii) be in conformity with the applicable provisions of the Bankruptcy Rules and the Local Rules; (iv) state with particularity the legal and factual basis for the objection and the specific grounds therefor; (v) be filed with the Clerk of the Court, 824 N. Market Street, 3rd Floor, Wilmington, DE 19801, together with proof of service, **[●], 2021** (the “Post-Auction Objection Deadline”); and (vi) be served, so as to be actually received on or before the Post-Auction Objection Deadline, upon the Notice Parties.

8. If a Sale Objection is not filed and served on or before the Sale Objection Deadline or a Post-Auction Objection is not filed and served on or before the Post-Auction Objection Deadline in accordance with the foregoing requirements, the Court may enter the Sale Order without further notice to such party.

9. Copies of the Motion, the Bidding Procedures, and the Bidding Procedures Order may be obtained by parties in interest free of charge on the dedicated webpage related to the Debtors’ chapter 11 case maintained by the claims and noticing agent in this case, Kurtzman Carson Consultants LLC (“KCC”) (<http://www.kccllc.net/aerocentury>). Copies of such documents are also available for inspection during regular business hours at the Clerk of the Bankruptcy Court, 824 N. Market Street, 3rd Floor, Wilmington, DE 19801, and may be viewed for a fee on the internet at the Court’s website (<http://www.deb.uscourts.gov/>) by following the directions for accessing the ECF system on such website.

Dated: [●], 2021 March 29, 2021  
Wilmington, Delaware

/s/

---

Joseph M. Barry (No. 4221)

Ryan M. Bartley (No. 4985)

Joseph M. Mulvihill (No. 6061)

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*Proposed Counsel to the Debtors and Debtors in Possession*



**EXHIBIT 3**

**Notice of Assumption and Assignment**

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

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

**NOTICE OF POSSIBLE ASSUMPTION AND ASSIGNMENT OF CERTAIN  
EXECUTORY CONTRACTS AND UNEXPIRED LEASES  
IN CONNECTION WITH SALE**

**PLEASE TAKE NOTICE OF THE FOLLOWING:**

1. On [●], 2021, the debtors and debtors in possession in the above-captioned cases (the “Debtors”) filed with the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”) their motion (the “Motion”) for the entry of: (A) an order (the “Bidding Procedures Order”), (i) approving bidding procedures in connection with the sale of the Debtors’ assets (the “Bidding Procedures”); (ii) authorizing the Debtors to enter into the Stalking Horse Purchase Agreement; (iii) scheduling an auction for (the “Auction”) and hearing (the “Sale Hearing”) on the approval of the proposed sale or disposition (the “Sale”) of the Debtors’ assets (the “Assets”); (iv) approving notice of respective date, time and place for the Auction and for the Sale Hearing; (v) approving procedures for the assumption and assignment of certain executory contracts and unexpired leases; (vi) approving form and manner of notice; and (vii) granting related relief; and (B) an order authorizing and approving (i) the Sale free and clear of liens, claims, rights, encumbrances, and other interests; and (ii) the assumption and assignment of certain executory contracts and unexpired leases (collectively, the “Contracts”) and (iii) related relief. The Assets constitute nine (9) aircraft owned by the Debtors and related leases with third-party lessees.

2. On [●], 2021, the Bankruptcy Court entered the Bid Procedures Order [Docket No. ●].

3. The Sale Hearing shall take place on [●], 2021, at [●] (ET). The Sale Hearing may be adjourned by the Debtors from time to time without further notice to creditors or other parties in interest other than by announcement of the adjournment in open court on the date scheduled for the Sale Hearing or by filing a notice, which may be a hearing agenda, stating the adjournment, on the docket of the Debtors’ chapter 11 cases.

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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. (0929). The Debtors’ mailing address is 1440 Chapin Avenue, Suite 310, Burlingame, CA 94014.

4. To facilitate the Sale, the Debtors are potentially seeking to assume and assign the Designated Contracts to any Successful Bidder, in accordance with the Assignment Procedures provided for in the Bid Procedures Order. Each of the Designated Contracts subject to potential assignment through the Sale process is identified on Exhibit 1 attached hereto. **THE INCLUSION OF ANY CONTRACT ON EXHIBIT 1 DOES NOT CONSTITUTE AN ADMISSION THAT A PARTICULAR CONTRACT IS AN EXECUTORY CONTRACT OR UNEXPIRED LEASE OF PROPERTY OR REQUIRE OR GUARANTEE THAT SUCH CONTRACT WILL BE ASSUMED AND ASSIGNED, AND ALL RIGHTS OF THE DEBTORS WITH RESPECT THERETO ARE RESERVED.** The cure amount (each, a “Cure Cost”), if any, that the Debtors believe is required to be paid to the applicable counterparty (each, a “Non-Debtor Counterparty,” and collectively, the “Non-Debtor Counterparties”) to each of the Designated Contracts under section 365(b)(1)(A) and (B) of the Bankruptcy Code is identified on Exhibit 1 attached hereto.

5. If a Non-Debtor Counterparty objects to the Cure Cost for its Designated Contract and/or to the proposed assumption, assignment and/or transfer of such Designated Contract (including the transfer of any related rights or benefits thereunder), other than objections that relate specifically to the identity of a Successful Bidder (in the event that the Stalking Horse Bidder is not the Successful Bidder), the Non-Debtor Counterparty must file with the Bankruptcy Court and serve on the Notice Parties (as defined below) a written objection (a “Cure Cost/Assignment Objection”). Any Cure Cost/Assignment Objection must: (i) be in writing; (ii) signed by counsel or attested to by the objecting party; (iii) in conformity with the applicable provisions of the Bankruptcy Rules and the Local Rules; (iv) state with particularity the legal and factual basis for the objection and the specific grounds therefor; (v) be filed with the Clerk of the Court, 824 N. Market Street, 3rd Floor, Wilmington, DE 19801, together with proof of service, **no later than [●], 2021, at 4:00 p.m. (ET)** (the “Sale Objection Deadline”); and (vi) be served, so as to be actually received on or before the Sale Objection Deadline, upon (a) the United States Trustee for the District of Delaware (the “U.S. Trustee”); (b) counsel to any official committee(s) appointed in these chapter 11 cases; (c) counsel for Drake; and (d) any party that has requested notice pursuant to Bankruptcy Rule 2002 (collectively, the “Notice Parties”).

6. Objections (a “Post-Auction Objection”) of any Non-Debtor Counterparty related solely to the identity of, and adequate assurance of future performance provided by, the Successful Bidder must (i) be in writing; (ii) state with specificity the nature of such objection, and (iii) be filed with the Bankruptcy Court and properly served on the Notice Parties so as to be received, **no later than [●], 2021, at [●] (ET)** (the “Post-Auction Objection Deadline”); *provided, however*, that any objection of a Non-Debtor Counterparty related to the Stalking Horse Bid (including with respect to the identity of and adequate assurance of future performance provided by the Stalking Horse Bidder) must be filed as a Cure Cost/Assignment Objection by the Cure Cost/Assignment Objection Deadline.

7. At the Sale Hearing, the Debtors may seek Bankruptcy Court approval of the assumption and assignment to any Successful Bidder of those Designated Contracts that have been selected by the Successful Bidder to be assumed and assigned. The Debtors and their estates

reserve any and all rights with respect to any Designated Contracts that are not ultimately assigned to the Successful Bidder.

8. Any Non-Debtor Counterparty to a Contract who fails to timely file and properly serve a Cure Cost/Assignment Objection or Post-Auction Objection as provided herein will (i) be forever barred from objecting to the Cure Cost and from asserting any additional cure or other amounts with respect to such Contract in the event it is assumed and/or assigned by the Debtors and the Debtors shall be entitled to rely solely upon the Cure Cost, and (ii) be deemed to have consented to the assumption, assignment and/or transfer of such Contract (including the transfer of any related rights and benefits thereunder) to the relevant Successful Bidder and shall be forever barred and estopped from asserting or claiming against the Debtors or the Successful Bidder that any additional amounts are due or defaults exist, or conditions to assumption, assignment, and/or transfer must be satisfied under such Contract, or that any related right or benefit under such Contract cannot or will not be available to the relevant Successful Bidder.

9. Consideration of unresolved Cure Cost/Assignment Objections and Post-Auction Objections relating to all Designated Contracts, if any, will be held at the Sale Hearing; *provided, however,* that (i) any Contract that is the subject of a Cure Cost/Assignment Objection with respect solely to the amount of the Cure Cost may be assumed and assigned prior to resolution of such objection and (ii) the Debtors, in consultation with the Consultation Parties and the parties to any Contract that is subject to a Cure Cost/Assignment objection, may adjourn a Cure Cost/Assignment objection.

10. A timely filed and properly served Cure Cost/Assignment Objection or Post-Auction Objection will reserve the filing Non-Debtor Counterparty's rights relating to the Contract, but will not be deemed to constitute an objection to the relief generally requested in the Motion with respect to the approval of the Sale.

11. The Debtors' assumption and/or assignment of a Contract is subject to approval by the Bankruptcy Court and consummation of the Sale. Absent consummation of the Sale and entry of an order approving the assumption and/or assignment of the Designated Contracts, the Designated Contracts shall be deemed neither assumed nor assigned, and shall in all respects be subject to subsequent assumption or rejection by the Debtors.

12. Copies of the Motion, the Bidding Procedures, and the Bid Procedures Order may be obtained by parties in interest free of charge on the dedicated webpage related to this chapter 11 case maintained by the claims and noticing agent in this case, Kurtzman Carson Consultants LLC ("KCC"). Copies of such documents are also available for inspection during regular business hours at the Clerk of the Bankruptcy Court, 824 N. Market Street, 3rd Floor, Wilmington, DE 19801, and may be viewed for a fee at the Bankruptcy Court's website (<http://www.deb.uscourts.gov/>) by following the directions for accessing the ECF system on such website.

13. Any Non-Debtor Counterparty to a Contract may notify the Debtors, via an electronic mail request to the Debtors' counsel, Young Conaway Stargatt & Taylor, LLP, Rodney

Square, 1000 North King Street, Wilmington, Delaware 19801 (Attn: Joseph M. Barry, Esq. (jbarry@ycst.com) and Heather P. Smillie (hsmillie@ycst.com), of its desire for information about (a) adequate assurance information from the Stalking Horse Bidder (if its Contract is implicated by the Stalking Horse Bid), as applicable; (b) the identity of the Successful Bidder and any backup bidder; and (c) adequate assurance information from the Successful Bidder and any backup bidder (if its Contract is implicated by the Successful Bid or backup bid). Any such request shall include an email address whereby the requestor can receive such information, and Debtors shall provide, or shall cause their counsel and/or the claims and noticing agent to provide, such information to any requestor (a) with respect to a Stalking Horse Bidder, within the later of (i) the date that is seven (7) days before the Sale Objection Deadline, and (ii) one Business Day after receipt by proposed counsel to the Debtors of such a request; and (b) with respect to a Successful Bidder or Next-Highest Bidder (other than the Stalking Horse), within the later of (i) twenty-four (24) hours after the conclusion of the Auction and (ii) twenty-four (24) hours after receipt by counsel to the Debtors of such a request.

*[Signature Page Follows]*

Dated: [●], 2021  
Wilmington, Delaware

/s/

---

Joseph M. Barry (No. 4221)

Ryan M. Bartley (No. 4985)

Joseph M. Mulvihill (No. 6061)

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erichards@mof.com

*Proposed Counsel to the Debtors and Debtors in Possession*

**EXHIBIT B**

**Stalking Horse Purchase Agreement**

# **ASSET PURCHASE AGREEMENT**

**dated as of March 26, 2021**

**AEROCENTURY CORP.,  
as Seller**

**DRAKE ASSET MANAGEMENT JERSEY LIMITED,  
as Buyer**



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## ASSET PURCHASE AGREEMENT

This **ASSET PURCHASE AGREEMENT** (this “**Agreement**”), dated as of March 26, 2021, by and among **AEROCENTURY CORP.**, a corporation formed under the laws of Delaware, as seller (“**ACY**”), and **DRAKE ASSET MANAGEMENT JERSEY LIMITED**, a company incorporated in Jersey (registered number 127856) whose registered office is at IFC5, St Helier, Jersey JE1 1<sup>ST</sup>, as buyer (“**Buyer**”).

### RECITALS

**WHEREAS**, 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 ACY, as borrower, were parties to the Fourth Amended and Restated Loan and Security Agreement dated as of May 1, 2020 (as amended, modified or supplemented from time to time and as assigned by the Original Lenders to Buyer as new lender and Agent, the “**Loan Agreement**”) pursuant to which the Original Lenders made a loan (the “**Loan**”) to ACY;

**WHEREAS**, the Loan is secured by (among other things) the Loan Agreement and the Fourth Amended and Restated Mortgage and Security Agreement dated as of May 1, 2020 (as amended, modified, supplemented and assigned, the “**Mortgage**”) made by ACY in favor the Original Agent;

**WHEREAS**, the amount of outstanding Secured Obligations pursuant to the Mortgage and Loan Agreement as of the date of this Agreement is approximately \$83,164,109. The Secured Obligations continue to accrue.

**WHEREAS**, pursuant to the Loan Purchase and Sale Agreement dated as of October 2, 2020, (the “**Loan Purchase Agreement**”) among the Buyer, the Agent, the Original Lenders, the Original Agent and MUFG Bank, Ltd., the Loan was sold by the Original Lenders to the Buyer and the Original Agent was replaced with the Agent;

**WHEREAS**, concurrent with the sale of the Loan, (i) the Loan Agreement was assigned by the Original Lenders to the Buyer and by the Original Agent to the Agent, (ii) the Mortgage and Original Financing Statements were assigned by the Original Agent to the Agent, acting on behalf of Buyer, and accordingly the Agent is now the holder of valid properly-perfected first priority liens on all of the Equipment and Lease Documents and (iii) ACY executed and delivered the Deposit Account Control Agreements 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;

**WHEREAS**, following execution of this Agreement, ACY intends to commence a proceeding under title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “**Bankruptcy Code**”), by filing voluntary petitions for relief under Chapter 11 of the Bankruptcy Code (the date of such filing, the “**Petition Date**”) in the United States Bankruptcy Court for the District of Delaware (“**Bankruptcy Court**” and, such case the “**Bankruptcy Case**”); and

Error!

**WHEREAS**, ACY desires to sell to the Buyer and the Buyer desires to purchase from ACY, all of ACY's right, title and interest in and to the Equipment and the Lease Documents free and clear of Encumbrances pursuant to section 363(f) of the Bankruptcy Code, in each case on the terms and subject to the conditions set out in this Agreement and the Sale Order.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Buyer and ACY, agree as follows:

**Section 1.** Defined Terms. The following terms, when capitalized as below, shall have the following meanings when used in this Agreement:

**"Account"** means each account subject to a Deposit Account Control Agreement.

**"ACY Conditions Precedent"** means conditions to the obligations of ACY in respect of each Delivery Date set out in Sections 6.3 and 6.4.

**"Agent"** means UMB Bank, N.A., a national banking association formed under the laws of the United States of America.

**"Aircraft"** means individually or collectively, as applicable, the aircraft listed as items 1 through 10 in Part 1 of Schedule 2 comprised of an Airframe, together with the related Engines and, where the context permits, references to an **"Aircraft"** shall include the related Manuals and Technical Records.

**"Airframe"** means, at any time, the airframe which is part of the relevant Aircraft at such time, together with all Parts relating to such airframe.

**"Approved Plan"** has meaning given to such term in Section 12.5.

**"Assumed Leases"** means the rights and interests under the Lease Documents set forth in Schedule 4 in respect of an Aircraft to be assumed by ACY and assigned to the Buyer on the Delivery Date in respect of the Aircraft.

**"Assumed Liabilities"** has the meaning given to such term in Section 2.4.

**"Auction"** means the auctions referenced in Section 12.3(e) the terms and conduct of which shall be subject to the Sale Procedures Order.

**"Bankruptcy Case"** has the meaning given to such term in the Recitals to this Agreement.

**"Bankruptcy Code"** has the meaning given to such term in the Recitals to this Agreement.

**"Bankruptcy Court"** has the meaning given to such term in the Recitals to this Agreement.

**"Bankruptcy Milestones"** has the meaning given to such term in Section 12.3.

**“Bid Deadline”** has the meaning given to such term in Section 12.3(d).

**“Bid Procedures Hearing”** has the meaning given to such term in Section 12.3(b).

**“Business Day”** means a day, other than a Saturday or a Sunday, on which banks are open for business in New York, New York; San Francisco, California; St. Helier, Jersey; Dublin, Ireland; and London, England.

**“Buyer Conditions Precedent”** means conditions to the obligations of the Buyer in respect of each Delivery Date set out in Sections 6.1 and 6.2.

**“Cash Collateral Order”** shall mean the order or orders of the Bankruptcy Court in the Bankruptcy Case authorizing ACY’s use of cash collateral which shall be in form and substance reasonably acceptable to the Buyer.

**“Challenge”** has the meaning given to such term in the Cash Collateral Order.

**“Challenge Period”** has the meaning given to such term in the Cash Collateral Order.

**“Claim”** or **“claim”** has the meaning given that term in section 101(5) of the Bankruptcy Code and includes, *inter alia*, all rights, claims, causes of action, defenses, debts, demands, damages, offset rights, setoff rights, recoupment right, obligations, and liabilities of any kind or nature under contract, at law, or in equity, known or unknown, contingent or matured, liquidated or unliquidated, and all rights and remedies with respect thereto.

**“Closing Date”** means the first date upon which a Delivery occurs following the Signing Date.

**“Collateral”** means each item of Equipment, each item of Excluded Equipment and the Lease Documents.

**“Competing Bid”** has the meaning given to such term in Section 12.1.

**“Conditions Precedent”** means the Buyer Conditions Precedent and the ACY Conditions Precedent.

**“Consultation Documents”** has the meaning given to such term in Section 12.2(e).

**“Cure Costs”** means the amounts, if any, required to cure any past defaults with respect to an Assumed Lease pursuant to 11 U.S.C. § 365(b)(1) including, but not limited to, any maintenance and/or repair obligations under the Assumed Leases.

**“Custodial Agreement”** means the custodial agency agreement dated October 30, 2020 between ACY and the Agent.

**“Customer Programs”** means certain programs that ACY maintains in connection with their leasing business in respect of the Assumed Leases. These programs include, but are not limited to, customer security deposits under aircraft and equipment leases, Maintenance Reserve

Obligations, and lessor contributions for regulatory airworthiness directives and mandatory modifications to the aircraft.

**“Delivery”** means, on the Delivery Date in respect of an item of Equipment, the concurrent occurrence of the events set out in Section 7.

**“Delivery Date”** means, for each item of Equipment, the date on which the Conditions Precedent related to the Delivery of such Equipment have been satisfied or waived.

**“Delivery Location”** means (i) the location identified on Schedule 2 with respect to the equipment identified on Schedule 2 by Serial Numbers 15207, 15215, 15128 (excluding ESN 194582) and 238, (ii) with respect to the equipment identified on Schedule 2 by ESN 194582, the location of such equipment as may be acceptable to the Buyer, and (iii) with respect to all other equipment identified on Schedule 2, the location of such equipment on the date all other conditions to Delivery have been satisfied or such other location as may be acceptable to the Buyer and the applicable Lessee.

**“Deposit Account Control Agreements”** means the following, individually and collectively, as applicable, (i) the Deposit Account Control Agreement dated as of October 30, 2020, among ACY, as debtor, Agent, as secured party, and Zions Bancorporation, N.A. (d/b/a California Bank & Trust), as bank, (ii) the Special Deposit Account Control Agreement, dated as of October 30, 2020, among ACY, as borrower, Agent, as secured party, and MUFG Union Bank, N.A., as bank, (iii) the Special Deposit Account Control Agreement, dated as of October 30, 2020, among JetFleet Management Corp., as pledgor, Agent, as secured party, and MUFG Union Bank, N.A., as bank, and (iv) the Deposit Account Control Agreement, dated as of October 30, 2020, among JetFleet Management Corp., as debtor, Agent, as secured party, and Zions Bancorporation, N.A. (d/b/a California Bank & Trust), as bank.

**“DJL9”** means Drake Jet Leasing 9 Designated Activity Company, an Irish designated activity company.

**“Dollars”** and the sign “\$” means the lawful currency of the United States of America.

**“Effective Date”** means the date on which all Delivery Dates have occurred and all other conditions precedent have been satisfied or waived by the Buyer in accordance Section 8.1 hereof.

**“Effective Time Notice”** shall have the meaning, in respect of an Aircraft, given to such term in the Lease Novation in respect of that Aircraft.

**“Encumbrance”** means any charge, claim, community property interest, right of way, easement, covenant, condition, equitable interest, Lien, option, pledge, security interest, right of first refusal, or restriction of any kind, including any restriction on use, voting, transfer, receipt of income or exercise of any other attribute of ownership.

**“Engine”** means, with respect to any Airframe, any of the engines that are included as part of the related Aircraft and any and all related Parts.

**“Equipment”** means individually or collectively, the Aircraft.

**“Equipment Specific Documents”** means for each applicable item of Equipment the documents, certificates and other items listed in Schedule 3 which are required to be delivered as a Buyer Conditions Precedent in accordance with Section 6.2.

**“ERISA”** means the U.S. Employee Retirement Income Security Act of 1974, as amended.

**“ERISA Affiliate”** means any Person that could be treated as a single employer with ACY pursuant to Section 4001 of ERISA or Section 414 of the U.S. Internal Revenue Code of 1986 (as amended).

**“Excluded Amount”** means any amount paid by or on behalf of the Lessee under any Lease Documents in respect of indemnity payments under the relevant Lease Documents to which ACY is entitled thereunder in respect of a loss suffered or incurred by ACY.

**“Excluded Asset”** means any asset and property listed in items (i) to (iv) inclusive of Section 8.4.

**“Excluded Equipment”** means individually or collectively, as applicable, the aircraft or engines listed as items 1 to 5 in Part 2 of Schedule 2 together with, in relation to the aircraft equipment, the related engines listed therein, and in relation to such aircraft and engine equipment, all Parts and records applicable thereto.

**“Excluded Liabilities”** shall have the meaning given to such term in Section 2.5.

**“Excluded Transfer Taxes”** shall mean any Transfer Taxes imposed by any Government Entity to the extent arising from or imposed on or as a result of (i) ACY’s acts or omissions prohibited by this Agreement, (ii) activities of ACY in the jurisdiction imposing the liability unrelated to ACY’s dealings with the Buyer or the Agent pursuant to the transactions contemplated by this Agreement, (iii) the net income, profits or gains of ACY by any Government Entity in the jurisdiction where ACY is incorporated, formed or organized or has its principal place of business, or (iv) ACY’s gross negligence or willful misconduct.

**“FAA”** means the Federal Aviation Administration or any successor agency.

**“FAA Bill of Sale”** means an FAA form bill of sale (AC Form 8050-2) to be signed by ACY with respect to each Airframe comprising part of the Equipment listed as items 4 through 6 of Part 1 of Schedule 2.

**“FAA Counsel”** means McAfee & Taft.

**“Government Entity”** means any (a) nation, state, county, city, town, village, district, or other jurisdiction of any nature; (b) federal, state, local, municipal, foreign, or other government; (c) governmental or quasi-governmental authority of any nature (including any governmental agency, branch, department, official, or entity and any court or other tribunal); (d) multinational

organization or body; or (e) body exercising, or entitled to exercise, any administrative, executive, judicial, legislative, regulatory, or taxing authority or power of any nature.

**“Gross Revenue After ECD”** means all rent, maintenance reserves, power by the hour payments and all other revenue received in respect of the Aircraft under the Lease Documents in respect of any period from (and including) February 1, 2021, excluding any Excluded Amount.

**“Gross Revenue Before ECD”** means all rent, maintenance reserves, power by the hour payments and all other revenue received in respect of the Aircraft under the Lease Documents in respect of any period prior to (and including) January 31, 2021.

**“International Registry”** shall have the meaning given to such term in official English language texts of the “Convention on International Interests in Mobile Equipment” and the “Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment”, both of which were signed in Cape Town, South Africa on November 16, 2001, and including the Regulations for the International Registry and the Procedures for the International Registry, as promulgated thereunder.

**“Lease Documents”** means each of the lease documents listed in Schedule 4.

**“Lease Novation”** means the agreement for the assignment, transfer and/or novation, as the case may be, of the Lease Documents in respect of an item of Equipment entered into or to be entered into between ACY, the Buyer (or the nominee thereof) and the Lessee.

**“Lessee”** means the lessee of an Aircraft as named under the heading “Lessee” in Schedule 2.

**“Lien”** means any mortgage, pledge, hypothecation, right of others, claim, security interest, encumbrance, lease, sublease, license, occupancy agreement, adverse claim or interest, easement, covenant, encroachment, burden, title defect, title retention agreement, voting trust agreement, interest, equity, option, lien, right of first refusal, charge, or other restrictions or limitations of any nature whatsoever, including, without limitation, such as may arise under any contracts, and any “claim,” “lien,” or “security interest,” as those terms are defined in the Bankruptcy Code.

**“Limited Recourse Date”** shall have the meaning given to such term in Section 8.5.

**“Loan Documents”** shall have the meaning given in the Loan Purchase Agreement.

**“Maintenance Reserves”** shall mean the payments made by Lessees based on aircraft usage, as specified under any applicable Lease Documents, which ACY may use to reimburse Lessees for ACY’s Maintenance Reserve Obligations. For the avoidance of doubt, Maintenance Reserves shall include any and all such amounts (excluding lease rental) paid by any Lessee under any Lease Documents at any time prior to the applicable Delivery Date.

**“Maintenance Reserve Obligations”** means reimbursements available to a Lessee upon completion of specific qualified maintenance projects, as defined and specified under any Lease Documents.



**“Manuals and Technical Records”** means, as applicable in relation to an Aircraft, the Aircraft Documents or the Manuals and Technical Records in respect thereof as defined in the applicable Lease Documents related to that Aircraft.

**“Mortgage”** has the meaning given to such term in the Recitals to this Agreement.

**“Operative Documents”** means this Agreement, each Equipment Specific Document, each Warranty Bill of Sale, each FAA Bill of Sale and any other agreement or document entered into in connection with the foregoing.

**“Order”** means any order, writ, judgement, injunction, decree, stipulation, determination or award entered into by or with any Governmental Authority.

**“Original Financing Statements”** means the Uniform Commercial Code financing statements described in Schedule 1.

**“Parts”** means, with respect to an Airframe, Engine any auxiliary power unit, avionics, appliance, part, instrument, appurtenance, accessory, furnishing or other item of equipment or components of whatever nature (other than a complete Engine) incorporated in, installed on, attached to or appurtenant to an Airframe or, as the context may require, any Engine.

**“Permitted Liens”** means “Permitted Liens” or an analogous term used in any Lease Documents other than “Lessor Liens” or Liens created by or through the lessor under such Lease Documents.

**“Person”** means any natural person, general or limited partnership, corporation, company, trust, limited liability company, limited liability partnership, firm, association, organization or other legal entity.

**“Petition Date”** has the meaning given to such term in the Recitals to this Agreement.

**“Purchase Price”** has the meaning given to such term in Section 3.1.

**“Republic LLC”** means ACY E-175 LLC, a Delaware limited liability company.

**“Sale Hearing”** has the meaning given to such term in Section 12.3(c).

**“Sale Motion”** has the meaning given to such term in Section 12.3(a).

**“Sale Motion Filing Date”** has the meaning given to such term in Section 12.3(a).

**“Sale Order”** means an Order of the Bankruptcy Court, in form and substance reasonably acceptable to Buyer, among other things, (a) approving (i) this Agreement and the execution, delivery, and performance by ACY of this Agreement and the other instruments and agreements contemplated hereby, (ii) the sale of the Equipment to the Buyer or its nominee free and clear of any and all Encumbrances (other than any Permitted Liens), and (iii) the assumption by ACY and assignment to the Buyer or its nominee of the Assumed Leases on the terms set forth herein; (b) determining that Buyer is a good faith purchaser and has provided adequate

assurance of future performance with respect to the Assumed Leases; (c) containing findings consistent with Section 9.1; and (d) providing that (i) each Delivery Date, the Closing Date and the Effective Date will occur in accordance with the terms and conditions hereof; and (ii) Buyer will not have any derivative, successor, transferee or vicarious liability for liabilities of ACY or any affiliates of ACY by reason of any theory of law or equity (whether under federal or state law or otherwise) as a result of the transactions contemplated by this Agreement, including liabilities on account of any Tax arising, accruing, or payable under, out of, in connection with, or in any way relating to the Equipment prior to the Closing Date.

**“Sale Procedures Order”** means that certain order of the Bankruptcy Court in form and substance reasonably acceptable to the Buyer, that among other things, establishes (a) the date by which qualified bids are due, (b) the date of an Auction or Auctions, and (c) the date of the hearing on the Sale Motion, all in accordance with terms of this Agreement.

**“Second Transfer Agreement”** means the transfer agreement to be entered into between the Buyer and DJL9 with respect to the transfer of title or beneficial interest in such of the Aircraft which are subject to Lease Documents from the Buyer to DJL9 as Buyer and DJL9 shall agree.

**“Secured Obligations”** shall have the meaning given in the Mortgage.

**“Signing Date”** means the date of this Agreement.

**“Tax”** and **“Taxes”** means any tax (including, without limitation, any income tax, withholding tax, capital gains tax, value-added tax, franchise tax, sales tax, property tax, gift tax, or estate tax), levy, assessment, tariff, duty (including any customs duty), deficiency or other fee, and any related charge or amount (including any fine, penalty, interest, or addition to tax), imposed, assessed, or collected by or under the authority of any Government Entity or payable pursuant to any tax-sharing agreement or any other contract relating to the sharing or payment of any such tax, levy, assessment, tariff, duty, deficiency, or fee.

**“Transfer Legal Fees”** means:

(i) any legal invoices received by ACY from (a) a Lessee in respect of the transfer of title to the Aircraft or the assignment, novation or transfer of the Lease Documents applicable to that Aircraft, in each case to the Buyer (it being acknowledged that ACY will, where possible and if relevant, procure fee quotes from legal counsel to any Lessee and share the same with the Buyer for approval before relevant work begins); and

(ii) 50% of the amount of any external legal fees and expenses of ACY related to the sale and transfer of title to the Aircraft in respect of the period beginning with the first calendar day following the date of the Sale Order and ending on the Effective Date, which fees and expenses are incurred as a result of any reasonable requests made by or on behalf of the Buyer in respect of the sale and transfer of title to each Aircraft under this Agreement on or before the respective Delivery Date in respect thereof.

**“Transfer Taxes”** shall mean sales, use, documentary, transfer, property, bulk, stamp, ad valorem or similar tax imposed on the transfer of title to any item of Equipment pursuant to this Agreement and all additions to such taxes in the form of penalties, interest or similar amounts.

**“Warranty Bill of Sale”** means a bill of sale to be delivered by ACY in favor of the Buyer or its nominee with respect to each item of Equipment in the form of Exhibit A.

1.2 **Construction.** Any agreement referred to in this Section 1 means such agreement as from time to time modified, supplemented and amended in accordance with its terms. References to sections, exhibits and the like refer to those in or attached to this Agreement unless otherwise specified. “Including” means “including but not limited to” and “herein,” “hereof,” “hereunder,” etc., mean in, of, or under, etc., this Agreement (and not merely in, of, under, etc. the section or provision where that reference appears). Unless the context otherwise requires, any reference to a “party” means a party to this Agreement and any reference to the “parties” means ACY, the Buyer, and the Agent, collectively.

## **Section 2. Purchase and Sale.**

2.1 **Transfer of Equipment and Lease Documents.** Pursuant to sections 105, 363, and 365 of the Bankruptcy Code, and on the terms and subject to the conditions set out in this Agreement, the Sale Order and each Lease Novation, at each Delivery Date ACY shall sell, convey, assign, transfer and deliver to the Buyer or its nominee, and the Buyer or its nominee shall purchase, acquire and accept from ACY all of ACY’s right, title and interest in and to applicable Equipment and the relevant Lease Documents free and clear of all Encumbrances (other than Permitted Liens).

2.2 **Title and Risk of Loss.** Upon the execution and delivery of the Warranty Bill of Sale while the Equipment is at the Delivery Location, title to and risk of loss with respect to the applicable Equipment shall pass to the Buyer or its nominee.

2.3 **Condition Upon Delivery.** Each item of Equipment shall be delivered to the Buyer (a) “AS IS, WHERE IS AND WITH ALL FAULTS,” WITH THE EXCEPTION OF (x) ACY’S WARRANTY OF TITLE AS PROVIDED IN THE WARRANTY BILL OF SALE AND (y) SECTION 9.1 HEREOF, BUT SUBJECT TO EACH AND EVERY DISCLAIMER OF WARRANTY AND REPRESENTATION AS SET FORTH IN SECTION 10. The Buyer shall be deemed to have unconditionally accepted each item of Equipment for all purposes under this Agreement and the Sale Order upon the delivery by ACY of the Warranty Bill of Sale in accordance with the terms hereof.

2.4 **Assumed Liabilities.** On the terms and subject to the conditions set forth in this Agreement and the Sale Order, the Buyer shall assume from ACY only the following liabilities (collectively, the “Assumed Liabilities”): any (a) Cure Costs required to be paid pursuant to section 365 of the Bankruptcy Code in connection with the assumption and assignment of the Assumed Leases (in each case, as such costs may be reduced pursuant to agreement with the applicable counterparty); (b) all costs of obtaining necessary consents thereto (to the extent not assignable pursuant to contract or applicable law); (c) Transfer Legal Fees; (d) Transfer Taxes

that are not Excluded Taxes; (e) Maintenance Reserve Obligations; and (f) any unsatisfied liabilities as of the Closing Date with respect to Customer Programs.

2.5 Excluded Liabilities. Notwithstanding any provision in this Agreement to the contrary, other than the Assumed Liabilities, the Buyer is not assuming, and shall not be deemed to have assumed, any other liabilities of ACY of whatever nature (whether arising prior to, at the time of, or subsequent to the Closing Date), whether absolute, accrued, contingent or otherwise, whether due or to become due and whether or not assets, and whether or not known or unknown or currently existing or hereafter arising or matured or unmatured, direct or indirect, and ACY shall be solely and exclusively liable for any and all such liabilities, including, without limitation, any such liabilities set forth below (collectively, the “**Excluded Liabilities**”):

- (a) Any and all liabilities of ACY relating to or otherwise arising, whether before, on or after the Closing Date, out of, or in connection with, any of the Excluded Assets;
- (b) Any and all liabilities of ACY to its creditors, except for those related to the Lease Documents in respect of an Aircraft after the Delivery Date in respect of that Aircraft;
- (c) Other than the Transfer Tax liabilities assumed by Buyer under Section 4, any and all liabilities for Taxes including, without limitation:
  - (i) Any and all Taxes (irrespective of when asserted) of ACY for any taxable period (including any such Taxes or related liabilities that may be imposed or asserted against the Buyer or any of its affiliates by reason of contract, assumption, transferee or successor liability, operation of law, pursuant to Treasury Regulation Section 1.1502-6 (or any similar provision of any state or local law) or otherwise);
  - (ii) Any and all Taxes related to or arising from the Equipment or the Lease Documents, in each case, for any taxable period (or portion thereof) ending on or before the applicable Delivery Date, including, without limitation, any Taxes set forth in Schedule E/F filed in the Bankruptcy Case;
  - (iii) Any and all Taxes imposed on any Person that are the responsibility of ACY;
  - (iv) Any and all Taxes arising from or in connection with an Excluded Asset; and
  - (v) Any and all Taxes imposed on or suffered by the Buyer in respect of ACY, the Equipment or the transactions contemplated by the Operative Documents arising from the failure by ACY to comply with or obtain a certificate under any bulk sales laws (including with respect to the transactions contemplated by the Operative Documents).

(d) Any and all liabilities related to payroll, vacation or sick leave, or with respect to employment or other provision of services, compensation, severance, benefits or payments of any nature owed to any current or former employee, officer, director, member, partner or independent contractor of ACY or any ERISA Affiliate (or any beneficiary or

dependent of any such individual), whether or not employed by the Buyer after the Closing Date, including without limitation, any liability that:

- (i) Arises out of or relates to the employment, service provision or other relationship between ACY or any ERISA Affiliate and any such individual, including but not limited to the termination of such relationship; and
- (ii) Arises out of or relates to events or conditions occurring on or before the Closing Date;
- (e) Any and all liabilities under any common law doctrine of *de facto* merger or transferee or successor liability or otherwise by operation of contract or law;
- (f) Any and all liabilities arising under or related to the Federal Worker Adjustment and Retraining Notification Act, 29 U.S.C. § 2101 et seq. (1988) and any similar laws, including laws of any state, country or other locality that is applicable to a termination of employees, in each case to the extent applicable, for any action resulting from employees' separation of employment prior to or on the Closing Date;
- (g) Any and all liabilities of ACY to its equity holders respecting dividends, distributions in liquidation, redemptions of interests, option payments or otherwise;
- (h) Any and all liabilities relating (i) to claims, actions, suits, arbitrations, litigation matters, proceedings, investigations or other actions (in each case, whether involving private parties, authorities, or otherwise) involving, against, or affecting any of the Equipment or Lease Documents, or any assets or properties of ACY, whether commenced, filed, initiated, or threatened before or after the Closing Date, which was or could have been asserted on or prior to the Closing Date or to the extent the basis of which arose or accrued on or prior to the Closing Date or (ii) violations of law by ACY;
- (i) Any and all liabilities obligations of ACY arising or to be performed prior to the Closing Date arising from or related to the Equipment or the Lease Documents, other than as expressly assumed herein;
- (j) Any and all liabilities of ACY or its predecessors arising out of any contract, agreement, permit, franchise or claim that is not transferred to the Buyer as part of transactions contemplated hereby, or, is not transferred to the Buyer because of any failure to obtain any third-party or governmental consent required for such transfer; and
- (k) Any and all liabilities related to any failure to perform, improper performance, breach of warranty or other breach, default, violation, act or omission by ACY on or prior to the Closing Date, whether under or with respect to any contract (other than liabilities for the payment of the Cure Costs and other cure obligations under the Assumed Leases), in tort or otherwise.

2.6 Assumption and Assignment of Assumed Leases. ACY shall take all actions reasonably required to assume and assign the Assumed Leases to the Buyer (excluding payment of Cure Costs), including taking all actions reasonably required to facilitate any negotiations with

the counterparties to such Assumed Leases and to obtain a Sale Order containing a finding that the proposed assumption and assignment of the Assumed Leases to the Buyer satisfies all applicable requirements of section 365 of the Bankruptcy Code. ACY shall use its reasonable efforts to obtain any consents or waivers necessary to assume and assign the Assumed Leases and, if reasonably requested by the Buyer, to enter into any lawful arrangement to provide to the Buyer the benefits of such Assumed Leases.

2.7 Maintenance Reserves. In relation to each Aircraft which is subject to Lease Documents, ACY shall not, without the prior written consent of the Buyer, take any action (including providing a lessee with pre-approval of any maintenance workscope, or confirmation of coverage and amounts payable under any lessor contribution provisions) under the Lease Documents during the period from the Signing Date to the applicable Delivery Date in relation to that Aircraft that would entitle the Lessee to make a claim for reimbursement for maintenance costs from Maintenance Reserves.

### **Section 3. Consideration and Economic Terms.**

3.1 Purchase Price. The aggregate consideration for the purchase of the Equipment and the related Lease Documents shall be an amount equal to the amount of the then-outstanding Secured Obligations as of the Closing Date (collectively, the “**Purchase Price**”). The Buyer shall offset the full amount of the Secured Obligations against the Purchase Price pursuant to section 363(k) of the Bankruptcy Code, resulting in the full satisfaction and cancellation by the Buyer of the Secured Obligations on the Effective Date. The Secured Obligations shall be deemed satisfied and cancelled, in part, on each of the applicable Delivery Date to the extent of the amounts allocated to the respective Equipment and related Lease Documents as set forth in Part 3 of Schedule 2.

3.2 Gross Revenue. To the extent not previously conveyed to the Buyer in accordance with the terms of the Cash Collateral Order (the terms of which shall provide for such conveyance), ACY hereby conveys, assigns and transfers to the Buyer upon the date of this Agreement all of ACY’s right, title and interest in and to Gross Revenue After ECD. If ACY (or any person on behalf of ACY, other than the Agent or the Buyer) receives any amount in respect of Gross Revenue After ECD, ACY shall procure that such amount is paid to the Buyer within two Business Days of receipt thereof, and pending such payment to the Buyer any such amount shall be held by ACY on trust for the Buyer.

**Section 4. Tax Treatment; Allocation; Transfer Taxes.** The parties shall cooperate with each other in all reasonable respects to lawfully mitigate or eliminate the imposition of any Transfer Taxes; provided, however, that, subject to the provisions of Section 2.5(c), the Buyer shall be responsible for and promptly pay when due any such Transfer Tax (other than Excluded Transfer Taxes) in any jurisdiction which may be levied by any Government Entity in any jurisdiction as a result of the transfer of title to any item of Equipment under this Agreement.

## **Section 5. Leases and Lessees**

5.1 Lease Novation. Between the Signing Date and the Delivery Date in respect of each Aircraft, ACY and the Buyer shall each use their respective commercially reasonable efforts to:

(i) agree with the relevant Lessee and enter into, for each Aircraft which is subject to Lease Documents, a Lease Novation with respect to such Aircraft;

(ii) satisfy the conditions to the occurrence of the Delivery Date in respect of each Aircraft including satisfying the conditions to the completion of the assignment or novation of the Lease Documents as set out in the Lease Novation in respect thereof; and

(iii) in the case of the Buyer only, satisfy the conditions to the occurrence of the Delivery Date under the Second Transfer Agreement.

5.2 Lessees. From and after the Signing Date, the Buyer shall be authorized to communicate directly with each Lessee to the extent it deems necessary to facilitate the transactions contemplated by Section 5.1, *provided, however*, that any such communication shall be coordinated through ACY's professionals or advisors.

## **Section 6. Conditions Precedent.**

6.1 Buyer's Conditions to the Closing Date. The obligation of the Buyer to perform its obligations hereunder is subject to the satisfaction (or waiver by the Buyer) of the following conditions precedent on or prior to the Closing Date:

(a) this Agreement shall have been duly authorized, executed and delivered by ACY and shall be in full force and effect with respect to ACY;

(b) the Buyer shall have received the following documents from ACY: (i) a certificate of an officer of ACY, certifying that this Agreement and each Operative Document to which it is or will be, a party have been, or will be, duly authorized, executed and delivered by ACY and is, or will be, in full force and effect with respect to ACY and (ii) an incumbency certificate of ACY as to the officers of ACY authorized to execute and deliver this Agreement and each other Operative Document to which ACY is or will be a party, including the signatures of each such officers; and

(c) the Sale Order shall have been entered by the Bankruptcy Court in the Bankruptcy Case.

6.2 Buyer's Conditions to each Delivery Date. The obligation of the Buyer to perform its obligations on each Delivery Date is subject to the satisfaction (or waiver by the Buyer) of the following conditions precedent on or prior to each Delivery Date with respect to an item of Equipment:

(a) each of the Operative Documents relating to that item of Equipment to which ACY is a party shall have been duly authorized, executed and delivered by ACY and the Buyer shall have received a copy of each such duly executed Operative Document;

(b) each of the Equipment Specific Documents relating to that item of Equipment shall be in form reasonably satisfactory to the Buyer and shall have been delivered to the Buyer and to the extent requiring execution, shall have been duly authorized, executed and delivered by each party thereto (other than the Buyer) and the Buyer shall have received a copy of each duly executed Equipment Specific Document;

(c) the representations and warranties of ACY contained in Section 9.1 and in each Operative Document relating to that item of Equipment shall be true and accurate as though made on and as of the Delivery Date;

(d) the Equipment shall be in the Delivery Location;

(e) to the extent required, ACY shall have executed any resale or other similar exemption certificates requested by the Buyer in order to allow the Buyer to claim any available exemption from Transfer Taxes;

(f) all conditions to the transfer of an Aircraft which is subject to Lease Documents under the Second Transfer Agreement (other than those which will be satisfied at and by the occurrence of Delivery on the Delivery Date) shall have been satisfied or waived; and

(g) the Challenge Period has expired and no Challenge remains outstanding or has been upheld by the Bankruptcy Court.

6.3 ACY's Conditions to Closing Date. The obligation of ACY to perform its obligations hereunder is subject to the satisfaction (or waiver by ACY) of the following conditions precedent on or prior to the Closing Date:

(a) this Agreement shall have been duly authorized, executed and delivered by the Buyer and shall be in full force and effect with respect to the Buyer;

(b) ACY shall have received the following documents from the Buyer: (i) a certificate of an officer of the Buyer, certifying that this Agreement and each Operative Document to which it is or will be, a party have been, or will be, duly authorized, executed and delivered by the Buyer and is, or will be, in full force and effect with respect to the Buyer (ii) an incumbency certificate of the Buyer as to the persons authorized to execute and deliver this Agreement and each other Operative Document to which the Buyer is or will be a party, including the signatures of each such person and (iii) a certified copy of the resolutions of the board of directors and/or shareholders, as applicable, of the Buyer authorizing the transactions contemplated hereby and the execution and delivery of this Agreement and each other Operative Document to which the Buyer is a party; and

(c) the Sale Order shall have been entered by the Bankruptcy Court.



6.4 ACY's Conditions to each Delivery Date. The obligation of ACY to perform its obligations hereunder is subject to the satisfaction (or waiver by ACY) of the following conditions precedent on or prior to each Delivery Date with respect to an item of Equipment:

(a) each of the Operative Documents relating to that item of Equipment to which the Buyer is a party shall have been duly authorized, executed and delivered by the Buyer as applicable and ACY shall have received a copy of each such duly executed Operative Document;

(b) each of the Equipment Specific Documents relating to that item of Equipment to which ACY is a party shall be in form reasonably satisfactory to ACY and shall have been delivered to ACY and to the extent requiring execution, shall have been duly authorized, executed and delivered by each party thereto (other than ACY) and ACY shall have received a copy of each duly executed Equipment Specific Document;

(c) the representations and warranties of the Buyer contained in Section 9.2 and in each Operative Document relating to that item of Equipment shall be true and accurate as though made on and as of the Delivery Date; and

(d) the Equipment shall be in the Delivery Location, it being understood and agreed that if any Equipment is relocated at Buyer's request and with the agreement of the applicable Lessee (if necessary) to facilitate Delivery, Buyer shall be responsible for any and all fees, costs, charges, and expenses of any kind related thereto.

6.5 Cape Town Registrations and FAA Filings. On each applicable Delivery Date:

(a) ACY shall (i) give its consent to FAA Counsel or the Buyer's other counsel for the registration of the sale of Equipment from ACY to the Buyer on the International Registry; (ii) give its consent to FAA Counsel or the Buyer's other counsel for the assignment to the Buyer of any lease registrations at the International Registry; and (iii) deliver releases to FAA Counsel or the Buyer's other counsel with respect to all Liens on the purchased Equipment, other than the applicable Lease Documents for such Aircraft, in order to permit FAA Counsel or the Buyer's other counsel to file discharges of such Liens on the International Registry, and shall consent to the filing by FAA Counsel or the Buyer's other counsel of such discharges, as well as the filing of discharges provided to FAA Counsel or the Buyer's other counsel by the Buyer with respect to the Liens in favor of the Buyer;

(b) with respect to United States registered Aircraft being purchased, (i) ACY shall execute and deliver to FAA Counsel for filing at the FAA in Oklahoma City an FAA Bill of Sale documenting the transfer of title from ACY to the Buyer; and (ii) Agent shall be authorized and instructed to execute and deliver to FAA Counsel for filing with the FAA a release of the Mortgage recorded on the FAA registry for such aircraft;

(c) with respect to non-US registered Aircraft being purchased, (i) ACY shall execute and deliver any required documents required by the local counsel engaged by applicable Lessee or the Buyer to register the transfer of ownership of the Equipment under Lessee's registration on the civil aircraft registry upon which the Aircraft is registered, and (ii) Agent shall

be authorized and instructed to execute and deliver for filing such documentation necessary to release of any mortgages recorded in the jurisdiction where the Aircraft is registered.

**Section 7. Delivery.**

7.1 Delivery Timing. The parties shall each use their commercially reasonable efforts to complete the Delivery of each item of Equipment to the Buyer as soon as possible following the Signing Date.

7.2 Delivery Date. Subject to the satisfaction (or waiver) of the Conditions Precedent, on the Delivery Date in respect of an Aircraft:

(a) the signed Warranty Bill of Sale and, if applicable, the signed FAA Bill of Sale in respect of the relevant Aircraft shall be pre-positioned with FAA Counsel and deemed released to the Buyer and with respect to the FAA Bill of Sale, if applicable, FAA Counsel for filing with the FAA. The Buyer shall be entitled to date or authorize the dating of such documents as of the Delivery Date;

(b) the relevant Effective Time Notice shall be dated and released to the parties to the relevant Lease Novation;

(c) all other documents required to be either or both dated and completed in order to complete the Delivery, including pursuant to the relevant Lease Novation shall be either or both dated and completed and released;

(d) possession of the relevant item of Equipment shall be deemed to be delivered to the Buyer; and

(e) all original Lease Documents in the possession of ACY shall be delivered to the Buyer.

**Section 8. Effective Date.**

8.1 Buyer's Conditions to the Effective Date. The obligation of the Buyer to perform its obligations hereunder is subject to the satisfaction (or waiver by the Buyer) of the following conditions precedent on or prior to the Effective Date:

(a) the representations and warranties of ACY contained in Section 9.1 shall be true and accurate as though made on and as of the Effective Date;

(b) ACY shall have executed and delivered to the Agent (with a copy to the Buyer) a notice of termination of the Custodial Agreement; and

(c) the Delivery Date with respect to all of the Equipment shall have occurred unless the Buyer has elected, in its sole discretion, not to take Delivery of an item of Equipment.

8.2 Covenant of the Buyer as of Effective Date. The Buyer covenants and agrees for the benefit of ACY that on the Effective Date it shall deliver to ACY releases, in form and

substance reasonably acceptable to ACY, and duly executed by the Agent with respect to each of the following:

- (i) the Mortgage in respect of the Excluded Equipment, as executed by the Agent;
- (ii) the Security Agreement dated October 1, 2018, as executed by JetFleet Holding Corp.;
- (iii) the Security Agreement dated February 19, 2019, as executed by JetFleet Management Corp.;
- (iv) the Pledge Agreement dated as of February 19, 2019, as executed by ACY;
- (v) the JMC Guaranty (as such term is defined in Loan Purchase Agreement);
- (vi) the JHC Guaranty (as such term is defined in the Loan Purchase Agreement)
- (vii) UCC-3 termination statements with respect to all Original Financing Statements, to be filed by the Agent; and
- (viii) the Deposit Account Control Agreements.

8.3 UCC. Within one (1) business day following the Effective Date, the Agent shall file UCC-3 termination statements with respect to all Original Financing Statements.

8.4 Excluded Equipment and Other Matters. Upon and from the Limited Recourse Date, the Buyer agrees that ACY shall be and become entitled to all rights to and benefit of the following free and clear of any Claim or Encumbrance of the Agent, the Buyer or any affiliate of the Buyer:

- (i) the Gross Revenue Before ECD;
- (ii) any cash balances in each Account as of the Effective Date;
- (iii) any proceeds payable under any consignment contract to which any of the Excluded Equipment is subject;
- (iv) other than the Equipment and the Assumed Leases, all other assets of ACY, including but not limited to, the Excluded Equipment; and
- (v) any proceeds of sale or other funds received in respect of items (i) to (iv) above.

The Cash Collateral Order shall provide that, prior to its release under Section 8.4, all proceeds comprising item 8.4(v) shall be held upon and from receipt by ACY subject to the

Error!

Buyer's Lien in respect of the Secured Obligations and may only be used by ACY to the extent required to pay costs and expenses incurred by ACY during the Bankruptcy Case but subject to the terms of the Approved Budget and the other terms of the Cash Collateral Order or otherwise as agreed by the Buyer in writing in its sole discretion.

8.5 Limited Recourse. Upon and from the earlier of:

- (a) the Effective Date; and
  - (b) the date an Approved Plan is confirmed in the Bankruptcy Case,
- (such date being the "**Limited Recourse Date**"), the Buyer's sole and exclusive recourse on account of the Secured Obligations shall be limited to the Equipment and the Assumed Leases and no other assets of ACY and, subject to the Buyer's rights under Section 12.4, from the Limited Recourse Date the Buyer unconditionally and irrevocably waives any other rights to assert any Claims or Encumbrances against ACY, its affiliates or subsidiaries or the bankruptcy estates created by the Bankruptcy Case (other than to enforce ACY's obligations under this Agreement).

**Section 9.** Representations and Warranties.

9.1 Representations and Warranties of ACY. ACY represents and warrants on the Signing Date, on each Delivery Date and on the Effective Date, but subject to authorization of the Bankruptcy Court with respect to Sections 9.1(b), (c), (d), (e) and (f):

(a) Title. Upon delivery of the Warranty Bill of Sale by ACY to the Buyer or its nominee, as applicable, the Buyer or such nominee will have good and marketable legal and beneficial title to the applicable Equipment free and clear of all Encumbrances other than any Permitted Lien and any Lien in favor of the Agent.

(b) Organization, Etc. ACY is duly formed and validly existing and in good standing under the laws of the State of Delaware and has all requisite power and authority to enter into and perform its obligations under this Agreement and each Operative Document to which it is or will be a party.

(c) Authorization. ACY has taken, or caused to be taken, all necessary corporate action to authorize the execution and delivery of this Agreement and each Operative Document to which it is or will be a party and the performance of its obligations hereunder and thereunder.

(d) No Violation. The execution and delivery by ACY of this Agreement and each Operative Document to which ACY is or will be a party, the performance by ACY of its obligations hereunder and thereunder, and the consummation by ACY of the transactions contemplated hereby and thereby, do not and will not (i) violate or contravene any provision of any certificate of incorporation or bylaws of ACY, (ii) violate or contravene any law applicable to or binding on ACY or (iii) violate, contravene or constitute any default under, or result in the creation of any Encumbrance under, any indenture, mortgage, chattel mortgage, deed of trust,

conditional sales contract, lease, loan or other material agreement, instrument or document to which ACY is a party or by which ACY or any of their respective properties is or may be bound or affected.

(e) Approvals. Other than as expressly set forth herein and subject to entry of the Sale Order, the execution and delivery by ACY of this Agreement and each Operative Document to which it is or will be party, the performance by ACY of its obligations hereunder and thereunder, and the consummation by ACY of the transactions contemplated hereby and thereby, do not and will not require the consent, approval or authorization of, or the giving of notice to, or the registration with, or the recording or filing of any documents with, or the taking of any other action in respect of, (i) any trustee or other holder of any debt of ACY or (ii) any Government Entity.

(f) Valid and Binding Agreement. This Agreement and each other Operative Document to which ACY is or will be a party has been duly authorized, executed and delivered by ACY and, assuming the due authorization, execution and delivery by any other party or parties thereto, this Agreement and each Operative Document to which it is a party constitutes the legal, valid and binding obligations of ACY, enforceable against ACY in accordance with the terms hereof and thereof, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, receivership, moratorium and other similar laws affecting the rights of creditors generally and general principles of equity, whether considered in a proceeding at law or in equity.

(g) Relationship of ACY and the Buyer. The Buyer has not, at any time, directed or participated in any aspect of the management of ACY or the conduct of ACY's business. ACY has made all of its business decisions independently of the Buyer, and the Buyer has limited its actions to those as a buyer of assets. Notwithstanding any other provision of this Agreement or the Operative Documents, (i) the relationship between the Buyer, on the one hand, and ACY on the other, shall be limited to the relationship of a buyer and seller in a commercial transaction; (ii) the Buyer shall not be construed as a partner, joint venturer, alter ego, manager, controlling person, or other business associate or participant of any kind of ACY, and neither the Buyer does not intend to assume any such status at any time; and (iii) the Buyer shall not be deemed responsible for (or a participant in) any acts, omissions, or decisions of the ACY. In addition, ACY hereby acknowledges and agrees that (a) it has been represented by counsel of its own choosing throughout the negotiation, preparation, and execution of this Agreement and the Operative Documents, (b) it has exercised independent judgment with respect to the negotiation, preparation, and execution of this Agreement and the Operative Documents and the consummation of the transactions contemplated hereby and thereby, (c) it has not relied on the Buyer, or its counsel, for any advice with respect to the negotiation, preparation, or execution of this Agreement and the Operative Documents, and (d) any principle of contract construction that favors or disfavors the party whose attorneys have drafted a contract or provision thereof shall not be applied to this Agreement.

9.2 Representations and Warranties of the Buyer. The Buyer represents and warrants on the Signing Date and on each Delivery Date and on the Effective Date, in each case by reference to the facts and circumstances then existing:

(a) Organization, Etc. It is duly formed, validly existing and in good standing under the laws of the jurisdiction of its formation or incorporation and has the power and authority to enter into and perform its obligations under this Agreement and each Operative Document to which it is or will be a party.

(b) Corporate Authorization. It has taken, or caused to be taken, all necessary company or organizational action required to authorize the execution and delivery of this Agreement and the Operative Documents to which it is or will be a party and the performance of its obligations hereunder thereunder.

(c) No Violation. The execution and delivery by the Buyer of this Agreement and the Operative Documents to which it is or will be a party, the performance by the Buyer of its obligations hereunder and thereunder, and the consummation by the Agent and the Buyer of the transactions contemplated hereby and thereby, do not and will not (i) violate or contravene any provision of its constitutive documents (ii) violate or contravene any law applicable to or binding on it, or (iii) violate, contravene or constitute any default under, or result in the creation of any Lien under, any indenture, mortgage, chattel mortgage, deed of trust, conditional sales contract, lease, loan or other material agreement, instrument or document to which the Buyer is a party or by which it or any of its properties is or may be bound or affected.

(d) Approvals. The execution and delivery by each of the Buyer of this Agreement and each Operative Document to which it is or will be a party, the performance by it of its obligations hereunder and thereunder, and the consummation by the Buyer of the transactions contemplated hereby or thereby for such date, do not and will not require the consent, approval or authorization of, or the giving of notice to, or the registration with, or the recording or filing of any documents with, or the taking of any other action in respect of, (i) any trustee or other holder of any debt of the Buyer or (ii) any Government Entity.

(e) Valid and Binding Agreement. This Agreement and each Operative Document to which it is a party has been or will be duly authorized, executed and delivered by the Buyer and, assuming the due authorization, execution and delivery by the other parties thereto, constitutes the legal, valid and binding obligation of the Buyer and is or will be enforceable against each of the Buyer in accordance with the terms hereof, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, receivership, moratorium and other similar laws affecting the rights of creditors generally and general principles of equity, whether considered in a proceeding at law or in equity.

**Section 10.** Disclaimer of Additional Warranties. The Buyer acknowledges that (i) the Buyer has not sought from ACY, or relied upon ACY for, any analysis, evaluation or advice with respect to ACY, the Equipment or relevant Lease Documents or the financial condition, operations, investment potential or tax attributes of the same and (ii) the Buyer has either been supplied with or has had access to all information, which it has deemed necessary to evaluate the assignment, transfer and conveyance contemplated by this Agreement and any related documentation. The Buyer further acknowledges that:

EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES AS SET FORTH IN SECTION 9 HEREOF (WHICH SHALL EXPIRE AND NOT SURVIVE THE DATES

SPECIFIED IN SECTION 13.4), ACY HAS NOT MADE ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, RELATING TO THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT, AND ACY'S RIGHTS WITH RESPECT TO THE EQUIPMENT AND RELATED LEASE DOCUMENTS ARE BEING ACQUIRED BY THE BUYER ON AN "AS IS, WHERE IS AND WITH ALL FAULTS" BASIS.

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT OR ANY OPERATIVE DOCUMENTS, ACY HAS NOT MADE ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO THE AIRWORTHINESS, CONDITION, VALUE, DESIGN, OPERATION, MERCHANTABILITY, COMPLIANCE WITH SPECIFICATIONS, CONSTRUCTION, PERFORMANCE OR FITNESS FOR USE OR FOR ANY PURPOSE OF THE EQUIPMENT OR ANY PART THEREOF, AS TO THE ABSENCE OF LATENT OR OTHER DEFECTS, WHETHER OR NOT DISCOVERABLE, AS TO THE ABSENCE OF ANY INFRINGEMENT OF ANY PATENT, TRADEMARK OR COPYRIGHT, AS TO THE ABSENCE OF OBLIGATIONS BASED ON LIABILITY IN TORT, STRICT OR OTHERWISE, AS TO FREEDOM FROM INTERFERENCE IN POSSESSION OR USE, OR AS TO THE QUALITY OF THE MATERIAL OR WORKMANSHIP OF THE EQUIPMENT OR ANY PART THEREOF OR ANY OTHER REPRESENTATION OR WARRANTY WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO THE EQUIPMENT OR ANY PART THEREOF.

The foregoing disclaimer of warranty shall not be construed to be a waiver (a) by the Buyer of claims against ACY, arising from ACY's breach of its obligations under this Agreement or any Operative Document made by, applicable to or to be performed by ACY, or (b) by ACY of claims against the Buyer, arising from the Buyer's breach of its obligations under this Agreement or any Operative Document made by, applicable to or to be performed by the Buyer.

#### **Section 11. Expenses.**

11.1 Expenses of ACY. Except as expressly provided for in Sections 11.2 and 11.3, ACY shall bear the costs and expenses of conducting its business and in complying with its obligations under this Agreement (including any legal fees and expenses incurred by ACY) and, other than any specifically provided for herein, the Buyer shall have no liability for, or to contribute towards, any costs and expenses of ACY.

11.2 Transfer Legal Fees. Within two Business Days following each Delivery Date, the Buyer shall pay to ACY the amount of the Transfer Legal Fees in respect of the Equipment transferred in respect of such Delivery Date provided that the Buyer has received such supporting documentation in respect of such Transfer Legal Fees as the Buyer shall reasonably request.

11.3 FAA Counsel Fees. The Buyer shall pay the costs and expenses of FAA Counsel including all related filing fees and registration fees incurred in respect of each Delivery Date.

## **Section 12. Bankruptcy Provisions.**

12.1 Competing Bid. This Agreement is subject to approval by the Bankruptcy Court and the consideration by ACY of higher or better competing bids in respect of all or any part of the Equipment (each a “**Competing Bid**”). From the Signing Date (and any prior time) and until entry of the Sale Order, ACY is permitted to, and to cause its representatives and professionals to, initiate contact with, solicit or encourage submission of any inquiries, proposals or offers by, any person (in addition to the Buyer and its affiliates and representatives) in connection with a Competing Bid. In addition, ACY shall have the responsibility and obligation to respond to any inquiries or offers for a Competing Bid and perform any and all other acts related thereto which are required under the Bankruptcy Code, the Sale Procedures Order or other applicable law, including supplying information relating to the Equipment to prospective purchasers.

### 12.2 Bankruptcy Court Filings.

(a) ACY and the Buyer acknowledge that this Agreement and the transactions contemplated hereby are subject to entry of, as applicable, the Sale Procedures Order and the Sale Order. In the event of any discrepancy between this Agreement and the Sale Procedures Order and the Sale Order, the Sale Procedures Order and the Sale Order shall govern.

(b) ACY shall give notice under the Bankruptcy Code of the request for the relief specified in the Sale Motion to all persons entitled to such notice, including all persons that have asserted Liens in the Equipment and all non-debtor parties to the Assumed Leases, and other appropriate notice as required by the Federal Rules of Bankruptcy Procedure and the local rules of the Bankruptcy Court, including such additional notice as the Bankruptcy Court shall direct or as the Buyer may reasonably request, and provide appropriate opportunity for hearing, to all parties entitled thereto, of all motions, orders, hearings, or other proceedings in the Bankruptcy Court relating to this Agreement and the transactions contemplated hereby.

(c) ACY shall use reasonable best efforts to ensure that the proposed Sale Procedures Order and Sale Order find that, the provisions of this Agreement are reasonable, were a material inducement to the Buyer, and were reasonably relied upon by the Buyer in deciding, to enter into this Agreement, and are designed to achieve the highest or otherwise best price for the Equipment.

(d) The Buyer agrees that it will promptly take such actions as are reasonably requested by ACY to assist in obtaining entry of the Sale Procedures Order and the Sale Order and a finding of adequate assurance of future performance by the Buyer, including furnishing witnesses, affidavits or other documents or information for filing with the Bankruptcy Court for the purposes, among others, of providing necessary assurances of performance by the Buyer under this Agreement and demonstrating that the Buyer is a “good faith” purchaser under section 363(m) of the Bankruptcy Code.

(e) ACY shall be responsible for making all filings with the Bankruptcy Court necessary to permit ACY to consummate the transactions under this Agreement. ACY and the Buyer shall consult with one another regarding the Cash Collateral Order and any related motions seeking approval thereof, and other draft “first day” motions, the Sale Motion, the Sale



Procedures Order and/or the Sale Order and any declarations in support of the foregoing (the “**Consultation Documents**”). ACY shall provide (or shall cause its representatives to provide) the Buyer with advance drafts of, and a reasonable opportunity to review and comment upon, the Consultation Documents as soon as reasonably practicable prior to the date ACY intends to file such motion, pleading or Bankruptcy Court filing. ACY shall make any modifications of such documents reasonably requested by the Buyer, and each such document shall be subject to approval by the Buyer in its reasonable discretion. The Buyer shall provide (or shall cause its representatives to provide) ACY with advance drafts of, and a reasonable opportunity to review and comment upon substantive pleadings, motions, and supporting papers prepared by the Buyer to be filed with the Bankruptcy Court in connection with the Agreement as soon as reasonably practicable prior to the date the Buyer intends to file such motion, pleading or Bankruptcy Court filing, and the Buyer shall make any reasonable modifications of such documents requested by ACY. In the event the entry of the Sale Procedures Order and the Sale Order or any other Order of the Bankruptcy Court relating to this Agreement shall be appealed (or if any petition for certiorari or motion for reconsideration, amendment, clarification, modification, vacation, stay, rehearing or reargument shall be filed with respect to the Sale Procedures Order, the Sale Order or other such order), ACY and the Buyer shall use their respective commercially reasonable efforts to defend such appeal, petition or motion and obtain an expedited resolution of any such appeal, petition or motion.

12.3 Bankruptcy Milestones. ACY shall use its reasonable best efforts to satisfy the following milestones (collectively, the “**Bankruptcy Milestones**”):

(a) Within three (3) days after the Signing Date (the “**Sale Motion Filing Date**”), ACY shall have filed a motion, in form and substance reasonably acceptable to the Buyer (the “**Sale Motion**”), (i) designating the Buyer as the proposed purchaser of the Equipment subject to the terms of this Agreement and Bankruptcy Court approval, (ii) requesting that the Buyer and the transactions of the Buyer contemplated hereby be accorded the protections provided under section 363(m) of the Bankruptcy Code, and (iii) seeking approval and entry of the Sale Procedures Order.

(b) ACY shall have sought to schedule a hearing to approve the Sale Procedures Order to be held no later than the first date available from the Bankruptcy Court that is twenty-one (21) days after the Sale Motion Filing Date (the “**Bid Procedures Hearing**”).

(c) On or before the date that is two (2) days after the Bid Procedures Hearing, the Bankruptcy Court shall have entered the Sale Procedures Order and scheduled the hearing on the Sale Motion for on or before a date that is thirty (30) days or less from the Bid Procedures Hearing (the “**Sale Hearing**”).

(d) The deadline for interested third parties to submit qualified bids in accordance with the Sale Procedures Order shall be no later than twenty-one (21) days following the Bid Procedures Hearing (the “**Bid Deadline**”).

(e) If required, the Auction shall occur no later than three (3) Business Days following the Bid Deadline.

(f) The Bankruptcy Court shall have entered the Sale Order on or before the date that is two (2) days after the conclusion of the Sale Hearing.

The Bankruptcy Milestones may be extended upon mutual agreement between ACY and the Buyer or as necessary to accommodate the availability of the Bankruptcy Court.

12.4 Assumed Leases. The Buyer shall have the right by giving notice in writing to ACY at any time from the Signing Date to the relevant Delivery Date to modify the content of Schedule 4 in respect of an Aircraft, without any corresponding reduction in the Purchase Price.

12.5 Plan Participation. Provided that any chapter 11 plan proposed in the Bankruptcy Case is not inconsistent with this Agreement and the transactions contemplated hereby, (an “**Approved Plan**”), the Buyer agrees not to participate in such chapter 11 plan process in the Bankruptcy Case, including, but not limited to, the right to vote or receive any recovery under any such Approved Plan proposed or confirmed in the Bankruptcy Case. Nothing set forth in this Section 12.5 is intended to, or does, affect, modify or impair (a) ACY’s obligations hereunder or the Buyer’s rights to seek to enforce such obligation, or (b) ACY’s rights to propose and seek confirmation of an Approved Plan prior to the Effective Date.

### **Section 13. Miscellaneous.**

13.1 Notices. Every notice, request, demand or other communication (collectively, a “**Notice**”) under this Agreement shall:

(a) be in writing delivered personally or by prepaid courier or other similar services or by electronic mail and in the case of a Notice sent by e-mail, shall be accompanied by a copy sent by prepaid air mail letter;

(b) be deemed to have been received, in the case of an e-mail upon the earlier of (i) confirmation of receipt of such e-mail by the addressee; or (ii) on the fifth day after sending, provided the sender thereof has not received actual notice of failed delivery, and, in the case of a Notice delivered personally or by courier service, when delivered (provided that if delivery is tendered but refused, such Notice shall be deemed effective upon such tender); and be sent to:

(i) to the Buyer at the following address:

Drake Asset Management Jersey Limited  
IFC5, St Helier  
Jersey JE1 1<sup>ST</sup>  
Attn: The Directors  
Email: [falkoII@sannegroup.com](mailto:falkoII@sannegroup.com)

With a copy (that shall not constitute notice) to:

Falko Regional Aircraft Limited  
1 Bishop Square  
St. Albans Rd. West  
Hatfield AL10 9NE  
Attn: Sarah Dichlian  
Email: [sarah.dichlian@falko.com](mailto:sarah.dichlian@falko.com) / [legal@falko.com](mailto:legal@falko.com)

(ii) to ACY at the following address:

1440 Chapin Avenue, Suite 310  
Burlingame, CA94010-4011  
Attn: Harold M. Lyons / Christopher B Tigno  
Email: [hal.lyons@aerocentury.com](mailto:hal.lyons@aerocentury.com) / [chris.tigno@aerocentury.com](mailto:chris.tigno@aerocentury.com)

With a copy (that shall not constitute notice) to:

Lorenzo Marinuzzi, Esquire  
Morrison & Foerster LLP  
250 West 55th Street  
New York, New York 10019  
Email: [lmarinuzzi@moffo.com](mailto:lmarinuzzi@moffo.com)

and

Craig Grear, Esquire  
Joseph Barry, Esquire  
Young Conaway Stargatt & Taylor, LLP  
Rodney Square  
1000 North King Street  
Wilmington, Delaware 19801  
Email: [jbarry@ycst.com](mailto:jbarry@ycst.com) / [cggear@ycst.com](mailto:cggear@ycst.com)

or to such other address as is notified by one party to the other party under this Agreement.

13.2 Assignment. This Agreement may not be assigned by any party without the prior written consent of the other parties hereto. Any consent by ACY shall be conditioned upon, among other things, the Buyer providing to ACY satisfactory “Know Your Customer” due diligence reasonably requested by ACY in respect of any proposed assignee or nominee of the Buyer.

13.3 Headings. All headings in this Agreement are for convenience only, and are not a substantive part of this Agreement.

13.4 Survival of Representations, Warranties and Indemnities. Each of the representations, warranties and indemnities of the parties shall expire on the earliest to occur of (a) each Delivery Date with respect to any Equipment and related Assumed Leases subject to

such Delivery on such Delivery Date, and (b) the Effective Date, in each case to the extent not previously expired.

13.5 Each of the representations, warranties and indemnities of the parties shall survive the execution and delivery of this Agreement and the Delivery of the Equipment.

13.6 Governing Law; Forum. (a) **THIS AGREEMENT, AND ANY NON-CONTRACTUAL RIGHTS OR CLAIMS ARISING FROM OR RELATED TO IT, SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, U.S.A., APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED ENTIRELY WITHIN SUCH STATE WITHOUT REGARD FOR CONFLICT OF LAW PRINCIPLES (OTHER THAN THE PROVISIONS OF SECTIONS 5-1401 AND 5-1402 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK).**

(b) So long as the Bankruptcy Case remains pending, the parties agree that the Bankruptcy Court shall have exclusive jurisdiction to settle any disputes in connection with this Agreement, the Sale Order and the other documents related hereto and submit to the jurisdiction of such courts in connection with this Agreement, the Sale Order and the other documents related hereto. From and after the entry of a final decree in the Bankruptcy Case, the parties agree that the federal and state courts located in New York, New York (in the Borough of Manhattan) are to have non-exclusive jurisdiction to settle any disputes in connection with this Agreement and the other documents related hereto and submit to the jurisdiction of such courts in connection with this Agreement and the other documents related hereto.

(c) Each party hereto:

(i) waives objection to such courts on grounds of inconvenient forum, venue or otherwise as regards proceedings in connection with this Agreement and other documents related hereto;

(ii) agrees that (subject to permitted appeals) a judgment or order of such a court in connection with this Agreement or the other documents related hereto is conclusive and binding on it and may be enforced against them in the courts of any other jurisdiction; and

(iii) **IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTION CONTEMPLATED HEREBY.**

(d) Except as set forth in Section 13.5(b), nothing in this Section 13.5 limits the right of either party to bring proceedings in connection with this Agreement or any other document related hereto:

(i) in any other court of competent jurisdiction; or

(ii) concurrently in more than one jurisdiction.

13.7 Entire Agreement; Amendment; No Course of Dealing. This Agreement together with the Operative Documents along with all exhibits and schedules attached hereto, shall constitute the entire agreement between the parties with respect to the transactions contemplated herein, supersede any prior or contemporaneous agreements, whether oral or in writing, between the parties, and this Agreement shall not in any manner be supplemented, amended or modified except by a writing executed on behalf of the parties by their authorized representatives. No party shall construe this Agreement, and nothing contained in this Agreement shall be construed, as creating any course of dealing or conduct between the parties.

13.8 Waivers. The waiver of performance of any term of this Agreement in a particular instance shall not constitute a waiver of any subsequent breach or preclude any party from thereafter demanding performance thereof according to the provisions hereof.

13.9 Unenforceability. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provisions in any other jurisdiction.

13.10 Counterparts. This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but both of which together will constitute one and the same agreement, and which shall be sufficiently evidenced by any one of such original counterparts. This Agreement may be executed and delivered by means of a facsimile machine or by .pdf, .tif, .gif, .jpeg, or similar attachment to electronic mail (any such delivery, an “**Electronic Delivery**”), each of which shall be deemed an original and shall be treated in all manner and respects as an original executed counterpart and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. At the request of any party, the other party shall re-execute the original form of this Agreement and deliver such form to the requesting party. No party shall raise the use of Electronic Delivery to deliver a signature or the fact that any signature or agreement or instrument was transmitted or communicated through the use of Electronic Delivery as a defense to the formation of a contract, and each party unconditionally, absolutely and irrevocably forever waives any such defense.

13.11 Export Law. Buyer understands that the subject matter of this sale, including the Aircraft and all other things associated with it including, but not limited to, spare parts, training, technical data, warranty protection and services, is subject to US export laws and regulations, including but not limited to the Export Administration Act of 1979, as amended and the Export Administration Regulations promulgated thereunder and the Office of Foreign Asset Control Regulations. These laws and regulations impose restrictions on the export and re-export of the Aircraft, including Buyer’s re-export by resale, lease, sublease or otherwise, to countries that are prohibited due to embargo, anti-terrorism or any other reason.

13.12 No Third-Party Beneficiaries. No third party is intended to benefit from, nor may any third party seek to enforce any of the provisions of, this Agreement.

13.13 Further Assurances. Each party shall, at the request and cost of the other, do and perform such further acts and execute and deliver, such further documents which are reasonably

necessary or desirable to effect and perfect the transfer of all right, title and interest in and to the Equipment to the Buyer and to give full effect to the intent and purpose of this Agreement.

13.14 Attorneys' Fees. For the avoidance of doubt, the Buyer shall be responsible for any and all fees, costs and expenses incurred by the Buyer, including any legal fees and costs, in any capacity (including that as lender to ACY) and no such fees shall be payable by ACY except that any fees, costs or expenses suffered or incurred by the Buyer as a Lender under and as defined in the Loan Agreement or by the Agent thereunder shall accrue as a liability of ACY and be included in the Secured Obligations.

13.15 Time of the Essence. Unless specifically stated to the contrary herein, time shall be of the essence for all events contemplated hereunder. The Parties intend that the time period between entry of the Sale Order and Effective Date be as truncated as possible under all relevant and applicable circumstances and agree to use commercially reasonable efforts to ensure that, as promptly as possible, the satisfaction of all conditions set forth in Sections 6, 7, and 8 occur with all due haste, without delay and as promptly as is commercially reasonable.


13.16 Construction of Terms. This Agreement has been drafted jointly by the parties in full consultation with their respective attorneys, and no ambiguity in this Agreement shall be interpreted or construed against any of the parties.

[Signature page follows]

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed by their duly authorized officers or representatives as of the date first above written.

**AEROCENTURY CORP.,**  
as Seller

**DRAKE ASSET MANAGEMENT**  
**JERSEY LIMITED**, as Buyer

By:   
Name: Harold M. Lyons  
Title: Chief Financial Officer

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

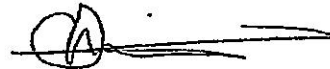
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[SIGNATURE PAGE TO ASSET PURCHASE AGREEMENT]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officers or representatives as of the date first above written.

**AEROCENTURY CORP.,**  
as Seller

**DRAKE ASSET MANAGEMENT  
JERSEY LIMITED,** as Buyer



By: \_\_\_\_\_  
Name: Harold M. Lyons  
Title: Chief Financial Officer

By: \_\_\_\_\_  
Name: Oliver Morris  
Title: Director

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Asset Purchase Agreement  
VP/#41595814.13

[SIGNATURE PAGE TO ASSET PURCHASE AGREEMENT]



**SCHEDULE 1****Original Financing Statements**

<b><u>FILING NO.</u></b>	<b><u>FILING DATE</u></b>	<b><u>DEBTOR</u></b>	<b><u>SECURED PARTY</u></b>	<b><u>FILING OFFICE</u></b>
20101347966*	April 19, 2010	AeroCentury Corp.	MUFG Union Bank, N.A., as Agent	Secretary of State, Delaware
20101347990*	April 19, 2010	AeroCentury Corp.	MUFG Union Bank, N.A., as Agent	Secretary of State, Delaware
20191177265	February 19, 2019	AeroCentury Corp.	MUFG Union Bank, N.A., in its capacity as Agent	Secretary of State, Delaware
18-7673460315	October 2, 2018	JetFleet Holding Corp.	MUFG Union Bank, N.A., in its capacity as administrative agent	Secretary of State, California
19-7698077307	February 19, 2019	JetFleet Management Corp.	MUFG Union Bank, N.A., in its capacity as administrative agent	Secretary of State, California

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**SCHEDULE 2****Part 1 - Aircraft**

	<b>Manufacturer</b>	<b>Serial Number</b>	<b>Model</b>	<b>Engine #1</b>	<b>Engine #2</b>	<b>Lessee</b>	<b>Delivery Location</b>
	Bombardier	15128	CRJ900	194583	194582	Off-Lease	ESN 194582: Berlin Germany  Remainder of Aircraft: Maastricht, Netherlands
	Bombardier	15207	CRJ900	194771	194788	Off-Lease	Maastricht Netherlands
	Bombardier	15215	CRJ900	194785	194770	Off-Lease	Maastricht Netherlands
	Bombardier	10165	CRJ700	965565	965566	American Airlines	Habitual Home Base of Aircraft
	Bombardier	10171	CRJ700	965579	965580	American Airlines	Habitual Home Base of Aircraft
	Bombardier	10178	CRJ700	965568	965575	American Airlines	Habitual Home Base of Aircraft
	Bombardier	4205	Q400	FA0461	FA0462	Croatia Airlines	Zagreb, Croatia
	Bombardier	4211	Q400	FA0471	FA0473	Croatia Airlines	Zagreb, Croatia
	Bombardier	15055	CRJ900	194345	194346	Jazz	Habitual Home Base of Aircraft
	Bombardier	238	Q300	AE0160	AE0164	Off-Lease	Maastricht, Netherlands

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**Part 2 – Excluded Equipment**

	<b>Manufacturer</b>	<b>Serial Number</b>	<b>Model</b>	<b>Engine #1</b>	<b>Engine #2</b>	<b>Lessee</b>
1.	Bombardier	406	DHC 8-300	123161	AE0065	Silverstone
2.	Bombardier	407	DHC 8-300	123330	AE0165	Skyward
3.	Saab	453	Saab 340B Plus			Off-lease
4.	Bombardier	4020	Q400			Off-lease
5.	Pratt & Whitney	FA0137	PW150A			Off-lease

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SCHEDULE 2

Page 2

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**Part 3 – Secured Obligations**

	<b>Manufacturer</b>	<b>Serial Number</b>	<b>Allocated Secured Obligations (US\$)</b>
1.	Bombardier	15128	\$ 3,659,220.80
2.	Bombardier	15207	\$ 8,316,410.90
3.	Bombardier	15215	\$ 8,482,739.12
4.	Bombardier	10165	\$ 8,233,246.79
5.	Bombardier	10171	\$ 8,233,246.79
6.	Bombardier	10178	\$ 8,233,246.79
7.	Bombardier	4205	\$ 9,231,216.10
8.	Bombardier	4211	\$ 9,231,216.10
9.	Bombardier	15055	\$17,630,791.11
10.	Bombardier	238	\$ 1,912,774.51

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**SCHEDULE 3****Equipment Specific Documents**

<b>Part 1 – MSN 4205 / 4211 - Croatia</b>			
	<b>Document</b>	<b>Parties</b>	<b>Responsibility</b>
1	Novation Agreement (English law lease)	Lessor, Buyer, DJL9, Lessee	Vedder Price (VP)
	Effective Time Notice	Lessor, Buyer, DJL9, Lessee	VP
	DPOA	Lessee (in favour of Lessor)	tbd
	Revocation Letter (in respect of existing DPOA)	Lessee	tbd
	Corporate authorisations:		
	Officer's Certificate of Lessee – constitutional documents, board resolutions, delegated authority / power of attorney		Lessee
	Officer's Certificate of Buyer – constitutional documents, board resolutions, delegated authority / power of attorney		VP
	Officer's Certificate of DJL9 – constitutional documents, board resolutions, delegated authority / power of attorney		VP
	Officer's Certificate of Lessor – constitutional documents, board resolutions, delegated authority / power of attorney		Lessor
	KYC and tangible net worth documents – no TNW test	DJL9	DJL9
	Certificate of Insurance and Reinsurance		Lessee
	Letter of Undertaking issued by the insurance and reinsurance broker		Lessee
	Run Off Insurance and Reinsurance Certificate		Lessee
	Certificate of Registration (if relevant) reflecting DJL9 as new owner		Lessee
	Current Certificate of Airworthiness		Lessee
	Decision on Registration of New Owner issued by the Croatian Aircraft Registry		Lessee
	Decision on Approval of Novated Lease issued by		Lessee

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	the Croatian Civil Aviation Authority		
	Aircraft Repossession Agreement with Direct Enforceability	Lessor, Lessee	Lessee
	Legal opinion: Croatia legal opinion in respect of Lessee and aircraft registration and relevant local law matters  California legal opinion in respect of Lessor  English law legal opinion in respect of any documents governed by English law  Irish legal opinion in respect of DJL9  Jersey legal opinion in respect of Buyer		Kovacevic Prpic Simeunovic  Morrison Foerster VP  tbd  tbd
	ATC Letter	Lessee (to Lessor)	VP
	Process Agent Letters (England)	DJL9, Lessee	VP/Lessee
	Evidence of nameplate installation / updated	N/A	Lessee
<b>Part 2 – MSN 10165 / 10171 / 10178 – American Airlines</b>			
	<b>Document</b>	<b>Parties</b>	<b>Responsibility</b>
2	Assignment and Assumption Agreement (New York law lease)	Lessor, Owner Trustee, Lessee	VP / FAA Counsel
	Effective Time Notice	Lessor, Owner Trustee, Lessee	VP
	Trust Agreement - ACC approval needed to form of trust agreement (10 Business Days' notice)  - Trust Agreement to be filed at FAA  - Affidavit of citizenship from Owner Trustee; to be submitted for approval with the Trust Agreement and filed at the FAA	Owner Trustee, Buyer	VP / FAA Counsel

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	Beneficial Interest Transfer – filed at the FAA	Owner Trustee, Buyer, DJL9	VP / FAA Counsel
	FAA Bill of Sale / FAA Registration Application – filed at the FAA reflecting Owner Trustee as new owner (with Registration Certificate to follow post-closing)		VP / FAA Counsel
	Residual Agreement Assignment and Assumption Agreement (MSN 10165)	Bombardier Inc. Seller, Buyer, DJL9	[VP]
	Residual Agreement Assignment and Assumption Agreement (MSN 10171)	Bombardier Inc. Seller, Buyer, DJL9	[VP]
	Residual Agreement Assignment and Assumption Agreement (MSN 10178)	Bombardier Inc. Seller, Buyer, DJL9	[VP]
	Deficiency Agreement Assignment and Assumption Agreement (MSN 10165)	Bombardier Inc. Seller, Buyer, DJL9	[VP]
	Deficiency Agreement Assignment and Assumption Agreement (MSN 10171)	Bombardier Inc. Seller, Buyer, DJL9	[VP]
	Deficiency Agreement Assignment and Assumption Agreement (MSN 10178)	Bombardier Inc. Seller, Buyer, DJL9	[VP]
	Corporate authorisations:		
	Officer's Certificate of Lessee – incumbency certificate / corporate authorisation / POA		Lessee
	Officer's Certificate of Buyer – incumbency certificate / corporate authorisation / POA		VP
	Officer's Certificate of Buyer – incumbency certificate / corporate authorisation / POA		VP

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	Officer's Certificate of Lessor – incumbency certificate / corporate authorisation / POA		Morrison Foerster
	KYC and tangible net worth documents (\$30million)	DJL9	DJL9
	Certificate of Insurance		Lessee
	Letter of Undertaking issued by the insurance broker		Lessee
	Run Off Insurance Certificate (to be provided by Lessee if de minimis costs)		Lessee
	Priority Search Certificate relating to: MSN 10165, 10171, 10178  ESN 965565, 965579, 965568  ESN 965566, 965580, 965575		VP
	Legal opinion: FAA opinion		FAA Counsel
	Evidence of nameplate installation / updated		Lessee
	Assignment of UCC-1 Lease Notice Filings		VP
Part 3 – MSN 15055 – Jazz			
	Document	Parties	Responsibility
3	Assignment and Assumption Agreement (Ontario law lease)	Lessor, Buyer, DJL9, Lessee	VP
	Effective Time Notice	Lessor, Buyer, DJL9, Lessee	VP
	Short Form Assignment and Assumption Agreement	Lessor, Buyer, DJL9, Lessee	Blakes, Cassels + Graydon LLP (Blakes) / VP
	IDERA	Lessee (in favour of Lessor)	Blakes / VP
	Revocation of existing IDERA in the form required by the Canadian Civil Aviation Authority	Lessee	Blakes / VP
	TCA Notice	Lessee	Blakes / VP

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	Corporate authorisations:	
	Officer's Certificate of Lessee – constitutional documents, board resolutions, delegated authority / power of attorney	Lessee
	Officer's Certificate of Buyer – constitutional documents, board resolutions, delegated authority / power of attorney	VP
	Officer's Certificate of DJL9 – constitutional documents, board resolutions, delegated authority / power of attorney	VP
	Officer's Certificate of Lessor – constitutional documents, board resolutions, delegated authority / power of attorney	Morrison Foerster
	KYC and tangible net worth documents \$25million TNW test	DJL9
	Replacement / Transferred Letters of Credit	Lessee (in favour of Lessor)
	Certificate of Insurance	Lessee
	Letter of Undertaking issued by the insurance broker	Lessee
	Run Off Insurance Certificate	Lessee
	Priority Search Certificate relating to: MSN 15055 ESN 194345 ESN 194346	VP
	Certificate of Registration (if relevant) reflecting DJL9 as new owner	Lessee
	Current Certificate of Airworthiness	Lessee
	Delivery Certificate (Aircraft Location)	Lessee
	Legal opinion: [Ontario / Canadian] legal opinion in respect of Lessee[and aircraft registration and relevant local law matters]  California legal opinion in respect of Lessor  Irish legal opinion in respect of DJL9	Blakes  Morrison Foerster  tbd

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	Jersey legal opinion in respect of Buyer		tbd
	ATC Letter	Lessee to lessor	Blakes / VP
	Process Agent Letters	tbd	
	Evidence of nameplate installation / updated	tbd	Lessee
Part 9 – MSN 238			
	An agreement or other arrangement, satisfactory to the Buyer, has been entered into in respect of storage of such item of Equipment upon and from the proposed Delivery Date in respect thereof.	N/A	N/A
Part 10 – MSN 15128			
	An agreement or other arrangement, satisfactory to the Buyer, has been entered into in respect of storage of such item of Equipment upon and from the proposed Delivery Date in respect thereof.	N/A	N/A
Part 11 – MSN 15207			
	An agreement or other arrangement, satisfactory to the Buyer, has been entered into in respect of storage of such item of Equipment upon and from the proposed Delivery Date in respect thereof.	N/A	N/A
Part 12 – MSN 15128			
	An agreement or other arrangement, satisfactory to the Buyer, has been entered into in respect of storage of such item of Equipment upon and from the proposed Delivery Date in respect thereof.	N/A	N/A

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**SCHEDULE 4****Lease Documents****American Airlines****MSN 10165**

Amended and Restated Participation Agreement dated 23 September 2005 between AFS Investments 68 LLC and US Airways, Inc.

Amended and Restated Lease Agreement dated 23 September 2005 between AFS Investments 68 LLC and US Airways, Inc.

US Airways Inc. Amended and Restated Standard Terms Manual – Single Investor Lease dated 28 May 2004.

Amended and Restated Tax Indemnity Agreement dated 23 September 2005 between AFS Investments 68 LLC and US Airways, Inc.

Amended and Restated Guaranty dated 23 September 2005 between AFS Investments 68 LLC and US Airways Group, Inc.

Amended and Restated Lease Supplement No.1 dated 23 September 2005 between AFS Investments 68 LLC and US Airways, Inc.

Assignment, Assumption and Amendment Agreement dated 29 January 2014 between AFS Investments 68 LLC, US Airways, Inc. and AeroCentury Corp.

Assumption Agreement dated 30 December 2015 between US Airways, Inc. and AeroCentury Corp.

Residual Agreement dated 23 September 2005 between AFS Investments 68 LLC and Bombardier Inc.

Deficiency Agreement dated 23 September 2005 between AFS Investments 68 LLC and Bombardier Inc.

Assignment of Residual and Deficiency Agreements dated 17 January 2014 between AFS Investments 68 LLC and AeroCentury Corp.

Consent Letter dated 17 January 2014 executed by Bombardier Inc. in favour of AFS Investments 68 LLC and AeroCentury Corp.

Renewal Agreement dated 25 January 2021 between AeroCentury Corp. and American Airlines, Inc.

Error!

Amendment to Amended and Restated Lease Agreement dated 25 January 2021 between AeroCentury Corp. and American Airlines, Inc.

Consent and Amendment Letter dated 25 January 2021 between AeroCentury Corp. and MHI RJ Aviation ULC.

### **American Airlines**

### **MSN 10171**

Amended and Restated Participation Agreement dated 23 September 2005 between AFS Investments 68 LLC and US Airways, Inc.

Amended and Restated Lease Agreement dated 23 September 2005 between AFS Investments 68 LLC and US Airways, Inc.

US Airways Inc. Amended and Restated Standard Terms Manual – Single Investor Lease dated 28 May 2004.

Amended and Restated Tax Indemnity Agreement dated 23 September 2005 between AFS Investments 68 LLC and US Airways, Inc.

Amended and Restated Guaranty dated 23 September 2005 between AFS Investments 68 LLC and US Airways Group, Inc.

Amended and Restated Lease Supplement No.1 dated 23 September 2005 between AFS Investments 68 LLC and US Airways, Inc.

Assignment, Assumption and Amendment Agreement dated 29 January 2014 between AFS Investments 68 LLC, US Airways, Inc. and AeroCentury Corp.

Assumption Agreement dated 30 December 2015 between US Airways, Inc. and AeroCentury Corp.

Residual Agreement dated 23 September 2005 between AFS Investments 68 LLC and Bombardier Inc.

Deficiency Agreement dated 23 September 2005 between AFS Investments 68 LLC and Bombardier Inc.

Assignment of Residual and Deficiency Agreements dated 17 January 2014 between AFS Investments 68 LLC and AeroCentury Corp.

Consent Letter dated 17 January 2014 executed by Bombardier Inc. in favour of AFS Investments 68 LLC and AeroCentury Corp.

Error!

Renewal Agreement dated 25 January 2021 between AeroCentury Corp. and American Airlines, Inc.

Amendment to Amended and Restated Lease Agreement dated 25 January 2021 between AeroCentury Corp. and American Airlines, Inc.

Consent and Amendment Letter dated 25 January 2021 between AeroCentury Corp. and MHI RJ Aviation ULC.

### **American Airlines**

### **MSN 10178**

Amended and Restated Participation Agreement dated 23 September 2005 between AFS Investments 68 LLC and US Airways, Inc.

Amended and Restated Lease Agreement dated 23 September 2005 between AFS Investments 68 LLC and US Airways, Inc.

US Airways Inc. Amended and Restated Standard Terms Manual – Single Investor Lease dated 28 May 2004.

Amended and Restated Tax Indemnity Agreement dated 23 September 2005 between AFS Investments 68 LLC and US Airways, Inc.

Amended and Restated Guaranty dated 23 September 2005 between AFS Investments 68 LLC and US Airways Group, Inc.

Amended and Restated Lease Supplement No.1 dated 23 September 2005 between AFS Investments 68 LLC and US Airways, Inc.

Assignment, Assumption and Amendment Agreement dated 29 January 2014 between AFS Investments 68 LLC, US Airways, Inc. and AeroCentury Corp.

Assumption Agreement dated 30 December 2015 between US Airways, Inc. and AeroCentury Corp.

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Deficiency Agreement dated 23 September 2005 between AFS Investments 68 LLC and Bombardier Inc.

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Error!

Consent Letter dated 17 January 2014 executed by Bombardier Inc. in favour of AFS Investments 68 LLC and AeroCentury Corp.

Renewal Agreement dated 25 January 2021 between AeroCentury Corp. and American Airlines, Inc.

Amendment to Amended and Restated Lease Agreement dated 25 January 2021 between AeroCentury Corp. and American Airlines, Inc.

Consent and Amendment Letter dated 25 January 2021 between AeroCentury Corp. and MHI RJ Aviation ULC.

### **Jazz Aviation**

#### **MSN 15055**

Aircraft Lease Agreement dated 14 November 2007 between Al Waha (Cayman 1) Lease Limited and Jazz Aviation, LP.

Aircraft Lease Novation and Amendment Agreement dated 26 October 2010 between Al Waha (Cayman 1) Lease Limited, as existing lessor, Jazz Aviation, LP. and Wells Fargo Bank Northwest, N.A., as new lessor.

Aircraft Lease Novation and Amendment Agreement dated 1 November 2013 between Wells Fargo Bank Northwest, N.A. as existing lessor, Lessee and AeroCentury Corp., as new lessor.

### **Croatia Airlines**

#### **MSN 4211**

Aircraft Lease Agreement dated 30 May 2007 between GOAL Verwaltungsgesellschaft mbH & Co. Projekt Nr. 28 KG and Croatia Airlines D.D.

Amendment Agreement dated 17 September 2007 (containing the form of Amended and Restated Aircraft Lease Agreement) between GOAL Verwaltungsgesellschaft mbH & Co. Projekt Nr. 28 KG and Croatia Airlines D.D.

Lease Replacement Schedule Letter Agreement dated 24 July 2008 between GOAL Verwaltungsgesellschaft mbH & Co. Projekt Nr. 28 KG and Croatia Airlines D.D.

Certificate of Acceptance dated 25 July 2008 executed by Croatia Airlines D.D.

Third Amendment Agreement to a Lease Agreement (containing the form of Amended and Restated Aircraft Lease Agreement (the Amended and Restated Lease Agreement)) dated 13 December 2010 between GOAL Verwaltungsgesellschaft mbH & Co. Projekt Nr. 28 KG and Croatia Airlines D.D.

Error!

Lease Amendment Letter Agreement No.4 dated 15 November 2011 between GOAL Verwaltungsgesellschaft mbH & Co. Projekt Nr. 28 KG and Croatia Airlines D.D.

Fifth Lease Amendment and Supplement Agreement dated 27 October 2017 between GOAL Verwaltungsgesellschaft mbH & Co. Projekt Nr. 28 KG and Croatia Airlines D.D.

Exchange Rate Notice Letter dated 3 November 2017 from GOAL Verwaltungsgesellschaft mbH & Co. Projekt Nr. 28 KG and acknowledged and agreed by Croatia Airlines D.D.

Aircraft Lease Novation and Amendment Agreement dated 14 May 2018 between GOAL Verwaltungsgesellschaft mbH & Co. Projekt Nr. 28 KG, AeroCentury Corp. and Croatia Airlines D.D.

Lease Amendment (SN 4205 and 4211) dated 15 May 2020 between AeroCentury Corp. and Croatia Airlines D.D.

Lease Amendment (SN 4205 and SN 4211) dated December 9, 2020 between AeroCentury Corp. and Croatia Airlines D.D.

#### **Croatia Airlines**

#### **MSN 4205**

Aircraft Lease Agreement dated 30 May 2007 between GOAL Verwaltungsgesellschaft mbH & Co. Projekt Nr. 27 KG and Croatia Airlines D.D.

Amendment Agreement dated 17 September 2007 between GOAL Verwaltungsgesellschaft mbH & Co. Projekt Nr. 27 KG and Croatia Airlines D.D.

Lease Replacement Schedule Letter Agreement dated 15 May 2008 between GOAL Verwaltungsgesellschaft mbH & Co. Projekt Nr. 27 KG and Croatia Airlines D.D.

Certificate of Acceptance dated 16 May 2008 executed by Croatia Airlines D.D.

Third Amendment Agreement to a Lease Agreement (containing the form of Amended and Restated Aircraft Lease Agreement (the Amended and Restated Lease Agreement)) dated 13 December 2010 between GOAL Verwaltungsgesellschaft mbH & Co. Projekt Nr. 27 KG and Croatia Airlines D.D.

Lease Amendment Letter Agreement No.4 dated 15 November 2011 between GOAL Verwaltungsgesellschaft mbH & Co. Projekt Nr. 27 KG and Croatia Airlines D.D.

Fifth Lease Amendment and Supplement Agreement dated 27 October 2017 between GOAL Verwaltungsgesellschaft mbH & Co. Projekt Nr. 27 KG and Croatia Airlines D.D.

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Exchange Rate Notice Letter dated 3 November 2017 from between GOAL Verwaltungsgesellschaft mbH & Co. Projekt Nr. 27 KG and acknowledged and agreed by and Croatia Airlines D.D.

Aircraft Lease Novation and Amendment Agreement dated 14 May 2018 between GOAL Verwaltungsgesellschaft mbH & Co. Projekt Nr. 27 KG, AeroCentury Corp. and Croatia Airlines D.D.

Lease Amendment (SN 4205 and 4211) dated 15 May 2020 between AeroCentury Corp. and Croatia Airlines D.D.

Lease Amendment (SN 4205 and SN 4211) dated December 9, 2020 between AeroCentury Corp. and Croatia Airlines D.D.

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**EXHIBIT A**

**Form of Warranty Bill of Sale**

**WARRANTY BILL OF SALE**  
**(MSN [\_\_\_\_])**

WARRANTY BILL OF SALE (MSN \_\_\_\_), dated as of [\_\_\_\_] \_\_, 2021, by:

**AEROCENTURY CORP.** a Delaware corporation, as Seller (the “**Seller**”);

-to-

**DRAKE ASSET MANAGEMENT JERSEY LIMITED**, as Buyer, (the “**Buyer**”).

Defined terms used herein have the meaning given in the Asset Purchase Agreement.

Pursuant to an Asset Purchase Agreement dated as of [\_\_\_\_], 2021] (the “**Asset Purchase Agreement**”) and in consideration of the Purchase Price paid thereunder and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller hereby GRANTS, BARGAINS, TRANSFERS, ASSIGNS, SETS OVER, CONVEYS AND DELIVERS UNTO Buyer full legal title in and to one (1) [\_\_\_\_] aircraft bearing manufacturer’s serial number [\_\_\_\_], together with two (2) [\_\_\_\_] engines bearing manufacturer’s serial numbers [\_\_\_\_] and [\_\_\_\_] as more particularly described in the Asset Purchase Agreement (the “**Aircraft**”).

Seller hereby warrants to Buyer (and Buyer’s successors and assigns) that Seller conveys to Buyer full good and marketable legal and beneficial title to the Aircraft, free and clear of any and all Encumbrances (as defined in the Asset Purchase Agreement) other than any Permitted Liens in respect of the Aircraft and that Seller shall warrant and defend such title against any claims and demands whatsoever; provided, that the Aircraft is otherwise conveyed “**AS IS,**” “**WHERE IS**” AND WITH ALL FAULTS AND (EXCEPT AS PREVIOUSLY PROVIDED IN THIS PARAGRAPH OR IN THE ASSET PURCHASE AGREEMENT) WITHOUT REPRESENTATION OR WARRANTY OF ANY TYPE OR KIND, EXPRESS OR IMPLIED, WITH RESPECT THERETO (INCLUDING, WITHOUT LIMITATION, AS TO CONDITION, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE) and is subject to each and every disclaimer contained in the Asset Purchase Agreement.

THIS WARRANTY BILL OF SALE, AND ALL NON-CONTRACTUAL CLAIMS ARISING FROM OR CONNECTED TO IT, ARE GOVERNED BY AND SHALL BE CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, U.S.A., APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED ENTIRELY WITHIN SUCH STATE WITHOUT REGARD FOR CONFLICT OF LAW PRINCIPLES (OTHER THAN THE PROVISIONS OF SECTION 5-1401 AND SECTION 5-1402 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK).

IN WITNESS WHEREOF, Seller has caused this Warranty Bill of Sale to be duly executed and delivered the day and year first written above.

**AEROCENTURY CORP.**, as Seller

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

EXHIBIT A  
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