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

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| In re: | Chapter 11 |
| AEROCENTURY CORP., *et al*.,[1] | Case No. 21-10636 (JTD) |
| Debtors. | (Jointly Administered) |

# MEMORANDUM OF LAW IN SUPPORT OF CONFIRMATION OF THE COMBINED DISCLOSURE STATEMENT AND JOINT CHAPTER 11 PLAN OF AEROCENTURY CORP., AND ITS AFFILIATED DEBTORS

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[1] 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 JetFlee mailing address is 1440 Chapin Avenue, Suite 310, Burlingame, CA 94010

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## I. INTRODUCTION

1. On March 29, 2021 (the "Petition Date"), each of the Debtors filed with the United States Bankruptcy Court for the District of Delaware (the "Court") a voluntary petition for relief under chapter 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the *"*Bankruptcy Code"), thereby commencing their chapter 11 cases (the "Chapter 11 Cases").

2. The Debtors have proposed the *Combined Disclosure Statement and Joint Chapter 11 Plan of AeroCentury Corp., and its Affiliated Debtors* [D.I. 225] (as the same may be further amended, supplemented or modified, the "Combined Disclosure Statement and Plan" or "Plan").[2] The confirmation hearing on the Plan (the "Confirmation Hearing") is scheduled for August 31, at 10:00 a.m. (Eastern Time).

3. In connection with the Confirmation Hearing, the Debtors submit this memorandum of law (this "Memorandum") in support of entry of the Confirmation Order. This Memorandum addresses the requirements set forth in the Bankruptcy Code for confirmation of the Combined Disclosure Statement and Plan. In support of this Memorandum and confirmation, the Debtors are also filing concurrently herewith the *Declaration of Chris Tigno in Support of Confirmation of the Amended Combined Disclosure Statement and Joint Chapter 11 Plan of AeroCentury Corp., and its Affiliated Debtors* (the "Tigno Declaration") and the *Declaration of Adam Rosen in Support of Confirmation of the Combined Disclosure Statement and Joint Chapter 11 Plan of AeroCentury Corp. and its Affiliated Debtors* (the "Rosen Declaration" and together with the Tigno Declaration, the "Confirmation Declarations").

[2] Capitalized terms used but not otherwise defined herein shall have the meanings assigned to such terms in the Plan. The rules of interpretation set forth in Article I of the Plan are fully incorporated herein. In addition, in accordance with Article I of the Plan, any term used in the Plan that is not defined in the Plan, but that is used in the Bankruptcy Code or the Bankruptcy Rules, has the meaning given to that term in the Bankruptcy Code or the Bankruptcy Rules, as applicable.

4. The Plan is a joint plan for each of the Debtors, and presents together Classes of Claims against, and Interests in, the Debtors. The Plan does not provide for the substantive consolidation of the Debtors. Rather, the Plan constitutes a separate Plan proposed by each Debtor. As set forth in the Combined Plan and Disclosure Statement, the classifications set forth in Classes 1 through 7 of the Plan apply to each Debtor. Each Class constitutes a separate Sub-Class of Claims against, and Interests in, each of the Debtors, as applicable, and each such Sub-Class of a Class of Claims entitled to vote on the Plan has voted as a single separate Class for, and the confirmation requirements of section 1129 of the Bankruptcy Code must be satisfied separately with respect to, each of the Debtors.

5. As set forth in the *Declaration of Angela M. Nguyen with Respect to the Tabulation of Votes on the Combined Disclosure Statement and Joint Chapter 11 Plan of AeroCentury Corp., and Its Affiliated Debtors* [D.I. 281] (the "Voting Declaration"), Class 7 Interests at AeroCentury Corp. has overwhelmingly voted in favor of the Plan. The following table summarizes the Plan voting results:

| **Total Ballots Received** | |
|---|---|
| **Accept** | **Reject** |
| **# of Shares** | **# of Shares** |
| Class 7 – Interests | |
| 353,623<br>99.14% | 3,083<br>00.86% |

6. Class 7 Interests at JetFleet Holding Corp. and JetFleet Management Corp. are Unimpaired and deemed to accept the Plan.

7. Accordingly, the Debtors request confirmation of the Plan.

## II. OVERVIEW OF THE COMBINED DISCLOSURE STATEMENT AND PLAN

8. The following is a brief overview of the Combined Disclosure Statement and Plan, and is qualified in its entirety by reference to the full text of the Combined Disclosure Statement and Plan.

9. The Combined Disclosure Statement and Plan provides for a toggle between the (i) the Sponsored Plan, which pursuant to the terms of the Plan Sponsor Agreement, the Debtors and the Plan Sponsor will agree to a restructuring of the Debtors' business that will be implemented through the Sponsored Plants and (ii) the Stand-Alone Plan, whereby the Debtors' remaining Assets will vest in the Post-Effective Date Debtors and be monetized by the Plan Administrator.

10. On August 9, 2021, the Debtors' filed the *Notice of Selection of Plan Sponsor* [D.I. 254] which included as Exhibit A an Investment Term Sheet between AeroCentury and the Plan Sponsor setting for the principal terms of an investment by the Plan Sponsor into AeroCentury to be implemented pursuant to the Plan. On August 16, 2021, the Debtors' filed a supplement to the Plan (the "Plan Supplement") which contained the Plan Sponsor Agreement. A summary of the financial terms of the Plan Sponsor Agreement are as follows:[3]

a. On the Effective Date of the Combined Disclosure Statement and Plan, each Interest in AeroCentury Corp. shall be reinstated, subject to dilution. The Debtors will issue new shares of AeroCentuy Corp. common stock to the Plan Sponsor such that the pro forma ownership percentages of the AeroCentury Corp. common stock will be: (a) 65.0% held by the Plan Sponsor, and (b) 35.0% held by existing shareholders of AeroCentury Corp. on the Effective Date (the "Legacy Shareholders").

b. As soon as practicable following the Effective Date, AeroCentury Corp. will make a cash dividend distribution to the Legacy Shareholders in the aggregate amount of $1,000,000.

c. On the Effective Date, a trust will be established for the benefit of the Legacy Shareholders. At the same time, all Interests of AeroCentury Corp. in JetFleet

[3] In the event of any inconsistency between this summary and the terms of the Plan Sponsor Agreement, the Plan Sponsor Agreement shall govern.

Holding Corp. will be canceled. JetFleet Holding Corp. will then issue a Series B Preferred Stock to the trust. The Series B Preferred Stock will have a liquidation preference of $1, non-convertible, non-transferable, non-voting, will not pay a dividend, and will contain a mandatory, redeemable provision. The Series B Preferred Stock is redeemable for an aggregate amount equal to (i) $1,000,000, if the Series B Preferred Stock is redeemed after following the first fiscal year for which JetFleet Holding Corp. reports positive EBITDA for the preceding 12 month period, or (ii) $0.001 per share, if the Series B Preferred Stock is redeemed prior the first fiscal year for which JetFleet Holding Corp. reports positive EBITDA for the preceding 12-month period.

11. The Combined Disclosure Statement and Plan sets forth the treatment to be provided to each Class. The Classes take into account the differing nature and priority under the Bankruptcy Code of the various Claims and Interests. In particular, the Combined Disclosure Statement and Plan segregates various Claims against and Interests in the Debtors into the following groups: Class 1 (Priority Non-Tax Claims); Class 2 (Other Secured Claims); Class 3 (Prepetition Loan Claims); Class 4 (PPP Loan Claims); Class 5 (General Unsecured Claims); Class 6 (Intercompany Claims); and Class 7 (Interests). The Classes and their treatment under the Plan are further described as follows:

- **Class 1: Priority Non-Tax Claims.** Class 1 consists of Priority Non-Tax Claims against the Debtors. Class 1 Claims are Unimpaired by the Plan and the Holders of Class 1 Claims are deemed to accept the Plan and, therefore, are not entitled to vote on the Plan.
- **Class 2: Other Secured Claims.** Class 2 consists of Other Secured Claims against the Debtors. Class 2 Claims are Unimpaired by the Plan and the Holders of Class 2 Claims are deemed to accept the Plan and, therefore, are not entitled to vote on the Plan.
- **Class 3: Prepetition Loan Claims.** Class 3 consists of Prepetition Loan Claims against the Debtors. Class 3 Claims are consensually Impaired under the Plan and deemed to accept the Plan per treatment agreed to in the Falko Sale Order.
- **Class 4: PPP Loan Claims.** Class 4 Claims consist of PPP Loan Claims. Class 4 Claims are Unimpaired by the Plan and the Holders of Class 4 Claims are deemed to accept the Plan and, therefore, are not entitled to vote on the Plan.

- **Class 5: General Unsecured Claims.** Class 5 consists of all General Unsecured Claims. Class 5 Claims are Unimpaired by the Plan and the Holders of Class 5 Claims are deemed to accept the Plan and, therefore, are not entitled to vote on the Plan.

- **Class 6: Intercompany Claims.** Class 6 consists of all Intercompany Claims. Class 6 Claims are Unimpaired by the Plan and the Holders of Class 6 Claims are deemed to accept the Plan and, therefore, are not entitled to vote on the Plan

- **Class 7: Interests.** Class 7 consists of all Interests. Class 7 Interests at AeroCentury Corp. will be Reinstated, subject to dilution, shall receive their pro rata share of the $1,000,000 distribution under the Plan Sponsor Agreement, and shall otherwise be treated in accordance with the Plan Sponsor Agreement. Because Holders of Class 7 Interests at AeroCentury are Impaired, but will be Reinstated (subject to dilution) and receive a Distribution under the Plan, Holders of Class 7 Interests at AeroCentruty Corp. are entitled to vote on the Plan. Class 7 Interests at JetFleet Management Corp. and JetFleet Holding Corp. are Unimpaired and deemed to accept the Plan..

## III. PLAN SOLICITATION AND VOTING

12. On July 12, 2021, the Court entered an Order [D.I. 222] (the "Interim Approval and Procedures Order"), pursuant to which the Court, among other things, (i) established procedures for the solicitation and tabulation of votes to accept or reject the Combined Disclosure Statement and Plan, (ii) approved the form of Ballot and solicitation materials, (iii) approved, on an interim basis, the Disclosure Statement, and (iv) scheduled the Confirmation Hearing and established related deadlines. In accordance with the Interim Approval and Procedures Order, on or before July 21, 2021 (the "Service Date"), the Debtors commenced the solicitation of votes to accept or reject the Plan from Holders of Claims in Class 7 at AeroCentury Corp. (the "Voting Class") by causing Kurtzman Carson Consultants LLC, the Claims Agent in the Chapter 11 Cases ("KCC" or the "Claims Agent"), to mail to the Holders of Claims in the Voting Class (that are entitled to vote on the Plan under the Interim Approval and Procedures Order) the following materials (collectively, the "Solicitation Packages"): (i) the Combined Disclosure Statement and Plan; (ii) notice of the confirmation hearing (the **"**Confirmation Hearing Notice"); (iii) the

applicable Ballot; and (iv) a pre-paid, pre-addressed return envelope (where applicable and in accordance with the Interim Approval and Procedures Order).

13. The Debtors did not solicit votes on the Plan from Holders of Unclassified Claims or from Holders of Claims in Classes 1, 2, 4, 5, or 6, and Class 7 Interests at JetFleet Holding Corp. and JetFleet Management Corp., which are Unimpaired and conclusively deemed to have accepted the Plan pursuant to Bankruptcy Code section 1126(f). Further, the Debtors did not solicit votes on the Plan from the Holders of Prepetition Loan Claims in Class 3, which were consensually Impaired and deemed to accept the Plan pursuant to the Falko Sale Order. On the Service Date, and in accordance with the Interim Approval and Procedures Order, the Claims Agent mailed the Confirmation Hearing Notice to the following parties, to the extent such parties were not otherwise entitled to receive a Solicitation Package: (a) all persons or entities that have filed, or are deemed to have filed a proof of Claim or request for allowance of Claim as of the Record Date; (b) all persons or entities listed on the Schedules as holding a Claim or potential Claim; (c) the Securities and Exchange Commission and any regulatory agencies with oversight authority of the Debtor; (d) the Internal Revenue Service; (e) the United States Attorney's office for the District of Delaware; (f) other known Holders of Claims (or potential Claims) and Interests; (g) all entities known to the Debtor to hold or assert a lien or other interest in the Debtor's property; and (h) any other parties that have requested notice pursuant to Bankruptcy Rule 2002.

14. On July 21, 2021, KCC filed a *Certificate of Service* [D.I. 237], and on August 2, 2021, KCC filed a *Supplemental Certificate of Service* [D.I. 249] regarding the mailing of the Confirmation Hearing Notice and the Solicitation Packages, and evidencing service in accordance with the terms of the Interim Approval and Procedures Order.

15. As described in greater detail below, the Plan was accepted by the Voting Class.

## IV. OBJECTIONS

16. The Debtors received informal responses to the Combined Plan and Disclosure Statement from the Office of the United States Trustee and Falko (collectively, the "Informal Comments"). The Debtors have resolved the Informal Comments through certain language that has been included in the Confirmation Order and minor revisions to the Plan.

17. On August 24, 2021, Monocoque Diversified Interests, LLC ("MDI"), an unsuccessful bidder in the sale process and the plan sponsor process, filed the *Objection of Monocoque Diversified Interests, LLC to the Combined Disclosure Statement and Joint Plan of AeroCentury Corp., and its Affiliated Debtors* [D.I. 274] (the "MDI Objection"). On August 27, 2021, MDI filed a notice of withdrawal of the MDI Objection [D.I. 285].

## V. THE PLAN SHOULD BE CONFIRMED BECAUSE IT COMPLIES WITH THE REQUIREMENTS OF BANKRUPTCY CODE SECTION 1129.

18. Bankruptcy Code section 1129 governs confirmation of a chapter 11 plan and sets forth the requirements that must be satisfied for a plan to be confirmed. The Debtors bear the burden of establishing that all elements necessary for confirmation of the Plan under Bankruptcy Code section 1129(a) have been met by a preponderance of the evidence.[4] This Memorandum and the Confirmation Declarations demonstrate that, by a preponderance of the evidence, the Plan complies with the requirements of Bankruptcy Code section 1129(a) with respect to all Classes of Claims and Interests. Accordingly, the Plan should be confirmed.

[4] *See In re Tribune Co.*, 464 B.R. 126, 151–52 (Bankr. D. Del. 2011) (explaining that the plan proponent bears the burden of establishing the plan's compliance with Bankruptcy Code section 1129(a) (*citing In re Exide Tech.*, 303 B.R. 48, 58 (Bankr. D. Del. 2003))); *Heartland Fed'n Sav. & Loan Ass'n v. Briscoe Enters. Ltd., II (In re Briscoe Enters., Ltd., II*), 994 F.2d 1160, 1165 (5th Cir. 1993) (stating that the bankruptcy court must find that the debtor has satisfied the provisions of section 1129 by a preponderance of the evidence); *In re Alta+Cast, LLC*, No. 02-12982 (MFW), 2004 Bankr. LEXIS 219, at *5 (Bankr. D. Del. Mar. 2, 2004) (same).

### A. The Plan Complies with All Applicable Provisions of the Bankruptcy Code—11 U.S.C. § 1129(a)(1).

19. Bankruptcy Code section 1129(a)(1) provides that a court may confirm a chapter 11 plan only if such plan complies with applicable provisions of the Bankruptcy Code. *See* 11 U.S.C. § 1129(a)(1).[5] A principal objective of section 1129(a)(1) is to assure compliance with the sections of the Bankruptcy Code governing classification of claims and interests and the contents of a plan. Accordingly, the determination of whether the Plan complies with section 1129(a)(1) requires an analysis of its compliance with Bankruptcy Code sections 1122 and 1123. As set forth below, the Plan complies with these sections of the Bankruptcy Code.

#### 1. The Classification of Claims and Interests in the Plan Satisfies the Requirements of Bankruptcy Code Section 1122.

20. Bankruptcy Code section 1122(a) provides that the claims or interests within a given class must be "substantially similar."[6] Section 1122(a), however, does not mandate that "substantially similar" claims be classified together.[7] Section 1122 of the Bankruptcy Code provides plan proponents with a great degree of flexibility in classifying claims and interests, and courts are offered broad discretion in approving a proponent's classification scheme and to properly consider the specific facts of each case before rendering a decision.[8]

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[5] The legislative history of section 1129(a)(1) explains that this provision encompasses the requirements of sections 1122 and 1123, which govern the classification of claims under the plan and the contents of the plan, respectively. *See* H.R. Rep. No. 95-595, at 412 (1977), *reprinted in* 1978 U.S.C.C.A.N. 5963; *see also In re Nutritional Sourcing Corp.*, 398 B.R. 816, 824 (Bankr. D. Del. 2008).

[6] *See* 11 U.S.C. § 1122(a).

[7] *See In re Jersey City Med. Ctr.*, 817 F.2d 1055, 1061 (3d Cir. 1987) (agreeing that section 1122 permits the grouping of similar claims in different classes); *In re Coram Healthcare Corp.*, 315 B.R. 321, 348 (Bankr. D. Del. 2004) (noting that "section 1122 . . . provides that claims that are not 'substantially similar' may not be placed in the same class; it does not expressly prohibit placing 'substantially similar' claims in separate classes").

[8] *See In re Jersey City Med. Ctr.*, 817 F.2d at 1060–61 ("Congress intended to afford bankruptcy judges broad discretion [under section 1122] to decide the propriety of plans in light of the facts of each case").

21. The Plan is a joint plan for each of the Debtors and presents together Classes of Claims against, and Interests in, the Debtors. Article II of the Plan classifies seven (7) Classes of Claims against and Interests in the Debtors, as summarized above and described more fully in the Combined Disclosure Statement and Plan. In accordance with Bankruptcy Code section 1122(a), each Class and Sub-Class of Claims against and Interests in the Debtors contains only Claims or Interests that are substantially similar to the other Claims or Interests within that Class or Sub-Class. Moreover, the Plan's classification of Claims and Interests into seven (7) Classes satisfies the requirements of Bankruptcy Code section 1122, because the Claims and Interests in each Class differ from the Claims and Interests in each other Class in a legal or factual nature, or are based upon other relevant criteria. In addition, valid business, factual, and legal reasons exist for separately classifying the various Classes of Claims against and Interests in the Debtors under the Plan. Based upon the foregoing, the Debtors submit that the Plan satisfies the requirements of Bankruptcy Code section 1122.

**2. The Plan Satisfies the Requirements of Bankruptcy Code Section 1123(a).**

22. The Plan also complies with Bankruptcy Code section 1123(a), which sets forth seven (7) requirements for every chapter 11 plan.[9] As demonstrated below and in the Confirmation Declarations, the Plan complies with each such requirement:

i. Section 1123(a)(1). Article II of the Plan properly designates all Claims and Interests that require classification, as required by Bankruptcy Code section 1123(a)(1).

ii. Section 1123(a)(2)–(3). Articles II and VII of the Plan specify whether each Class of Claims or Interests is Impaired under the Plan and the treatment of each Impaired Class, as required by Bankruptcy Code section 1123(a)(2)–(3).

iii. Section 1123(a)(4). In accordance with Bankruptcy Code section 1123(a)(4), Article VII of the Plan provides the same treatment for each Claim or Interest in a

[9] *See* 11 U.S.C. § 1123(a).

given Class unless the Holder of such Claim or Interest agrees to less favorable treatment.

iv. Section 1123(a)(5). In accordance with Bankruptcy Code section 1123(a)(5), Article IX of the Plan provides adequate means for the Plan's implementation. For example, the Plan provides that, after the Effective Date, pursuant to the Plan Sponsor Agreement, the Debtors and the Reorganized Debtors shall be authorized to enter into Restructuring Transactions. In furtherance of the foregoing, the Debtors and the Reorganized Debtors shall be permitted to take all actions as may be necessary or appropriate to effectuate the transactions described in, approved by, contemplated by, or necessary to effectuate the Plan and the Restructuring Transactions, including: (1) the execution and delivery of any appropriate agreements or other documents of merger, consolidation, restructuring, conversion, disposition, transfer, formation, organization, dissolution, or liquidation containing terms that are consistent with the terms of the Plan, and that satisfy the requirements of applicable law and any other terms to which the applicable Entities may agree, including, but not limited to the documents comprising the Plan Supplement; (2) the execution and delivery of appropriate instruments of transfer, assignment, assumption, or delegation of any asset, property, right, liability, debt, or obligation on terms consistent with the terms of the Plan and having other terms for which the applicable Entities agree; (3) the filing of appropriate certificates or articles of incorporation, reincorporation, merger, consolidation, conversion, or dissolution pursuant to applicable state law; (4) such other transactions that are required to effectuate the Restructuring Transactions in a tax-efficient manner as determined by the Debtors, including any contributions, mergers, consolidations, restructurings, conversions, dispositions, transfers, formations, organizations, dissolutions or liquidations required in connection therewith; (5) the execution, delivery, and filing, if applicable, of the any exit financing; and (6) all other actions that the applicable Debtors determine to be necessary or appropriate, including making filings or recordings that may be required by applicable law.

i. Section 1123(a)(6). The organizational documents contained in the Plan Supplement do not provide for the issuance of any non-voting equity securities under the Plan to the extent required by Bankruptcy Code section 1123(a)(6).

ii. Section 1123(a)(7). Section 9.5 of the Plan provides that on the Effective Date, the members of the Reorganized Debtors' board of directors shall remove and replace the existing officers of the Debtors, as set forth in the Plan Sponsor Agreement. The identity of the members of the Reorganized Debtors' board of directors is set forth in the Plan Supplement. The Debtors submit that the Plan provisions governing the manner of selection of the Reorganized Debtors' board of directors is consistent with the interests of creditors and equity security holders and with public in accordance with Bankruptcy Code section 1123(a)(7).

### 3. The Combined Disclosure Statement and Plan Complies With the Requirements of Bankruptcy Code Section 1123(b).

#### a. The Plan Discretionary Provisions are Consistent with Section 1123(b).

23. Bankruptcy Code section 1123(b) contains various discretionary provisions that may be included in a chapter 11 plan.[10] For example, a plan may impair or leave unimpaired any class of claims or interests and provide for the assumption or rejection of executory contracts and unexpired leases. A plan also may include the settlement or adjustment of any claim or interest held by the debtor or the debtor's estate, or provide for the debtor's retention and enforcement of any such claim or interest.[11] Likewise, a plan may modify the rights of secured creditors or unsecured creditors, or leave unaffected the rights of creditors in any class of claims.[12] Finally, a plan may contain "any other appropriate provision not inconsistent with the applicable provisions of [the Bankruptcy Code]."[13]

24. In accordance with the Bankruptcy Code section 1123(b), the Combined Disclosure Statement and Plan employs various discretionary provisions, including the following:

i. Article VII provides that certain Classes are Unimpaired and others are Impaired;

ii. Article XII provides for the assumption of all of the Debtors' executory contracts and leases that have not been previously rejected, assumed, or assumed and assigned;

iii. Articles IX–XI, along with the Plan Sponsor Agreement, establish procedures for the settlement of Claims and mechanics for distribution with respect to Allowed Claims;

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[10] *See* 11 U.S.C. § 1123(b).

[11] *See* 11 U.S.C. § 1123(b)(3)(A), (B); *see, e.g., In re Exide Tech.*, 303 B.R. at 67 (Bankr. D. Del. 2003) (noting that 11 U.S.C. § 1123(b)(3)(A) permits settlements to be incorporated into a plan of reorganization); *Cohen v. TIC Fin. Sys. (In re Ampace Corp.),* 279 B.R. 145, 158–59 (Bankr. D. Del. 2002) (noting that 11 U.S.C. § 1123(b)(3)(B) permits a plan to retain causes of action by the debtor or representatives).

[12] 11 U.S.C. § 1123(b)(5).

[13] 11 U.S.C. § 1123(b)(6).

iv. Article XV provides that the Court shall retain exclusive jurisdiction over all matters arising out of, or related to, the Chapter 11 Cases and the Combined Disclosure Statement and Plan, except as otherwise specifically stated therein;[14] and

v. Article XIV, as further discussed below, provides for: (a) a release by the Debtors of certain parties (the "Debtor Release"); (b) a consensual third-party release (the "Third-Party Release," and together with the Debtor Release, the "Releases"); (c) an exculpation (the "Exculpation"); and (d) certain injunction and discharge provisions prohibiting parties from pursuing Claims or Causes of Action exculpated, discharged, or released under the Combined Disclosure Statement and Plan (the "Injunction").

25. The Debtors submit that the discretionary provisions contained in the Combined Disclosure Statement and Plan are reasonable and appropriate in light of the circumstances of the Chapter 11 Cases and permissible under Bankruptcy Code section 1123(b).

b. The Releases, Exculpation, discharge, and Injunction Should Be Approved.

26. The Releases, Exculpation, discharge, and Injunction are proper because, among other things, they are the product of arms'-length negotiations and have been critical to obtaining the support of the various constituencies for the Combined Disclosure Statement and Plan. Such provisions are fair and equitable, are given for valuable consideration, and are in the best interests of the Debtors and their creditors. Neither the Releases, the Exculpation, nor the Injunction is inconsistent with the Bankruptcy Code and, as a result, the requirements of Bankruptcy Code section 1123(b) have been satisfied.

27. The principal terms of the Releases, Exculpation, discharge, and Injunction, as well as the basis for approval of these Plan provisions, are described below. The Debtors submit that, based upon the circumstances and record of the Chapter 11 Cases and the paramount interest of

[14] *See Gruen Mktg. Corp. v. Asia Commercial Co., Ltd.* (*In re Jewelcor Inc.*), 150 B.R. 580, 582 (Bankr. M.D. Pa. 1992) ("There is no doubt that the bankruptcy court's jurisdiction continues post-confirmation to 'protect its confirmation decree, to prevent interference with the execution of the plan and to aid otherwise in its operation.'" (citations omitted)).

creditors and other parties-in-interest, the Releases, the Exculpation, and the Injunction should be approved.

*(i) Debtor Release (Plan § 14.1(b))*

28. Pursuant to the Plan and the Confirmation Order, the Debtors (on their own behalf and as a representative of their respective Estates) will release certain entities that commonly are released in chapter 11 plans from Claims, Causes of Action and other liabilities as and to the extent set forth in the Plan. Specifically, the Debtor Release contained in Section 14.1(b) of the Plan provides:

> Except as otherwise expressly provided in the Plan or the Confirmation Order, on the Effective Date, for good and valuable consideration, each of the Debtors, on their own behalf and as a representative of their respective Estates, to the fullest extent permitted under applicable law, shall, and shall be deemed to, completely and forever release, waive, void, extinguish and discharge unconditionally, each and all of the Debtor Released Parties of and from any and all Claims, Causes of Action, interests, obligations, suits, judgments, damages, debts, rights, remedies, set offs, and liabilities of any nature whatsoever, whether liquidated or unliquidated, fixed or Contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity, tort, contract, or otherwise, that are or may be based in whole or part on any act, omission, transaction, event, occurrence, or other circumstance, whether direct or derivative, taking place or existing on or prior to the Effective Date (including prior to the Petition Date) in connection with or related to any of the Debtors or their operations, their respective Assets, the Estates, or the Chapter 11 Cases, that may be asserted by or on behalf of any of the Debtors or their respective Estates, against any of the Debtor Released Parties.

29. Each of the parties to be released by the Debtors are stakeholders or critical participants in the Chapter 11 Cases and the Combined Disclosure Statement and Plan process. Specifically, the Debtor Released Parties are:

> (i) any directors that served or are currently serving on the Debtors' boards of directors, (ii) the Debtors' current officers; and (iii) with

respect to each of the foregoing, their Related Parties.

30. Section 14.1(b) of the Plan represents a valid settlement (as and to the extent provided for in the Combined Plan and Disclosure Statement) pursuant to Bankruptcy Code section 1123(b)(3)(A) of whatever Claims any Debtor may have against the Debtor Released Parties. The Debtors have proposed these releases based on their sound business judgment.[15] Indeed, the Debtors believe that, under the circumstances, pursuing claims against the Debtor Released Parties would not be in the best interest of the Debtors' various stakeholders, because the costs involved would likely outweigh any potential benefit to the Estates from pursuing such claims.

31. Moreover, the efforts of the Debtor Released Parties were integral to the development of the Combined Disclosure Statement and Plan and the timely and efficient resolution of these Chapter 11 Cases. These releases are the product of extensive arm's length and good faith negotiations, and without the releases, among other things, the Debtors would have not been able to garner sufficient support for the Plan. Without this material consideration, the Debtors likely would be forced to convert the Chapter 11 Cases to chapter 7, which the Debtors believe, as discussed further below, would reduce recoveries to Holders of Allowed Claims. Moreover, there are no objections to the Debtor Release and the Plan has been accepted.

32. Bankruptcy courts typically consider the *Master Mortgage* factors to determine whether a release by a debtor should be approved: (a) whether there is an identity of interest between the debtor and the third party, such that a such against the non-debtor is, in essence, a suit against the debtor or will deplete assets of the estate; (b) whether the non-debtor has made a substantial contribution; (c) the essential nature of the release to the extent that, without the release,

[15] *See U.S. Bank Nat'l Ass'n v. Wilmington Trust Co., Spansion, Inc. (In re Spansion, Inc.)*, 426 B.R. 114, 143 (Bankr. D. Del. 2010) ("[A] debtor may release claims in a plan pursuant to Bankruptcy Code § 1123(b)(3)(A), if the release is a valid exercise of the debtor's business judgment, is fair, reasonable, and in the best interests of the estate.").

there is little likelihood of success; (d) an agreement by a substantial majority of creditors to support the release, specifically if the impacted class or classes "overwhelmingly" vote to accept the plan; and (e) whether there is a provision in the plan for payment of all or substantially all of the claims of the class or classes affected by the release.[16] Importantly, a court need not find that all of these factors apply to approve a debtor's release of claims.[17] Rather, such factors are "helpful in weighing the equities of the particular case after a fact-specific review."[18]

33. *First*, there is an identity of interest between the Debtors and the Debtor Released Parties because such parties all "share the common goal" of confirming the Plan and implementing the Plan Sponsor Agreement.[19] The Plan is the result of extensive arm's length and good faith negotiations among, and efforts by, the Debtors and the Debtor Released Parties, resulting in the compromise of the Debtor Released Parties' Claims as provided for in the Combined Plan and Disclosure Statement, and their support of the Plan. Each of the Debtor Released Parties, as a critical participant in the Plan process, shares a common goal with the Debtors in seeing the Plan succeed, and ensuring that the Chapter 11 Cases can be wound down in a timely and efficient manner. Like the Debtors, these parties seek to confirm the Plan and implement the transactions contemplated thereunder.[20]

[16] *See In re Zenith Elecs. Corp.*, 241 B.R. 92, 110 (Bankr. D. Del. 1999) (citing *In re Master Mortg. Inv. Fund, Inc.*, 168 B.R. 930, 935 (Bankr. W.D. Mo. 1994)).

[17] *See, e.g.*, *In re Wash. Mut., Inc.*, 442 B.R. 314, 346 (Bankr. D. Del. 2011).

[18] *In re Indianapolis Downs, LLC, LLC*, 486 B.R. 286, 303 (Bankr. D. Del. 2013).

[19] *See In re Tribune Co.*, 464 B.R. 126, 187 (Bankr. D. Del. 2011) (finding an identity of interest existed between the debtors and the released parties because they "share[d] the common goal of confirming" the plan and implementing the global settlement).

[20] *See Zenith Elecs.*, 241 B.R. at 110 (concluding that certain releases who "were instrumental in formulating the Plan" shared an identity of interest with the debtor "in seeing that the Plan succeed").

34. *Second*, the Debtor Released Parties are providing necessary contributions in exchange for the Debtor Releases, including by contributing value necessary to consummate the Plan, agreeing to compromise or otherwise waive substantive rights to effectuate the Plan Sponsor Agreement, and providing other material support to the Debtors' overall chapter 11 efforts, including the Debtors' Plan efforts.[21] Among other things, the released officers and directors have continued to operate and manage the Debtors' business and financial affairs throughout the Chapter 11 Cases, helped to develop and implement the Debtors' chapter 11 strategy, and otherwise navigate the Debtors through the chapter 11 process. Accordingly, the value contributed by the Debtor Released Parties is more than sufficient to support the Debtor Release.

35. *Third*, the Debtor Release is an essential component of the Plan, and constitutes a sound exercise of the Debtors' business judgment, as attested to in the Tigno Declaration. During the course of negotiations regarding the Plan, it was clear that the Debtor Release would be a necessary condition to consummation of the transactions embodied in the Plan, including the Plan Sponsor Agreement. Without the Debtor Release, the Debtors and their stakeholders would neither have been able to secure the significant benefits provided by the Plan, nor build consensus around the Plan. The Debtor Release was a material inducement to the concessions and contributions received by the Debtors and their Estates under the Plan. Absent Confirmation of the Plan and the Debtor Release, the and the Plan Sponsor Agreement could not be effectuated, and parties in interest would likely be mired in extensive and costly litigation that would potentially provide only minimal recoveries, if any, for parties in interest. Accordingly, the Debtor Release is essential to Plan consummation and to preserving and maximizing the value of the Debtors' Estates for the benefit of stakeholders.

[21] *See In re W.R. Grace*, 446 B.R. 96, 138 (Bankr. D. Del. 2011).

36. *Fourth*, as evidenced by the Voting Report and noted above, the Debtors' stakeholders overwhelmingly support the Plan. Given the critical nature of the Debtor Release, this degree of consensus evidences the Debtors' stakeholders' support for the Debtor Release and the Plan.

37. The Debtor Release represents a valid settlement as and to the extent provided for in the Combined Plan and Disclosure Statement of any claims the Debtors and their Estates may have against the Debtor Released Parties, pursuant to section 1123(b)(3)(A) and Bankruptcy Rule 9019. The Debtors, in consultation with other constituencies, have proposed the Debtor Release based on their sound business judgment.[22] For these reasons, the Debtor Release is justified, in the best interests of the Debtors and their Estates, and an integral part of the Plan, and, therefore, should be approved.

*(ii) Third-Party Releases (Plan § 14.1(c))*

38. Section 14.1(c) of the Plan also provides for voluntary third-party releases by the Releasing Parties. Specifically, the Third-Party Release provides:

> As of the Effective Date, or, solely with respect to Unimpaired Claims, upon the later of the Effective Date or when such Unimpaired Claim is Paid in Full, for good and valuable consideration, the adequacy of which is hereby confirmed, the Releasing Parties shall be deemed to forever release, waive and discharge the Third-Party Released Parties of all claims, obligations, suits, judgments, damages, demands, debts, rights, remedies, causes of action and liabilities of any nature whatsoever in connection with or related to the Debtors, the Chapter 11 Cases, or the combined Disclosure Statement and Plan, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or hereafter arising, in law, equity, or otherwise that are or may be based in whole or in part

[22] *See In re Spansion, Inc.*, 426 B.R. 114, 143 (Bankr. D. Del. 2010) ("[A] debtor may release claims in a plan pursuant to Bankruptcy Code § 1123(b)(3)(A), if the release is a valid exercise of the debtor's business judgment, is fair, reasonable, and in the best interests of the estate").

> upon any act, omission, transaction, event, or other occurrence taking place or existing on or prior to the Effective Date (other than the rights of Holders of Allowed Claims to enforce the obligations under the Confirmation Order and the Plan); *provided, however*, that nothing in this section shall operate as a release, waiver or discharge of any causes of action or liabilities arising out of gross negligence, willful misconduct, fraud, or criminal acts of any such Released Party as determined by a Final Order.

39. Such consensual releases are fully consistent with governing law. As the Court has recognized, "Courts in this jurisdiction have consistently held that a plan may provide for a release of third party claims against a non-debtor upon consent of the party affected."[23] Releasing Parties excludes any party that makes a Release Opt-Out Election.[24] As a result, the Releasing Parties have consented to the Third-Party Release because such parties had the opportunity to affirmatively opt out of the releases, but did not make a Release Opt-Out Election. The Ballots and Confirmation Hearing Notice provided clear notice of the Third-Party Release, and clearly stated that parties would be deemed to have consented to the Third-Party Release if they did not make a Release Opt-Out Election. The Ballots and Confirmation Hearing Notice further provided instructions on how to make a Release Opt-Out Election. The Third-Party Release, therefore, has been consented to by each of the Releasing Parties, and, therefore, is appropriate and should be approved.

40. In addition, the Third-Party Releases under the Plan are the product of extensive negotiations with key constituents. Absent the Third-Party Releases, such parties, among other things, would not have agreed to the Plan or the Plan Sponsor Agreement.

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[23] *In re Indianapolis Downs, LLC*, 486 B.R. 286, 306 (Bankr. D. Del. 2013); *see also In re Exide Tech.*, 303 B.R. 47, 74 (Bankr. D. Del. 2003) ("The 'Releases by Holders of Claims' provision applies to release both prepetition and postpetition claims against the Releases, but it binds only those creditors and equity holders who accept the terms of the Plan. Because it is consensual, there is no need to consider the *Zenith* factors.").

[24] See Plan § 1.97.

*(iii) Exculpation (Plan § 14.1(a)).*

41. The Exculpation is narrowly tailored to protect Estate fiduciaries for their actions taken in furtherance of the Chapter 11 Cases. Specifically, Section 14.1(a) of the Plan provides:

> Notwithstanding any other provision of the Plan, the Exculpated Parties shall not have or incur any liability to, or be subject to any right of action by, any Holder of a Claim or an Interest, or any other party in interest, or any of their respective agents, employees, representatives, financial advisors, attorneys, or agents acting in such capacity, or Affiliates, or any of their successors or assigns, for any act or omission taking place on or after the Petition Date and prior to or on the Effective Date relating to, in any way, or arising from (i) the Chapter 11 Cases; (ii) formulating, negotiating or implementing the combined Disclosure Statement and Plan or any contract, instrument, release or other agreement or document created or entered into in connection with the combined Disclosure Statement and Plan; (iii) the Asset Sales; (iv) any other postpetition act taken or omitted to be taken in connection with or in contemplation of the administration of the Debtors' Estates, the restructuring, sale or liquidation of the Debtors; (v) the solicitation of acceptances of the Plan, the pursuit of confirmation of the Plan, the Confirmation of the Plan, the Consummation of the Plan; or (vi) the administration of the Plan or the property to be distributed under the Plan, except for their bad faith, gross negligence or willful misconduct as determined by a Final Order, and in all respects shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities under the Plan. This exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, exculpations and any other applicable law or rules protecting the Exculpated Parties from liability. The Confirmation Order shall serve as a permanent injunction against any Entity seeking to enforce any claim or cause of action against the Exculpated Parties that has been exculpated pursuant to Section 14.1(a) of the Plan.

42. The Exculpated Parties have participated in the Chapter 11 Cases in good faith, and the Exculpation is necessary to protect those Estate fiduciaries who have contributed to the Debtors' plan efforts from collateral attacks related to their good-faith acts or omissions. Further, the scope of the Exculpation is targeted, and has no effect on liability that is determined to have

constituted bad faith, gross negligence or willful misconduct. Accordingly, the Court should approve the Exculpation.

*(iv) Discharge and Injunction (Plan § 14.1(e))*

43. Section 14.1(e) of the Plan implements the Plan's release, discharge and exculpation provisions, in part, by permanently enjoining all entities from commencing or maintaining any action against the Debtors, the Reorganized Debtors, the Debtor Released Parties, the Third-Party Released Parties, or the Exculpated Parties on account of or in connection with respect to any such Claims or Interests released, discharged, or exculpated pursuant to the Plan..[25] The discharge and injunction are necessary to preserve and enforce the Releases and Exculpation, and is appropriately tailored to achieve that purpose. Accordingly, the Court should approve the injunction as set forth in the Plan.

**B. The Debtors Have Complied with the Applicable Provisions of the Bankruptcy Code—11 U.S.C. § 1129(a)(2).**

44. Bankruptcy Code section 1129(a)(2) requires that the "proponent of the plan complies with the applicable provisions of this title."[26] The legislative history to section 1129(a)(2) reflects that this provision is intended to encompass the disclosure and solicitation requirements under Bankruptcy Code sections 1125 and 1126.[27] In determining whether a plan proponent has complied with this section, courts focus on whether the proponent has adhered to the disclosure and solicitation requirements of sections 1125 and 1126.[28]

[25] *See* Plan § 14.1(e).

[26] 11 U.S.C. § 1129(a)(2).

[27] See H.R. Rep. No. 95-595, at 412 (1977); S. Rep. No. 95-989, at 126 (1978) ("Paragraph (2) [of § 1129(a)] requires that the proponent of the plan comply with the applicable provisions of chapter 11, such as section 1125 regarding disclosure"); s*ee also In re Resorts Int'l Inc.*, 145 B.R. 412, 468–69 (Bankr. D.N.J. 1990); *In re Elsinore Shore Assocs.*, 91 B.R. 238, 258 (Bankr. D.N.J. 1988).

[28] *See In re PWS Holding Corp.*, 228 F.3d at 248.

45. The Debtors have complied with all requirements set forth in the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and the Interim Approval and Procedures Order governing notice, disclosure, and solicitation in connection with the Combined Disclosure Statement and Plan. Accordingly, the requirements of section 1129(a)(2) have been satisfied.

**C. The Combined Disclosure Statement and Plan Has Been Proposed in Good Faith and Not by Any Means Forbidden by Law—11 U.S.C. § 1129(a)(3).**

46. Section 1129(a)(3) requires that a chapter 11 plan be "proposed in good faith and not by any means forbidden by law."[29] "The good faith standard requires that the plan be 'proposed with honesty, good intentions and a basis for expecting that a reorganization can be effected with results consistent with the objectives and purposes of the Bankruptcy Code.'"[30] In determining whether a plan has been proposed in good faith, courts have recognized that they should avoid applying any hard and inflexible rules, but should instead evaluate each case on its own merits.[31]

47. The Debtors have proposed the Combined Disclosure Statement and Plan in good faith and not by any means forbidden by law. The Combined Disclosure Statement and Plan is the culmination of significant arm's-length and good faith negotiations among the Debtors, the Plan Sponsor, and other significant parties in interest, and reflects the results of these negotiations. The Debtors submit that the Combined Disclosure Statement and Plan is fundamentally fair to all stakeholders, and has been proposed with the legitimate purpose of reorganizing the business and

[29] See 11 U.S.C. § 1129(a)(3).

[30] *In re Coram Healthcare Corp.*, 271 B.R. 228, 234 (Bankr. D. Del. 2001) (citations omitted).

[31] *See, e.g.*, *In re NII Holdings, Inc.*, 288 B.R. 356, 362 (Bankr. D. Del. 2002); *Century Glove*, 1993 WL 239489, at *4 (stating good faith should be evaluated in light of the totality of the circumstances surrounding confirmation); *In re PWS Holdings Corp*., 228 F.3d at 243 (finding that plan was proposed in good faith).

affairs of the Debtors in a timely and efficient manner. Accordingly, the Combined Disclosure Statement and Plan has been filed in good faith and satisfies the requirements of Bankruptcy Code section 1129(a)(3).

### D. The Combined Disclosure Statement and Plan Provides that Payments Made by the Debtors for Services or Costs and Expenses are Subject to Approval—11 U.S.C. § 1129(a)(4).

48. Bankruptcy Code section 1129(a)(4) provides that a bankruptcy court shall confirm a plan only if "payment made or to be made by the proponent . . . for services or for costs and expenses in or in connection with the case, or in connection with the plan and incident to the case, has been approved by, or is subject to the approval of, the court as reasonable."[32] Section 1129(a)(4) has been construed to require that all payments of professional fees paid from estate assets be subject to review and approval by the bankruptcy court as to the reasonableness of such fees.[33]

49. In accordance with Bankruptcy Code section 1129(a)(4), no payment for services or costs and expenses in or in connection with the Chapter 11 Cases, or in connection with the Combined Disclosure Statement and Plan and incidental to the Chapter 11 Cases, including Professional Fee Claims, has been or will be made by the Debtors other than payments that have been authorized by order of the Court. Further section 6.1(c) of the Combined Disclosure Statement and Plan provides that Professional Fee Claims are subject to Court approval and the standards of the Bankruptcy Code. Accordingly, the provisions of the Combined Disclosure Statement and Plan comply with Bankruptcy Code section 1129(a)(4).

[32] 11 U.S.C. § 1129(a)(4).

[33] *See, e.g.*, *Lisanti v. Lubetkin* (*In re Lisanti Foods, Inc.*), 329 B.R. 491, 503 (D.N.J. 2005); *In re Resorts Int'l, Inc.*, 145 B.R. at 476.

### E. The Debtors Have Disclosed the Identity of Directors and Officers and the Nature of Compensation of Insiders—11 U.S.C. § 1129(a)(5).

50. Bankruptcy Code section 1129(a)(5)(A) requires the proponent of any plan to disclose the "identity and affiliations of any individual proposed to serve, after confirmation of the plan, as a director, officer, or voting trustee of the debtor, an affiliate of the debtor participating in a joint plan with the debtor, or a successor to the debtor under the plan," and requires a finding that "the appointment to, or continuance in, such office of such individual, is consistent with the interests of creditors and equity security holders and with public policy."[34] Additionally, section 1129(a)(5)(B) requires the proponent of a plan to disclose the "identity of any insider that will be employed or retained by the reorganized debtor, and the nature of any compensation for such insider."[35] The Debtors have provided the information required under section 1129(a)(5) by identifying the directors of Reorganized Debtor JetFleet Holding Corp. in the Plan Supplement, and will identify the directors of Reorganized Debtor AeroCentury Corp. prior to the Effective Date. The appointment of the directors of the Reorganized Debtors will be approved in the Confirmation Order. Based upon the foregoing, the Combined Disclosure Statement and Plan satisfies the requirements of Bankruptcy Code section 1129(a)(5).

### F. The Combined Disclosure Statement and Plan Does Not Contain Any Rate Changes Subject to the Jurisdiction of Any Governmental Regulatory Commission—11 U.S.C. § 1129(a)(6).

51. Bankruptcy Code section 1129(a)(6) requires that any regulatory commission having jurisdiction over the rates charged by the reorganized debtor in the operation of its business approve any rate change under the plan.[36] The Combined Disclosure Statement and Plan does not

[34] *See* 11 U.S.C. § 1129(a)(5)(A)(i)–(ii).

[35] *See* 11 U.S.C. § 1129(a)(5)(B).

[36] *See* 11 U.S.C. § 1129(a)(6).

provide for any rate changes subject to the jurisdiction of any governmental regulatory commission. Accordingly, the Debtors submit that Bankruptcy Code section 1129(a)(6) is inapplicable to the Combined Disclosure Statement and Plan.

### G. The Combined Disclosure Statement and Plan is in the Best Interests of Creditors —11 U.S.C. § 1129(a)(7).

52. Bankruptcy Code section 1129(a)(7) requires that a plan be in the best interests of creditors and equity holders.[37] This "best interests" test focuses on individual dissenting creditors rather than classes of claims.[38] The best interests test requires that each holder of a claim or equity interest either accept the plan or receive or retain under the plan property having a present value, as of the effective date of the plan, not less than the amount such holder would receive or retain if the debtor was liquidated under chapter 7 of the Bankruptcy Code.[39] If a class of claims or equity interests unanimously approves the plan, the best interests test is deemed satisfied for all members of that class.[40]

53. Under the Combined Disclosure Statement and Plan, Class 7 Interests at AeroCentury Corp. are Impaired. The test, therefore, requires that each Holder of a Claim or Interest in the Voting Class either accept the Combined Disclosure Statement and Plan, or receive or retain under the Plan property having a present value, as of the effective date of the Plan, not less than the amount that such Holder would receive or retain if the Debtors were liquidated under chapter 7 of the Bankruptcy Code.

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[37] *See* 11 U.S.C. § 1129(a)(7).

[38] *See Bank of Am. Nat'l Trust & Sav. Ass'n v. 203 N. LaSalle St. P'ship*, 526 U.S. 434, 441 n.13 (1999).

[39] *See* 11 U.S.C. § 1129(a)(7).

[40] *See In re Drexel Burnham Lambert Group, Inc.*, 138 B.R. at 761.

54. The Debtors have satisfied section 1129(a)(7). The Debtors are not seeking to require Holders of Claims or Interests to accept non-cash consideration so that the Debtors can pursue going-concern value.

55. As set forth in the Combined Disclosure Statement and Plan and the Plan Sponsor Agreement, under the Sponsored Plan, the Plan Sponsor is investing $11,000,000 into the Reorganized Debtors. Among other things, Holders of Allowed Class 7 Interests at AeroCentury Corp. as of the Distribution Record Date will have such Interests Reinstated, subject to dilution, and will also receive a dividend in the aggregate amount of $1,000,000. As described more fully in the Rosen Declaration, Holders of Interests will receive more overall value under the Sponsored Plan, as compared to the expected return under the Stand-Alone Plan.

56. Additionally, a chapter 7 liquidation would likely result in an increase in Administrative Claims because there would be an additional tier of Administrative Claims by the chapter 7 trustee and his or her professionals. The chapter 7 trustee's professionals, including legal counsel and accountants, would add administrative expenses that would be entitled to be paid ahead of Allowed Claims against, or Allowed Interests in, the Debtors. The Estates would also be obligated to pay all unpaid expenses incurred by the Debtors during the Chapter 11 Cases, which would continue to be allowed in the chapter 7 case as well and ultimately, the Lenders would need to consent to the usage of their cash collateral to fund such a chapter 7 process, and there is no guarantee that they would do so. If such consent was not forthcoming, a conversion to chapter 7 would serve only to increase the amount of claims against the Debtors that would not be paid—both in terms of currently incurred and unpaid administrative and priority claims, as well as any costs incurred in administering the chapter 7 cases.

57. For the reasons set forth above and in the Confirmation Declarations, the Debtors believe that the Plan clearly provides recovery greater than the recovery in a chapter 7 for Holders of Allowed Claims, and, therefore, the Plan complies with Bankruptcy Code section 1129(a)(7) and meets the requirements of the "best interests" test.

**H. The Combined Disclosure Statement and Plan Has Been Accepted by an Impaired Voting Class—11 U.S.C. § 1129(a)(8).**

58. Bankruptcy Code section 1129(a)(8) requires that each class of claims and interests either has accepted or is not impaired under a chapter 11 plan.[41] The Plan is a joint plan for each of the Debtors and presents together Classes of Claims against, and Interests in, the Debtors, as described in Articles II and VII of the Plan. As set forth in Article II of the Combined Disclosure Statement and Plan, Classes 1, 2, 4, 5, and 6 are Unimpaired under the Combined Disclosure Statement and Plan and are conclusively presumed to have accepted the Plan pursuant to Bankruptcy Code section 1126(f). As discussed above, Class 3 is Impaired, and deemed to accept the Plan pursuant to the Falko Sale Order, and Class 7 Interests at AeroCentury Corp., which is the only class of Impaired Claims and Interests entitled to vote to accept or reject the Combined Disclosure Statement and Plan, has overwhelmingly voted to accept the Combined Disclosure Statement and Plan pursuant to Bankruptcy Code section 1126(c). Accordingly, all Classes of Claims and Interests have accepted the Plan

**I. The Combined Disclosure Statement and Plan Provides for Payment in Full of All Allowed Priority Claims—11 U.S.C. § 1129(a)(9).**

59. Bankruptcy Code section 1129(a)(9) requires that all claims entitled to priority pursuant to Bankruptcy Code section 507(a) be paid in full in cash unless the holders thereof agree

[41] *See* 11 U.S.C. § 1129(a)(8).

to a different treatment.[42] As required by Bankruptcy Code section 1129(a)(9), Articles VI and VII of the Plan provide for full payment to all Holders of Administrative Claims, Other Secured Claims, Priority Claims, and Priority Non-Tax Claims.

60. Section 6.1 of the Combined Disclosure Statement and Plan provides that each Holder of an Allowed Administrative Claim shall receive in full and final satisfaction, settlement, and release of and in exchange for such Allowed Administrative Claim: (a) Cash equal to the amount of such Allowed Administrative Claim; or (b) such other treatment as to which the Debtors or Reorganized Debtors, as applicable, and the Holder of such Allowed Administrative Claim shall have agreed upon in writing.

61. Section 6.2 of the Plan provides that within the time period provided in Article X of the Plan, each Holder of an Allowed Priority Tax Claim shall receive in full and final satisfaction, settlement, and release of and in exchange for such Allowed Priority Tax Claim: (a) Cash equal to the amount of such Allowed Priority Tax Claim; or (b) such other treatment as to which the Debtors or the Reorganized Debtors, as applicable, and the Holder of such Allowed Priority Tax Claim shall have agreed upon in writing.

62. Section 7.1 of the Combined Disclosure Statement and Plan provides that each Holder of an Allowed Priority Non-Tax Claim shall receive in full and final satisfaction, settlement, and release of and in exchange for such Allowed Class 1 Claim: (a) Cash equal to the amount of such Allowed Priority Non-Tax Claim; or (b) such other treatment which the Debtors or Reorganized Debtors, as applicable, and the Holder of such Allowed Priority Non-Tax Claim have agreed upon in writing.

[42] *See* 11 U.S.C. § 1129(a)(9).

63. In addition, Section 7.2 of the Combined Disclosure Statement and Plan provides that each Holder of an Allowed Other Secured Claim shall receive in full and final satisfaction, settlement, and release of and in exchange for such Allowed Class 2 Claim: (a) return of the collateral securing such Allowed Other Secured Claim; (b) Cash equal to the amount of such Allowed Other Secured Claim; or (c) such other treatment which the Debtors or the Reorganized Debtors, as applicable, and the Holder of such Allowed Other Secured Claim have agreed upon in writing.

64. Accordingly, the Debtors submit that the Combined Disclosure Statement and Plan complies with Bankruptcy Code section 1129(a)(9).

### J. At Least One Impaired, Non-Insider Class Has Accepted the Plan—11 U.S.C. § 1129(a)(10).

65. Bankruptcy Code section 1129(a)(10) requires that at least one impaired class of claims must accept the plan, excluding the votes of insiders.[43] Prepetition Loan Claims are Impaired and were deemed to accept the Plan pursuant to the Falko Sale order. In addition, Class 7 Interests at AeroCentury Corp. are Impaired and voted to accept the Plan. Accordingly, both Impaired Classes of Claims or Interests accepted the Plan, excluding the votes of insiders, and as set forth above, the Voting Class has accepted the Combined Disclosure Statement and Plan. Accordingly, the Combined Disclosure Statement and Plan satisfies the requirements of Bankruptcy Code section 1129(a)(10).

### K. The Plan is Feasible—11 U.S.C. § 1129(a)(11).

66. Pursuant to Bankruptcy Code section 1129(a)(11), a chapter 11 plan may be confirmed only if "[c]onfirmation of the plan is not likely to be followed by the liquidation, or the

[43] *See* 11 U.S.C. § 1129(a)(10).

need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan."[44] Pursuant to Bankruptcy Code section 1129(a)(11), the Court must determine, among other things, that confirmation of the Plan is not likely to be followed by the liquidation or need for further financial reorganization of the Debtors or any successors to the Debtors under Plan (unless such liquidation or reorganization is proposed in the Plan). These conditions are referred to as the "feasibility" of the Plan.

67. The Confirmation Declarations establish that the Reorganized Debtors will be solvent as of the Effective Date after giving effect to the Restructuring Transactions and therefore there is reasonable assurance of the Plan's success and confirmation of the Plan is not likely to be followed by a liquidation or the need for further financial reorganization of the debtors, and thus, the Plan is feasible within the meaning of section 1129(a)(11).

**L. All Statutory Fees Have or Will Be Paid—11 U.S.C. § 1129(a)(12).**

68. Bankruptcy Code section 1129(a)(12) provides that a court may confirm a chapter 11 plan only if "[a]ll fees payable under section 1930 of title 28, as determined by the court at the hearing on confirmation of the plan, have been paid or the plan provides for the payment of all such fees on the effective date of the plan."[45] Section 6.1(d) of the Combined Disclosure Statement and Plan provides for the payment, on or before the Effective Date, of any fees due pursuant to section 1930 of title 28 of the United States Code or other statutory requirement. Therefore, the Combined Disclosure Statement and Plan meets the requirements of Bankruptcy Code section 1129(a)(12).

[44] 11 U.S.C. § 1129(a)(11).

[45] 11 U.S.C. § 1129(a)(12).

**M. The Combined Disclosure Statement and Plan Appropriately Treats Retiree Benefits—11 U.S.C. § 1129(a)(13).**

69. Bankruptcy Code section 1129(a)(13) requires that a chapter 11 plan provide for the continued payment of certain retiree benefits "for the duration of the period that the debtor has obligated itself to provide such benefits."[46] The Debtors have no obligations to provide any such retiree benefits, and, accordingly, Bankruptcy Code section 1129(a)(13) is inapplicable to the Combined Disclosure Statement and Plan.

**N. Bankruptcy Code Sections 1129(a)(14)–(16) are Inapplicable.**

70. None of the Debtors are (a) required to pay any domestic support obligations, (b) individuals, or (c) nonprofit corporations or trusts. Accordingly, Bankruptcy Code sections 1129(a)(14) through (16) is not applicable.[47]

**O. The Combined Disclosure Statement and Plan Is Not an Attempt to Avoid Tax Obligations—11 U.S.C. § 1129(d).**

71. Bankruptcy Code section 1129(d) provides that a court may not confirm a plan if the principal purpose of the plan is to avoid taxes or the application of Section 5 of the Securities Act of 1933 (the "Securities Act").[48] The Combined Disclosure Statement and Plan meets these requirements because the principal purpose of the Plan is not the avoidance of taxes or the avoidance of the application of the Securities Act, and no party in interest has filed an objection alleging otherwise. The principal purpose of the Combined Disclosure Statement and Plan is to effectuate the Debtors' orderly reorganization, in a timely and efficient manner, through a

[46] 11 U.S.C. § 1129(a)(13).

[47] *See In re Sea Launch Co., L.L.C.*, No. 09-12153 (BLS), 2010 Bankr. LEXIS 5283, at *41 (Bankr. D. Del. July 30, 2010) ("Section 1129(a)(16) by its terms applies only to corporations and trusts that are *not* moneyed, business, or commercial.").

[48] *See* 11 U.S.C. § 1129(d).

Distribution mechanism that will maximize creditor recoveries. Accordingly, the Combined Disclosure Statement and Plan satisfies the requirements of Bankruptcy Code section 1129(d).

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## VI. CONCLUSION

72. For the reasons set forth in this Memorandum, the Debtors respectfully request that the Court enter an order confirming the Combined Disclosure Statement and Plan, in substantially the form of the proposed Confirmation Order the Debtors have filed concurrently herewith.

Dated: August 30, 2021
Wilmington, Delaware

*/s/ Joseph M. Mulvihill*

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