

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

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:
  
In re :
  
: Chapter 11
  
AEROCENTURY CORP., *et al.*, :
  
: Case No. 21-10636 ( )
  
Debtors.<sup>1</sup> :
  
: (Joint Administration Requested)
  
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**DEBTORS’ MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS  
AUTHORIZING (I) THE DEBTORS TO PAY CERTAIN PREPETITION TAXES  
AND FEES AND RELATED OBLIGATIONS AND (II) BANKS TO HONOR  
AND PROCESS CHECK AND ELECTRONIC TRANSFER  
REQUESTS RELATED THERETO**

The debtors and debtors in possession in the above-captioned case (collectively, the “Debtors”) hereby submit this motion (the “Motion”), pursuant to sections 105(a), 363(b), 507(a)(8), and 541 of title 11 of the United States Code (the “Bankruptcy Code”) and Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), for entry of an interim order (the “Interim Order”) and a final order (the “Final Order”), substantially in the forms attached hereto as **Exhibit A** and **Exhibit B**, respectively, (i) authorizing, but not directing, the Debtors, in their discretion, to pay certain prepetition taxes and fees and related obligations that are payable to certain authorities (each an “Authority” and, collectively, the “Authorities”) and (ii) authorizing banks and other financial institutions (collectively, the “Banks”) to honor and process check and electronic transfer requests related to the foregoing. In support of this Motion, the Debtors rely on the *Declaration of Harold M. Lyons in Support of Chapter 11 Petitions and*

<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.



*First-Day Applications* (the “First Day Declaration”),<sup>2</sup> which was filed contemporaneously with this Motion and is incorporated herein by reference. In further 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 U.S.C. § 157(b), and the Debtors consent, pursuant to Rule 9013-1(f) of the Local Rules of Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory and legal predicates for the relief requested herein are sections 105(a), 363(b), 507(a)(8), and 541 of the Bankruptcy Code and Bankruptcy Rules 6003 and 6004.

**BACKGROUND**

**A. General Background**

3. On the date hereof (the “Petition Date”), the Debtors each commenced a bankruptcy case by filing a voluntary petition for relief under chapter 11 of the Bankruptcy Code (the “Chapter 11 Cases”). 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.

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

No official committees have been appointed in the Chapter 11 Case, and no request has been made for the appointment of a trustee or examiner.

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

**B. The Taxes and Fees**

5. In the ordinary course of business, the Debtors incur or collect and remit a variety of taxes, including, without limitation, franchise taxes, property taxes, income taxes, other miscellaneous taxes (collectively, the "Taxes").<sup>3</sup> The Debtors may also incur certain other fees and assessments to Authorities (the "Fees" and, collectively with the Taxes, the "Taxes and Fees"). The Debtors remit the Taxes and Fees to the Authorities in accordance with applicable laws. The Taxes and Fees are remitted at different times to the applicable Authorities, depending on the given Taxes and Fees.

6. More specifically, the Debtors pay Delaware franchise taxes in four quarterly installments totaling approximately \$102,215. Most recently, the Debtors paid an installment of \$20,483 on February 12, 2021. The next installment of \$40,866 will be payable on June 1, 2021. In addition, the Debtors pay California income/franchise taxes of \$4,000 annually. The California income/franchise tax for 2020 was paid on June 30, 2020. The California income/franchise tax

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<sup>3</sup> In addition to the Taxes discussed herein, the Debtors are required by law to withhold from their employees' pay amounts related to, among other things, federal, state and local income taxes and social security and Medicare taxes (collectively, the "Withheld Amounts") for remittance to the appropriate federal, state or local taxing authorities. The Debtors must then match from their own funds for social security and Medicare taxes and pay, based upon a percentage of gross payroll, additional amounts for state and federal unemployment insurance (collectively with the Withheld Amounts, the "Payroll Taxes"). The Debtors request relief with respect to the Payroll Taxes in the *Debtors' Motion for Entry of an Order (I) Authorizing the Debtors to Pay and Honor Certain (A) Prepetition Wages, Benefits, and Other Compensation Obligations; (B) Prepetition Employee Business Expenses; and (C) Workers' Compensation Obligations; (II) Authorizing Banks to Honor and Process Checks and Transfers Related to Such Obligations; and (III) Granting Related Relief*, filed contemporaneously herewith.

for 2021 was paid prior to the Petition Date. The Debtors also pay a *de minimis* amount of California property tax annually. In 2020, the Debtors paid \$266.87 on account of their 2020 California property tax obligations. The Debtors' 2021 California property tax obligations were paid prior to the Petition Date.

7. The Debtors estimate that approximately \$60,000 in Taxes and Fees had accrued on account of Delaware franchise taxes but remained unpaid as of the Petition Date.<sup>4</sup>

8. The Debtors believe that they are current on all Taxes and Fees that were due and owing as of the Petition Date. However, to the extent the Debtors have inadvertently failed to timely pay any Taxes and Fees that became due and owing prior to the Petition Date, the Debtors are not by this Motion seeking authority to remit any "catch up" payments, late penalties, or similar fees to any Authorities.

#### **RELIEF REQUESTED**

9. By this Motion, the Debtors request that the Court enter the Interim and Final Orders, (i) authorizing, but not directing, the Debtors, in their discretion, to pay the Taxes and Fees owing on account of periods prior to the Petition Date, when and as those Taxes and Fees come due in the ordinary course, up to the caps set forth in the Interim Order and the Final Order, respectively, plus any Taxes and Fees subsequently determined upon audit, or otherwise, to be owed for periods prior to the Petition Date, and (ii) authorizing the Banks to honor and process check and electronic transfer requests related thereto.

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<sup>4</sup> Any estimates set forth herein do not include any potential prepetition liabilities related to the Taxes and Fees that may later come due as the result of an audit. The Debtors request authority, but not direction, to pay any amounts assessed after such an audit.

**BASIS FOR RELIEF**

10. The Debtors believe that any failure to pay the Taxes and Fees could materially disrupt the Debtors' efforts to preserve and maximize the value of their assets in several ways: (i) the Authorities may initiate audits of the Debtors, which would unnecessarily divert the Debtors' attention from the Debtors' chapter 11 efforts; (ii) the Authorities may attempt to file liens, seek to lift the automatic stay, and pursue other remedies that will harm the Debtors' estates; and (iii) certain of the Debtors' directors and officers could be subject to personal liability, which would likely distract those key employees from their duties related to the Debtors' chapter 11 efforts. In addition, the Debtors collect and hold certain outstanding tax liabilities in trust for the benefit of the applicable Authorities, and these funds may not constitute property of the Debtors' estates. Moreover, unpaid Taxes and Fees may result in penalties and additional accrued interest.

**A. Certain Taxes and Fees May Not Be Property of the Debtors' Estates.**

11. Certain of the Taxes and Fees are collected or withheld by the Debtors on behalf of the applicable Authorities and are held in trust by the Debtors. As such, these Taxes and Fees are not property of the Debtors' estates under section 541 of the Bankruptcy Code. *See, e.g., Begier v. Internal Revenue Serv.*, 496 U.S. 53, 57–60 (1990) (holding that any prepetition payment of trust fund taxes is not a transfer subject to avoidance because such funds are not the debtor's property); *In re First Pay, Inc.*, 773 F.3d 583, 590 (4th Cir. 2014) (same); *DuCharmes & Co. v. Mich. (In re DuCharmes & Co.)*, 852 F.2d 194 (6th Cir. 1988) (per curiam) (same); *In re Shank*, 792 F.2d 829, 833 (9th Cir. 1986) (holding that a sales tax required by state law to be collected by sellers from their customers is a "trust fund" tax and not released by bankruptcy discharge); *DeChiaro v. N.Y. State Tax Comm'n*, 760 F.2d 432, 435–36 (2d Cir. 1985) (same); *Rosenow v. Ill. Dept. of Revenue (In re Rosenow)*, 715 F.2d 277, 279–82 (7th Cir. 1983) (same); *W. Surety Co. v. Waite (In re Waite)*, 698 F.2d 1177, 1179 (11th Cir. 1983) (per curiam) (same). The Debtors,

therefore, generally do not have an equitable interest in such funds, and they should be permitted to pay those funds to the Authorities as they become due.<sup>5</sup>

**B. Certain Taxes and Fees May Be Secured or Priority Claims Entitled to Special Treatment under the Bankruptcy Code.**

12. Claims for certain of the Taxes and Fees are, or may be, priority claims entitled to payment before general unsecured claims. *See* 11 U.S.C. § 507(a)(8) (describing taxes entitled to priority treatment). Moreover, to the extent that such amounts are entitled to priority treatment under the Bankruptcy Code, the respective Authorities may attempt to assess interest and penalties if such amounts are not paid. *See* 11 U.S.C. § 507(a)(8)(G) (granting eighth priority status to “a penalty related to a claim of a kind specified in this paragraph and in compensation for actual pecuniary loss”). Claims entitled to priority status pursuant to section 507(a)(8) of the Bankruptcy Code must be paid in full before any general unsecured obligations of the Debtors. Therefore, payment of certain of the Taxes and Fees at this time will not unduly prejudice any rights or recoveries of junior creditors.

13. It is also possible that some of the Taxes and Fees may be entitled to secured status on the property owned by the Debtors. As secured claims, these Taxes and Fees would be entitled to priority treatment when the Debtors sell the property that these Taxes and Fees are recorded against or if the Debtors confirmed a plan of reorganization. *See* 11 U.S.C. §§ 506(a); 1129(a)(9)(C); 1129(b)(2)(A) (requiring that any plan of reorganization “crammed down” over a class of secured creditors pay those creditors in full or allow those creditors to retain their liens). Thus, paying such Taxes and Fees would not prejudice the rights of other creditors of the Debtors.

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<sup>5</sup> For the avoidance of doubt, the Debtors hereby request authority to pay the Taxes and Fees as provided herein regardless of whether such Taxes and Fees constitute trust fund obligations.

**C. Payment of Taxes and Fees as Provided Herein Is a Sound Exercise of the Debtors' Business Judgment.**

14. Section 363 of the Bankruptcy Code provides, in relevant part, that “[t]he [debtor], after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Under section 363(b) of the Bankruptcy Code, courts require only that the debtor “show that a sound business purpose” justifies the proposed use of property. *In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999); *see also Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1070–71 (2d Cir. 1983) (requiring a “good business reason” to approve a sale pursuant to section 363(b)); *In re W.A. Mallory Co.*, 214 B.R. 834, 836 (Bankr. E.D. Va. 1997) (“This Court follows the ‘sound business purpose’ test when examining § 363(b) sales.”) (citing *In re WBQ P’ship*, 189 B.R. 97, 102 (Bankr. E.D. Va. 1995)). Moreover, “[w]here the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor’s conduct.” *In re Johns-Manville Corp.*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986); *see also In re Tower Air, Inc.*, 416 F.3d 229, 238 (3d Cir. 2005) (“Overcoming the presumptions of the business judgment rule on the merits is a near-Herculean task.”). Thus, if a transaction satisfies the business judgment rule, it should be approved under section 363(b) of the Bankruptcy Code.

15. Furthermore, section 105(a) of the Bankruptcy Code further provides that a court “may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of” the Bankruptcy Code, pursuant to the “doctrine of necessity.” The “doctrine of necessity” functions in a chapter 11 case as a mechanism by which the bankruptcy court can exercise its equitable power to allow payment of critical prepetition claims not explicitly authorized by the Bankruptcy Code and further supports the relief requested herein. *See In re*

*Lehigh & New Eng. Ry.*, 657 F.2d 570, 581 (3d Cir. 1981) (holding that a court may authorize payment of prepetition claims if such payment is essential to continued operation); *In re Just for Feet, Inc.*, 242 B.R. 821, 824–25 (D. Del. 1999) (holding that section 105(a) of the Bankruptcy Code “provides a statutory basis for payment of pre-petition claims” under the doctrine of necessity); *see also In re United Am., Inc.*, 327 B.R. 776, 781 (Bankr. E.D. Va. 2005) (acknowledging the doctrine of necessity is “a necessary deviation because otherwise there will be no reorganization and no creditor will have an opportunity to recoup any part of its pre-petition claim”); *In re NVR L.P.*, 147 B.R. 126, 127 (Bankr. E.D. Va. 1992) (“Under [section 105(a)] the court can permit pre-plan payment of a pre-petition obligation when essential to the continued operation of the debtor.”).

16. Moreover, the doctrine of necessity is designed to foster a debtor’s rehabilitation, which courts have recognized is “the paramount policy and goal of Chapter 11.” *Ionosphere Clubs*, 98 B.R., 174, 176 (Bankr. S.D.N.Y. 1989); *see also In re Quality Interiors, Inc.*, 127 B.R. 391, 396 (Bankr. N.D. Ohio 1991) (“[P]ayment by a debtor-in-possession of pre-petition claims outside of a confirmed plan of reorganization is generally prohibited by the Bankruptcy Code,” but “[a] general practice has developed . . . where bankruptcy courts permit the payment of certain pre-petition claims, pursuant to 11 U.S.C. § 105, where the debtor will be unable to reorganize without such payment.”); *In re Eagle-Picher Indus., Inc.*, 124 B.R. 1021, 1023 (Bankr. S.D. Ohio 1991) (approving payment of prepetition unsecured claims of toolmakers as “necessary to avert a serious threat to the Chapter 11 process”); *Mich. Bureau of Workers’ Disability Comp. v. Chateaugay Corp. (In re Chateaugay Corp.)*, 80 B.R. 279, 285–86 (S.D.N.Y. 1987) (approving lower court order authorizing payment of prepetition wages, salaries, expenses, and benefits).

17. The Debtors' ability to pay the Taxes and Fees is critical to preserving and maximizing the value of the Debtors' estates. As discussed herein, payment of the Taxes and Fees will benefit the estates by (i) permitting the Debtors to pursue their chapter 11 efforts without interruption and (ii) reducing both the amount and priority of claims that could be asserted against the Debtors' estates. If certain Taxes and Fees remain unpaid, the Authorities may seek to recover such amounts directly from the Debtors' directors, officers, or employees, thereby distracting these key personnel from the administration of the Chapter 11 Cases. *See e.g., In re Am. Motor Club, Inc.*, 139 B.R. 578, 581–83 (Bankr. E.D.N.Y. 1992) (“[i]f the employer fails to pay over the trust fund taxes, the IRS may collect an equivalent amount directly from officers or employees of the employer who are responsible for collecting the tax” and finding director personally liable for unpaid taxes (citing *United States v. Energy Res. Co.*, 495 U.S. 545, 547 (1990))). Any collection action on account of such penalties, and any potential ensuing liability, would distract the Debtors and their personnel to the detriment of all parties in interest. The dedicated and active participation of the Debtors' officers and employees is integral to the success of the Chapter 11 Cases.

18. The Debtors' liability to pay the Taxes and Fees may ultimately result in increased tax liability for the Debtors if interest and penalties accrue on the claims for Taxes and Fees, which amounts may also be entitled to priority treatment. Such a result would be contrary to the best interests of the Debtors' estates and stakeholders. As noted above, many of the Taxes and Fees may be entitled to priority status pursuant to section 507(a)(8) of the Bankruptcy Code. As priority claims, these obligations must be paid in full before any general unsecured obligations of the Debtors may be satisfied. To the extent that the Debtors are not able to timely pay the prepetition Taxes and Fees, they may ultimately be required to pay those amounts with additional interest and penalties. The Debtors' failure to pay the prepetition Taxes and Fees as they come due may, thus,

ultimately increase the amount of priority claims held by the Authorities against the Debtors' estates. *See* 11 U.S.C. §§ 507(a)(8). Accordingly, the Court should grant the Debtors authority to pay the prepetition Taxes and Fees as provided herein.

**D. The Court Should Authorize the Banks to Honor and Process the Debtors' Payments on Account of the Taxes and Fees.**

19. The Debtors also request that the Court authorize the Banks, when requested by the Debtors, in their discretion, to honor and process checks or electronic fund transfers drawn on the Debtors' bank accounts to pay prepetition obligations described herein, whether such checks or other requests were submitted prior to, or after, the Petition Date, provided that sufficient funds are available in the applicable bank accounts to make such payments. The Debtors further request that all of the Banks be authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved pursuant to this Motion.

**SATISFACTION OF BANKRUPTCY RULE 6003(b)**

20. Pursuant to Bankruptcy Rule 6003(b), any motion seeking to use property of the estate pursuant to section 363 of the Bankruptcy Code or to satisfy prepetition claims within twenty-one days of the Petition Date requires the Debtors to demonstrate that such relief "is necessary to avoid immediate and irreparable harm." The Debtors believe that, among other things, the success of their chapter 11 efforts will require that the Debtors remain in good standing with the Authorities and that the Debtors' officers and directors remain focused and fully devoted to the Chapter 11 Cases. Thus, if the relief requested herein is not granted, the Debtors' failure to satisfy the Taxes and Fees would cause the Debtors' estates immediate and irreparable harm by detracting from, and potentially derailing, the Debtors' efforts to maximize value of their estates and minimize administrative expenses.

21. For this reason and those set forth above, the Debtors respectfully submit that Bankruptcy Rule 6003(b) has been satisfied and that the relief requested herein is necessary to avoid immediate and irreparable harm to the Debtors and their estates.

**WAIVER OF ANY APPLICABLE STAY**

22. Pursuant to Bankruptcy Rule 6004(h), “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6004(h). As set forth throughout this Motion, any delay in paying the Taxes and Fees would be detrimental to the Debtors, their estates and creditors, as the Debtors’ ability to run a successful chapter 11 case without any unexpected interruptions requires, in part, that it remain current with such obligations. For this reason and those set forth above, the Debtors submit that ample cause exists to justify a waiver of the fourteen-day stay imposed by Bankruptcy Rule 6004(h), to the extent applicable.

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

**RESERVATION OF RIGHTS**

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

**NOTICE**

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

*[Remainder of page intentionally left blank.]*

**CONCLUSION**

WHEREFORE, the Debtors respectfully request entry of orders, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B**, granting the relief requested herein and such other relief as is just and proper.

Dated: March 29, 2021  
Wilmington, Delaware

*/s/ Joseph M. Mulvihill*

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*Proposed Counsel to the Debtors and Debtors in Possession*

**EXHIBIT A**

**Proposed Interim Order**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

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 In re : Chapter 11  
 :  
 AEROCENTURY CORP., et al., : Case No. 21- 10636 ( )  
 :  
 Debtors.<sup>1</sup> : (Jointly Administered)  
 :  
 : Re: Docket No. \_\_\_\_  
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**INTERIM ORDER AUTHORIZING (I) THE DEBTORS TO PAY  
CERTAIN PREPETITION TAXES AND FEES AND RELATED OBLIGATIONS  
AND (II) BANKS TO HONOR AND PROCESS CHECK AND ELECTRONIC  
TRANSFER REQUESTS RELATED THERETO**

Upon the motion (the “Motion”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an interim order (this “Interim Order”) (i) authorizing, but not directing, the Debtors, in their discretion, to pay the Taxes and Fees to the Authorities, and (ii) authorizing the Banks to honor and process check and electronic transfer requests related thereto, all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over 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; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that due and adequate notice of the Motion has been given under the circumstances, and that no other or further

<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 defined herein have the meanings given to such terms in the Motion.

notice need be given; and it appearing that the relief requested in the Motion is in the best interests of the Debtors, their estate, their 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 on an interim basis as set forth herein.
2. Objections to entry of an order granting the Motion on a final basis must be filed by \_\_\_\_\_, 2021, at 4:00 p.m. (ET) and served on: (i) the Debtors at 1440 Chapin Avenue, Suite 310, Burlingame, CA 94010; (ii) proposed co-counsel to the Debtors, (a) Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, Delaware 19801, Attn: Joseph M. Barry, Esq. (jbarry@ycst.com), Ryan M. Bartley, Esq. (rbartley@ycst.com), and S. Alexander Faris, Esq. (afaris@ycst.com), and (b) Morrison & Foerster LLP, 250 West 55th Street, New York, NY 10019-9601, Attn: Lorenzo Marinuzzi, Esq. (lmarinuzzi@mof.com) and Erica J. Richards, Esq. (erichards@mof.com); (iii) counsel to the prepetition lender, Vedder Price P.C., 222 North LaSalle Street, Chicago, Illinois 60601, Attn: Neil Poland (npoland@vedderprice.com) and David L. Kane, Esq. (dkane@vedderprice.com); the Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Wilmington, Delaware, 19801, Attn: Linda Casey, Esq. (linda.casey@usdoj.gov); and (v) counsel to any statutory committee appointed in the Chapter 11 Case. A final hearing, if required, on the Motion will be held on \_\_\_\_\_, 2021, at \_\_\_\_\_m. (ET). If no objections are filed to the Motion, this Court may enter a final order without further notice or hearing.

3. The Debtors are authorized, but not directed, in their discretion, to pay prepetition Taxes and Fees to the Authorities in the ordinary course of their business up to an aggregate amount of \$45,000 absent further order of this Court.

4. The Banks are authorized, when requested by the Debtors, in the Debtors' discretion, to honor and process checks or electronic fund transfers drawn on the Debtors' bank accounts to pay prepetition obligations authorized to be paid hereunder, whether such checks or other requests were submitted prior to, or after, the Petition Date, provided that sufficient funds are available in the applicable bank accounts to make such payments. The Banks may rely on the representations of the Debtors with respect to whether any check or other transfer drawn or issued by the Debtors prior to the Petition Date should be honored pursuant to this Interim Order, and any such Bank shall not have any liability to any party for relying on such representations by the Debtors, as provided for in this Interim Order.

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

6. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Interim Order in accordance with the Motion.

7. The requirements of Bankruptcy Rule 6003(b) are satisfied.

8. The terms and conditions of this Interim Order shall be effective and enforceable immediately upon its entry.

9. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Interim Order.

**EXHIBIT B**

**Proposed Final Order**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

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In re : Chapter 11  
: :  
AEROCENTURY CORP., *et al.*, : Case No. 21-10636( )  
: :  
Debtors.<sup>1</sup> : (Jointly Administered) RE:  
: :  
: Docket Nos. \_\_\_ & \_\_\_  
-----X

**FINAL ORDER AUTHORIZING (I) THE DEBTORS TO PAY CERTAIN  
PREPETITION TAXES AND FEES AND RELATED OBLIGATIONS AND  
(II) BANKS TO HONOR AND PROCESS CHECK AND ELECTRONIC  
TRANSFER REQUESTS RELATED THERETO**

Upon the motion (the “Motion”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of a final order (this “Final Order”) (i) authorizing, but not directing, the Debtors, in their discretion, to pay the Taxes and Fees to the Authorities, and (ii) authorizing the Banks to honor and process check and electronic transfer requests related thereto, all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over 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; and this Court having found that this is a core proceeding 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 this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that due

<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 defined herein have the meanings given to such terms in the Motion.

and adequate notice of the Motion has been given under the circumstances, and that no other or further notice need be given; and it appearing that the relief requested in the Motion is in the best interests of the Debtors, their estates, their 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 on a final basis as set forth herein.
2. The Debtors are authorized, but not directed, in their discretion, to pay prepetition Taxes and Fees to the Authorities in the ordinary course of their business up to an aggregate amount of \$60,000 absent further order of this Court, plus any Taxes and Fees subsequently determined upon audit, or otherwise, to be owed for periods prior to the Petition Date.
3. The Banks are authorized, when requested by the Debtors, in the Debtors' discretion, to honor and process checks or electronic fund transfers drawn on the Debtors' bank accounts to pay prepetition obligations authorized to be paid hereunder, whether such checks or other requests were submitted prior to, or after, the Petition Date, provided that sufficient funds are available in the applicable bank accounts to make such payments. The Banks may rely on the representations of the Debtors with respect to whether any check or other transfer drawn or issued by the Debtors prior to the Petition Date should be honored pursuant to this Final Order, and any such Bank shall not have any liability to any party for relying on such representations by the Debtors, as provided for in this Final Order.
4. Nothing in this Final Order (i) is intended or shall be deemed to constitute an assumption of any agreement pursuant to section 365 of the Bankruptcy Code or an admission as to the validity of any claim against the Debtors and their estates; (ii) shall impair, prejudice, waive, or otherwise affect the rights of the Debtors and their estates with respect to the validity, priority,

or amount of any claim against the Debtors and their estates; (iii) shall impair, prejudice, waive, or otherwise affect the rights of the Debtors and their estates with respect to any and all claims or causes of action against any party in interest; or (iv) shall be construed as a promise to pay a claim.

5. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Final Order in accordance with the Motion.

6. The terms and conditions of this Final Order shall be effective and enforceable immediately upon its entry.

7. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Final Order.