

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

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	:	Chapter 11
In re	:	
	:	Case No. 21-10670 (KBO)
TECT AEROSPACE GROUP	:	
HOLDINGS, INC., et al.,	:	(Jointly Administered)
	:	
Debtors.¹	:	Objection Deadline: October 21, 2021 at 4:00 p.m. (ET)
	:	Hearing Date: October 28, 2021 at 2:00 p.m. (ET)
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MOTION OF DEBTORS FOR ENTRY OF AN ORDER
(I) EXTENDING TIME TO ASSUME OR REJECT UNEXPIRED LEASES OF
NONRESIDENTIAL REAL PROPERTY AND (II) GRANTING RELATED RELIEF

TECT Aerospace Group Holdings, Inc. and its debtor affiliates in the above-captioned chapter 11 cases, as debtors and debtors in possession (collectively, the “**Debtors**”), respectfully represent as follows in support of this motion (the “**Motion**”):²

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: TECT Aerospace Group Holdings, Inc. (9338); TECT Aerospace Kansas Holdings, LLC (4241); TECT Aerospace Holdings, LLC (9112); TECT Aerospace Wellington Inc. (4768); TECT Aerospace, LLC (8650); TECT Hypervelocity, Inc. (8103); and Sun Country Holdings, LLC (6079). The Debtors’ mailing address is TECT Aerospace Group Holdings, Inc., c/o Conway MacKenzie, LLC, Attn: Shaun Martin, 265 Franklin Street, Suite 1004, Boston, MA 02110.

² On October 1, 2021, Utica Realty Park City LLC and Utica Realty Wellington LLC (together, the “**Utica Lessors**”) filed a motion [D.I. 514] (the “**Utica Motion**”) to fix the deadline for the Debtors to assume or reject unexpired leases of non-residential real property. The hearing on the Utica Motion is currently scheduled for October 19, 2021 at 1:00 p.m. (the “**October 19 Hearing**”). The Debtors believe that the Utica Motion is procedurally improper. *See, e.g.*, May 4, 2020 Transcript at 5–8, *In re Lucky’s Market Parent Co., LLC*, Case No. 20-10166 (JTD) (Bankr. D. Del.) (D.I. 713) (holding section 365(d) only allows a commercial landlord to oppose a debtor’s extension motion or compel compliance with section 365(d)(3), not compel assumption or rejection). In any event, the Debtors have requested that the Utica Lessors either (i) withdraw the Utica Motion because it has been rendered moot by the filing of this Motion or (ii) schedule the Utica Motion for hearing on October 28, 2021 (*i.e.*, before the November 1, 2021 Assumption/Rejection Deadline (as defined below)) so it can be considered with this Motion. As of the filing of this Motion, however, the Utica Lessors have not indicated an intent to do either. To the extent the Utica Lessors do not withdraw or continue the Utica Motion, this Motion is also an objection to the Utica Motion. The Debtors reserve the right to raise additional arguments in opposition to the Utica Motion at the October 19 Hearing or any other hearing thereon.

INTRODUCTION

1. By this Motion, the Debtors seek the incremental 90-day extension of the deadline to assume or reject unexpired leases provided by the Bankruptcy Code in connection with the ongoing Designation Rights Period pursuant to the Kansas Sale (each as defined herein). For reasons discussed herein, the Debtors respectfully submit that cause exists to grant the requested extension.

BACKGROUND

2. On April 5, 2021 (the “**Petition Date**”), the Debtors commenced with this Court voluntary cases under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”). The Debtors are authorized to continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in these chapter 11 cases. On April 20, 2021, the Office of the United States Trustee for the District of Delaware (the “**U.S. Trustee**”) appointed the official committee of unsecured creditors (the “**Committee**”). *See* D.I. 76.

3. The Debtors’ chapter 11 cases are being jointly administered for procedural purposes only pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) and Rule 1015-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”).

4. Additional information regarding the Debtors’ business and capital structure and the circumstances leading to the commencement of these chapter 11 cases is set forth in the *Declaration of Shaun Martin in Support of Chapter 11 Petitions and First Day Pleadings* [D.I. 13] (the “**First Day Declaration**”), filed on April 6, 2021, and incorporated herein by reference.

5. In connection with their operations as manufacturers in the aerospace industry, prior to the sale of their Kansas operations, the Debtors operated two manufacturing facilities in

Kansas, one each in Park City, Kansas and Wellington, Kansas. The Debtors leased (the “**Unexpired Leases**”) those facilities from Utica Realty Park City, LLC and Utica Realty Wellington, LLC, two non-debtor affiliates (the “**Lessors**”).

6. On May 21, 2021, the Debtors filed a motion seeking authorization to, among other things, sell substantially all of their assets related to their Kansas manufacturing business. *See* D.I. 192. On July 13, 2021, the Court entered an order [D.I. 372] (the “**Kansas Sale Order**”) approving, among other things, the sale of the Kansas assets to Central Kansas Aerospace Manufacturing, LLC (the “**Buyer**”) in accordance with the Asset Purchase Agreement appended to the Kansas Sale Order (the “**Kansas APA**” and the sale, the “**Kansas Sale**”). *See* D.I. 372, Ex. 1. The Kansas Sale closed on August 6, 2021, whereby the Debtors sold substantially all of their assets associated with their Kansas operations to the Buyer. *See* D.I. 418. Since the closing, the Buyer has operated the Debtors’ former business at the Wellington and Park City facilities.

7. In connection with the Kansas Sale, pursuant to the Kansas Sale Order and the Kansas APA, all contracts other than assumed contracts are being held by the Debtors and not rejected pursuant to section 365 of the Bankruptcy Code in accordance with a designation rights period that the Buyer acquired under the Kansas APA (the “**Designation Rights Period**”). With respect to executory contracts, the Designation Rights Period currently ends on December 4, 2021. *See* D.I. 372 ¶ 23; Kansas APA § 7.1(d). With respect to unexpired leases of nonresidential real property, the Designation Rights Period ends “on the date specified as the deadline for assumption or rejection . . . pursuant to Section 365(d)(4) of the Bankruptcy Code.” Kansas APA § 7.1(d). Since the closing of the Kansas Sale, the Buyer has been evaluating the Debtors’ executory contracts and unexpired leases, and has designated numerous contracts for either assumption or rejection. *See* D.I. 406, 458, 471, 472, 531.

8. Given the Buyer's ongoing evaluation of the Debtors' contracts pursuant to the Designation Rights Period, and to preserve flexibility with respect to the Unexpired Leases as these chapter 11 cases proceed, the Debtors seek an extension of the November 1, 2021 deadline to assume or reject the Unexpired Leases through and including January 30, 2022.

JURISDICTION

9. This Court has jurisdiction to consider this matter 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 February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b).

10. Pursuant to Local Rule 9013-1(f), the Debtors consent 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 consistent with Article III of the United States Constitution. Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

RELIEF REQUESTED

11. By this Motion, pursuant to section 365(d)(4) of the Bankruptcy Code, the Debtors request entry of an order (i) granting an extension of the period to assume or reject unexpired leases of non-residential real property (the "**Assumption/Rejection Deadline**") for an additional 90 days through and including January 30, 2022, in accordance with section 365(d)(4) of the Bankruptcy Code, and (ii) granting related relief. Such an extension would be without prejudice to the Debtors' rights to seek further extensions with the consent of the affected landlords, as provided by section 365(d)(4)(B)(ii) of the Bankruptcy Code.

12. A proposed form of order approving the relief requested herein is attached hereto as **Exhibit A** (the "**Proposed Order**").

BASIS FOR RELIEF REQUESTED

13. Prior to the recent amendments to the Bankruptcy Code, section 365(d)(4) provided both a 120-day window and a discretionary 90-day extension for the assumption or rejection of an unexpired nonresidential lease:

(A) Subject to subparagraph (B), an unexpired lease of nonresidential property under which the debtor is the lessee shall be deemed rejected, and the trustee shall immediately surrender that nonresidential real property to the lessor, if the trustee does not assume or reject the unexpired lease by the earlier of -

(i) the date that is 120 days after the date of the order for relief; or

(ii) the date of the entry of an order confirming the plan.

(B)(i) The court may extend the period determined under subparagraph (A), prior to the expiration of the 120-day period, for 90 days on the motion of the trustee or lessor for cause.

(ii) if the court grants an extension under clause (i), the court may grant a subsequent extension only upon prior written consent of the lessor in each instance.

11 U.S.C. § 365(d)(4).

14. On December 27, 2020, the Consolidated Appropriations Act, 2021 (the “Act”) was signed into law. The Act amended section 365(d)(4)(A)(i) of the Bankruptcy Code to provide debtors with an initial 210 days (as opposed to 120 days) from the filing date to assume or reject unexpired nonresidential leases. Consequently, the Assumption/Rejection Deadline currently is November 1, 2021. The Act maintains the Bankruptcy Code’s provision for an additional 90-day extension of such deadline to assume or reject unexpired residential leases “for cause” and did not change any other aspects of that section. *See* Consolidated Appropriations Act, 2021, H.R. 133, 116th Cong. Title X, Sec. 1001(f) (2020); *see also* 11 U.S.C. § 365(d)(4)(B).

15. Courts consider the following nonexclusive factors to determine whether “cause” exists for purposes of a section 365(d)(4) extension:

- (a) whether the debtor is paying for the use of the property;
- (b) whether the debtor's continued occupation could damage the lessor beyond the compensation available under the Bankruptcy Code;
- (c) whether the lease is the debtor's primary asset;
- (d) whether the debtor has had sufficient time to formulate a plan of reorganization;
- (e) the complexity of the case facing the debtor; and
- (f) the number of leases the debtor must evaluate.

See South St. Seaport L.P. v. Burger Boys, Inc. (In re Burger Boys, Inc.), 94 F.3d 755, 760–61 (2d Cir. 1996); *see also In re Wedtech Corp.*, 72 B.R. 464, 471–72 (Bankr. S.D.N.Y. 1987); *In re Channel Home Ctrs., Inc.*, 989 F.2d 682, 689 (3d Cir. 1993), *cert. denied*, 510 U.S. 865 (1993) (“[I]t is permissible for a bankruptcy court to consider a particular debtor’s need for more time in order to analyze leases in light of the plan it is formulating.”) (citing *Wedtech*, 72 B.R. at 471–72); *In re GST Telecom Inc.*, No. 00-1982-GMS, 2001 WL 686971, at *3 (D. Del. June 8, 2001) (holding “equity dictates that courts can grant debtors additional time in which to decide whether to assume or reject a particular lease”).

16. Here, the Debtors respectfully submit that application of these factors demonstrates that cause exists to extend the Assumption/Rejection Deadline. First, the Sale Order obligates the Buyer to pay continued rent and other obligations under the Unexpired Leases pursuant to section 365(d)(3), and the Buyer has done so to date. Second, maintenance of the Unexpired Leases will not harm the Lessors, as the premises will continue to be used for the intended purposes under the Unexpired Leases and the Buyer will continue to pay rent therefor until the earliest of the Designation Rights Period’s termination (*i.e.*, the proposed extended Assumption/Rejection Deadline), the confirmation of any chapter 11 plan, and the Buyer’s election to designate the Unexpired Leases for rejection. Third, the Debtors, the Committee, and the Secured Lender are in

the process of negotiations regarding a chapter 11 plan, and these chapter 11 cases are large and complex. The Unexpired Leases interrelate with the Debtors' other contractual agreements and legal obligations, and the Buyer's ongoing operations, which operations benefit the Debtors' estates through ongoing receipts and monetization of retained inventory pursuant to the Kansas Sale. Additionally, extending the Assumption/Rejection Deadline will afford the Debtors opportunities to create value for the Debtors' estates, including, (i) value that may arise through the marketing of the Unexpired Leases, in the event the leases are designated for rejection, and (ii) value that may arise through potential transactions related to the Kansas business, including the possibility of continued operations at the Kansas locations and retention of employees and supplier relationships in Kansas. It is therefore imperative that the Debtors and Buyer be afforded sufficient time to fully evaluate the Unexpired Leases. Accordingly, the relief requested in the Motion should be granted.

RESERVATION OF RIGHTS

17. Nothing contained herein is intended to be or shall be construed as (i) an admission as to the validity of any claim against the Debtors or any liens; (ii) an agreement or obligation to pay any claims; (iii) a waiver of any claims or causes of action that may exist against any creditor or interest holder; (iv) a waiver of the Debtors' or any appropriate party in interest's rights to dispute any claim; (v) an approval, assumption, or rejection of any agreement, contract, program, policy, or lease under section 365 of the Bankruptcy Code; or (vi) an admission by the Debtors that a particular instrument is or is not a true lease.

NOTICE

18. Notice of this Motion will be provided to (i) the U.S. Trustee; (ii) the United States Attorney for the District of Delaware; (iii) the Internal Revenue Service; (iv) counsel to the Committee; (v) counsel to the Secured Lender; (vi) the Lessors; and (vii) those parties that have

requested notice pursuant to Bankruptcy Rule 2002. The Debtors respectfully submit that no further notice is required. No previous request for the relief sought herein has been made by the Debtors to this or any other court.

WHEREFORE the Debtors respectfully request entry of the Proposed Order granting the relief requested herein and such other and further relief as the Court may deem just and appropriate.

Dated: October 14, 2021
Wilmington, Delaware

/s/ Christopher M. De Lillo

RICHARDS, LAYTON & FINGER, P.A.

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Attorneys for the Debtors and Debtors in Possession

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

<p><i>In re</i></p> <p>TECT AEROSPACE GROUP HOLDINGS, INC., <i>et al.</i>,</p> <p style="text-align: center;">Debtors.¹</p>	<p>X</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>X</p>	<p>Chapter 11</p> <p>Case No. 21-10670 (KBO)</p> <p>Jointly Administered</p> <p>Obj. Deadline: October 21, 2021 at 4:00 p.m. (ET)</p> <p>Hearing Date: October 28, 2021 at 2:00 p.m. (ET)</p>
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NOTICE OF MOTION AND HEARING

PLEASE TAKE NOTICE that, on October 14, 2021, TECT Aerospace Group Holdings, Inc. and its debtor affiliates in the above-captioned chapter 11 cases, as debtors and debtors in possession (collectively, the “**Debtors**”) filed the *Motion of Debtors for Entry of an Order (I) Extending Time to Assume or Reject Unexpired Leases of Nonresidential Real Property and (II) Granting Related Relief* (the “**Motion**”) with the United States Bankruptcy Court for the District of Delaware (the “**Court**”).

PLEASE TAKE FURTHER NOTICE that objections or responses to the relief requested in the Motion, if any, must be made in writing and filed with the Court on or before **October 21, 2021 at 4:00 p.m. (prevailing Eastern Time)**.

PLEASE TAKE FURTHER NOTICE that if any objections to the Motion are received, the Motion and such objections will be considered at a hearing before The Honorable Karen B. Owens, United States Bankruptcy Judge for the District of Delaware, at the Court, 824

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: TECT Aerospace Group Holdings, Inc. (9338); TECT Aerospace Kansas Holdings, LLC (4241); TECT Aerospace Holdings, LLC (9112); TECT Aerospace Wellington Inc. (4768); TECT Aerospace, LLC (8650); TECT Hypervelocity, Inc. (8103); and Sun Country Holdings, LLC (6079). The Debtors’ mailing address is TECT Aerospace Group Holdings, Inc., c/o Conway MacKenzie, LLC, Attn: Shaun Martin, 265 Franklin Street, Suite 1004, Boston, MA 02110.

North Market Street, 6th Floor, Courtroom 3, Wilmington, Delaware 19801, on **October 28, 2021 at 2:00 p.m. (prevailing Eastern Time)**. The hearing may be conducted virtually, with instructions noted on the hearing agenda filed on the Court's docket.

PLEASE TAKE FURTHER NOTICE THAT, IF NO OBJECTIONS TO THE MOTION ARE TIMELY FILED IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

Dated: October 14, 2021
Wilmington, Delaware

/s/ Christopher M. De Lillo
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Exhibit A

Proposed Order

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

	X	
	:	
In re	:	Chapter 11
	:	
TECT AEROSPACE HOLDINGS, INC., et al.,	:	Case No. 21–10670 (KBO)
	:	
Debtors.¹	:	(Jointly Administered)
	:	
	:	Re: D.I. ____
	X	

**ORDER (I) EXTENDING THE DEADLINE
TO ASSUME OR REJECT UNEXPIRED LEASES OF
NONRESIDENTIAL REAL PROPERTY, AND (II) GRANTING RELATED RELIEF**

Upon the motion (the “**Motion**”)² of TECT Aerospace Holdings, Inc. and its debtor affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “**Debtors**”), pursuant to section 365(d)(4) of title 11 of the United States Code (the “**Bankruptcy Code**”), for entry of an order (i) extending the Assumption/Rejection Deadline, and (ii) granting related relief, as more fully set forth in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein 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 February 29, 2012; and consideration of the Motion and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: TECT Aerospace Group Holdings, Inc. (9338); TECT Aerospace Kansas Holdings, LLC (4241); TECT Aerospace Holdings, LLC (9112); TECT Aerospace Wellington Inc. (4768); TECT Aerospace, LLC (8650); TECT Hypervelocity, Inc. (8103); and Sun Country Holdings, LLC (6079). The Debtors’ mailing address is TECT Aerospace Group Holdings, Inc., c/o Conway MacKenzie, LLC, Attn: Shaun Martin, 265 Franklin Street, Suite 1004, Boston, MA 02110.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

having been provided to the Notice Parties; and such notice having been adequate and appropriate under the circumstances, and it appearing that no other or further notice need be provided; and the Court having reviewed the Motion; and the Court having held a hearing, if necessary, to consider the relief requested in the Motion (the “**Hearing**”); and upon the record of the Hearing, if any; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and it appearing that the relief requested in the Motion is in the best interests of the Debtors, their estates, creditors, and all parties in interest; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT

1. The Motion is granted to the extent set forth herein.
2. The period within which the Debtors may assume or reject the Unexpired Leases is extended from November 1, 2021 for an additional 90 days through and including January 30, 2022.
3. The extension of time granted by this Order is without prejudice to the right of the Debtors to request further extensions with the consent of the landlords.
4. Except as otherwise set forth herein, nothing herein shall create, nor is intended to create, any rights in favor of or enhance the status of any claim held by any party.
5. The Debtors are authorized to take all reasonable actions necessary or appropriate to effectuate the relief granted in this Order.
6. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Order.