

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

-----X  
:  
In re : Chapter 11  
:  
AEROCENTURY CORP., *et al.*, : Case No. 21-10636 (JTD)  
:  
Debtors.<sup>1</sup> : (Jointly Administered)  
:  
: **Hearing Date: October 26, 2021 at 1:00 p.m. (ET)**  
: **Objection Deadline: October 13, 2021 at 4:00 p.m. (ET)**  
-----X

**DEBTORS' MOTION FOR ENTRY OF AN ORDER  
AUTHORIZING THE DEBTORS TO (A) REJECT THAT CERTAIN  
UNEXPIRED LEASE BETWEEN DEBTORS AND 1440 CHAPIN OWNER, LLC  
EFFECTIVE AS OF SEPTEMBER 30, 2021 AND (B) GRANTING RELATED RELIEF**

The debtors and debtors in possession in the above-captioned case (collectively, the “Debtors”) hereby submit this motion (this “Motion”) for entry of an order, substantially in the form attached hereto as **Exhibit A** (the “Proposed Order”), authorizing the Debtors to (a) reject that certain Lease Agreement by and between Debtor JetFleet Management Corp. and 1440 Chapin Owner, LLC dated as of August 1, 2020 (including any and all amendments thereto, the “Rejected Lease”), effective as of September 30, 2021 (the “Rejection Date”), and (b) abandon any personal property remaining at the premises related to the Rejected Lease (the “Premises”) as of the Rejection Date. In support of this Motion, the Debtors respectfully represent as follows:

**JURISDICTION AND VENUE**

1. The Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012. This is a core proceeding pursuant to 28

---

<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 94010.



211063621092900000000001

U.S.C. § 157(b), and the Debtors consent, pursuant to Local Rule 9013-1(f), to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory and legal predicates for the relief sought herein are sections 105(a), 365(a), and 554(a) of the Bankruptcy Code and Rules 6006 and 6007 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

### **BACKGROUND**

#### **A. General Background**

3. On March 29, 2021 (the “Petition Date”), the Debtors commenced these bankruptcy cases (the “Chapter 11 Cases”) by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code. The Debtors are authorized to continue to operate their business and manage their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No official committees have been appointed in these Chapter 11 Cases and no request has been made for the appointment of a trustee or examiner.

4. On May 21, 2021, and May 28, 2021, the Court entered three orders authorizing the sales of certain of the Debtors’ assets [D.I. 148, 172, & 173] (collectively, the “Sales”).

5. On August 31, 2021, the Court entered an order [Docket No. 296] confirming the *Combined Disclosure Statement and Joint Chapter 11 Plan of AeroCentury Corp., and its Affiliated Debtors* [Docket No. 225] (the “Plan”). The Plan has not yet gone effective.

6. Additional factual background relating to the Debtors’ business, capital structure, and the commencement of these Chapter 11 Cases is set forth in the *Declaration of Harold M.*

*Lyons in Support of Chapter 11 Petition and First-Day Pleadings*, [Docket No. 2] (the “First Day Declaration”),<sup>2</sup> which is incorporated herein by reference.

## **B. The Rejected Lease**

7. Prior to the Sales, the Debtors were engaged in the business of investing in used regional aircraft and leasing the aircraft to foreign and domestic regional air carriers. In connection with the operation of their business, on August 18, 2020, the Debtors and 1440 Chapin Owner, LLC (the “Landlord” and together with the Debtors, the “Parties”) entered into the Rejected Lease for the lease of the premises at 1440 Chapin Avenue, Burlingame, CA 9414 (the “Premises”). The Debtors used the Premises as their corporate offices and for their corporate headquarters. However, due to the worldwide COVID-19 pandemic and locally-imposed “shelter in place” orders, the Debtors had only minimal use of the Premises beginning in March of 2020.

8. The Debtors understand that the Plan Sponsor does not intend to assume the Lease or utilize the Premises. Following the Plan Sponsor’s determination not to assume the Lease, the Debtors engaged with the Landlord to discuss potential options in relation to the Rejected Lease. Ultimately, however, the Debtors were unable to reach an agreement with the Landlord. Accordingly, the Debtors determined, in their business judgment, to reject the Rejected Lease.

9. Prior to the filing of this Motion, the Debtors notified the Landlord that they were unequivocally surrendering possession of the Premises and abandoning any Debtor-owned personal property remaining on the Premises as of the Rejection Date.

---

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

**C. Remaining Property**

10. The Rejected Lease contains certain property that belongs to the Debtors, including, but not limited to, books and records, equipment, fixtures, furniture and other personal property (the “Remaining Property”). Before the Debtors vacated the Premises, the Debtors evaluated the Remaining Property located at the Premises and determined that (a) the Remaining Property is of inconsequential value or (b) the cost of removing and storing the Remaining Property for future use, marketing, or sale exceeded its value to the Debtors’ estates.

11. Accordingly, to reduce administrative costs and in the exercise of the Debtors’ sound business judgment, the Debtors believe that the abandonment of the Remaining Property is appropriate and in the best interests of the Debtors, their estates, and their creditors.

**RELIEF REQUESTED**

12. By this Motion, and in order to preserve and maximize the value of their estates and minimize costs to the Debtors’ go-forward business, the Debtors seek to (a) reject the Rejected Lease, effective as of September 30, 2021, and (b) abandon any Remaining Property. In light of the Debtors’ efforts to preserve and maximize the value of their estates through these Chapter 11 Cases, and to avoid incurring any future costs and expenses, the Debtors submit that such relief is necessary and appropriate.

**BASIS FOR RELIEF**

13. Section 365(a) of the Bankruptcy Code provides, in pertinent part, that a debtor-in-possession “subject to the court’s approval, may assume or reject any executory contract or unexpired lease of the debtor.” 11 U.S.C. § 365(a). As courts have held, “[t]he purpose behind allowing the assumption or rejection of executory contracts is to permit the trustee or debtor-in-possession to use valuable property of the estate and to ‘renounce title to and abandon burdensome

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

14. The standard applied to determine whether the rejection of an executory contract should be authorized is the “business judgment” standard. See *Sharon Steel Corp. v. Nat’l Fuel Gas Distr. Corp.*, 872 F.2d 36, 40 (3d Cir. 1989); see also *In re HQ Global Holdings, Inc.*, 290 B.R. 507, 513 (Bankr. D. Del. 2003) (stating that a debtor’s decision to reject an executory contract is governed by the business judgment standard and can only be overturned if the decision was the “product of bad faith, whim, or caprice”). Once a debtor states a valid business justification, “[t]he business judgment rule ‘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 taken was in the best interests of the company.’” *Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.)*, 147 B.R. 650, 656 (S.D.N.Y. 1992) (quoting *Smith v. Van Gorkom*, 488 A.2d 858, 872 (Del. 1985)).

15. The business judgment rule is crucial in chapter 11 cases and shields a debtor’s management from judicial second-guessing. See *Comm. of Asbestos Related Litigants and/or Creditors v. Johns-Manville Corp.*, 60 B.R. 612, 615–16 (Bankr. S.D.N.Y. 1986) (“The Code favors the continued operation of a business by a debtor and a presumption of reasonableness attached to a debtor’s management decisions.”). Generally, courts defer to a debtor-in-possession’s business judgment to reject a lease or other executory contract. See, e.g., *NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 523 (1984); *In re Minges*, 602 F.2d 38, 43 (2d Cir. 1979); *In re Riodizio*, 204 B.R. 417, 424–25 (Bankr. S.D.N.Y. 1997); *In re G Survivor Corp.*, 171 B.R. 755, 757 (Bankr. S.D.N.Y. 1994).

16. Upon finding that the Debtors have exercised sound business judgment in determining that rejection of the Rejected Lease, effective as of the Rejection Date, is in the best interests of the Debtors and their estates, the Court should approve the proposed rejection under section 365(a) of the Bankruptcy Code. *See, e.g., Westbury Real Estate Ventures, Inc. v. Bradlees, Inc. (In re Bradlees Stores, Inc.)*, 194 B.R. 555, 558 n.1 (Bankr. S.D.N.Y. 1996); *see also Summit Land Co. v. Allen (In re Summit Land Co.)*, 13 B.R. 310, 315 (Bankr. D. Utah 1981) (holding that, absent extraordinary circumstances, court approval of a debtor's decision to assume or reject an executory contract "should be granted as a matter of course"). If a debtor's business judgment has been reasonably exercised, a court should approve the assumption or rejection of an executory contract. *See, e.g., Sharon Steel Corp.*, 872 F.2d at 39–40.

17. As an integral component of their effort to preserve and maximize the value of their estate and to reduce the obligations on their go-forward business by, among other things, eliminating unnecessary costs, the Debtors have determined, in their business judgment, that the Rejected Lease is burdensome and provides no economic value to their estates. The Rejected Lease is unnecessary to the Debtors' go-forward operations, and the Debtors notified the Landlord of the termination of the Rejected Lease prior to the Rejection Date.

18. To avoid paying any unnecessary expenses related to the Rejected Lease, the Debtors seek to reject the Rejected Lease effective as of September 30, 2021. The Court has routinely authorized a debtor's retroactive rejection of unexpired contracts or leases. *See In re Chi-Chi's, Inc.*, 305 B.R. 396, 399 (Bankr. D. Del. 2004); *see also In re Fleming Cos., Inc.*, 304 B.R. 85, 96 (Bankr. D. Del. 2003) (rejection permitted to be effective as of the date of the motion or the date the premises surrendered).

19. The facts and circumstances of these Chapter 11 Cases and the balance of the equities favor the Debtors' rejection of the Rejected Lease effective as of the Rejection Date. Without a retroactive date of rejection, the Debtors may incur unnecessary charges. Moreover, the Landlord will not be unduly prejudiced if the Rejected Lease is rejected effective as of Rejection Date because the Debtors notified the Landlord of such rejection, and the Debtors will serve this Motion on the Landlord and/or its agent or representative by overnight delivery and, if possible, electronic mail, stating that the Debtors intend to reject the Rejected Lease effective as of the Rejection Date.

20. Therefore, as it is in the Debtors' and their estates' best interest to eliminate the potential incurrence of administrative claims, and to avoid the potential accrual of any further obligations under the Rejected Lease, the Debtors respectfully submit that the retroactive rejection of the Rejected Lease effective as of September 30, 2021 is appropriate.

21. In light of the foregoing facts and circumstances, the Debtors respectfully submit that its rejection of the Rejected Lease under section 365(a) of the Bankruptcy Code, effective as of September 30, 2021, is a sound exercise of its business judgment and is necessary, prudent, and in the best interests of the Debtors, their estates, and their creditors.

22. Further, the abandonment of the Remaining Property is appropriate and authorized by the Bankruptcy Code. *See* 11 U.S.C. § 554(a). Section 554(a) provides that "[a]fter notice and a hearing, the trustee may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate." *Id.* Courts generally give a debtor in possession great deference to its decision to abandon property. *See In re Vel Rey Props., Inc.*, 174 B.R. 859, 867 (Bankr. D.D.C. 1994) ("Clearly, the court should give deference to the trustee's judgment in such matters."). Unless certain property is harmful to the public, once a debtor has

shown that it is burdensome or of inconsequential value to the estate, a court should approve the abandonment. *Id.*

23. Before deciding to abandon any Remaining Property, the Debtors determined that the costs of moving and storing such Remaining Property outweighed any benefit to the Debtors' estates. Further, any efforts by the Debtors to move or market the Remaining Property would have unnecessarily delayed the Debtors' rejection of the Rejected Lease.

24. Accordingly, the Debtors respectfully submit that the Court deem the Rejected Lease rejected effective as of the Rejection Date and authorize the Debtors to abandon the Remaining Property as of such date.

#### **RESERVATION OF RIGHTS**

25. Nothing contained herein should be construed as a waiver of any of the Debtors' rights, defenses, or counterclaims with respect to the Rejected Lease. Nor does anything contained herein constitute an acknowledgement that a particular Rejected Lease constitutes an executory contract under section 365 of the Bankruptcy Code, and has not otherwise expired by its own terms or upon agreement of the parties as of the date hereof.

#### **NOTICE**

26. Notice of this Motion has been provided to: (i) the Office of the United States Trustee for the District of Delaware; (ii) the Debtors' five (5) largest unsecured creditors; (iii) counsel to the prepetition lender; (iv) the Landlord (via overnight delivery); and (v) any party that has requested notice 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.

**CONCLUSION**

WHEREFORE, the Debtors request entry of the Proposed Order granting the relief requested herein and such other and further relief as is just and proper.

Dated: September 29, 2021  
Wilmington, Delaware

/s/ Joseph M. Mulvihill

Joseph M. Barry (No. 4221)

Ryan M. Bartley (No. 4985)

Joseph M. Mulvihill (No. 6061)

S. Alexander Faris (No. 6278)

**YOUNG CONAWAY STARGATT & TAYLOR, LLP**

1000 N. King Street

Rodney Square

Wilmington, Delaware 19801

Telephone: (302) 571-6600

Facsimile: (302) 571-1253

E-mails: jbarry@ycst.com

rbartley@ycst.com

jmulvihill@ycst.com

afaris@ycst.com

-and-

Lorenzo Marinuzzi (admitted *pro hac vice*)

Raff Ferraioli (admitted *pro hac vice*)

**MORRISON & FOERSTER LLP**

250 West 55th Street

New York, NY 10019-9601

Telephone: (212) 468-8000

Facsimile: (212) 468-7900

E-mails: lmarinuzzi@mofo.com

erichards@mofo.com

*Counsel to the Debtors and Debtors in Possession*

**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 (JTD)
	:	
Debtors. <sup>1</sup>	:	(Jointly Administered)
	:	
	:	<b>Hearing Date: October 26, 2021 at 1:00 p.m. (ET)</b>
	:	<b>Objection Deadline: October 13, 2021 at 4:00 p.m. (ET)</b>
	X	

**NOTICE OF MOTION**

TO: (I) THE OFFICE OF THE UNITED STATES TRUSTEE FOR THE DISTRICT OF DELAWARE; (II) THE DEBTORS' FIVE (5) LARGEST UNSECURED CREDITORS; (III) COUNSEL TO THE PREPETITION LENDER; (IV) THE LANDLORD (VIA OVERNIGHT DELIVERY); AND (V) ANY PARTY THAT HAS REQUESTED NOTICE PURSUANT TO BANKRUPTCY RULE 2002.

**PLEASE TAKE NOTICE** that the debtors and debtors in possession in the above-captioned cases (the "Debtors") have filed the attached *Debtors' Motion for Entry of an Order Authorizing the Debtors to (A) Reject That Certain Unexpired Lease Between Debtors and 1440 Chapin Owner, LLC Effective as of September 30, 2021 and (B) Granting Related Relief* (the "Motion").

**PLEASE TAKE FURTHER NOTICE** that any objections to the Motion must be filed on or before **October 13, 2021 at 4:00 p.m. (ET)** (the "Objection Deadline") with the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 3rd Floor, Wilmington, Delaware 19801. At the same time, you must serve a copy of the objection upon the undersigned proposed counsel to the Debtors so as to be received on or before the Objection Deadline.

**PLEASE TAKE FURTHER NOTICE THAT A HEARING TO CONSIDER THE MOTION WILL BE HELD ON **OCTOBER 26, 2021 AT 1:00 P.M. (ET)** BEFORE THE HONORABLE JOHN T. DORSEY, UNITED STATES BANKRUPTCY COURT JUDGE FOR THE DISTRICT OF DELAWARE.**

---

<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 94010.

**PLEASE TAKE FURTHER NOTICE THAT, IF YOU FAIL TO RESPOND  
IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF  
REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR A HEARING.**

Dated: September 29, 2021  
Wilmington, Delaware

/s/ Joseph M. Mulvihill

Joseph M. Barry (No. 4221)

Ryan M. Bartley (No. 4985)

Joseph M. Mulvihill (No. 6061)

S. Alexander Faris (No. 6278)

**YOUNG CONAWAY STARGATT & TAYLOR, LLP**

1000 N. King Street

Rodney Square

Wilmington, Delaware 19801

Telephone: (302) 571-6600

Facsimile: (302) 571-1253

E-mails: jbarry@ycst.com

rbartley@ycst.com

jmulvihill@ycst.com

afaris@ycst.com

-and-

Lorenzo Marinuzzi (admitted *pro hac vice*)

Raff Ferraioli (admitted *pro hac vice*)

**MORRISON & FOERSTER LLP**

250 West 55th Street

New York, NY 10019-9601

Telephone: (212) 468-8000

Facsimile: (212) 468-7900

E-mails: lmarinuzzi@mofo.com

rferraioli@mofo.com

*Counsel to the Debtors and Debtors in Possession*

**EXHIBIT A**

**Proposed Order**

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

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

**ORDER (A) AUTHORIZING THE DEBTORS TO  
REJECT THAT CERTAIN UNEXPIRED LEASE EFFECTIVE  
AS OF SEPTEMBER 30, 2021 AND (B) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)<sup>2</sup> of the Debtors for the entry of an order, pursuant to sections 105(a), 365(a), and 554(a) of the Bankruptcy Code, authorizing the Debtors to (a) reject the Rejected Lease effective as of September 30, 2021, and (b) abandon the Remaining Property remaining at the Premises as of the Rejection Date; and upon consideration of the First Day Declaration and the record of these Chapter 11 Cases; and having determined that this Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 1334 and 157, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated February 29, 2012; and having determined that this is a core matter pursuant to 28 U.S.C. § 157(b)(2) and that this Court may enter a final order consistent with Article III of the United States Constitution; and having determined that venue of these Chapter 11 Cases and of the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and having determined that due and adequate notice of the Motion has been given under the circumstances, and that no other or further notice need be given; and having determined that the relief requested in the Motion is in the best interests

---

<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 94010.

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

of the Debtors, their estate, its creditors, and other parties in interest; and after due deliberation and sufficient cause appearing therefor;

**IT IS HEREBY ORDERED THAT:**

1. The Motion is GRANTED as set forth herein.
2. Pursuant to sections 105(a) and 365(a) of the Bankruptcy Code and Bankruptcy Rule 6006, the Rejected Lease, to the extent not already terminated in accordance with its applicable terms, is hereby rejected by the Debtors, with such rejection being effective as of September 30, 2021.
3. The Debtors are authorized, but not directed, to abandon the Remaining Property that is owned by the Debtors and located on the Premises. Any furniture, fixtures, and equipment, or other personal property remaining on the Premises as of the Rejection Date is deemed abandoned effective as of the Rejection Date without further order of this Court.
4. Any person or entity that holds a claim that arises from the Rejected Lease must file a proof of claim based on such rejection **on or before November 1, 2021**.
5. Nothing in this Order shall impair, prejudice, waive, or otherwise affect any rights of the Debtors or their estates to assert that any claims for damages arising from the Debtors' rejection of the Rejected Lease are limited to any remedies available under any applicable termination provisions of such Rejected Lease, or that any such claims are obligations of a third party, and not those of the Debtors or their estates.
6. The Debtors are authorized to execute and deliver all instruments and documents, and take such other actions as may be necessary or appropriate, to implement and effectuate the relief granted by this Order.

7. The rights of the Debtors and their estates to assert that Rejected Lease was terminated prior to the date hereof are fully preserved, and the Debtors and their estates do not waive any claims that they may have against the Landlord, whether or not such claims arise under, are related to the rejection of, or are independent of the Rejected Lease.

8. This Order is immediately effective and enforceable, notwithstanding the possible applicability of Bankruptcy Rule 6004(h) or otherwise.

9. The requirements in Bankruptcy Rules 6006 and 6007 is satisfied.

10. This Court retains jurisdiction with respect to all matters arising from or related to the implementation or interpretation of this Order.