

# Section 1: 10-K (AEROCENTURY REPORT ON FORM 10-K FOR Y.E. 12/31/18)

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, DC 20549

FORM 10-K

(Mark One)

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the fiscal year ended December 31, 2018

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission File Number: **001-13387**

**AeroCentury Corp.**

(Exact name of Registrant as Specified in Its Charter)

**Delaware**

(State or Other Jurisdiction of Incorporation or Organization)

**94-3263974**

(IRS Employer Identification No.)

**1440 Chapin Avenue, Suite 310**

**Burlingame, California 94010**

(Address of Principal Executive Offices)

Registrant's telephone number, including area code: **(650) 340-1888**

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Name of each exchange on which registered
Common Stock, par value \$0.001 per share	NYSE American Exchange

Securities registered pursuant to Section 12(g) of the Act: **None**

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act.

Yes  No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act.

Yes  No

Indicate by check mark whether the registrant: (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

Yes  No

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files).

Yes  No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (§ 229.405) is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer  Accelerated filer   
Non-accelerated filer  Smaller reporting company   
Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act).

Yes  No

The aggregate market value of the voting and non-voting common equity held by non-affiliates as of June 29, 2018, the last business day of the registrant's most recently completed second fiscal quarter (based upon the closing sale price of the registrant's common stock as of such date, as reported by the NYSE American Exchange) was \$19,051,000. Shares of common stock held by the registrant's officers and directors and beneficial owners of 10% or more of the outstanding shares of the registrant's common stock have been excluded from the calculation of this amount because such persons may be deemed to be affiliates of the registrant; however, the treatment of these persons as affiliates of the registrant for purposes of this calculation is not, and shall not be considered, a determination as to whether any such person is an affiliate of the registrant for any other purpose.

The number of shares of the registrant's common stock outstanding as of March 18, 2019 was 1,545,884.

#### **DOCUMENTS INCORPORATED BY REFERENCE**

Part III of this Annual Report on Form 10-K incorporates information by reference to the registrant's Proxy Statement for its 2019 Annual Meeting of Stockholders. Except as expressly incorporated by reference, such Proxy Statement shall not be deemed to be a part of this Annual Report on Form 10-K.

As used in this report, unless the context indicates otherwise, "AeroCentury" refers to AeroCentury Corp. and the "Company" refers to AeroCentury together with its consolidated subsidiaries.

### Forward-Looking Statements

This Annual Report on Form 10-K includes "forward-looking statements" within the meaning of Section 27A of the Securities Act of 1933, as amended (the "Securities Act"), and Section 21E of the Securities Exchange Act of 1934, as amended (the "Exchange Act"). All statements in this report other than statements of historical fact are forward-looking statements for purposes of these provisions, including any statements of the Company's plans and objectives for future operations, the Company's future financial or economic performance (including known or anticipated trends), and the assumptions underlying or related to the foregoing. Statements that include the use of terminology such as "may," "will," "expects," "plans," "anticipates," "estimates," "potential," or "continue," or the negative thereof, or other comparable terminology, are forward-looking statements.

Forward-looking statements in this report include statements about the following matters, although this list is not exhaustive:

- The Company's business plans and strategies, including its continued focus on acquiring used regional aircraft, any potential for acquiring and managing new types and models of regional aircraft, and its expectation that most of its future growth will be outside of North America;
- Matters related to the Company's merger with JetFleet Holding Corp. ("JHC"), which was completed on October 1, 2018, and the anticipated impact of the merger on the Company and its performance, including any changes to the Company's risk profile now that the Company has internalized the management services previously performed for the Company by JetFleet Management Corp. ("JMC"), a subsidiary of JHC, and the expectation that the combination effected by the merger could be accretive to the Company and create value for the stockholders of the combined post-merger company;
- Certain industry trends and their impact on the Company and its performance, including: increasing competition that results in higher acquisition prices for many of the aircraft types that the Company has targeted to buy and, at the same time, downward pressure on lease rates for these aircraft; relatively lower market demand for older aircraft types that are no longer in production, which could cause certain of the Company's aircraft to remain off lease for significant periods of time; and expectations of shakeouts of weaker carriers in economically troubled regions, which could impact the financial condition and viability of certain of the Company's customers, and as a result, their demand for the Company's aircraft and their ability to fulfill their lease commitments and other obligations to the Company under existing leases;
- Expectations about the Company's future liquidity, cash flow and capital requirements;
- The Company's ability to comply with its credit facility (the "Credit Facility"), recently established term loans (the "Term Loans") and other outstanding debt instruments, including making payments of principal and interest thereunder as and when required and complying with the financial and other covenants included in these instruments;
- The Company's ability to access additional sources of capital in the future as and when needed, in the amounts desired, on terms favorable to the Company, or at all;
- The expected impact of existing or known threatened legal proceedings;
- The effect on the Company and its customers of complying with applicable government and regulatory requirements in the numerous jurisdictions in which the Company and its customers operate;
- The Company's cyber vulnerabilities and the anticipated effects on the Company if a cybersecurity threat or incident were to materialize;
- General economic, market, political and regulatory conditions, including anticipated changes in these conditions and the impact of such changes on customer demand and other facets of the Company's business; and
- The impact of the foregoing on the prevailing market price and trading volume of the Company's common stock.

All of the Company's forward-looking statements involve risks and uncertainties that could cause the Company's actual results to differ materially from those projected or assumed by such forward-looking statements. Among the factors that could cause such differences are: the continued availability of financing under the Credit Facility or otherwise; the Company's ability to comply with the covenants under its Credit Facility, Term Loans and other debt instruments; the potential impact on the Company's debt obligations of developments regarding LIBOR, including the potential phasing out of this metric; the Company's ability to locate and acquire appropriate and revenue-producing assets; deterioration of the market for or appraised values of aircraft owned by the Company; a surge in interest rates; any noncompliance by the Company's lessees with obligations under their respective leases, including payment obligations; any economic downturn or other financial crisis; the timing, rate and amount of maintenance expenses for the Company's asset portfolio, as well as the distribution of these expenses among the assets in the portfolio; following completion of the merger with JHC, the Company's ability to internalize the management services previously performed by JMC and the costs to the Company to internally perform these services; the Company's ability to raise capital on acceptable terms when needed and in desired amounts, or at all; limited trading volume in the Company's stock; and the other factors detailed under "Factors That May Affect Future Results and Liquidity" in Item 7 of this report. In addition, the Company operates in a competitive and evolving industry in which new risks emerge from time to time, and it is not possible for the Company to predict all of the risks it may face, nor can it assess the impact of all factors on its business or the extent to which any factor or combination of factors could cause actual results to differ from expectations. As a result of these and other potential

risks and uncertainties, the Company's forward-looking statements should not be relied on or viewed as predictions of future events.

This cautionary statement should be read as qualifying all forward-looking statements included in this report, wherever they appear. All forward-looking statements and descriptions of risks included in this report are made as of the date hereof based on information available to the Company as of the date hereof, and except as required by applicable law, the Company assumes no obligation to update any such forward-looking statement or risk for any reason. You should, however, consult the risks and other disclosures described in the reports the Company files from time to time with the ("SEC") after the date of this report for updated information.

## Table of Contents

### **PART I**

<u>Item 1.</u>	<u>Business</u>
<u>Item 1A.</u>	<u>Risk Factors</u>
<u>Item 1B.</u>	<u>Unresolved Staff Comments</u>
<u>Item 2.</u>	<u>Properties</u>
<u>Item 3.</u>	<u>Legal Proceedings</u>
<u>Item .</u>	<u>Mine Safety Disclosures</u>

### **PART II**

<u>Item 5.</u>	<u>Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities</u>
<u>Item 6.</u>	<u>Selected Financial Data</u>
<u>Item 7.</u>	<u>Management's Discussion and Analysis of Financial Condition and Results of Operations</u>
<u>Item 7A.</u>	<u>Quantitative and Qualitative Disclosures About Market Risk</u>
<u>Item 8.</u>	<u>Financial Statements and Supplementary Data</u>
<u>Item 9.</u>	<u>Changes in and Disagreements With Accountants on Accounting and Financial Disclosure</u>
<u>Item 9A.</u>	<u>Controls and Procedures</u>
<u>Item 9B.</u>	<u>Other Information</u>

### **PART III**

<u>Item 10.</u>	<u>Directors, Executive Officers and Corporate Governance</u>
<u>Item 11.</u>	<u>Executive Compensation</u>
<u>Item 12.</u>	<u>Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters</u>
<u>Item 13.</u>	<u>Certain Relationships and Related Transactions, and Director Independence</u>
<u>Item 14.</u>	<u>Principal Accountant Fees and Services</u>

### **PART IV**

<u>Item 15.</u>	<u>Exhibits, Financial Statements Schedules</u>
<u>Item 16.</u>	<u>Form 10-K Summary</u>

## PART I

### Item 1. Business.

#### *Business of the Company*

The Company is engaged in the business of investing in used regional aircraft equipment and leasing it to foreign and domestic regional air carriers. The Company's aircraft portfolio consists of 17 aircraft and one engine held for lease as of December 31, 2018, most of which are mid-life regional aircraft, and its globally diverse customer base consists of eleven airlines operating in nine countries.

On October 1, 2018, AeroCentury acquired JHC in a reverse triangular merger ("Merger") for consideration of approximately \$2.9 million in cash and 129,217 shares of common stock. JHC is the sole shareholder of JMC, which is an integrated aircraft management, marketing and financing business that manages and administers the Company's portfolio of aircraft assets. Before the Merger, such management and administration were performed pursuant to the terms of a management agreement (the "Management Agreement") between the Company and JMC. Post-Merger, the management and administration services provided under the Management Agreement have become internalized and under the control and management of the Company itself.

The Company's principal business objective is to acquire aircraft assets and manage those assets in order to provide a return on investment through lease revenue and, eventually, sale proceeds. The Company strives to achieve this objective by reinvesting cash flow from operations and using short-term and long-term debt and/or equity financing.

The Company believes its ability to achieve this objective depends in large part on its success in three areas: asset selection and acquisition, lessee selection and obtaining financing to acquire aircraft and engines.

*Asset Selection and Acquisition.* The Company typically acquires assets in one of three ways. The Company may purchase an asset already subject to a lease and assume the rights and obligations of the seller, as lessor under the existing lease. Additionally, the Company may purchase an asset from an air carrier and lease it back to the air carrier. Finally, the Company may purchase an asset from a seller and then immediately enter into a new lease for the aircraft with a third -party lessee. In this last case, the Company typically does not purchase an asset unless a potential lessee has been identified and has committed to lease the asset.

The Company locates customers through marketing efforts utilizing website listings, attendance and sponsorship of industry conferences, referrals from existing industry contacts and current customers, and focused advertising.

The Company generally targets used regional aircraft with purchase prices between \$10 million and \$20 million and lease terms of three to ten years. In identifying and selecting assets for acquisition, the Company evaluates, among other things, the type of asset, its current price and projected future value, its versatility or specialized uses, the current and projected availability of and demand for that asset, and the type and number of future potential lessees. Because the Company has extensive experience in purchasing, leasing and selling used regional aircraft, it believes it has the expertise and industry knowledge to purchase these assets at appropriate prices and maintain an acceptable overall on-lease rate for them.

In order to improve the remarketability of an aircraft after expiration of a lease, the Company's leases generally contain provisions that require lessees to either return the aircraft in a condition that allows the Company to expediently re-lease or sell the aircraft, or pay sufficient amounts based on usage under the lease to cover any maintenance or overhaul of the aircraft required to bring the aircraft to such a state.

*Lessee Selection.* The Company's customer base primarily consists of regional commercial aircraft operators located in globally diverse markets and seeking to access aircraft under operating leases. The Company expects to continue to target these customer markets for the foreseeable future, and expects any customer growth in the near term would be from lessees operating outside of North America. When considering whether to enter into transactions with a lessee, the Company generally reviews the lessee's creditworthiness, growth prospects, financial status and backing; the experience of its management; and the impact of legal and regulatory matters in the lessee's market, all of which are weighed in determining the lease terms offered to the lessee. In addition, it is the Company's policy to monitor the lessee's business and financial performance closely throughout the term of the lease, and, if requested, provide assistance drawn from the experience of the Company's management in many areas of the air carrier industry. Because of its "hands-on" approach to portfolio management, the Company believes it is able to enter into transactions with lessees in a wider range of markets than may be possible for traditional, large lending institutions and leasing companies.

*Availability of Financing.* The Company has funded its asset acquisitions primarily through debt financing, supplemented by free cash flow. The Company's primary source of debt financing has been the Credit Facility, which is a secured credit facility provided by a syndicate of banks that was extended in February 2019 to expire in February 2023. In addition, during 2016, the Company financed the purchase of two aircraft using special purpose subsidiary financing, and in February 2019, the Company refinanced those two aircraft and four other aircraft assets that previously served as collateral under the Credit Facility using financing under new non-recourse Term Loans.

The Company's portfolio of assets has historically generated lease and sale revenues that have exceeded the Company's cash expenses, which have consisted mainly of maintenance costs, principal and interest payments on debt, professional fees, insurance premiums, management fees (before the Merger) and salaries and employee benefits (after the Merger). This historical excess cash from operations has aided in the Company's ability to continue to add to its aircraft portfolio over time; however, the Company's performance and cash flow are subject to fluctuations and a number of risks and uncertainties, and as a result, free cash flow may not serve as a viable source of funding in some periods. See Item 7 of this report for more information about trends in and expectations about the Company's performance and liquidity.

### *Competition*

The Company competes with other leasing companies, banks, financial institutions, private equity firms, aircraft leasing syndicates, aircraft manufacturers, distributors, airlines and aircraft operators, equipment managers, equipment leasing programs and other parties for its regional air carrier customers. Many of these competitors have longer operating histories, more experience, larger customer bases, more expansive brand recognition, deeper market penetration and significantly greater financial resources. Competition has increased significantly recently as competitors who have traditionally neglected the regional air carrier market have recently focused on this market. The industry has also experienced a number of consolidations of smaller leasing companies, creating a handful of very large companies operating in this market, as well as new entrants to the market.

Competition in this industry is based on a number of factors, including price, lease terms, variety of product selection (in other words, the type(s) of aircraft available for lease), reputation, ability to execute transactions as committed, and customer service. Among these, the Company believes price and lease terms may be the most important competitive factors, and as a result, the entry of new competitors into the market, the creation of larger competitors due to consolidation, and/or the entry of traditional large aircraft lessors into the regional aircraft niche, particularly those with greater access to capital than the Company, could lead to fewer acquisition opportunities for the Company and/or lease terms that are less favorable to the Company, as well as fewer renewals of existing leases or new leases of existing aircraft.

The Company, however, believes that it has a competitive advantage due to its experience and operational efficiency in financing the transaction sizes that are desired by many in the regional air carrier market.

### *Dependence on Significant Customers*

For the year ended December 31, 2018, the Company's four largest customers accounted for 30%, 21%, 15%, and 13% of operating lease revenue. For the year ended December 31, 2017, the Company's four largest customers accounted for 28%, 20%, 14%, and 11% of operating lease revenue. This concentration of credit risk with respect to lease receivables will diminish in the future only if the Company is able to expand its customer base by re-leasing assets currently on lease to significant customers to new customers at lease-end and/or acquiring assets for lease to new customers.

### *Environmental Matters*

Compliance with federal, state and local environmental laws, including provisions regulating the discharge of greenhouse gas emissions (including carbon dioxide (CO<sub>2</sub>)) into the environment, aircraft noise regulations, and remedial agreements or other actions relating to these provisions or the environment otherwise, has not had, and is not expected to have, a material effect on the Company's capital expenditures, financial condition, results of operations or competitive position.

### *Employees*

Prior to the Merger, JMC was responsible for all administration and management of the Company pursuant to the terms of the Management Agreement. Consequently, the Company did not have any employees. With the acquisition of JHC by the Company on October 1, 2018, the Company assumed the role of employer (through its JMC subsidiary) of the staff of such subsidiary at the time of the Merger. As a result, as of December 31, 2018, the Company had 12 total employees, including 11 full-time employees.

### *Patents, Trademarks and Licenses*

The Company has a registered trademark for the “AeroCentury” name. The Company relies primarily on trademark and trade secrets law, as well as non-disclosure contracts, to protect its intellectual property and proprietary information.

### *Available Information*

AeroCentury is a Delaware corporation incorporated in 1997. Its headquarters is located at 1440 Chapin Avenue, Suite 310, Burlingame, California 94010. The main telephone number is (650) 340-1888. The Company’s website is located at: <http://www.aerocentury.com>.

The Company files and furnishes periodic reports, proxy statements and other information with the SEC. Copies of these materials are made available free of charge on the Company’s website through the Investor Relations link (SEC Filings) as soon as reasonably practicable after they are electronically filed with or furnished to the SEC. In addition, the SEC maintains an Internet site (<http://www.sec.gov>) that contains reports, proxy and information statements and other information regarding issuers that file electronically with the SEC, including the Company.

### **Item 1A. Risk Factors.**

Disclosure under this item has been omitted pursuant to the rules of the SEC that permit smaller reporting companies to omit this information. However, please see the description of certain risks and uncertainties that could impact the Company’s performance, liquidity and stock price and volume set forth under *Factors that May Affect Future Results and Liquidity* in Item 7 of this report.

### **Item 1B. Unresolved Staff Comments.**

None.

### **Item 2. Properties.**

As of December 31, 2018, the Company did not own any real property, plant or materially important physical properties. The Company leases its principal executive office space at 1440 Chapin Avenue, Suite 310, Burlingame, California 94010 under a lease agreement that expires on June 30, 2020.

For information regarding the aircraft and aircraft engines owned by the Company, refer to the information under “*Fleet Summary*” in Item 7 of this report and Note 3 to the Company’s consolidated financial statements in Item 8 of this report.

### **Item 3. Legal Proceedings.**

The Company from time to time engages in ordinary course litigation incidental to the business, typically relating to lease collection matters against defaulting lessees and mechanic’s lien claims by vendors hired by lessees. Although the Company cannot predict the impact or outcome of any of these proceedings, including, among other things, the amount or timing of any liabilities or other costs it may incur, none of the pending legal proceedings to which the Company is a party or any of its property is subject is anticipated to have a material effect on the Company’s business, financial condition or results of operations.

**Item 4. Mine Safety Disclosures.**

Not applicable.

**PART II**

**Item 5. Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities.**

*Market Information*

The Company's common stock is traded on the NYSE American Exchange under the symbol "ACY."

*Number of Holders*

According to the Company's transfer agent, the Company had approximately 1,300 stockholders of record as of March 15, 2019. Because brokers and other institutions and nominees hold many of the Company's shares of Common Stock on behalf of beneficial owners, the Company is unable to estimate the total number of beneficial owners represented by those nominees.

*Dividends*

Although the Company's earnings in some periods may indicate an ability to pay cash dividends, the Company has not declared or paid any such dividends to date, and has no plans to do so in the foreseeable future because it intends to re-invest any earnings into the acquisition of additional revenue-generating aircraft and equipment.

**Item 6. Selected Financial Data.**

Disclosure under this item has been omitted pursuant to the rules of the SEC that permit smaller reporting companies to omit this information.

## Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations.

*The following discussion and analysis should be read together with the Company's audited consolidated financial statements and the related notes included in this report. This discussion and analysis contains forward-looking statements. Please see the cautionary note regarding these statements at the beginning of this report.*

### Overview

The Company provides leasing and finance services to regional airlines worldwide. The Company is principally engaged in leasing its aircraft portfolio, primarily consisting of mid-life regional aircraft, through operating leases and finance leases to its globally diverse customer base of eleven airlines in nine countries. In addition to leasing activities, the Company sells aircraft from its operating lease portfolio to third parties, including other leasing companies, financial services companies, and airlines. Its operating performance is driven by the composition of its aircraft portfolio, the terms of its leases, the interest rate of its debt, as well as asset sales.

During 2018, the Company purchased two aircraft subject to operating leases. During the same period, the Company sold five aircraft for cash, and reclassified three aircraft from held for lease to held for sale. The Company ended the year with a total of seventeen aircraft and one engine held for lease, with a net book value of approximately \$184 million. This represents a 6% decrease compared to the net book value of the Company's aircraft and engines held for lease at December 31, 2017. In addition to the aircraft and engine held for lease, at year-end, the Company held six aircraft subject to finance leases and three aircraft held for sale.

Average portfolio utilization was approximately 92% and 93% during 2018 and 2017, respectively. The year-to-year decrease was due to asset sales of previously-leased assets during 2017 and 2018, as well as the return of several aircraft at lease end in 2017.

In July 2017, the Company expanded its Credit Facility from \$150 million to \$170 million. The unused amount of the Credit Facility was \$47.6 million as of December 31, 2018, and the weighted average interest rate was 5.92% at December 31, 2018. In February 2019, the Credit Facility, which was to expire on May 31, 2019, was extended to February 19, 2023 and was amended in certain other respects as described under *Liquidity and Capital Resources* below. Also in February 2019, the Company refinanced, using new non-recourse Term Loans with an aggregate principal of \$44.3 million, four aircraft that previously served as collateral under the Credit Facility and two aircraft previously subject to special purpose subsidiary financing.

Net loss for 2018 was \$8.1 million, compared to net income of \$7.4 million in 2017, resulting in basic and diluted (loss)/earnings per share of \$(5.58) and \$5.10 respectively. Pre-tax profit margin (which the Company calculates as its (loss)/income before income tax (benefit)/provision as a percentage of its revenues and other income) was (33%) in 2018 compared to 10% in 2017.

On October 1, 2018, the Company acquired JHC by way of the Merger. JHC is the owner of JMC, the integrated aircraft management, marketing and financing business that manages and administers the Company's portfolio of aircraft assets. Before the Merger, such management and administration were performed pursuant to the terms of the Management Agreement between the Company and JMC. Post-Merger, the management and administration services provided under the Management Agreement have become internalized and under the control and management of the Company itself. Expenses incurred by JMC in providing services under the Management Agreement are, as of October 1, 2018, expenses of the Company reflected in the Company's financial statements. In addition, after October 1, 2018, the management, acquisition and remarketing fees previously paid by the Company to JMC as an unconsolidated third party are no longer be reflected in the Company's financial statements; rather, the expenses incurred by JMC in managing and administering the Company's assets are borne by the Company directly and reflected in its financial statements accordingly.

**Fleet Summary**

*(a) Assets Held for Lease*

Key portfolio metrics of the Company's aircraft held for lease as of December 31, 2018 and December 31, 2017 were as follows:

	<u>December 31, 2018</u>	<u>December 31, 2017</u>
Number of aircraft and engines held for lease	<u>For the Years Ended December 31, 2018</u>	<u>2017</u>
Weighted average fleet age	<u>11.20 years</u>	<u>11.24 years</u>
Average portfolio utilization portfolio	92%	93%

utilization between 2017 and 2018 was due to asset sales during late 2017 and 2018, as well as the return of several aircraft at lease-end in 2017.

The following table sets forth the net book value and percentage of the net book value, by type, of the Company's assets that were held for lease at December 31, 2018 and December 31, 2017:

Type	December 31, 2018		December 31, 2017	
	Number owned	% of net book value	Number owned	% of net book value
<b>Turboprop aircraft:</b>				
Bombardier Dash-8-400	2	13%	2	7%
Bombardier Dash-8-300	2	5%	3	6%
Saab 340B Plus	-	-%	4	3%
Saab 340B	-	-%	1	1%
<b>Regional jet aircraft:</b>				
Canadair 900 (*)	5	39%	5	38%
Embraer 175	3	16%	3	16%
Canadair 1000	2	14%	2	15%
Canadair 700	3	12%	3	13%
<b>Engines:</b>				
Pratt & Whitney 150A	1	1%	1	1%

was converted to a Canadair 900 in 2018.

During 2018, the Company purchased two aircraft subject to operating leases, and sold five aircraft and certain aircraft parts. During 2017, the Company purchased three aircraft subject to operating leases and three aircraft that the Company leased pursuant to direct financing leases in a sale and leaseback transaction, and sold two aircraft, three spare engines and parts from two assets that are held for sale, and one aircraft pursuant to a sales-type finance lease.

The following table sets forth the net book value and percentage of the net book value of the Company's assets that were held for lease at December 31, 2018 and December 31, 2017 in the indicated regions (based on the domicile of the lessee):

Region	December 31, 2018		December 31, 2017	
	Net book value	% of net book value	Net book value	% of net book value
Europe	\$ 110,069,000	60%	\$ 92,108,500	47%
North America	68,485,400	37%	72,270,700	37%
Asia	5,465,500	3%	6,082,100	3%
Off lease	-	-%	24,636,900	13%
	<u>\$ 184,019,900</u>	<u>100%</u>	<u>\$ 195,098,200</u>	<u>100%</u>

For the year ended December 31, 2018, approximately 30%, 28% and 21% of the Company's operating lease revenue was derived from customers in Slovenia, the United States and Spain, respectively. For the year ended December 31, 2017, approximately 28%, 21%, 20% and 11% of the Company's operating lease revenue was derived from customers in Slovenia, the United States, Spain and Mozambique, respectively. Operating lease revenue does not include interest income from the Company's finance leases. The following table sets forth geographic information about the Company's operating lease revenue for leased aircraft and aircraft equipment, grouped by domicile of the lessee:

At December 31, Region	For the Years Ended December 31,			
	2018		2017	
	Number of lessees	% of operating lease revenue	Number of lessees	% of operating lease revenue
Europe	4	59%	4	52%
North America	4	37%	5	29%
Africa	-	-	1	12%
Asia	1	4%	1	4%
Australia	-	-	1	3%

Company also had six aircraft and nine aircraft, respectively, subject to finance leases. For the year ended December 31, 2018, approximately 67% and 33% of the Company's finance lease revenue was derived from customers in Africa and Europe, respectively. For the year ended December 31, 2017, approximately 75% and 25% of the Company's finance lease revenue was derived from customers in Africa and Europe, respectively.

*(b) Assets Held for Sale*

Assets held for sale at December 31, 2018 consisted of two off-lease Saab 340B Plus turboprop aircraft, one off-lease Bombardier Dash-8-300 aircraft and airframe parts from two turboprop aircraft. Assets held for sale at December 31, 2017 consisted of airframe parts from two aircraft.

## **Results of Operations**

### *(a) Revenues and Other Income*

Revenues and other income decreased by 24% to \$27.1 million in 2018 from \$35.6 million in 2017. The decrease was primarily a result of losses incurred on the sale of older assets, decreased operating lease revenues, and decreased maintenance reserves revenues.

Operating lease revenue decreased by 5% to \$27.6 million in 2018 from \$29.0 million in 2017, primarily due to the loss of revenue from assets that were on lease in 2017 but off lease in 2018 and aircraft that were sold during 2017. Such decreases were partially offset by revenue from assets purchased in mid-2017 and in the second quarter of 2018.

Finance lease revenue decreased by 20% to \$1.3 million in 2018 from \$1.6 million in 2017, primarily due to a lower finance lease receivables balance in the 2018 period and the purchase by the lessee of three aircraft subject to finance leases during the third quarter of 2018.

Maintenance reserves that are retained by the Company at lease end are recorded as revenue at that time. The Company recorded \$1.6 million of such revenue during 2018, arising from cash received from the former lessee of three aircraft after such aircraft were returned to the Company by the lessee during 2017. Such amounts were not accrued at lease termination based on management's evaluation of the creditworthiness of the lessee. During 2017, the Company recorded maintenance reserves revenue of \$3.9 million related to retained maintenance reserves at the time of lease termination for seven aircraft.

During 2018, the Company recorded gains totaling approximately \$0.1 million on the sale of an aircraft and aircraft parts and losses totaling approximately \$3.5 million on the sale of four aircraft. During 2017, the Company recorded a gain of \$0.3 million on the sale of an aircraft pursuant to a sales-type finance lease, gains totaling \$1.2 million on the sale of two aircraft and aircraft parts, and losses totaling \$0.4 million on the sale of three spare engines. During 2017, the Company also exchanged one of its spare engines for 150,000 shares of the Company's common stock held by a stockholder, and recorded no gain or loss related to the exchange.

### *(b) Expenses*

Total expenses increased by 13% to \$36.2 million in 2018 from \$32.1 million in 2017. The increase was primarily a result of increases in asset impairment provisions, interest expense, salaries and employee benefits and professional fees, general and administrative and other expenses, as well as a settlement loss recorded in connection with the acquisition of JHC. These increases were partially offset by decreases in management fees and maintenance fees.

The Company's interest expense increased by 23% to \$9.5 million in 2018 from \$7.8 million in 2017, primarily as a result of a higher average debt balance, a higher average interest rate and higher loan fee amortization.

The average net book value of assets held for lease during 2018 and 2017 was approximately \$195.1 million and \$196.5 million, respectively. Until the acquisition of JHC on October 1, 2018, management fees paid to JMC were based on the net book value of the Company's aircraft and engines as well as finance lease receivable balances. After the Merger, JMC's operating expenses, including salaries and employee benefits, became the responsibility of the Company. The total of management fees, salaries and employee benefits and professional fees, general and administrative and other expenses decreased by 8% to \$7.4 million in 2018 from \$8.1 million in 2017.

In 2018 and 2017, the Company's professional fees, general and administrative and other expenses included \$485,000 and \$619,400, respectively, incurred in connection with the acquisition of JHC.

During 2018, the Company recorded impairment charges totaling \$3.0 million on four aircraft held for sale, based on appraised values. During 2017, the Company recorded impairment charges of \$0.7 million for two turboprop aircraft, based on their appraised values, \$0.1 million for an asset based on its net sales value, which was subsequently sold in 2017, and \$0.2 million for an asset that was written down to its net sales value and sold in early 2018.

The Company's maintenance expense decreased by 78% to \$0.6 million in 2018 from \$2.9 million in 2017, as a result of a decrease in maintenance work performed by the Company on off-lease aircraft to prepare them for sale or re-lease.

The Company's insurance expense increased by 41% to \$0.4 million in 2018 from \$0.3 million in 2017. Insurance expense includes amounts paid for directors' and officers' liability, business personal property, premises liability and product liability insurance, as well as aircraft hull insurance for periods when an aircraft is off-lease.

During 2018, the Company recorded a settlement loss of \$2.5 million related to the Merger. See Note 8 to the Company's consolidated financial statements in Item 8 of this report for more information about this settlement loss.

### *(c) Income Tax Benefit*

The Company's benefit for income taxes decreased from \$4.0 million in 2017 to \$1.0 million in 2018. This change was primarily attributable to the Company recognizing the deferred tax benefit of lower U.S. corporate income tax rates enacted in December 2017.

## *Liquidity and Capital Resources*

The Company is currently financing its assets and operations primarily through debt financing and excess cash flow from operations.

### *(a) Credit Facility*

The Company has a Credit Facility, as described in Notes 6(a) and 14 to the Company's consolidated financial statements in Item 8 of this Annual Report on Form 10-K. In February 2019, the Credit Facility, which had availability of \$170 million (with the ability for the Company to request an increase up to \$180 million) and was to mature on May 31, 2019, was extended to February 19, 2023, reduced to \$145 million (with the ability for the Company to request an increase up to \$160 million) and amended in certain other respects, including with respect to certain of the Company's financial covenants thereunder.

In addition to payment obligations (including principal and interest payments on outstanding borrowings and commitment fees based on the amount of any unused portion of the Credit Facility), the Credit Facility contains financial covenants with which the Company must comply, including, but not limited to, positive earnings requirements, minimum net worth standards and certain ratios, such as debt to equity ratios.

The Company was not in compliance with the interest coverage, debt service coverage and revenue concentration covenants under the Credit Facility at September 30, 2018. The Company obtained a waiver from the Credit Facility lenders in November 2018 for the September 30, 2018 noncompliance. There were no fees or penalties related to the waiver. In addition, based on appraisals obtained in October 2018 for four assets held for sale, the Company had a borrowing base deficiency of approximately \$1,400,000 at September 30, 2018. The Company cured the deficiency in October 2018 by making a principal payment of \$2,000,000 on the Credit Facility.

The Company was also not in compliance with the interest coverage, debt service coverage, no-net-loss and revenue concentration covenants under the Credit Facility at December 31, 2018. The December 31, 2018 noncompliance was cured by the February 2019 amendment and extension to the Credit Facility, which also revised certain of these financial covenants requirements through the February 2023 maturity date of the extended Credit Facility.

If the Company is out of compliance with any of its Credit Facility covenants at future calculation dates, it would need to request waivers or amendments of applicable covenants from the lenders if such compliance failure is not timely cured. Any such future noncompliance that is not timely cured or waived would result in a default under the Credit Facility, which could have material negative consequences, as described further below.

The Company's ability to regain and maintain compliance with its covenants in the Credit Facility is subject to a variety of factors, including, among others (i) unanticipated decreases in the market value of the Company's assets, or in the rental rates deemed achievable for such assets, that cause the Company to record an impairment charge against earnings, (ii) lessee noncompliance with lease obligations, (iii) inability to locate new lessees for returned aircraft or equipment within a reasonable remarketing period, or at a rent level consistent with projected rates, (iv) inability to locate and acquire a sufficient volume of additional assets at prices that will produce acceptable net returns, (v) increases in interest rates, and (vi) inability to timely dispose of off-lease assets at prices commensurate with their market value.

Any default under the Credit Facility, if not cured in the time permitted or waived by the lenders, could result in the Company's inability to borrow any further amounts under the Credit Facility, the acceleration of the Company's obligation to repay amounts borrowed under the Credit Facility, or foreclosure upon any or all of the assets of the Company.

### *(b) Special Purpose Financing*

In August 2016, the Company acquired, using wholly-owned special purpose entities, two regional jet aircraft, using cash and third-party financing (referred to as "special purpose financing" or "UK LLC SPE Financing") separate from the Credit Facility, as described in Note 6(b) to the Company's consolidated financial statements in Item 8 of this Annual Report on Form 10-K.

In February 2019, the UK LLC SPE Financing was repaid as part of a refinancing involving the Term Loans, which were made to special purpose subsidiaries of the Company. Under the Term Loans, four aircraft that previously served as collateral under the Credit Facility were moved into newly formed special purpose subsidiaries and, along with the aircraft owned by the two existing special purpose subsidiaries, were pledged as collateral under the Term Loans.

All of the Term Loans contain cross-default provisions, so that any default by a lessee of any of the subject aircraft could result in the Term Loan lender exercising its remedies under the Term Loan agreement, including, but not limited to, possession of the aircraft that is subject to a lessee default. In addition, a default under the Term Loan agreement would be a default under the Credit Facility agreement.

### *(c) Cash Flow*

The Company's primary sources of cash from operations are payments due under the Company's operating and finance leases, maintenance reserves, which are billed monthly to lessees based on asset usage, and proceeds from the sale of aircraft and engines.

The Company's primary uses of cash are for (i) purchases of assets, (ii) Credit Facility and Term Loan financing interest, principal and interest swap payments, (iii) maintenance expense and reimbursement to lessees from collected maintenance reserves, (iv) before completion of the Merger, management fees and expense reimbursement owed to JMC, (v) after completion of the Merger, salaries and employee benefits and (vi) professional fees, including legal, accounting and directors' fees costs.

The Company's payments for maintenance consist of reimbursements to lessees for eligible maintenance costs under their leases and maintenance

incurred directly by the Company for preparation of off-lease assets for re-lease to new customers. The timing and amount of such payments may vary widely between quarterly and annual periods, as the required maintenance events can vary greatly in magnitude and cost, and the performance of the required maintenance events by the lessee or the Company, as applicable, are not regularly scheduled calendar events and do not occur at uniform intervals. The Company's maintenance payments typically constitute a large portion of its cash needs, and the Company may from time to time borrow additional funds under the Credit Facility, if available, or seek alternative sources of financing to provide funding for these payments.

Prior to the Company's acquisition of JHC on October 1, 2018, the Company's portfolio of aircraft assets was managed and administered under the terms of the Management Agreement with JMC. Under the Management Agreement, JMC received a monthly management fee based on the net asset value of the Company's assets under management. JMC also received an acquisition fee for locating assets for the Company to acquire. Acquisition fees were included in the cost basis of the asset purchased. JMC also received a remarketing fee in connection with the re-lease or sale of the Company's assets. Remarketing fees were amortized over the applicable lease term or included in the gain or loss on sale.

In April 2018, subsequent to the execution of the merger agreement for the acquisition of JHC (the "Merger Agreement"), which was signed in October 2017, the Company, JHC and JMC entered into a waiver and reimbursement agreement (the "Waiver/Reimbursement Agreement"), pursuant to which JHC and JMC agreed to waive their right to receive management and acquisition fees ("Contract Fees") otherwise owed by the Company to JMC pursuant to the Management Agreement for all periods after March 31, 2018 and until the consummation of the Merger, and in return, the Company agreed to reimburse JMC for expenses incurred in providing management services set forth under the Management Agreement. As a result, the Company has been responsible for all expenses incurred by JMC in managing the Company beginning April 1, 2018 and will continue to be responsible for all such expenses in all periods after the Merger ("Management Expense"), and no Contract Fees were paid by the Company to JMC for the period from April 1 through September 30, 2018. Notwithstanding the Waiver/Reimbursement Agreement, the Company accrued as an expense the Contract Fees that would have been due under the Management Agreement through September 30, 2018. For the nine months ended September 30, 2018, Contract Fees exceeded the reimbursement for JMC expenses by \$1,023,100 of management fees and \$494,400 of acquisition fees (collectively, the "JMC Margin"). The amount of the JMC Margin was considered in the acquisition accounting for the calculation of the settlement loss that the Company recognized upon closing the Merger.

Following the Merger, the risk of increased Management Expense, including employee salaries and benefits, worldwide travel related to the management of the Company's aircraft portfolio, office rent, outside technical experts and other overhead expenses, is now the responsibility of the Company. In addition, because the management and administrative services previously performed by JMC are now internalized, the Company is no longer paying management or acquisition fees to JMC in exchange for the performance of these services. As a result, the Company expects the types, timing and amounts of, and patterns and trends with respect to, its recorded expenses to change as a result of the Merger, but the manner and extent of these changes remains uncertain until the Company has performed and controlled these functions for some period of time.

The amount of interest paid by the Company depends primarily on the outstanding balance of its Credit Facility. Although the amounts owed under the Credit Facility accrue interest at a floating rate plus an interest rate margin, and are thus dependent on fluctuations in prevailing interest rates, in March 2019 the Company entered into an interest rate swap transaction for approximately 50% of the variable interest rate payment amounts due under the Credit Facility. As a result, although the amount of interest paid by the Company under the Credit Facility will fluctuate depending on prevailing interest rates, the swap will offset some of this variability such that the Company will be affected by interest rate fluctuations under the Credit Facility only to the extent of any excess of the outstanding balance under the Credit Facility over the amount covered by the related interest rate swap. Interest related to the Company's Term Loans also accrues at variable rates, but the Company has entered into interest rate swaps that effectively convert the Term Loan interest payments to fixed rate payments.

The Credit Facility and the Term Loans, as well as their related interest rate swap transactions, use LIBOR as a benchmark for establishing the rates at which interest accrues. LIBOR is the subject of recent national, international and other regulatory guidance and proposals for reform. These reforms and other pressures may cause LIBOR to disappear entirely or to perform differently than in the past. Although the consequences of these developments cannot be entirely predicted, they could include an increase in the cost to the Company of its LIBOR debt or even an acceleration of maturity of such debt if a suitable replacement index cannot be agreed upon or is not available.

Management believes that the Company will have adequate cash flow to meet its ongoing operational needs, including any required repayments under the Credit Facility and Term Loans, for at least the next 12 months from the issuance of this Annual Report, based upon its current estimates of future revenues and expenditures. These estimates reflect assumptions about, among other things, (i) revenues from assets to be re-leased, (ii) the amount, timing and patterns of management and administrative expenses being borne by the Company after the Merger rather than a third-party management company, (iii) cost and anticipated timing of aircraft maintenance to be performed, (iv) required debt payments, (v) timely use of proceeds of unused debt capacity for additional acquisitions of income-producing assets, and (vi) interest rates. Although the Company believes that the assumptions it has made in forecasting its cash flow are reasonable in light of experience, actual results could deviate from such assumptions. As discussed above, in *Liquidity and Capital Resources – (a) Credit Facility*, and below in *Outlook and Factors that May Affect Future Results and Liquidity*, there are a number of factors that may cause actual results to deviate from these forecasts. If these assumptions prove to be incorrect and the Company's cash requirements exceed its cash flow, the Company would need to pursue additional sources of financing to satisfy these requirements, which may not be available when needed, on acceptable terms or at all. See *Factors that May Affect Future Results and Liquidity* below for more information about financing risks and limitations.

(i) *Operating activities*

The Company's cash flow from operations increased by \$3.4 million in 2018 compared to 2017. As discussed below, the increase in cash flow was primarily a result of increases in payments received for maintenance reserves, as well as a decrease in payments made for management fees and maintenance. This positive effect was partially offset by increases in payments made for interest, salaries and employee benefits, professional fees and general and administrative expenses and income taxes.

(A) Payments for maintenance reserves

Receipts from lessees for maintenance reserves increased by \$0.4 million in 2018 compared to 2017, primarily due to cash received from the former

lessee of three aircraft that were returned to the Company during 2017. Such payments were for unpaid maintenance reserves, as well as amounts due pursuant to the return conditions of the applicable leases. The Company did not accrue unpaid reserves or return condition amounts at the time of lease termination based on management's evaluation of the creditworthiness of the lessee. Therefore, the Company is accounting for payments as they are received and recording the amount in maintenance reserves revenue in the period in which a payment is received.

(B) Payments for management fees, salaries and employee benefits and JMC expense reimbursement

Payments made for management fees decreased by \$3.2 million in 2018 compared to 2017, primarily as a result of the Waiver/Reimbursement Agreement, as well as a difference in the timing of payments from year to year. Payments made for salaries and employee benefits, which became the responsibility of the Company after the Merger, were \$0.7 million in 2018.

(C) Payments for maintenance

Payments made for maintenance decreased by \$3.5 million in 2018 compared to 2017 as a result of decreased maintenance performed by the Company on off-lease aircraft to prepare them for sale or re-lease.

(D) Payments for interest

The Company's interest payments increased by \$1.5 million in 2018 compared to 2017 as a result of a higher average debt balance and higher interest rates during 2018.

(E) Payments for income taxes

Payments made for income taxes increased by \$1.1 million in 2018 compared to 2017 as a result of foreign income taxes related to the Company's UK LLC SPE Financing entities.

(ii) *Investing activities*

During 2018 and 2017, the Company received net cash of \$16.6 million and \$12.9 million, respectively, from the sale of assets. During 2018 and 2017, the Company used cash of \$22.8 million and \$32.1 million, respectively, for acquisitions of aircraft. During 2017, the Company also used \$7.6 million for the acquisition of three aircraft that are subject to direct financing leases. During 2018, the Company also used \$2.9 million related to AeroCentury's acquisition of JHC.

(iii) *Financing activities*

During 2018 and 2017, the Company borrowed \$21.0 million and \$35.9 million, respectively, under the Credit Facility. In 2018 and 2017, the Company repaid \$32.6 million and \$12.0 million, respectively, of its total outstanding debt under the Credit Facility. Such repayments were funded by excess cash flow and, in 2018, the sale of assets. During 2018 and 2017, the Company's special purpose entities repaid \$4.3 million and \$4.1 million, respectively, of UK LLC SPE Financing principal. During 2018 and 2017, the Company paid \$0.1 million and \$1.2 million, respectively, for debt issuance and amendment fees.

(iv) *Off balance sheet arrangements*

The Company has no material off balance sheet arrangements.

## **Outlook**

The Company has identified four principal factors that it believes may materially affect the Company's growth and operating results in the near term. These and other factors that could impact the Company's business, performance and liquidity are described in more detail under *Factors that May Affect Future Results and Liquidity* below.

- The Company must source additional capital, though equity financings, additional debt financings or other alternatives, in order to grow. One of the motivations for AeroCentury's acquisition of JHC was to remove the outside management structure of the Company, which was believed to be an impediment to attracting capital sources. There can be no assurance that the Company will be able to obtain additional capital when needed, in the amounts desired or on favorable terms, as a successful capital-raising transaction depends on many factors, some of which are outside the Company's control.
- On October 1, 2018, the Company acquired JHC, the parent of JMC, which has acted as the management company for the Company since the Company's inception. The Company believes that the combination of the management function performed by JMC and the portfolio held by the Company could be accretive to the Company and could create value for the stockholders of the combined post-Merger company, but such accretion may not be realized until after transaction and integration costs in connection with the Merger have been incurred, or at all. Most of the one-time costs associated with the Merger, including a settlement loss of \$2.5 million, were recognized by the Company in 2018, though there may be some additional costs recognized in future periods.
- Increased production of aircraft types in the Company's market niche of worldwide regional aircraft has resulted in some manufacturers offering more competitive pricing for new aircraft to regional aircraft customers. In addition, notwithstanding recent interest rate increases in the United States, competition for assets in this market niche has continued to increase. Some of the Company's newer competitors are funded by investment banks and private equity firms seeking higher yields on investment assets than are currently available from traditional income investment types. The increased competition has resulted in higher acquisition prices for many of the aircraft types that the Company has targeted to buy and, at the same time, downward pressure on lease rates for these aircraft, resulting in lower revenues

and margins and, therefore, fewer acceptable acquisition opportunities for the Company. The Company anticipates this trend will continue for the short- to medium-term, but could change if and when yields on alternative investments return to a more normal historical range.

- The Company has not identified sale customers for three turboprop aircraft that are currently off lease and classified as held for sale. These aircraft are older types that are no longer in production, and as a result, the Company does not view it as unusual that market demand for these aircraft is weak and expects that they may remain unsold for a significant period of time.

## ***Critical Accounting Policies, Judgments and Estimates***

The Company's discussion and analysis of its financial condition and results of operations are based upon the consolidated financial statements included in this report, which have been prepared in accordance with accounting principles generally accepted in the United States of America. The preparation of these financial statements requires management to make estimates and judgments that affect the reported amounts of assets and liabilities, revenues and expenses, and the related disclosure of contingent assets and liabilities at the date of the financial statements or during the applicable reporting period. In the event that actual results differ from these estimates or the Company adjusts these estimates in future periods, the Company's operating results and financial position could be materially affected. For a further discussion of Critical Accounting Policies, Judgments and Estimates, refer to Note 1 to the Company's financial statements in Item 8 of this Annual Report on Form 10-K.

## ***Factors that May Affect Future Results and Liquidity***

The Company's business, financial condition, results of operations, liquidity, prospects and reputation could be affected by a number of factors. In addition to matters discussed elsewhere in this discussion, the Company believes the following are the most significant factors that may impact the Company; however, additional or other factors not presently known to the Company or that management presently deems immaterial could also impact the Company and its performance and liquidity.

***Availability of Financing.*** As described above, the Company must source additional capital, through equity financings, additional debt financings or other alternatives, in order to grow. One of the current primary limiters on the Company's ability to draw under its Credit Facility or incur any other additional debt financing is the covenant limitation on the Company's maximum debt to equity ratio. As a result, unless this ratio changes due to equity financing or otherwise, the Company's ability to rely upon the Credit Facility as a capital resource will remain limited. Additionally, although one of the motivations for AeroCentury's acquisition of JHC was to remove the outside management structure of the Company, which was believed to be an impediment to attracting capital sources, there could be other material factors, some of which are outside of the Company's control, that prevent or limit the Company's ability to access additional capital. As a result, there can be no assurance that the Company will be able to obtain additional capital when needed, in the amounts desired or on favorable terms in the future.

***Noncompliance with Debt Financial Covenants.*** The Company's use of debt as its primary form of acquisition financing subjects the Company to increased risks associated with leverage. In addition to payment obligations, the Company's debt agreements include financial covenants, including some requiring the Company to have positive earnings, meet minimum net worth standards and comply with certain other financial ratios. The Company was not in compliance with certain of these standards and ratios under the Credit Facility as of December 31, 2018. Although this noncompliance was cured with the February 2019 amendments to the Credit Facility, which revised certain of these financial covenants to better accommodate the Company's financial circumstances as a post-Merger entity with unified asset and portfolio management and to position the Company for future growth, the Company may be subject to additional compliance failures of these or other debt covenants at future calculation dates, and the lenders are under no obligation to forbear or waive any such future noncompliance. Any default under the Credit Facility or any other debt agreement, if not cured in the time permitted or waived by the respective lender, could result in the Company's inability to borrow under the debt instrument, the acceleration of the Company's debt obligations, or the foreclosure upon any or all of the assets of the Company.

***Credit Facility Debt Limitations.*** The amount available to be borrowed under the Credit Facility is limited by asset-specific advance rates. Lease arrearages or off-lease periods for a particular asset that serves as collateral under the Credit Facility may reduce the loan advance rate permitted with respect to that asset and, therefore, reduce the permitted borrowing under the facility or require repayments. Amounts subject to payment deferral agreements also reduce the amount of permitted borrowing. The Company believes it will have sufficient borrowing availability under the Credit Facility to meet its anticipated capital needs in the near term in spite of these limitations and it will have sufficient cash funds to make any required principal repayment that arises due to any such borrowing limitations, but actual cash levels could deviate from these assumptions.

***Term Loan Debt Limitations.*** The special purpose subsidiaries, ACY 19002 Limited, ACY 19003 Limited, ACY SN 15129 LLC, and ACY E-175 LLC, that own the six aircraft serving as collateral for the Term Loans are the named borrowers ("Borrower LLCs") under the Term Loans, and each Term Loan is secured by the corresponding aircraft owned by the applicable Borrower LLC. AeroCentury, as the parent corporation of each Borrower LLC, is not a party to the Term Loan agreements, but has entered into agreements with lessees of the Borrower LLCs to guarantee certain obligations to such lessees under each lessee's lease agreement with a Borrower LLC and with the Term Loan lender to guarantee certain representations, warranties and covenants delivered by the Borrower LLCs to the Term Loan lender in connection with the refinancing transaction. As a result, although the Term Loans are non-recourse to AeroCentury, AeroCentury could become directly responsible for the Borrower LLCs' obligations under the Term Loans and the related lease agreements pursuant to these guaranty arrangements. Moreover, any noncompliance under the Term Loans by a Borrower LLC could negatively affect the liquidity, aircraft portfolio and reputation of the Company as a whole.

The required payments under each Term Loan are expected to be funded by the operating lease rental revenue received from the lessee of the corresponding aircraft, and each Borrower LLC's continued compliance with its Term Loan will depend upon the lessee's compliance with its lease payment obligations. Failure by a lessee to make timely payments could result in a default under the applicable Term Loan and could result in an acceleration of all Term Loan indebtedness of the applicable Borrower LLC or foreclosure by the Term Loan lender on the applicable aircraft. Furthermore, a default by any Borrower LLC under its Term Loan would also constitute a default under the Credit Facility, and therefore any failure by a Borrower LLC's lessee to comply with its lease payment obligations or any other compliance failure by a Borrower LLC under its Term Loan could result in the Company's noncompliance under several of its debt agreements, which could have a material negative adverse effect on the Company's liquidity and capital resources.

***Consummation of Merger May Subject the Company to Additional Risks.*** On October 1, 2018 the Company acquired JHC, the parent of the Company's management company, JMC. The acquisition of JHC subjects the Company to certain risks, including the following:

- ***Assumption of Expenses Covered under Management Agreement.*** Under the Management Agreement with JMC, the Company paid management fees to JMC based upon the book value of the Company's aircraft assets, an acquisition fee for each asset purchased by the Company, and a remarketing/re-lease fee for each sale or re-lease transaction entered into with respect to the Company's aircraft. In return,

JMC provided the Company with comprehensive management services, under which JMC had full responsibility for payment of all employee salaries and benefits, outside technical services, worldwide travel needed to promote the Company's business, office space, utilities, IT and communications, furniture and fixtures, and other general administrative and overhead costs. Under the Management Agreement, if the fees collected were not enough to cover JMC's expenses in managing the Company's portfolio, such losses were borne entirely by JMC.

As a result of the Waiver/Reimbursement Agreement, the Company has been responsible for all expenses incurred by JMC in managing the Company beginning April 1, 2018 and will continue to be responsible for all such expenses in all periods after the Merger. The risk of increased costs for these expenses is now the responsibility of the Company, and such costs are no longer limited to the amount of the management fee, as was the case under the third-party management structure with JMC. Consequently, the risk of any cost overruns or unanticipated expenses in asset management since April 1, 2018 have been borne solely by the Company and are no longer shifted to an unconsolidated third party. As a result, the Company's expense categories, amounts, timing and patterns could change significantly in post-Merger periods and could be subject to increased period-to-period fluctuations.

- *Internalization of Management.* JHC is now a wholly-owned subsidiary of the Company, and sole responsibility for management of the combined company now falls upon the Company's management. If the Company is dissatisfied with management services, the Company will have to address the shortcomings internally, and if they cannot be resolved with existing management and personnel, the Company may be required to reorganize its management structure and/or replace personnel or seek new third-party management services, either of which could result in the Company incurring significant expense and use of resources.
- *Assumption of JHC Liabilities.* By acquiring JHC in the Merger, JHC has become a wholly-owned subsidiary of the Company. To the extent that JHC or any of its subsidiaries have liabilities, these have become liabilities of the Company on a consolidated basis. While the Merger Agreement provides for limited indemnification by JHC shareholders for certain liabilities of JHC or its subsidiaries that arise from pre-Merger occurrences and the Company performed due diligence reviews of the liabilities of JHC and its subsidiaries before completion of the Merger, the indemnification is limited to the consideration paid by the Company to JHC's shareholders and such due diligence reviews are inherently non-exhaustive and may not have uncovered all known or contingent liabilities or presently unknown liabilities that may emerge after the Merger's completion.

*Ownership Risks.* The Company's leases typically are for a period shorter than the entire, anticipated, remaining useful life of the leased assets. As a result, the Company's recovery of its investment and realization of its expected yield in such a leased asset is dependent upon the Company's ability to profitably re-lease or sell the asset following the expiration of the lease. This ability is affected by worldwide economic conditions, general aircraft market conditions, regulatory changes, changes in the supply or cost of aircraft equipment, and technological developments that may cause the asset to become obsolete. If the Company is unable to remarket its assets on favorable terms when the leases for such assets expire, the Company's financial condition, cash flow, ability to service debt, and results of operations could be adversely affected.

The Company typically acquires used aircraft equipment. The market for used aircraft equipment has been cyclical, and generally reflects economic conditions and the strength of the travel and transportation industry. The demand for and value of many types of used aircraft in the recent past has been depressed by such factors as airline financial difficulties, airline consolidations, the number of new aircraft on order, an excess supply of newly manufactured aircraft or used aircraft coming off lease, as well as introduction of new aircraft models and types that may be more technologically advanced, more fuel efficient and/or less costly to maintain and operate. Values may also increase or decrease for certain aircraft types that become more or less desirable based on market conditions and changing airline capacity. Declines in the value of the Company's aircraft and any resulting decline in market demand for these aircraft could materially adversely affect the Company's revenues, performance and liquidity. Also, because the Company's ability to borrow under the current terms of its Credit Facility is subject to a covenant setting forth a maximum ratio of (i) the outstanding debt under the facility to (ii) the appraised value of the collateral base of aircraft assets securing the Credit Facility, a significant drop in the appraised market value of the portfolio could require the Company to make a substantial prepayment of outstanding principal under the Credit Facility in order to avoid a default under the Credit Facility and limit the utility of the Credit Facility as a source of future funding.

In addition, a successful investment in an asset subject to an operating lease depends in part upon having the asset returned by the lessee in the condition as required under the lease. Each operating lease obligates a customer to return an asset to the Company in a specified condition, generally in a condition that will allow the aircraft to be readily re-leased to a new lessee, and/or pay an economic settlement for redelivery that is not in compliance with such specified conditions. The Company strives to ensure this result through onsite management during the return process. However, if a lessee becomes insolvent during the term of its lease and the Company has to repossess the asset, it is unlikely that the lessee would have the financial ability to meet these return obligations. In addition, if a lessee files for bankruptcy and rejects the aircraft lease, the lessee would be required to return the aircraft but would be relieved from further lease obligations, including return conditions specified in the lease. In either case, it is likely that the Company would be required to expend funds in excess of any maintenance reserves collected to return the asset to a remarketable condition.

Several of the Company's leases with financially strong lessees do not require payment of monthly maintenance reserves, which serve as the lessee's advance payment for its future repair and maintenance obligations. If repossession due to lessee default or bankruptcy occurred under such a lease, the Company would need to pay the costs of unperformed repair and maintenance under the applicable lease and would likely incur an unanticipated expense in order to re-lease or sell the asset.

Furthermore, the occurrence of unexpected adverse changes that impact the Company's estimates of expected cash flow from an asset could result in an asset impairment charge against the Company's earnings. The Company periodically reviews long-term assets for impairment, particularly when events or changes in circumstances indicate the carrying value of an asset may not be recoverable. An impairment charge is recorded when the carrying amount of an asset is estimated to be not recoverable and exceeds its fair value. The Company recorded impairment charges for some of its aircraft in 2017 and 2018, and may be required to record asset impairment charges in the future as a result of a prolonged weak economic environment, challenging market conditions in the airline industry, events related to particular lessees, assets or asset types or other factors affecting the value of aircraft or engines.

*Interest Rate Risk.* While the debt under the Term Loans is fully covered by interest rate swaps that effectively convert the variable interest rate Term Loan payments to fixed rate payments, only approximately half of the Credit Facility debt is subject to such an interest rate swap. As a result, the amount of interest paid by the Company under the Credit Facility will fluctuate depending on prevailing interest rates to the extent of any excess of the outstanding balance under the Credit Facility over the amount covered by the related interest rate swap. Consequently, interest rate increases could materially increase the Company's interest payment obligations under the Credit Facility and thus could have a material adverse effect on the Company's liquidity and financial condition. Further, because the interest rates under the Credit Facility and the Term Loans are based on LIBOR, which is the subject of recent national, international and other regulatory guidance and proposals for reform, the amount of the Company's interest payments under these arrangements could increase if LIBOR is phased out or performs differently than in the past.

Lease rates typically, but not always, move over time with interest rates, but market demand and numerous other asset-specific factors also affect lease rates. Because the Company's typical lease rates are fixed at lease origination, interest rate changes during the lease term have no effect on existing lease rental payments. Therefore, if interest rates rise significantly and there is relatively little lease origination by the Company following such rate increases, the Company could experience decreased net income as additional interest expense outpaces revenue growth. Further, even if significant lease origination occurs following such rate increases, other contemporaneous aircraft market forces may result in lower or flat rental rates, thereby decreasing net income.

*Lessee Credit Risk.* The Company carefully evaluates the credit risk of each customer and attempts to obtain a third-party guaranty, letters of credit or other credit enhancements, if it deems them necessary, in addition to customary security deposits. There can be no assurance, however, that such enhancements will be available, or that, if obtained, they will fully protect the Company from losses resulting from a lessee default or bankruptcy.

If a lessee that is a certified U.S. airline defaults under a lease and seeks protection under Chapter 11 of the United States Bankruptcy Code, Section 1110 of the Bankruptcy Code would automatically prevent the Company from exercising any remedies against such lessee for a period of 60 days. After the 60-day period had passed, the lessee would have to agree to perform the lease obligations and cure any defaults, or the Company would have the right to repossess the equipment. However, this procedure under the Bankruptcy Code has been subject to significant litigation, and it is possible that the Company's enforcement rights would be further adversely affected in the event of a bankruptcy filing by a defaulting lessee.

Lessees located in low-growth or no-growth areas of the world carry heightened risk of lessee default. The Company has had customers that have experienced significant financial difficulties, become insolvent, or have entered bankruptcy proceedings. A customer's insolvency or bankruptcy usually results in the Company's total loss of the receivables from that customer, as well as additional costs in order to repossess and, in some cases, repair the aircraft leased by the customer. The Company closely monitors the performance of all of its lessees and its risk exposure to any lessee that may be facing financial difficulties, in order to guide decisions with respect to such lessee in an attempt to mitigate losses in the event the lessee is unable to meet or rejects its lease obligations. There can be no assurance, however, that additional customers will not become insolvent, file for bankruptcy or otherwise fail to perform their lease obligations, or that the Company will be able to mitigate any of the resultant losses.

It is possible that the Company may enter into deferral agreements for overdue lessee obligations. When a customer requests a deferral of lease obligations, the Company evaluates the lessee's financial plan, the likelihood that the lessee can remain a viable carrier, and whether the deferral is likely to be repaid according to the agreed schedule. The Company may elect to record the deferred rent and reserves payments from the lessee on a cash basis, which could have a material effect on the Company's financial results in the applicable periods. Deferral agreements with lessees also reduce the Company's borrowing capacity under its Credit Facility.

*Concentration of Lessees and Aircraft Type.* For the year ended December 31, 2018, the Company's four largest customers accounted for a total of approximately 79% of the Company's monthly operating lease revenue. A lease default by or collection problem with one or a combination of any of these significant customers could have a disproportionately negative impact on the Company's financial results and borrowing base under the Credit Facility, and, therefore, the Company's operating results are especially sensitive to any negative developments with respect to these customers in terms of lease compliance or collection. In addition, if the Company's revenues become overly concentrated in a small number of lessees, the Company could fail to comply with certain financial covenants in its Credit Facility related to customer concentration, which could result in the negative effects of such a default as described under *Noncompliance with Debt Financial Covenants*, above.

The Company's aircraft portfolio is currently focused on a small number of aircraft types and models relative to the variety of aircraft used in the commercial air carrier market. A change in the desirability and availability of any of the particular types and models of aircraft owned by the Company could affect valuations and future rental revenues of such aircraft, and would have a disproportionately significant impact on the Company's portfolio value. In addition, the Company is dependent on the third-party companies that manufacture and provide service for the aircraft types in the Company's portfolio. The Company has no control over these companies, and they could decide to curtail or discontinue production of or service for these aircraft types at any time or significantly increase their costs, which could negatively impact the Company's prospects and performance. These effects would diminish if the Company acquires assets of other types. Conversely, acquisition of additional aircraft of the types currently owned by the Company will increase the Company's risks related to its concentration of those aircraft types.

*Competition.* The aircraft leasing industry is highly competitive. The Company competes with other leasing companies, banks, financial institutions, private equity firms, aircraft leasing syndicates, aircraft manufacturers, distributors, airlines and aircraft operators, equipment managers, equipment leasing programs and other parties engaged in leasing, managing or remarketing aircraft. Many of these competitors have longer operating histories, more experience, larger customer bases, more expansive brand recognition, deeper market penetration and significantly greater financial resources. Further, competition in the Company's market niche of regional aircraft has increased significantly recently as a result of increased focus on regional air carriers by competitors who have traditionally neglected this market, new entrants to the acquisition and leasing market and consolidation of certain competitors. If and as competition continues to increase, it has and will likely continue to create upward pressure on acquisition prices for many of the aircraft types that the Company has targeted to buy and, at the same time, create downward pressure on lease rates, resulting in lower revenues and margins for the Company and, therefore, fewer acceptable acquisition opportunities for the Company.

*Risks Related to Regional Air Carriers.* The Company's continued focus on its customer base of regional air carriers subjects the Company to certain risks. Many regional airlines rely heavily or even exclusively on a code-share or other contractual relationship with a major carrier for revenue, and can face financial difficulty or failure if the major carrier terminates or fails to perform under the relationship or files for bankruptcy or becomes insolvent. Some regional carriers may depend on contractual arrangements with industrial customers such as mining or oil companies, or franchises from governmental agencies that provide subsidies for operating essential air routes, which may be subject to termination or cancellation on short notice. Furthermore, many lessees in the regional air carrier market are start-up, low-capital, and/or low-margin operators. A current concern for regional air carriers is the supply of qualified pilots. Due to recently imposed regulations of the U.S. Federal Aviation Administration requiring a higher minimum number of hours to qualify as a commercial passenger pilot, many regional airlines have had difficulty meeting their business plans for expansion. This could in turn affect demand for the aircraft types in the Company's portfolio and the Company's business, performance and liquidity.

*General Economic Conditions and Lowered Demand for Travel.* While the global economy has seen substantial improvement since the 2008 financial crisis and global recession, not all global regions are experiencing growth, and some have not fully recovered. There are indications that after recent periods of economic growth, major world economies may be headed into a period of slower growth or even recession. The Company does not anticipate any worsening of the financial condition of its overall customer base in the near term, but believes that there may be further shakeouts of weaker carriers in economically troubled regions, particularly if the world economy experiences a slowdown. Any such shakeouts or any continued or new economic recession or downturn in the regions in which the Company's lessees operate could negatively impact the financial condition and viability of certain of the Company's customers and, in turn, the Company's business and performance.

A growing concern arises from the fact that much of the recent growth in demand for regional aircraft in developing countries has been driven by mining or other resource extraction operations by Chinese enterprises in these countries. A downturn in the Chinese domestic economy that continues to reduce demand for imported raw materials could have a significant negative impact on the demand for business and regional aircraft in these developing countries, including in some of the markets in which the Company does, or seeks to do, business.

Furthermore, instability in Europe due to newly imposed U.S. sanctions against Russia and Iran, and the Russian, Iranian and European reaction to such sanctions, or due to other factors, could have a negative impact on intra-European carriers with which the Company does business. Also, Brexit and any further departures from the European Union ("EU") could threaten "open-sky" policies under which EU-based carriers operate freely within the EU. Losing open-sky flight rights could have a significant negative impact on the health of the Company's European lessees and, as a result, the financial performance and condition of the Company.

If international conflicts erupt into military hostilities, heightened visa requirements make international travel more difficult, terrorist attacks involving aircraft or airports occur, or a major flu outbreak occurs, passengers may avoid air travel altogether, and global air travel worldwide could be significantly affected. Any such occurrence would have an adverse impact on many of the Company's customers.

Airline reductions in capacity in response to lower passenger loads can result in reduced demand for aircraft and aircraft engines and a corresponding decrease in market lease rental rates and aircraft values. This reduced market value could affect the Company's results if the market value of an asset or assets in the Company's portfolio falls below carrying value, and the Company determines that a write-down of the value is appropriate. Furthermore, if older, expiring leases are replaced with leases at decreased lease rates, the lease revenue from the Company's existing portfolio is likely to decline, with the magnitude of the decline dependent on the length of the downturn and the depth of the decline in market rents.

Economic downturns can affect certain regions of the world more than others. As the Company's portfolio is not entirely globally diversified, a localized downturn in one of the key regions in which the Company leases assets could have a disproportionately significant adverse impact on the Company. The Company's significant sources of operating lease revenue by region are summarized in *Fleet Summary – Assets Held for Lease*, above.

*International Risks.* The Company leases assets in overseas markets. Leases with foreign lessees, however, may present different risks than those with domestic lessees. Most of the Company's expected growth is outside of North America.

A lease with a foreign lessee is subject to risks related to the economy of the country or region in which such lessee is located, which may be weaker or less stable than the U.S. economy. An economic downturn in a particular country or region may impact a foreign lessee's ability to make lease payments, even if the U.S. and other foreign economies remain strong and stable.

Foreign lessees are subject to risks related to currency conversion fluctuations. The Company currently has one customer with rent obligations payable in Euros, and the Company may, from time to time, agree to additional leases that permit payment in foreign currency, which would subject such lease revenue to monetary risk due to currency exchange rate fluctuations. During the periods covered by this report, the Company considers the estimated effect on its revenues of foreign currency exchange rate fluctuations to be immaterial; however, the impact of these fluctuations may increase in future periods if additional rent obligations become payable in foreign currencies.

Even with U.S. dollar-denominated lease payment provisions, the Company could still be negatively affected by a devaluation of a foreign lessee's local currency relative to the U.S. dollar, which would make it more difficult for the lessee to meet its U.S. dollar-denominated payments and increase the risk of default of that lessee, particularly if its revenue is primarily derived in its local currency.

Foreign lessees that operate internationally may also face restrictions on repatriating foreign revenue to their home country. This could create a cash flow crisis for an otherwise profitable carrier, affecting its ability to meet its lease obligations. Foreign lessees may also face restrictions on payment obligations to foreign vendors, including the Company, which may affect their ability to timely meet lease obligations to the Company.

Foreign lessees are not subject to U.S. bankruptcy laws, although there may be debtor protection similar to U.S. bankruptcy laws available in some jurisdictions. Certain countries do not have a central registration or recording system which can be used to locally record the Company's interest in equipment and related leases. This could make it more difficult for the Company to recover an aircraft in the event of a default by a foreign lessee. In any event, collection and enforcement may be more difficult and complicated in foreign countries.

Ownership of a leased asset operating in a foreign country and/or by a foreign carrier may subject the Company to additional tax liabilities that are not present with aircraft operated in the United States. Depending on the jurisdiction, laws governing such tax liabilities may be complex, not well formed or not uniformly enforced. In such jurisdictions, the Company may decide to take an uncertain tax position based on the best advice of the local tax experts it engages, which position may be challenged by the taxing authority. Any such challenge could result in increased tax obligations in these jurisdictions going forward or assessments of liability by the taxing authority, in which case the Company may be required to pay penalties and interest on the assessed amount that would not give rise to a corresponding foreign tax credit on the Company's U.S. tax returns.

The Trump administration and members of the U.S. Congress have made public statements about significant changes in U.S. trade policy and have

taken certain actions that materially impact U.S. trade, including terminating, renegotiating or otherwise modifying U.S. trade agreements with countries in various regions and imposing tariffs on certain goods imported into the United States. These changes in U.S. trade policy have triggered and could continue to trigger retaliatory actions by affected countries, including China, resulting in “trade wars” with these countries. These trade wars could generally increase the cost of aircraft, aircraft and engine components and other goods regularly imported by the Company’s customers, thereby increasing costs of operations for its air carrier customers that are located in the affected countries. The increased costs could materially and adversely impact the financial health of affected air carriers, which in turn could have a negative impact on the Company’s business opportunities, and if the Company’s lessees are significantly affected, could have a direct impact on the Company’s financial results. Furthermore, the Company often incurs maintenance or repair expenses not covered by lessees in foreign countries, which expenses could increase if such countries are affected by such a trade war.

*Level of Portfolio Diversification.* The Company intends to continue to focus solely on regional aircraft. Although the Company invested in a limited number of turboprop aircraft types in the past, including two in the second quarter of 2018, the Company has also acquired several regional jet aircraft types, which now comprise a larger percentage of the Company's portfolio based on number of aircraft and net book value. The Company may continue to seek acquisition opportunities for new types and models of aircraft used by the Company's targeted customer base of regional air carriers. Acquisition of aircraft types not previously owned by the Company entails greater ownership risk due to the Company's lack of experience managing those assets and the potentially different types of customers that may lease them. Conversely, the Company's focus on a more limited set of aircraft types and solely on regional aircraft subjects the Company to risks that disproportionately impact these aircraft markets, which are described elsewhere in this discussion. As a result, the level of asset and market diversification the Company chooses to pursue could have a significant impact on its performance and results.

*Government Regulation.* There are a number of areas in which government regulation may result in costs to the Company. These include aircraft registration safety requirements, required equipment modifications, maximum aircraft age, and aircraft noise requirements. Although it is contemplated that the burden and cost of complying with such requirements will fall primarily upon lessees, there can be no assurance that the cost will not fall on the Company. Additionally, even if lessees are responsible for the costs of complying with these requirements, changes to the requirements to make them more stringent or otherwise increase these costs could negatively impact the Company's customers' businesses, which could result in nonperformance under their lease agreements or decreased demand for the Company's aircraft. Furthermore, future government regulations could cause the value of any noncomplying equipment owned by the Company to decline substantially. Moreover, any failure by the Company to comply with the government regulations applicable to it could result in sanctions, fines or other penalties, which could harm the Company's reputation and performance.

*Casualties and Insurance Coverage.* The Company, as an owner of transportation equipment, may be named in a suit claiming damages for injuries or damage to property caused by its assets. As a triple-net lessor, the Company is generally protected against such claims, because the lessee would be responsible for, insure against and indemnify the Company for such claims. A "triple net lease" is a lease under which, in addition to monthly rental payments, the lessee is generally responsible for the taxes, insurance and maintenance and repair of the aircraft arising from the use and operation of the aircraft during the term of the lease. Although the United States Aviation Act may provide some additional protection with respect to the Company's aircraft assets, it is unclear to what extent such statutory protection would be available to the Company with respect to its assets that are operated in foreign countries where the provisions of this law may not apply.

The Company's leases generally require a lessee to insure against likely risks of loss or damage to the leased asset and liability to passengers and third parties pursuant to industry standard insurance policies, and require lessees to provide insurance certificates documenting the policy periods and coverage amounts. The Company has adopted measures designed to ensure these insurance policies continue to be maintained, including tracking receipt of the insurance certificates, calendaring their expiration dates, and reminding lessees of their obligations to maintain such insurance and provide current insurance certificates to the Company if a replacement certificate is not timely received prior to the expiration of an existing certificate.

Despite these requirements and procedures, there may be certain cases where losses or liabilities are not entirely covered by the lessee or its insurance. Although the Company believes the possibility of such an event is remote, any such uninsured loss or liability, or insured loss or liability for which insurance proceeds are inadequate, might result in a loss of invested capital in and any profits anticipated from the applicable aircraft, as well as potential claims directly against the Company.

*Compliance with Environmental Regulations.* Compliance with environmental regulations may harm the Company's business. Many aspects of aircraft operations are subject to increasingly stringent environmental regulations, and growing concerns about climate change may result in the imposition by the U.S. and foreign governments of additional regulation of carbon emissions, including requirements to adopt technology to reduce the amount of carbon emissions or imposing a fee or tax system on carbon emitters. Any such regulation could be directed at the Company's customers, as operators of aircraft, at the Company, as an owner of aircraft, and/or on the manufacturers of aircraft. Under the Company's triple-net lease arrangements, the Company would likely try to shift responsibility for compliance to its lessees; however, it may not be able to do so due to competitive or other market factors, and there might be some compliance costs that the Company could not pass through to its customers and would itself have to bear. Although it is not expected that the costs of complying with current environmental regulations will have a material adverse effect on the Company's financial position, results of operations, or liquidity, there is no assurance that the costs of complying with environmental regulations as amended or adopted in the future will not have such an effect.

*Cybersecurity Risks.* The Company believes that its main vulnerabilities to a cyber-attack would be interruption of the Company's email communications internally and with third parties, loss of customer and lease archives, and loss of document sharing between the Company's offices and remote workers. Such an attack could temporarily impede the efficiency of the Company's operations; however, the Company believes that sufficient replacement and backup mechanisms exist in the event of such an interruption such that there would not be a material adverse financial impact on the Company's business. A cyber-hacker could also gain access to and release proprietary information of the Company, its customers, suppliers and employees stored on the Company's data network. Such a breach could harm the Company's reputation and result in competitive disadvantages, litigation, lost revenues, additional costs, or liability to third parties. While the Company believes that it has sufficient cybersecurity measures in place commensurate with the risks to the Company of a successful cyber-attack or breach of its data security, its resources and technical sophistication may not be adequate to prevent or adequately respond to and mitigate all types of cyber-attacks.

*Possible Volatility of Stock Price.* The market price of the Company's common stock is subject to fluctuations following developments relating to the Company's operating results, changes in general conditions in the economy, the financial markets or the airline industry, changes in accounting principles or tax laws applicable to the Company or its lessees, or other developments affecting the Company, its customers or its competitors, or arising from other investor sentiment unknown to the Company. Because the Company has a relatively small capitalization of approximately 1.5 million shares outstanding, there is a correspondingly limited amount of trading and float of the Company's shares. Consequently, the Company's stock price is more sensitive to a single large trade or a small number of simultaneous trades along the same trend than a company with larger capitalization and higher trading volume and float. This stock price and trading volume volatility could limit the Company's ability to use its capital stock to raise capital, if and when needed or desired, or as consideration for other types of transactions, including strategic collaborations,

investments or acquisitions. Any such limitation could negatively affect the Company's performance, growth prospects and liquidity.

**Item 7A. Quantitative and Qualitative Disclosures About Market Risk.**

Disclosure under this item has been omitted pursuant to the rules of the SEC that permit smaller reporting companies to omit this information.

**Item 8. Financial Statements and Supplementary Data.**

Disclosure of certain supplementary financial data has been omitted pursuant to the rules of the SEC that permit smaller reporting companies to omit such information.

The following financial statements and schedules are included in this report below:

(1) Financial Statements:

Report of Independent Registered Public Accounting Firm  
Consolidated Balance Sheets as of December 31, 2018 and 2017  
Consolidated Statements of Operations for the Years Ended December 31, 2018 and 2017  
Consolidated Statements of Stockholders' Equity for the Years Ended December 31, 2018 and 2017  
Consolidated Statements of Cash Flows for the Years Ended December 31, 2018 and 2017  
Notes to Consolidated Financial Statements

(2) Schedules:

All schedules have been omitted because the required information is presented in the consolidated financial statements or is not applicable.

## Report of Independent Registered Public Accounting Firm

Shareholders and Board of Directors  
AeroCentury Corp.  
Burlingame, California

### Opinion on the Consolidated Financial Statements

We have audited the accompanying consolidated balance sheets of AeroCentury Corp. (the “Company”) and subsidiaries as of December 31, 2018 and 2017, the related consolidated statements of operations, stockholders’ equity, and cash flows for the years then ended, and the related notes (collectively referred to as the “consolidated financial statements”). In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company and subsidiaries at December 31, 2018 and 2017, and the results of their operations and their cash flows for the years then ended, in conformity with accounting principles generally accepted in the United States of America.

### Basis for Opinion

These consolidated financial statements are the responsibility of the Company’s management. Our responsibility is to express an opinion on the Company’s consolidated financial statements based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) (“PCAOB”) and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement, whether due to error or fraud. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. As part of our audits we are required to obtain an understanding of internal control over financial reporting but not for the purpose of expressing an opinion on the effectiveness of the Company’s internal control over financial reporting. Accordingly, we express no such opinion.

Our audits included performing procedures to assess the risks of material misstatement of the consolidated financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the consolidated financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements. We believe that our audits provide a reasonable basis for our opinion.

/s/ BDO USA, LLP

We have served as the Company’s auditor since 2006.

San Francisco, California  
March 18, 2019

AeroCentury Corp.  
Consolidated Balance Sheets

The	ASSETS	December 31, 2018	December 31, 2017
<b>Assets:</b>			
Cash and cash equivalents		\$ 1,542,500	\$ 8,657,800
Securities		121,000	-
Accounts receivable, including deferred rent of \$869,600 and \$707,300 at December 31, 2018 and December 31, 2017, respectively		3,967,200	3,825,100
Finance leases receivable		15,250,900	23,561,000
Aircraft and aircraft engines held for lease, net of accumulated depreciation of \$36,675,500 and \$33,234,200 at December 31, 2018 and December 31, 2017, respectively		184,019,900	195,098,200
Assets held for sale		10,223,300	4,966,500
Property, equipment and furnishings, net of accumulated depreciation of \$2,200 at December 31, 2018		69,100	-
Favorable lease acquired, net of accumulated amortization of \$61,700 at December 31, 2018		863,300	-
Deferred tax asset		254,900	
Prepaid expenses and other assets		840,100	301,300
<b>Total assets</b>		<b><u>\$ 217,152,200</u></b>	<b><u>\$ 236,409,900</u></b>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>			
<b>Liabilities:</b>			
Accounts payable and accrued expenses		\$ 1,025,600	\$ 645,200
Accrued payroll		78,600	-
Notes payable and accrued interest, net of unamortized debt issuance costs of \$674,300 and \$2,216,000 at December 31, 2018 and December 31, 2017, respectively		131,092,200	145,598,200
Maintenance reserves		28,527,500	26,942,800
Accrued maintenance costs		463,300	1,275,300
Security deposits		3,367,800	3,147,900
Unearned revenues		3,274,800	2,447,500
Deferred income taxes		7,537,100	8,533,700
Income taxes payable		497,400	452,600
<b>Total liabilities</b>		<b><u>175,864,300</u></b>	<b><u>189,043,200</u></b>
<b>Commitments and contingencies (Note 9)</b>			
<b>Stockholders' equity:</b>			
Preferred stock, \$0.001 par value, 2,000,000 shares authorized, no shares issued and outstanding		-	-
Common stock, \$0.001 par value, 10,000,000 shares authorized, 1,545,884 and 1,416,699 outstanding at December 31, 2018 and December 31, 2017, respectively		1,800	1,600
Paid-in capital		16,782,800	14,780,100
Retained earnings		27,540,600	35,621,800
		<u>44,325,200</u>	<u>50,403,500</u>
Treasury stock at cost, 213,332 and 213,300 shares at December 31, 2018 and December 31, 2017, respectively		(3,037,300)	(3,036,800)
<b>Total stockholders' equity</b>		<b><u>41,287,900</u></b>	<b><u>47,366,700</u></b>
<b>Total liabilities and stockholders' equity</b>		<b><u>\$ 217,152,200</u></b>	<b><u>\$ 236,409,900</u></b>

AeroCentury Corp.  
Consolidated Statements of Operations

	For the Years Ended December	
	2018	2017
<b>Revenues and other income:</b>		
Operating lease revenue	\$ 27,637,500	\$ 29,002,700
Maintenance reserves revenue, net	1,629,000	3,886,900
Finance lease revenue	1,251,000	1,571,500
Net (loss)/gain on disposal of assets	(3,408,700)	791,500
Net gain on sales-type finance leases	-	297,400
Other income	7,600	3,800
	<u>27,116,400</u>	<u>35,553,800</u>
<b>Expenses:</b>		
Depreciation	12,637,100	12,025,600
Interest	9,506,000	7,753,200
Management fees	4,482,800	6,109,200
Provision for impairment in value of aircraft	2,971,500	1,002,100
Professional fees, general and administrative and other	2,343,800	1,945,100
Maintenance	636,000	2,924,300
Salaries and employee benefits	592,300	-
Insurance	383,700	271,300
Other taxes	90,200	90,300
Settlement loss	2,527,000	-
	<u>36,170,400</u>	<u>32,121,100</u>
(Loss)/income before income tax benefit	(9,054,000)	3,432,700
Income tax benefit	(972,800)	(3,966,500)
Net (loss)/income	<u>\$ (8,081,200)</u>	<u>\$ 7,399,200</u>
<b>(Loss)/earnings per share:</b>		
Basic	<u>\$ (5.58)</u>	<u>\$ 5.10</u>
Diluted	<u>\$ (5.58)</u>	<u>\$ 5.10</u>
<b>Weighted average shares used in</b>		
<b>(loss)/earnings per share computations:</b>		
Basic	<u>1,449,261</u>	<u>1,449,576</u>
Diluted	<u>1,449,261</u>	<u>1,449,576</u>

AeroCentury Corp.  
Consolidated Statements of Stockholders' Equity  
For the Years Ended December 31, 2018 and 2017

The accompanying	Number of Common Stock Shares Outstanding	Common Stock	Paid-in Capital	Retained Earnings	Treasury Stock	Total
Balance, December 31, 2016	1,566,699	\$ 1,600	\$ 14,780,100	\$ 28,222,600	\$ (504,100)	\$ 42,500,200
Repurchase of shares	(150,000)	-	-	-	(2,532,700)	(2,532,700)
Net income	-	-	-	7,399,200	-	7,399,200
Balance, December 31, 2017	1,416,699	1,600	14,780,100	35,621,800	(3,036,800)	47,366,700
Acquisition of JHC by AeroCentury	129,217	200	2,002,700	-	-	2,002,900
Common stock shares held by JHC prior to the acquisition of JHC and retained as treasury stock	(32)	-	-	-	(500)	(500)
Net loss	-	-	-	(8,081,200)	-	(8,081,200)
Balance December 31, 2018	<u>1,545,884</u>	<u>\$ 1,800</u>	<u>\$ 16,782,800</u>	<u>\$ 27,540,600</u>	<u>\$ (3,037,300)</u>	<u>\$ 41,287,900</u>

AeroCentury Corp.  
Consolidated Statements of Cash Flows

	For the Years Ended December 31,	
During	2018	2017
<b>Operating activities:</b>		
Net (loss)/income	\$ (8,081,200)	\$ 7,399,200
<b>Adjustments to reconcile net (loss)/income to net cash provided by operating activities:</b>		
Net loss/(gain) on disposal of assets	3,408,700	(791,500)
Net gain on sales-type finance leases	-	(297,400)
Non-cash income	(42,700)	-
Depreciation	12,637,100	12,025,600
Amortization	61,700	-
Provision for impairment in value of aircraft	2,971,500	1,002,100
Non-cash interest	1,615,500	1,012,300
Settlement loss	2,527,000	-
Deferred income taxes	(1,390,000)	(4,296,800)
<b>Changes in operating assets and liabilities:</b>		
Accounts receivable	(537,400)	1,000,700
Finance leases receivable	(133,100)	(510,700)
Prepaid expenses and other	(457,800)	(123,500)
Taxes receivable	22,500	-
Accounts payable and accrued expenses	1,802,700	(572,000)
Accrued payroll	(14,800)	-
Accrued interest on notes payable	(147,100)	188,100
Maintenance reserves and accrued costs	3,552,600	(2,171,000)
Security deposits	(4,100)	(232,300)
Unearned revenue	827,300	608,500
Income taxes payable	(677,200)	329,400
<b>Net cash provided by operating activities</b>	<b>17,941,200</b>	<b>14,570,700</b>
<b>Investing activities:</b>		
Proceeds from sale of aircraft and aircraft engines held for lease, net of re-sale fees	11,688,400	12,741,200
Proceeds from sale of assets held for sale, net of re-sale fees	4,945,200	193,000
Investment in direct financing leases	-	(7,614,200)
Purchases of aircraft and aircraft engines	(22,844,300)	(32,063,100)
Acquisition of JHC, net of cash acquired	(2,875,100)	-
<b>Net cash used in investing activities</b>	<b>(9,085,800)</b>	<b>(26,743,100)</b>
<b>Financing activities:</b>		
Issuance of notes payable – Credit Facility	21,000,000	35,900,000
Repayment of notes payable – Credit Facility	(32,600,000)	(12,000,000)
Debt issuance costs	(70,000)	(1,152,500)
Repayment of notes payable – special purpose financing	(4,300,700)	(4,111,700)
<b>Net cash (used in)/provided by financing activities</b>	<b>(15,970,700)</b>	<b>18,635,800</b>
Net (decrease)/increase in cash and cash equivalents	(7,115,300)	6,463,400
Cash and cash equivalents, beginning of year	8,657,800	2,194,400
Cash and cash equivalents, end of year	\$ 1,542,500	\$ 8,657,800

Merger, and \$800 in 2018 and 2017, respectively. During 2018, AeroCentury issued 129,217 shares valued at \$2,002,900 related to its acquisition of JHC. During 2017, the Company repurchased 150,000 shares of its common stock in exchange for an aircraft engine with a value of \$2,532,700.

The accompanying notes are an integral part of these consolidated financial statements.

## 1. Organization and Summary of Significant Accounting Policies

### (a) *The Company and Basis of Presentation*

AeroCentury Corp. (“AeroCentury”) is a Delaware corporation incorporated in 1997. AeroCentury together with its consolidated subsidiaries is referred to as the “Company.”

In August 2016, AeroCentury formed two wholly-owned subsidiaries, ACY 19002 Limited (“ACY 19002”) and ACY 19003 Limited (“ACY 19003”) for the purpose of acquiring aircraft using a combination of cash and third-party financing (“UK LLC SPE Financing” or “special purpose financing”) separate from AeroCentury’s credit facility (the “Credit Facility”). The UK LLC SPE Financing was repaid in full in February 2019 as part of a refinancing involving new non-recourse term loans totaling approximately \$44.3 million (“Term Loans”) made to ACY 19002, ACY 19003 and two other newly formed special purpose subsidiaries of AeroCentury. See Note 14 for more information about the Term Loans.

On October 1, 2018, AeroCentury acquired JetFleet Holding Corp. (“JHC”) in a reverse triangular merger (“Merger”) for consideration of approximately \$2.9 million in cash and 129,217 shares of common stock of AeroCentury, as determined pursuant to an Agreement and Plan of Merger (the “Merger Agreement”) entered into by AeroCentury, JHC and certain other parties in October 2017. JHC is the sole shareholder of JetFleet Management Corp. (“JMC”), which is an integrated aircraft management, marketing and financing business and the manager of the assets owned by the Company. Upon completion of the Merger, JHC became a wholly-owned subsidiary of the Company, and as a result, JHC’s results are included in the Company’s consolidated financial statements beginning on October 1, 2018.

In November 2018, AeroCentury formed two wholly-owned subsidiaries, ACY SN 15129 LLC (“ACY 15129”) and ACY E-175 LLC (“ACY E-175”), for the purpose of refinancing four of the Company’s aircraft using the Term Loans. Because the Term Loans did not close until February 2019, the subject aircraft remained as collateral under the Credit Facility as of December 31, 2018, and ACY 15129 and ACY E-175 had no activity in 2018.

Financial information for AeroCentury and its consolidated subsidiaries is presented on a consolidated basis in accordance with accounting principles generally accepted in the United States of America (“GAAP”) based upon the continuation of the business as a going concern. All intercompany balances and transactions have been eliminated in consolidation.

### (b) *Use of Estimates*

The Company’s consolidated financial statements have been prepared in accordance with GAAP. The preparation of consolidated financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosures of contingent assets and liabilities at the date of the consolidated financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates. The Company bases its estimates on historical experience and on various other assumptions that are believed to be reasonable for making judgments that are not readily apparent from other sources.

The most significant estimates with regard to these consolidated financial statements are the residual values and useful lives of the Company’s long-lived assets, the amount and timing of future cash flows associated with each asset that are used to evaluate whether assets are impaired, accrued maintenance costs, accounting for income taxes, and the amounts recorded as allowances for doubtful accounts.

### (c) *Cash and Cash Equivalents*

The Company considers highly liquid investments readily convertible into known amounts of cash, with original maturities of 90 days or less from the date of acquisition, as cash equivalents.

### (d) *Securities*

At December 31, 2018, the Company owned 121 shares of non-voting preferred stock in a non-public company. The stock has a cumulative preferred annual dividend of 10% and a liquidation value of \$1,000 per share, but may not be liquidated before January 1, 2019. Because the Company owns a minority share of the non-voting preferred stock, the company’s results are not consolidated with those of the Company. The Company has elected to measure equity investments that do not have readily determinable fair values at cost minus impairment, if any, plus or minus changes resulting from observable price changes in orderly transactions for the identical or a similar investment of the same issuer.

### (e) *Aircraft Capitalization and Depreciation*

The Company’s interests in aircraft and aircraft engines are recorded at cost, which includes acquisition costs. Since inception, the Company has typically purchased only used aircraft and aircraft engines. It is the Company’s policy to hold aircraft for approximately twelve years unless market conditions dictate otherwise. Therefore, depreciation of aircraft is initially computed using the straight-line method over the anticipated holding period to an estimated residual value based on appraisal. For an aircraft engine held for lease as a spare, the Company estimates the length of time that it will hold the aircraft engine based upon estimated usage, repair costs and other factors, and depreciates it to the appraised residual value over such period using the straight-line method.

The Company periodically reviews plans for lease or sale of its aircraft and aircraft engines and changes, as appropriate, the remaining expected holding period for such assets. Estimated residual values are reviewed and adjusted periodically, based upon updated estimates obtained from an

independent appraiser. Decreases in the fair value of aircraft could affect not only the current value, discussed below, but also the estimated residual value.

Assets that are held for sale are not subject to depreciation and are separately classified on the balance sheet. Such assets are carried at the lower of their carrying value or estimated fair values, less costs to sell.

*(f) Favorable Lease Acquired*

In connection with the Company's acquisition of JHC, as discussed in Note 8, the Company recognized that the current lease of its office facilities had rents that are substantially below the market for such office space. Consequently, the Company recorded \$925,000 as the value of below-market rents at the October 1, 2018 date of the JHC acquisition, and is amortizing such amount on a level basis over the remaining term of the office lease, including two one-year bargain renewal options. The Company recorded \$61,700 of amortization in 2018 and will recognize \$246,700 of amortization annually through 2021 and \$123,200 in the first half of 2022.

*(g) Property, Equipment and Furnishings*

The Company's interests in equipment are recorded at cost and depreciated using the straight-line method over five years. The Company's leasehold improvements are recorded at cost and amortized using the straight-line method over the shorter of the lease term or the estimated useful lives of the respective assets.

*(h) Impairment of Long-lived Assets*

The Company reviews assets for impairment when there has been an event or a change in circumstances indicating that the carrying amount of a long-lived asset may not be recoverable. In addition, the Company routinely reviews all long-lived assets for impairment semi-annually. Recoverability of an asset is measured by comparison of its carrying amount to the future estimated undiscounted cash flows (without interest charges) that the asset is expected to generate. Estimates are based on currently available market data and independent appraisals and are subject to fluctuation from time to time. If these estimated future cash flows are less than the carrying value of an asset at the time of evaluation, any impairment to be recognized is measured by the amount by which the carrying amount of the asset exceeds its fair value. Fair value is determined by reference to independent appraisals and other factors considered relevant by management. Significant management judgment is required in the forecasting of future operating results that are used in the preparation of estimated future undiscounted cash flows and, if different conditions prevail in the future, material write-downs may occur. As discussed in Note 7, the Company recorded impairment provisions totaling \$2,971,500 and \$1,002,100 in 2018 and 2017, respectively.

*(i) Deferred Financing Costs and Commitment Fees*

Costs incurred in connection with debt financing are deferred and amortized over the term of the debt using the effective interest method or, in certain instances where the differences are not material, using the straight-line method. Costs incurred in connection with the Credit Facility are deferred and amortized using the straight-line method. Commitment fees for unused funds are expensed as incurred.

*(j) Security Deposits*

The Company's leases are typically structured so that if any event of default occurs under a lease, the Company may apply all or a portion of the lessee's security deposit to cure such default. If such application of the security deposit is made, the lessee typically is required to replenish and maintain the full amount of the deposit during the remaining lease term. All of the security deposits received by the Company are refundable to the lessee at the end of the lease upon satisfaction of all lease terms.

*(k) Taxes*

As part of the process of preparing the Company's consolidated financial statements, management estimates income taxes in each of the jurisdictions in which the Company operates. This process involves estimating the Company's current tax exposure under the most recent tax laws and assessing temporary differences resulting from differing treatment of items for tax and GAAP purposes. These differences result in deferred tax assets and liabilities, which are included in the balance sheet. Management also assesses the likelihood that the Company's deferred tax assets will be recovered from future taxable income, and, to the extent management believes it is more likely than not that some portion or all of the deferred tax assets will not be realized, the Company establishes a valuation allowance. To the extent the Company establishes a valuation allowance or changes the allowance in a period, the Company reflects the corresponding increase or decrease within the tax provision in the statement of operations. Significant management judgment is required in determining the Company's future taxable income for purposes of assessing the Company's ability to realize any benefit from its deferred taxes. After considering the Company's significant amounts of net deferred tax liabilities which are future reversing taxable temporary differences, the Company has determined that no valuation allowance is required for its deferred tax assets.

The Company accrues non-income based sales, use, value added and franchise taxes as other tax expense in the statement of operations.

*(l) Revenue Recognition, Accounts Receivable and Allowance for Doubtful Accounts*

Revenue from leasing of aircraft assets pursuant to operating leases is recognized on a straight-line basis over the terms of the applicable lease agreements. Deferred payments are recorded as accrued rent when the cash rent received is lower than the straight-line revenue recognized. Such receivables decrease over the term of the applicable leases. Interest income is recognized on finance leases based on the interest rate implicit in the lease and the outstanding balance of the lease receivable.

Maintenance reserves retained by the Company at lease-end are recognized as maintenance reserves revenue.

In instances where collectability is not reasonably assured, the Company recognizes revenue as cash payments are received. The Company estimates and charges to income a provision for bad debts based on its experience with each specific customer, the amount and length of payment arrearages, and its analysis of the lessee's overall financial condition. If the financial condition of any of the Company's customers deteriorates, it could result in actual losses exceeding any estimated allowances.

The Company had no allowance for doubtful accounts at December 31, 2018 and 2017.

*(m) Comprehensive Income*

The Company does not have any comprehensive income other than the revenue and expense items included in the statement of operations. As a result, comprehensive income equals net income for the years ended December 31, 2018 and 2017.

*(n) Finance Leases*

As of December 31, 2018, the Company had three aircraft subject to sales-type finance leases and three aircraft subject to direct financing leases. All six leases contain lessee bargain purchase options at prices substantially below the subject assets' estimated residual values at the exercise date for the options. Consequently, the Company has classified each of these six leases as finance leases for financial accounting purposes. For such finance leases, the Company reports the discounted present value of (i) future minimum lease payments (including the bargain purchase option) and (ii) any residual value not subject to a bargain purchase option, as a finance lease receivable on its balance sheet, and accrues interest on the balance of the finance lease receivable based on the interest rate inherent in the applicable lease over the term of the lease. For each of the three sales-type finance leases, the Company recognized as a gain or loss the amount equal to (i) the net investment in the sales-type finance lease plus any initial direct costs and lease incentives less (ii) the net book value of the subject aircraft at inception of the applicable lease.

The Company recognized interest earned on finance leases in the amount of \$1,251,000 and \$1,571,500 in 2018 and 2017, respectively.

*(o) Maintenance Reserves and Accrued Maintenance Costs*

Maintenance costs under the Company's triple net leases are generally the responsibility of the lessees. Some of the Company's leases require payment of maintenance reserves, which are based upon lessee-reported usage and billed monthly, and are intended to accumulate and be applied by the Company toward reimbursement of most or all of the cost of the lessees' performance of certain maintenance obligations under the leases. Such reimbursements reduce the associated maintenance reserve liability.

Maintenance reserves are characterized as either refundable or non-refundable depending on their disposition at lease-end. The Company retains non-refundable maintenance reserves at lease-end, even if the lessee has met all of its obligations under the lease, including any return conditions applicable to the leased asset, while refundable reserves are returned to the lessee under such circumstances. Any reserves retained by the Company at lease -end are recorded as revenue at that time.

Accrued maintenance costs include (i) maintenance for work performed for off-lease aircraft, which is not related to the release of maintenance reserves received from lessees and which is expensed as incurred, and (ii) lessor maintenance obligations assumed and recognized as a liability upon acquisition of aircraft subject to a lease with such provisions.

*(p) Interest Rate Hedging*

The Company periodically enters into various derivative instruments to mitigate its exposure to variable interest rate obligations, although it was not a party to any such instruments in 2017 or 2018. Although all such transactions are entered into for such a purpose, hedge accounting is only applied where specific criteria have been met and the transaction is highly effective and has been designated as a hedge at inception. Generally, the effects of derivative transactions are recorded in earnings for the period in which they arise, although the effective portion of a hedged transaction is reported as a component of other comprehensive income and is reclassified into earnings in the period in which the transaction being hedged affects earnings.

(q) *Recent Accounting Pronouncements*

Topic 606

In May 2014, the Financial Accounting Standards Board (“FASB”) issued Accounting Standards Update (“ASU”) No. 2014-09 that created the new *Topic 606* (“Topic 606”) in the Accounting Standards Codification (“ASC”). Topic 606 also included numerous conforming additions and amendments to other Topics within the ASC. Topic 606 established new rules that affect the amount and timing of revenue recognition for contracts with customers, but does not affect lease accounting and reporting. As such, adoption of these provisions has not affected the Company's lease revenues. The Company adopted Topic 606 as of January 1, 2018 using the modified retrospective method of transition. Since most of the Company's revenues arise from its lease contracts, which are not affected by the new standard, and since the Company's revenue recognition for other sources of revenue is generally the same as it was under previous accounting standards, adoption of Topic 606 in the current year, using the modified retrospective approach, has had no effect on its consolidated financial statements.

ASU 2016-01

In January 2016, the FASB issued ASU 2016-01, *Income Statement - Financial Instruments - Overall (Subtopic 825-10): Recognition and Measurement of Financial Assets and Liabilities* (“ASU 2016-01”). ASU 2016-01 was issued to enhance the reporting model for financial instruments to provide the users of financial statements with more useful information for decisions. Effective January 1, 2018, the Company adopted ASU 2016-01 and applied the provisions of the standard prospectively within the consolidated financial statements for the year ended December 31, 2018, which includes the Company no longer disclosing the method or significant assumptions used to estimate the fair value for its securities measured at amortized cost on the consolidated balance sheet. The adoption of the ASU did not have an effect on the Company's consolidated financial statements.

ASU 2016-02

In February 2016, the FASB issued ASU 2016-02, *Leases (Topic 842)* (“ASU 2016-02”). ASU 2016-02 is effective for public companies for years beginning after December 15, 2018, although early adoption is permitted. The Company has not adopted ASU 2016-02 early. ASU 2016-02 substantially modifies lessee accounting for leases, requiring that lessees recognize lease assets and liabilities for leases extending beyond one year. Leases will be classified as either finance or operating, with classification affecting the pattern of expense recognition in the income statement.

The new standard requires a lessor to classify leases as sales-type, finance, or operating. A lease will be treated as sales-type if it transfers all of the risks and rewards, as well as control of the underlying asset, to the lessee. If risks and rewards are conveyed without the transfer of control, the lease is treated as a finance lease. If the lessor does not convey risks and rewards or control, an operating lease results.

The Company adopted the standard on January 1, 2019, electing to apply its provisions on the date of adoption and to record the cumulative effect as an adjustment to retained earnings. The Company evaluated the guidance and noted that lessor accounting is similar to the current model; however, the guidance does impact the Company's existing operating lease obligation. In addition, the Company has elected to apply practical expedients permitted by the standard, under which the Company will not have to reevaluate the classification of its existing leases or its capitalized initial direct costs.

As a result of application of the practical expedients, the Company was not required to alter the classification or carrying value of its leased or finance lease assets. The Company was required to record a lease obligation of approximately \$600,000 in connection with the lease of its headquarters, and to increase the capitalized leasehold interest / right of use asset by a similar amount upon adoption. There was no effect on retained earnings recorded as a result of adoption of the standard.

ASU 2016-13

The FASB issued ASU 2016-13, *Financial Instruments – Credit Losses (Topic 326)*, in June of 2016 (“ASU 2016-13”). ASU 2016-13 provides that financial assets measured at amortized cost are to be presented as a net amount, reflecting a reduction for a valuation allowance to present the amount expected to be collected (the “current expected credit loss” model of reporting). As such, expected credit losses will be reflected in the carrying value of assets and losses will be recognized before they become probable, as is required under the Company's present accounting practice. In the case of assets held as available for sale, the amount of the valuation allowance will be limited to an amount that reflects the marketable value of the debt instrument. This amendment to GAAP is effective for fiscal years beginning after December 15, 2019 (for the Company, its 2020 year) unless elected earlier, and adoption is to be reflected as a cumulative effect on the first date of adoption. The Company does not expect to early adopt ASU 2016-13.

ASU 2017-12

In August 2017, the FASB issued ASU 2017-12, *Derivatives and Hedging (Topic 815): Targeted Improvements to Accounting for Hedging Activities* (“ASU 2017-12”). ASU 2017-12 is effective for public companies for years beginning after December 15, 2018, and will therefore be effective for the Company's 2019 year and interim periods. The revised guidance includes reduced limitations on items that can be hedged to more closely align hedge accounting with entities' risk management activities through changes to designation and measurement guidance as well as new disclosure requirements of balance sheet and income statement information designed to increase the transparency of the impact of hedging. Since the Company has not entered into in any derivative transactions in 2017 and 2018, adoption of ASU 2017-12 will not have any material effect on the Company's financial statements. The Company is continuing to evaluate the impact of any transactions entered into in 2019.

SAB 118

In December of 2017, the United States enacted the Tax Cuts and Jobs Act of 2017 (the “Tax Act”), which had numerous effects on U.S. corporate

taxation, including reducing the federal corporate tax rate to 21%, substantially modifying the U.S. taxation of international investments and transactions, and repealing the alternative minimum tax. In December of 2017, the Staff of the SEC issued Staff Accounting Bulletin No. 118 (“SAB 118”), which provides that companies should reflect in their financial statements the effects of the change in tax law in which the accounting is complete, as such completion occurs; provisional amounts for such effects for which the company can determine a reasonable estimate, as such estimates can be made; and continued accounting under the provisions of the law as it existed before enactment of the Tax Act for such effects for which no reasonable estimate under the new law can be made, until such a reasonable estimate is available and a provisional amount can be reported. Under SAB 118, in no event should the period during which a company is obtaining, preparing, and analyzing the information needed to complete the accounting for the effects of the change in tax law exceed one year from enactment (the “measurement period”), or the fourth quarter of 2018. The Company has reflected the effects of the Tax Act in these consolidated financial statements, and the Company did not record any additional amounts in 2018 for the year ended December 31, 2017 to account for the effects of the change in tax law due to the Tax Act.

## 2. Finance Leases Receivable

During 2018, a customer that leased six of the Company's aircraft under sales-type finance leases purchased three of those aircraft in amounts equal to the outstanding balance under the applicable finance leases. The purchase price was paid in the form of (i) \$1,088,700 in cash, (ii) \$1,675,100 of maintenance reserves previously paid to the Company for one of the purchased aircraft and (iii) \$2,618,100 of maintenance reserves previously paid to the Company for two aircraft that remain under sales-type finance leases with the customer. Such reserves are no longer available to the customer for reimbursement of maintenance claims under the applicable lease provisions pursuant to which the reserves were paid. The Company did not record a gain or loss on the sale of the aircraft.

At December 31, 2018 and December 31, 2017, the net investment included in sales-type finance leases and direct financing leases receivable were as follows:

	December 31, 2018	December 31, 2017
Gross minimum lease payments receivable	\$ 17,107,100	\$ 27,074,400
Less unearned interest	(1,856,200)	(3,513,400)
Finance leases receivable	<u>\$ 15,250,900</u>	<u>\$ 23,561,000</u>

2018, minimum future payments receivable under finance leases were as follows:

Years ending December 31	
2019	\$ 4,885,500
2020	4,208,600
2021	4,805,000
2022	3,208,000
	<u>\$ 17,107,100</u>

### 3. Aircraft and Aircraft Engines Held for Lease or Sale

#### (a) Assets Held for Lease

At December 31, 2018 and December 31, 2017, the Company's aircraft and aircraft engines held for lease consisted of the following:

During	Type	December 31, 2018		December 31, 2017	
		Number Owned	% of net book value	Number owned	% of net book value
Regional jet aircraft		13	81%	13	82%
Turboprop aircraft		4	18%	10	17%
Engines		1	1%	1	1%

the Company used cash of \$22,844,300 and \$32,063,100, respectively, for the purchase and capital improvement of aircraft.

During 2018, the Company purchased two aircraft subject to operating leases. During the same period, the Company sold four aircraft held for lease for cash and recorded net losses totaling \$2,426,600. The Company also reclassified four aircraft from held for lease to held for sale.

During 2018, the Company recorded \$1,629,000 in maintenance reserves revenue resulting from cash received from the former lessee of three aircraft that were returned to the Company during 2017. Such payments were for unpaid maintenance reserves, as well as amounts due pursuant to the return conditions of the applicable leases. The Company did not accrue unpaid reserves or return condition amounts at the time of lease termination based on management's evaluation of the creditworthiness of the lessee and, therefore, accounted for them as income when received.

None of the Company's aircraft and engines held for lease were off lease at December 31, 2018. As discussed below, the Company has three off-lease aircraft that were reclassified as held for sale during 2018.

As of December 31, 2018, minimum future lease revenue payments receivable under noncancelable operating leases were as follows:

Years ending December 31	
2019	\$ 28,357,100
2020	25,773,700
2021	18,672,300
2022	16,714,700
2023	13,031,900
Thereafter	21,610,600
	<u>\$ 124,160,300</u>

2018, the Company sold an aircraft that was previously held for lease and for which the Company had recorded an impairment provision of \$1,835,800 during 2018. The Company recorded a loss of \$1,072,400 related to the sale.

Assets held for sale at December 31, 2018 consist of three off-lease turboprop aircraft and airframe parts from two turboprop aircraft. During 2018, the Company recorded impairment provisions totaling \$1,135,700 for the three aircraft and reclassified them from assets held for lease to assets held for sale.

During 2018, the Company received \$1,280,100 in cash and accrued \$133,100 in receivables for parts sales. These amounts were accounted for as follows: \$779,700 reduced accounts receivable for parts sales accrued in 2017, \$543,200 reduced the carrying value of the parts, and \$90,300 was recorded as gains in excess of the carrying value of the parts. During 2017, the Company received \$193,100 from the sale of parts and accrued receivables totaling \$779,700 for 2017 parts sales, payment for which was received in 2018. Of such amounts, \$885,400 reduced the carrying value of the parts and \$87,400 was recorded as gains in excess of the carrying value of the parts.

#### 4. Operating Segments

The Company operates in one business segment, the leasing of regional aircraft to foreign and domestic regional airlines, and therefore does not present separate segment information for lines of business.

Approximately 28% and 21% of the Company's operating lease revenue was derived from lessees domiciled in the United States during 2018 and 2017, respectively. All revenues relating to aircraft leased and operated internationally, with the exception of rent payable in Euros for two of the Company's aircraft, are denominated and payable in U.S. dollars.

The tables below set forth geographic information about the Company's operating lease revenue and net book value for leased aircraft and aircraft equipment, grouped by domicile of the lessee:

	For the Years Ended December 31,	
	2018	2017
<b>Operating Lease Revenue</b>		
Europe and United Kingdom	\$ 16,250,000	\$ 14,941,100
North America	20,189,100	20,106,700
<b>Net Book Value of Aircraft and Aircraft Engines Held for Lease</b>		
Europe and United Kingdom	\$ 110,069,000	\$ 92,108,500
North America	68,485,400	72,270,700
Off lease	-	24,636,900
Asia	5,465,500	6,082,100
	<u>\$ 184,019,900</u>	<u>\$ 195,098,200</u>

the Company's finance lease revenue, grouped by domicile of the lessee:

	For the Years Ended December 31,	
	2018	2017
<b>Finance Lease Revenue</b>		
Africa	\$ 832,800	\$ 1,180,600
United Kingdom	418,200	390,900
	<u>\$ 1,251,000</u>	<u>\$ 1,571,500</u>

## 5. Concentration of Credit Risk

Financial instruments that potentially subject the Company to concentrations of credit risk consist principally of cash deposits and receivables. The Company places its deposits with financial institutions and other creditworthy issuers and limits the amount of credit exposure to any one party.

For the year ended December 31, 2018, the Company had five significant customers, four of which individually accounted for 30%, 21%, 15% and 13%, respectively, of operating lease revenue and one of which accounted for 67% of finance lease revenue. For the year ended December 31, 2017, the Company had five significant customers, four of which individually accounted for 28%, 20%, 14% and 11%, respectively, of operating lease revenue and one of which accounted for 75% of finance lease revenue.

At December 31, 2018, the Company had receivables from three customers totaling \$3,413,500 and representing 87% of the Company's total accounts receivable. In early 2019 through the date of this report, the Company has received payments totaling \$1,564,800 related to these receivables.

At December 31, 2017, the Company had receivables from four customers totaling \$2,959,200 and representing 77% of the Company's total accounts receivable, as well as receivables totaling \$779,700 for parts sales related to its aircraft held for sale.

## 6. Notes Payable and Accrued Interest

At December 31, 2018 and December 31, 2017, the Company's notes payable and accrued interest consisted of the following:

	December 31, 2018	December 31, 2017
<b>Credit Facility:</b>		
Principal	\$ 122,400,000	\$ 134,000,000
Unamortized debt issuance costs	(674,300)	(2,216,000)
Accrued interest	139,300	278,900
<b>Special purpose financing:</b>		
Principal	9,211,200	13,511,900
Accrued interest	16,000	23,400
	<u>\$ 131,092,200</u>	<u>\$ 145,598,200</u>

*(a) Credit Facility*

The Company's Credit Facility is provided by a syndicate of banks and is secured by all of the assets of the Company, including its aircraft and engine portfolio, except for the aircraft that serve as collateral for the Company's UK LLC SPE Financing. As discussed in Note 14, in February 2019, the Credit Facility, which had availability of \$170 million (with the ability for the Company to request an increase up to \$180 million) and was to mature on May 31, 2019, was extended to February 19, 2023, reduced to \$145 million (with the ability for the Company to request an increase up to \$160 million) and amended in certain other respects, including with respect to certain of the Company's financial covenants thereunder. Also in February 2019, the Company refinanced, with new non-recourse Term Loans totaling \$44,310,000, four aircraft that previously served as collateral under the Credit Facility and two aircraft that served as collateral for the UK LLC SPE Financing, as discussed in *(b) UK LLC SPE Financing* below.

As of September 30, 2018, the Company was not in compliance with the interest coverage, debt service coverage and revenue concentration covenants under the Credit Facility. The Company obtained a waiver from the Credit Facility lenders in November 2018 for the September 30, 2018 noncompliance. There were no fees or penalties related to the waiver. In addition, based on appraisals obtained in October 2018 for four assets held for sale, the Company had a borrowing base deficiency of approximately \$1,400,000 at September 30, 2018. The Company cured the deficiency in October 2018 by making a principal payment of \$2,000,000 on the Credit Facility.

As of December 31, 2018, the Company was not in compliance with the interest coverage, debt service coverage, no net loss and revenue concentration covenants under the Credit Facility. The noncompliance resulted primarily from the Company recording aircraft impairment charges on aircraft and losses on sale of aircraft totaling \$3,408,700 during 2018. The February 2019 amendment to the Credit Facility discussed above and in Note 14 cured the December 31, 2018 noncompliance and revised the compliance requirements through the extended maturity date of the Credit Facility.

The unused amount of the Credit Facility was \$47,600,000 and \$36,000,000 as of December 31, 2018, and December 31, 2017, respectively. The weighted average interest rate on the Credit Facility was 5.92% and 5.21% at December 31, 2018 and December 31, 2017, respectively.

*(b) UK LLC SPE Financing*

In August 2016, the Company acquired two regional jet aircraft using cash and financing separate from the Credit Facility. The separate UK LLC SPE Financing resulted in note obligations of \$9,805,600 and \$9,804,300, which were being paid from a portion of the rent payments on the related aircraft leases through October 3, 2020 and November 7, 2020, respectively, and which bore interest at the rate of 4.455% per annum. The borrower under each note obligation was the special purpose subsidiary of AeroCentury that owns each aircraft. The notes were collateralized by the aircraft and were recourse only to the special purpose entity borrower and its aircraft asset, subject to standard exceptions for this type of financing. Payments due under the notes consisted of quarterly principal and interest. The combined balance of the principal amount and accrued interest owed on these notes at December 31, 2018 and December 31, 2017 was \$9,227,200 and \$13,535,300, respectively.

As discussed in Note 14, in February 2019, the UK LLC SPE Financing was repaid and cancelled in full when the Company refinanced the aircraft securing the UK LLC SPE Financing with the proceeds from the Term Loans.

## 7. Fair Value Measurements

Fair value is defined as the exchange price that would be received for an asset or paid to transfer a liability (an exit price) in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants on the measurement date. Valuation techniques used to measure fair value must maximize the use of observable inputs and minimize the use of unobservable inputs, to the extent possible. The fair value hierarchy under GAAP is based on three levels of inputs.

Level 1 - Quoted prices in active markets for identical assets or liabilities.

Level 2 - Inputs other than Level 1 that are observable, either directly or indirectly, such as quoted prices for similar assets or liabilities; quoted prices in markets that are not active; or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the assets or liabilities.

Level 3 - Unobservable inputs that are supported by little or no market activity and that are significant to the fair value of the assets or liabilities.

### Assets and Liabilities Measured and Recorded at Fair Value on a Recurring Basis

The following table shows, by level within the fair value hierarchy, the Company's assets at fair value as of December 31, 2018 and December 31, 2017:

	December 31, 2018				December 31, 2017			
	Total	Level 1	Level 2	Level 3	Total	Level 1	Level 2	Level 3
Money market funds	\$ 656,400	\$ 656,400	\$ -	\$ -	\$ 6,151,900	\$ 6,151,900	\$ -	\$ -

were no transfers between Level 1 and Level 2 in either 2018 or 2017, and there were no transfers into or out of Level 3 during 2018 or 2017.

As of December 31, 2018, and December 31, 2017, there were no liabilities that were required to be measured and recorded at fair value on a recurring basis.

### Assets Measured and Recorded at Fair Value on a Nonrecurring Basis

The Company determines fair value of long-lived assets held and used, such as aircraft and aircraft engines held for lease and these and other assets held for sale, by reference to independent appraisals, quoted market prices (e.g., offers to purchase) and other factors. These are considered Level 3 within the fair value hierarchy. An impairment charge is recorded when the Company believes that the carrying value of an asset will not be recovered through future net cash flows and that the asset's carrying value exceeds its fair value. The Company recorded impairment charges totaling \$2,673,300 on four of its aircraft held for sale in 2018, which had an aggregate fair value of \$9,900,000. The Company also recorded an impairment charge of \$298,200 on one of its aircraft held for lease in 2018. The Company recorded impairment charges of \$1,002,100 on five of its assets held for lease in 2017.

### Fair Value of Other Financial Instruments

The Company's financial instruments, other than cash and cash equivalents, consist principally of finance leases receivable, amounts borrowed under the Credit Facility and notes payable under special purpose financing. The fair value of accounts receivable, accounts payable and the Company's maintenance reserves and accrued maintenance costs approximates the carrying value of these financial instruments because of their short-term maturities. The fair value of finance lease receivables approximates the carrying value as discussed in Note 1(n).

Borrowings under the Company's Credit Facility bear floating rates of interest that reset periodically to a market benchmark rate plus a credit margin. The Company believes the effective interest rate under the Credit Facility approximates current market rates for such indebtedness at the dates of the consolidated balance sheets, and therefore that the outstanding principal and accrued interest of \$122,539,300 and \$134,278,900 at December 31, 2018 and December 31, 2017, respectively, approximate their fair values on such dates. The fair value of the Company's outstanding balance of its Credit Facility is categorized as Level 3 under the GAAP fair value hierarchy.

Before their repayment in February 2019 in connection with the Term Loans refinancing (see Note 14), the amounts payable under the Company's UK LLC SPE Financing were payable through the fourth quarter of 2020 and bore a fixed rate of interest, as described in Note 6(b). The Company believes the effective interest rate under the special purpose financing approximates current market rates for such indebtedness at the dates of the consolidated balance sheets, and therefore that the outstanding principal and accrued interest of \$9,227,200 and \$13,535,300 approximate their fair values at December 31, 2018 and December 31, 2017, respectively. Such fair value is categorized as Level 3 under the GAAP fair value hierarchy.

## 8. Acquisition of Management Company

In October 2017, AeroCentury, JHC and certain other parties entered into the Merger Agreement for the acquisition of JHC by AeroCentury for consideration of approximately \$2.9 million in cash and 129,217 shares of common stock of AeroCentury, as determined pursuant to the Merger Agreement. JHC is the sole shareholder of JMC, which is the manager of the Company's assets as described in Note 13 below. The Merger was consummated on October 1, 2018. AeroCentury's common stock issued as consideration in the Merger was offered and sold pursuant to an exemption from registration under Section 3(a)(10) of the Securities Act of 1933, as the California Department of Business Oversight (the "DBO") had issued a permit for the issuance of such securities to JHC's shareholders on February 22, 2018 after a fairness hearing before the DBO.

As a subsidiary of the Company, JHC's results are included in the Company's consolidated financial statements beginning on October 1, 2018. In April 2018, subsequent to the execution of the Merger Agreement for the acquisition of JHC, which was signed in October 2017, the Company, JHC and JMC entered into a waiver and reimbursement agreement (the "Waiver/Reimbursement Agreement"), pursuant to which JHC and JMC agreed to waive their right to receive management and acquisition fees ("Contract Fees") otherwise owed by the Company to JMC pursuant to the Management Agreement for all periods after March 31, 2018 and until the consummation of the Merger, and in return, the Company agreed to reimburse JMC for expenses incurred in providing management services set forth under the Management Agreement. As a result of the Waiver/Reimbursement Agreement, the Company became responsible for all expenses incurred by JMC in managing the Company as of April 1, 2018, including employee salaries, office rent and all other general and administrative expenses. As a result of the Merger, the Company assumed all of JHC's assets, comprised primarily of securities, prepaid expenses and an office lease, as well as liabilities of approximately \$0.9 million.

During the years ended December 31, 2018 and 2017, the Company accrued \$485,000 and \$619,400, respectively, of expenses related to the Merger transaction. Such expenses are included in professional fees, general and administrative and other in the Company's consolidated statements of operations.

During the fourth quarter of 2018, the Company also recorded a settlement loss of \$2,527,000 related to the Merger. The settlement loss amount was estimated using an income approach. The Company assessed the contractual terms and conditions of the previous management agreement between the company and JMC (the "Management Agreement") as compared to current market conditions and the historical and expected financial performance of the Company and JMC. Based on the analysis performed, the Company determined that the contractual payment terms were above market rates. The present value of the expected differential between payments previously required by the Management Agreement and those that would be required if the contract reflected current market terms was calculated over the Management Agreement contractual term. As the management fee previously paid by the Company was deemed to be above market and the settlement of this pre-existing relationship resulted in a loss, the loss was recognized in the consolidated statement of operations at the acquisition date and reduced the estimated purchase consideration transferred.

The Company did not recognize any goodwill on its acquisition of JHC because the only customer relationship JHC had was through its contract with the Company for management of the Company's assets, and the Company cannot recognize goodwill attributable to its relationship with itself.

The following table shows the allocation of the purchase price paid by the Company for its acquisition of JHC, the assets and liabilities that were assumed as a result of the Merger and calculation of the settlement loss.

Consideration paid in the merger:	
Cash consideration	\$ 2,915,000
ACY stock consideration	2,003,000
	<u>4,918,000</u>
Fair value of assets acquired/(liabilities assumed):	
Cash	40,000
Securities	121,000
Accounts & note receivable	28,000
Prepaid expenses	157,000
Property, equipment and furnishings	79,000
Office leasehold	925,000
Accounts payable	(85,000)
Accrued vacation	(93,000)
Taxes payable	(722,000)
Deferred taxes	(138,000)
	<u>312,000</u>
Excess of consideration paid over net assets acquired	4,606,000
Waiver of JMC Margin payable	(1,517,000)
Settlement of payable to JMC	(562,000)
Settlement Loss on Management Agreement with JMC	<u>\$ 2,527,000</u>

## 9. Commitments and Contingencies

The Company leases its office space under a lease expiring June 30, 2020 and a storage facility on a monthly basis. Effective June 1, 2018, the Company agreed to amend its office lease to reduce the size of the rented office space and to provide two consecutive, 1-year renewal options. The amended monthly lease commitment for the office space includes an amount for base rent and operating expenses (including utilities and insurance costs). The Company estimates that the future minimum lease commitments for its office space, including both the base rent and operating expenses, and storage facility are as follows:

Years ending December 31	
2019	\$ 193,500
2020	196,400
2021	199,300
2022	101,100
	<u>\$ 690,300</u>

above are based on periodic increases to the base rental rate provided in the amended lease for the office space. Total rent expense for the post-Merger period in 2018, which included rent for a storage facility rented on a monthly basis, was \$82,300. Total rent expense was \$0 in 2017.

In the ordinary course of the Company's business, the Company may be subject to lawsuits, arbitrations and administrative proceedings from time to time. The Company believes that the outcome of any existing or known threatened proceedings, even if determined adversely, should not have a material adverse effect on the Company's business, financial condition, liquidity or results of operations.

## 10. Stockholder Rights Plan

In December 2009, AeroCentury's Board of Directors adopted a stockholder rights plan granting a dividend of one stock purchase right for each share of AeroCentury's common stock outstanding as of December 18, 2009, and AeroCentury entered into a rights agreement dated December 1, 2009 in connection therewith. The rights become exercisable only upon the occurrence of certain events specified in the rights agreement, including the acquisition of 15% of AeroCentury's outstanding common stock by a person or group in certain circumstances. Each right allows the holder, other than an "acquiring person," to purchase one one-hundredth of a share (a unit) of Series A Preferred Stock of AeroCentury at an initial purchase price of \$97.00 under circumstances described in the rights agreement. The purchase price, the number of units of preferred stock and the type of securities issuable upon exercise of the rights are subject to adjustment. The rights expire at the close of business on December 1, 2019 unless earlier redeemed or exchanged. Until a right is exercised, the holder thereof, as such, has no rights as a stockholder of AeroCentury, including the right to vote or to receive dividends.

## 11. Income Taxes

The items comprising the Company's income tax provision are as follows:

	For the Years Ended December 31,	
	2018	2017
Total income		
Current tax provision:		
Federal	\$ -	\$ -
State	3,200	800
Foreign	414,000	329,500
Current tax provision	<u>417,200</u>	<u>330,300</u>
Deferred tax (benefit)/provision:		
Federal	(1,270,400)	1,159,700
State	(26,100)	35,100
Foreign	(93,500)	(111,300)
Net legislative change in corporate tax rate	-	(5,380,300)
Deferred tax benefit	<u>(1,390,000)</u>	<u>(4,296,800)</u>
Total income tax benefit	<u>\$ (972,800)</u>	<u>\$ (3,966,500)</u>

statutory federal income tax rate to pretax earnings as illustrated below:

	For the Years Ended December 31,	
	2018	2017
Temporary		
Income tax provision at statutory federal income tax rate	\$ (1,901,400)	\$ 1,167,100
State tax (benefit)/provision, net of federal benefit	(44,500)	33,100
Non-deductible Merger expenses	647,200	213,500
Non-deductible management and acquisition fees	325,900	-
Net legislative change in corporate tax rate	-	(5,380,200)
Total income tax benefit	<u>\$ (972,800)</u>	<u>\$ (3,966,500)</u>

to a significant portion of deferred tax assets and liabilities as of December 31, 2018 and 2017 were as follows:

	December 31,	
	2018	2017
Deferred tax assets:		
Current and prior year tax losses	\$ 4,065,100	\$ 3,362,100
Maintenance reserves	3,100,800	2,810,200
Foreign tax credit	611,900	295,800
Deferred interest expense	81,800	-
Deferred maintenance, bad debt allowance and other	92,500	38,800
Alternative minimum tax credit	45,500	45,500
Deferred tax assets	<u>7,997,600</u>	<u>6,552,400</u>
Deferred tax liabilities:		
Accumulated depreciation on aircraft and aircraft engines	(14,773,800)	(14,591,000)
Deferred income	(320,600)	(495,100)
Favorable Lease	(185,400)	-
Net deferred tax liabilities	<u>\$ (7,282,200)</u>	<u>\$ (8,533,700)</u>

and liabilities as determined for financial reporting purposes and federal income tax purposes and are measured at enacted tax rates. On December 22, 2017, the Tax Act was signed into law. Among other things, the Tax Act reduced the Company's corporate federal tax rate to a flat 21% for years after 2017. As a result, the Company's deferred tax items are measured at an effective federal tax rate of 21% as of December 31, 2018 and December 31, 2017. Although realization is not assured, management believes it is more likely than not that the entire deferred federal income tax asset will be realized. The amount of the deferred federal income tax assets considered realizable could be reduced in the near term if estimates of future taxable income are reduced.

Beginning in 2018, the Tax Act also imposes a new provision designed to tax global intangible low-taxed income ("GILTI"), which requires the inclusion, in the Company's U.S. income tax return, of foreign subsidiary earnings in excess of an allowable return on the foreign subsidiary's tangible assets. Per guidance issued by the FASB, companies can either account for deferred taxes related to GILTI or treat tax arising from GILTI as a period cost. Both are acceptable methods subject to an accounting policy election. On December 31, 2018, the Company finalized its policy and has elected to use the period cost method for GILTI. In 2018, the Company did not account for any GILTI inclusion as its Canadian subsidiary was not material.

The federal operating loss carryovers totaled approximately \$19 million, of which \$16 million will be available to offset 100% of annual taxable income in future years and may be carried over through 2035 and \$3 million will be available to offset 80% of annual taxable income in future years and may be carried forward indefinitely. The current year state operating loss carryovers of approximately \$327,000 will be available to offset taxable income in the two preceding years and in future years through 2038. The Company expects to utilize the net operating loss carryovers remaining at

December 31, 2018 in future years.

During the year ended December 31, 2018, the Company had pre-tax loss from domestic sources of approximately \$6.0 million and pre-tax loss from foreign sources of approximately \$3.1 million. The Company had pre-tax income from domestic sources of approximately \$2.2 million and pre-tax income from foreign sources of approximately \$1.2 million for the year ended December 31, 2017. The foreign tax credit carryover will be available to offset federal tax expense in future years through 2028.

The Tax Act repealed the corporate alternative minimum tax for tax years beginning after 2017. In addition, beginning in 2018, the Company's alternative minimum tax credit ("MTC") will be available to offset federal tax expense and is refundable in an amount equal to 50% of the excess MTC for the tax year over the amount of the credit allowable for the year against regular tax liability. In 2021, any remaining MTC will be fully refundable.

The Company and its subsidiaries file income tax returns in the U.S. federal jurisdiction and various state and foreign jurisdictions. With few exceptions, the Company is no longer subject to U.S. federal, state and local, or non-U.S. income tax examinations by tax authorities for years before 2014. At December 31, 2018, the Company had a balance of accrued tax, penalties and interest in accounts payable and taxes payable totaling \$85,400 related to unrecognized tax benefits on its non-U.S. operations. The Company does not anticipate any significant changes to the unrecognized tax benefits within twelve months of this reporting date. A reconciliation of the beginning and ending amount of unrecognized tax benefits is as follows:

	2018	December 31, 2017
Balance at January 1	\$ -	-
Additions for prior years' tax positions	85,400	-
Balance at December 31	<u>\$ 85,400</u>	<u>-</u>

interest related to uncertain tax positions as interest expense, and for income tax penalties as tax expense.

## 12. Computation of (Loss)/Earnings Per Share

Basic and diluted earnings per share are calculated as follows:

	For the Years Ended December 31,	
	2018	2017
Basic		
Net (loss)/income	<u>\$ (8,081,200)</u>	<u>\$ 7,399,200</u>
Weighted average shares outstanding for the period used in computation of basic and diluted (loss)/earnings per share	1,449,261	1,449,576
Basic (loss)/earnings per share	<u>\$ (5.58)</u>	<u>\$ 5.10</u>
Diluted (loss)/earnings per share	<u>\$ (5.58)</u>	<u>\$ 5.10</u>

using net (loss)/income and the weighted average number of common shares outstanding during the period. Diluted (loss)/earnings per common share is computed using net (loss)/income and the weighted average number of common shares outstanding, assuming dilution. Weighted average common shares outstanding, assuming dilution, include potentially dilutive common shares outstanding during the period.

## 13. Related Party Transactions

See the description of the Merger Agreement between the Company and JHC in Note 8 above, pursuant to which the Company acquired JHC in the Merger and JHC became a wholly owned subsidiary of the Company on October 1, 2018.

Before completion of the Merger, the Company's portfolio of aircraft assets were managed and administered under the terms of a management agreement with JMC (the "Management Agreement"), which is an integrated aircraft management, marketing and financing business. Certain officers of the Company were also officers of JHC and JMC and held significant ownership positions in both JHC and the Company, and JHC was also a significant stockholder of AeroCentury. Under the Management Agreement, JMC received a monthly management fee based on the net asset value of the Company's assets under management. JMC also received an acquisition fee for locating assets for the Company. Acquisition fees were included in the cost basis of the asset purchased. JMC also received a remarketing fee in connection with the re-lease or sale of the Company's assets. Remarketing fees were amortized over the applicable lease term or included in the gain or loss on sale.

In April 2018, subsequent to the execution of the Merger Agreement, the Company, JHC and JMC entered into a waiver and reimbursement agreement (the "Waiver/Reimbursement Agreement"), pursuant to which JHC and JMC agreed to waive their right to receive Contract Fees otherwise owed by the Company to JMC pursuant to the Management Agreement for all periods after March 31, 2018 and until the consummation of the Merger, and in return, the Company agreed to reimburse JMC for expenses ("Management Expense") incurred in providing management services set forth under the Management Agreement. As a result, the Company has been responsible for all expenses incurred by JMC in managing the Company's assets beginning April 1, 2018 and will continue to be responsible for all such expenses in all periods after the Merger, and no Contract Fees have been or will be payable by the Company to JMC for the period from April 1 through September 30, 2018.

Notwithstanding the Waiver/Reimbursement Agreement, the Company accrued as an expense the Contract Fees that would have been due under the Management Agreement through September 30, 2018. For the nine months ended September 30, 2018, Contract Fees exceeded the Management Expense by \$1,023,000 of management fees and \$494,000 of acquisition fees (collectively, the "JMC Margin"). The amount of the JMC Margin payable was waived and included in the acquisition accounting for the calculation of the settlement loss that the Company recognized upon closing the Merger (see Note 8).

Contract Fees incurred during the 2018 and 2017 were as follows:

In	For the Years Ended December 31,	
	2018	2017
Management fees	<u>\$ 4,482,800</u>	<u>\$ 6,109,200</u>
Acquisition fees	494,400	850,500
Remarketing fees	-	51,100

Company exchanged one of its engines for 150,000 shares of common stock of AeroCentury held by a holder of more than 5% of AeroCentury's then-outstanding common stock. The Company recorded no gain or loss related to the exchange.

## 14. Subsequent Events

On February 8, 2019, the Company, through four wholly owned subsidiary limited liability companies (“LLC Borrowers”), entered into the Term Loans with Norddeutsche Landesbank Girozentrale, New York Branch (“Term Loan Lender”) that provides for six separate term loans with an aggregate principal amount of \$44.3 million. Each of the Term Loans is secured by a first priority security interest in a specific aircraft (“Term Loan Collateral Aircraft”) owned by an LLC Borrower, the lease for such aircraft, and a pledge by the Company of its membership interest in each of the LLC Borrowers, pursuant to a Security Agreement (the “Security Agreement”) among the LLC Borrowers and Wilmington Trust Company, as Security Trustee, and certain pledge agreements. The interest rates payable under the Term Loans vary by aircraft, and are based on a fixed margin above either 30-day or 3-month LIBOR. The proceeds of the Term Loans were used to pay off Company debt from its purchase of the Term Loan Collateral Aircraft. The maturity of each Term Loan varies by aircraft, with the first Term Loan maturing in October 2020 and the last Term Loan maturing in May 2025. The debt under the Term Loans is expected to be fully amortized by rental payments received by the LLC Borrowers from the lessees of the Term Loan Collateral Aircraft during the terms of their respective leases and remarketing proceeds.

The Term Loans include covenants that impose various restrictions and obligations on the LLC Borrowers, including covenants that require the LLC Borrowers to obtain the Lender’s consent before they can take certain specified actions. Events of default under the Term Loans and the Security Agreement include, among others: any failure by the LLC Borrowers to make payments thereunder when due; certain defaults by the lessees of the Term Loan Collateral Aircraft under their lease agreements for such aircraft; any misrepresentation by an LLC Borrower in the Term Loans agreement or the Security Agreement or failure by an LLC Borrower to perform its obligations thereunder; the occurrence of certain bankruptcy events; any lapse or failure to maintain insurance coverage on the Term Loan Collateral Aircraft; and any suspension or cessation of business of an LLC Borrower or the Company. If such an event of default occurs, subject to certain cure periods for certain events of default, the Lender would have the right to terminate its obligations under the Term Loans, declare all or any portion of the amounts then outstanding under the Term Loans to be accelerated and due and payable, and/or exercise any other rights or remedies it may have under applicable law, including foreclosing on the assets that serve as security for the Term Loans.

On February 19, 2019, the Company entered into a Third Amended and Restated Loan and Security Agreement to the Credit Facility which, among other things, extended the maturity date of the Credit Facility with the lenders thereunder from May 31, 2019 to February 19, 2023; decreased the maximum availability thereunder from \$170 million (with the ability for the Company to request an increase up to \$180 million) to \$145 million (with the ability for the Company to request an increase to up to \$160 million); and modified certain of the Company’s financial ratio covenants. Borrowings under the Credit Facility will continue to bear interest at floating rates that reset periodically to a market benchmark rate plus a credit margin, and the Company will also continue to be obligated to pay a quarterly fee on any unused portion of the Credit Facility at a rate of 0.50%. The Credit Facility requires that within 30 days after closing of the financing, the Company must enter into an interest rate protection derivative instrument with respect to \$50 million of the outstanding loan balance at closing.

The borrowings under the Credit Facility are secured by a first priority lien in all of the Company’s assets, including the Company’s aircraft portfolio, except those aircraft that are subject to the Term Loans. The Credit Facility requires the Company to comply with certain covenants relating to payment of taxes, preservation of existence, maintenance of property and insurance, and periodic financial reporting, as well as compliance with several financial ratio covenants. The Credit Facility restricts the Company with respect to certain corporate level transactions and transactions with affiliates or subsidiaries without consent of the lenders. Events of default under the Loan Agreement include failure to make a required payment within three business days of a due date or to comply with other obligations under the Credit Facility (subject to specified cure periods for certain events of default), a default under other indebtedness of the Company, and a change in control of the Company. Remedies for default under the Credit Facility include acceleration of the outstanding debt and exercise of any remedies available under applicable law, including foreclosure on the collateral securing the borrowings under the Credit Facility.

## **Item 9. Changes in and Disagreements With Accountants on Accounting and Financial Disclosure.**

None.

## **Item 9A. Controls and Procedures.**

**CEO and CFO Certifications.** Attached as exhibits to this Annual Report on Form 10-K are certifications of the Company's Chief Executive Officer (the "CEO") and the Company's Chief Financial Officer (the "CFO"), which are required pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 (the "Section 302 Certifications"). This Item 9A includes information concerning the evaluation of disclosure controls and procedures referred to in the Section 302 Certifications and should be read in conjunction with the Section 302 Certifications for a more complete understanding of the topics presented.

**Evaluation of the Company's Disclosure Controls and Procedures.** Disclosure controls and procedures ("Disclosure Controls") are controls and other procedures that are designed to ensure that information required to be disclosed in the Company's reports filed or submitted under the Exchange Act, such as this report, is recorded, processed, summarized and reported within the time periods specified in the rules and forms of the SEC and that such information is accumulated and communicated to the Company's management, including the CEO and CFO, as appropriate, to allow timely decisions regarding required disclosure.

In the course of the review of the consolidated financial results of the Company for the three months and six months ended June 30, 2018, the Company identified a material weakness in its internal control over financial reporting ("Internal Control") at June 30, 2018 related to the Company's incorrect accounting for management fees and acquisition fees associated with the Management Agreement between JHC and the Company. While the Company implemented controls over identifying the proper accounting treatment over the JHC acquisition and those controls operated as of December 31, 2018, the Company's tax review control did not identify a complex component resulting in an adjustment to the tax expense in 2018 and therefore there continues to be an identified material weakness in the Company's internal control over financial reporting as of December 31, 2018.

Management has determined that this deficiency constitutes a material weakness as of December 31, 2018. Management is in the process of enhancing the tax review control related to unusual transactions the Company may encounter.

The Company's management, with the participation of the CEO and CFO, evaluated the effectiveness of the Company's Disclosure Controls and concluded that the Company's Disclosure Controls were not effective as of December 31, 2018 due to the material weakness described above.

### *Management's Annual Report on the Company's Internal Control*

Internal Control is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles and includes policies and procedures that (1) pertain to the maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of the assets of the Company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures are being made only in accordance with authorizations of management and directors; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the Company's assets that could have a material effect on the financial statements.

The Company's management is responsible for establishing and maintaining adequate Internal Control. Management evaluated the Company's Internal Control based on the framework set forth by the Committee of Sponsoring Organizations of the Treadway Commission in *Internal Control – Integrated Framework (2013)*. Based on such evaluation, management concluded that the Company's Internal Control was not effective as of December 31, 2018 due to the material weakness described under "*Evaluation of the Company's Disclosure Controls and Procedures*" above.

This report does not include an attestation report on Internal Control by the Company's independent registered public accounting firm because such an attestation report is not required for smaller reporting companies pursuant to the rules of the SEC.

**Changes in Internal Control.** No change in the Company's Internal Control occurred during the fiscal quarter ended December 31, 2018 that has materially affected, or is reasonably likely to materially affect, the Company's Internal Control.

**Inherent Limitations of Disclosure Controls and Internal Control.** In designing its Disclosure Controls and Internal Control, the Company's management recognizes that any controls and procedures, no matter how well-designed and operated, can provide only reasonable assurance of achieving the desired control objectives. In addition, the design of the Company's controls and procedures must reflect the fact that there are resource constraints, and management necessarily applies its judgment in evaluating the benefits of possible controls and procedures relative to their costs. Because of these inherent limitations, the Company's Disclosure Controls and Internal Control may not prevent or detect all instances of fraud, misstatements or other control issues. In addition, projections of any evaluation of the effectiveness of disclosure or internal controls to future periods are subject to risks, including, among others, that controls may become inadequate because of changes in conditions or that compliance with policies or procedures may deteriorate.

## **Item 9B. Other Information.**

None.



## PART III

### **Item 10. Directors, Executive Officers and Corporate Governance.**

The information required by this item is included in the Company's definitive proxy statement ("Proxy Statement") to be filed in connection with the Company's 2019 Annual Meeting of Stockholders, under (i) "Proposal 1: Election of Directors," "Information Regarding the Company's Directors and Executive Officers—Current Board of Directors," "Information Regarding the Company's Directors and Executive Officers—Key Employees" and "Information Regarding the Company's Directors and Executive Officers—Family Relationships" as it relates to the information about the Company's directors, executive officers and certain key employees required by Item 401 of Regulation S-K, (ii) "Section 16(a) Beneficial Ownership Reporting Compliance" as it relates to the information concerning Section 16(a) beneficial ownership reporting compliance required by Item 405 of Regulation S-K, (iii) "Information Regarding the Company's Directors and Executive Officers—Board Meetings and Committees—Audit Committee" as it relates to the information about the Audit Committee of the Board of Directors and the "audit committee financial expert" required by Item 407(d)(4) and (d)(5) of Regulation S-K, and (iv) "Information Regarding the Company's Directors and Executive Officers—Director Nominations" as it relates to any changes to procedures by which security holders may recommend nominees to the Board of Directors as required by Item 407(c)(3) of Regulation S-K, and all such information is incorporated herein by reference.

The Company has adopted a code of business conduct and ethics, or the "code of conduct." The code of conduct applies to all of the Company's employees, including its executive officers, and non-employee directors, and it qualifies as a "code of ethics" within the meaning of Section 406 of the Sarbanes-Oxley Act of 2002 and the rules promulgated thereunder. A copy of the code of conduct is available on the Company's website at <http://www.aerocentury.com/code-of-conduct.php> or upon written request to the Investor Relations Department, 1440 Chapin Avenue, Suite 310, Burlingame, California 94010. To the extent required by law, any amendments to, or waivers from, any provision of the code of conduct will be promptly disclosed publicly. To the extent permitted by such requirements, the Company intends to make such public disclosure on its website in accordance with SEC rules.

### **Item 11. Executive Compensation.**

The information required by this item is included in the Proxy Statement under "Information Regarding the Company's Directors and Officers—Director Compensation" and "Information Regarding the Company's Directors and Officers—Executive Compensation" and is incorporated herein by reference.

**Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters.**

The information required by this item is included in the Proxy Statement under “Security Ownership of Certain Beneficial Owners and Management” and is incorporated herein by reference.

**Item 13. Certain Relationships and Related Transactions, and Director Independence.**

The information required by this item is included in the Proxy Statement under “Related Party Transactions” and “Information Regarding the Company’s Directors and Officers—Board Independence” and is incorporated herein by reference.

**Item 14. Principal Accountant Fees and Services.**

The information required by this item is included in the Proxy Statement under “Information Regarding Auditor” and is incorporated herein by reference.

PART IV

Item 15. Exhibits, Financial Statements Schedules.

(a)(1) The following financial statements of the Company are filed in Item 8 of this report:

Report of Independent Registered Public Accounting Firm  
 Consolidated Balance Sheets as of December 31, 2018 and 2017  
 Consolidated Statements of Operations for the Years Ended December 31, 2018 and 2017  
 Consolidated Statements of Stockholders' Equity for the Years Ended December 31, 2018 and 2017  
 Consolidated Statements of Cash Flows for the Years Ended December 31, 2018 and 2017  
 Notes to Consolidated Financial Statements

(a)(2) All financial statement schedules have been omitted because the required information is presented in the consolidated financial statements or is not applicable.

(a)(3) The following exhibits are filed with or incorporated by reference in this report:

Exhibit Number	Description
2.1§	<a href="#"><u>Agreement and Plan of Merger, dated as of October 26, 2017, by and among the AeroCentury Corp., Falcon Landing, Inc., JHC Holding Corp., and Fortis Advisors LLC, incorporated herein by reference to Exhibit 2.1 to the registrant's Report on Form 8-K filed with the SEC on October 30, 2017</u></a>
3.1.1^	<a href="#"><u>Certificate of Incorporation of AeroCentury Corp., incorporated by reference to Exhibit 3.08 to the registrant's registration statement on Form S-4/A filed with the SEC on July 24, 1997 (SEC File No. 333-24743, Film No. 97644740)</u></a>
3.1.2^	<a href="#"><u>Form of Certificate of Amendment of Certificate of Incorporation of AeroCentury Corp., incorporated by reference to Exhibit 3.07 to the registrant's registration statement on Form S-4/A filed with the SEC on June 10, 1997 (SEC File No. 333-24743, Film No. 97622056)</u></a>
3.1.3	<a href="#"><u>Certificate of Amendment to Amended and Restated Certificate of Incorporation of AeroCentury Corp., dated May 6, 2008, incorporated by reference to Exhibit 99.1 to the registrant's Report on Form 8-K filed with the SEC on May 7, 2008</u></a>
3.1.4	<a href="#"><u>Amended and Restated Certificate of Designation of AeroCentury Corp. dated December 1, 2009, incorporated by reference to Exhibit 3.1 to the registrant's Report on Form 8-K filed with the SEC on December 7, 2009</u></a>
3.2	<a href="#"><u>Amended and Restated Bylaws of AeroCentury Corp., incorporated herein by reference to Exhibit 3.1 of the registrant's Report on Form 8-K filed with the SEC on November 22, 2016</u></a>
4.1	Reference is made to <a href="#"><u>Exhibit 3.1.4.</u></a>
4.2	<a href="#"><u>Rights Agreement by and between AeroCentury Corp. and Continental Stock Transfer &amp; Trust Company dated December 1, 2009, incorporated by reference to Exhibit 4.1 to the registrant's Report on Form 8-K filed with the SEC on December 7, 2009</u></a>
10.1+	<a href="#"><u>Employment Agreement dated September 1, 2016 between Michael G. Magnusson and JetFleet Management Corp., incorporated by reference to Exhibit 10.1 to the registrant's Report on Form 10-Q filed with the SEC on November 8, 2018</u></a>
10.2	<a href="#"><u>Credit Agreement, dated February 8, 2019, among ACY SN 15129 LLC, ACY E-175 LLC, ACY SN 19002 Limited, and ACY SN 19003 Limited, Wilmington Trust Company, as Security Trustee, Norddeutsche Landesbank Girozentrale, New York Branch, as Agent, and Norddeutsche Landesbank Girozentrale, as swap counterparty, incorporated by reference to Exhibit 10.1 to the registrant's Report on Form 8-K filed with the SEC on February 14, 2019</u></a>
10.3	<a href="#"><u>Security Agreement, dated February 8, 2019, among ACY SN 15129 LLC, ACY E-175 LLC, ACY SN 19002 Limited, and ACY SN 19003 Limited, Wilmington Trust Company, as Security Trustee, and certain other parties, incorporated by reference to Exhibit 10.2 to the registrant's Report on Form 8-K filed with the SEC on February 14, 2019</u></a>
10.4	<a href="#"><u>Form of ISDA Master Agreements, Schedules and Confirmations of Interest Rate Swaps between Norddeutsche Landesbank Girozentrale, as swap counterparty, and each of ACY SN 15129 LLC, ACY E-175 LLC, ACY SN 19002 Limited, and ACY SN 19003 Limited, incorporated by reference to Exhibit 10.3 to the registrant's Report on Form 8-K filed with the SEC on February 14, 2019</u></a>
10.5	<a href="#"><u>Third Amended and Restated Loan and Security Agreement dated February 19, 2019, between AeroCentury Corp., MUFG Union Bank, N.A., as Agent and Lender, and certain other financial institution parties thereto</u></a>
10.6	<a href="#"><u>ISDA Master Agreements, Schedules and Confirmations of Interest Rate Swaps between MUFG Bank, Ltd., as swap counterparty, and AeroCentury Corp.</u></a>
21.1	<a href="#"><u>Subsidiaries of the AeroCentury Corp.</u></a>
24.1	<a href="#"><u>Power of Attorney (included on the signature page hereto)</u></a>
31.1	<a href="#"><u>Certification of Michael G. Magnusson, Chief Executive Officer, pursuant to Section 302 of the Sarbanes-Oxley Act of 2002</u></a>
31.2	<a href="#"><u>Certification of Toni M. Perazzo, Chief Financial Officer, pursuant to Section 302 of the Sarbanes-Oxley Act of 2002</u></a>
32.1*	<a href="#"><u>Certification of Michael G. Magnusson, Chief Executive Officer, pursuant to Section 906 of the Sarbanes-Oxley Act of 2002</u></a>
32.2*	<a href="#"><u>Certification of Toni M. Perazzo, Chief Financial Officer, pursuant to Section 906 of the Sarbanes-Oxley Act of 2002</u></a>
101.INS	XBRL Instance Document
101.SCH	XBRL Schema Document
101.CAL	XBRL Calculation Linkbase Document
101.LAB	XBRL Label Linkbase Document
101.PRE	XBRL Presentation Linkbase Document
101.DEF	XBRL Definition Linkbase Document

\* These certificates are furnished to, but shall not be deemed to be filed with, the SEC.

- § Schedules and other similar attachments have been omitted pursuant to Item 601(b)(2) of Regulation S-K promulgated by the SEC. The signatory hereby undertakes to furnish supplemental copies of any of the omitted schedules and attachments upon request by the SEC.
- + Management contract or compensatory plan or arrangement.
- ^ Originally filed in paper format.

**Item 16. Form 10-K Summary.**

The Company has elected not to provide summary information.

## SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

AEROCENTURY CORP.

By

/s/ Toni M. Perazzo  
Toni M. Perazzo  
Senior Vice President-Finance and  
Chief Financial Officer

Date March 18, 2019

## POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Toni M. Perazzo, or her attorneys-in-fact, with the power of substitution, for her in any and all capacities, to sign any amendments to this Report on Form 10-K and to file the same, with exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, hereby ratifying and confirming all that said attorneys-in-fact, or her substitute or substitutes, may do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities indicated.

<u>Signature</u>	<u>Title</u>	<u>Dated</u>
<u>/s/ Michael G. Magnusson</u> Michael G. Magnusson	Director and President of the Registrant (Principal Executive Officer)	March 18, 2019
<u>/s/ Toni M. Perazzo</u> Toni M. Perazzo	Director and Senior Vice President-Finance and Secretary of the Registrant (Principal Financial and Accounting Officer)	March 18, 2019
<u>/s/ Evan M. Wallach</u> Evan M. Wallach	Director and Chairman of the Board of Directors of the Registrant	March 18, 2019
<u>/s/ Roy E. Hahn</u> Roy E. Hahn	Director	March 18, 2019
<u>/s/ David P. Wilson</u> David P. Wilson	Director	March 18, 2019

2

[\(Back To Top\)](#)

## Section 2: EX-10.5 (FORM OF MUFG LOAN AND SECURITY AGREEMENT)

EXHIBIT 10.5

**THIRD AMENDED AND RESTATED**

**LOAN AND SECURITY AGREEMENT**

**BETWEEN**

**AEROCENTURY CORP.,  
as Borrower**

**THE FINANCIAL INSTITUTIONS PARTIES HERETO  
FROM TIME TO TIME,**

**as Lenders**

**MUFG UNION BANK, N.A.  
as Administrative Agent and Sole Lead Arranger**

**UMPQUA BANK,  
as Syndication Agent**

**ZIONS BANCORPORATION, N.A. (fka ZB, N.A.)  
dba California Bank & Trust,  
as Co-Documentation Agent**

**AND**

**U.S. BANK NATIONAL ASSOCIATION,  
as Co-Documentation Agent**

**February 19, 2019**

---

## TABLE OF CONTENTS

Page

1.	DEFINITIONS AND ACCOUNTING TERMS	
1.1	Defined Terms	
1.2	Accounting Terms	
1.3	UCC	
1.4	Construction	
1.5	USA Patriot Act Notice	
1.6	Rounding	
2.	REVOLVING COMMITMENT	
2.1	Revolving Loans	
2.2	Payment of Interest; Interest Rate	
2.3	Maximum Rate of Interest	
2.4	Fees	
2.5	Late Payments	
2.6	Repayment and Prepayment	
2.7	Term	
2.8	Early Termination or Reduction	
2.9	Note and Accounting	
2.10	Manner of Payment	
2.11	Application of Payments	
2.12	Use of Proceeds	
2.13	All Obligations to Constitute One Obligation	
2.14	Authorization to Make Loans	
2.15	Authorization to Debit Accounts	
2.16	Agent's Right to Assume Funds Available for Revolving Loans	
2.17	Withholding of Taxes	
2.18	Optional Increase to the Revolving Commitment.	
3.	SECURITY	
3.1	Grant of Security Interest	
3.2	Priority of Agent's Security Interest	
3.3	Agent's Rights	
3.4	Power of Attorney	
3.5	Grant of License to Use Intellectual Property Collateral	
3.6	Reinstatement	
3.7	Release of Security Interest	
4.	CONDITIONS PRECEDENT	
4.1	Conditions Precedent to Closing	
4.2	Conditions to All Loans	
5.	REPRESENTATIONS AND WARRANTIES	
5.1	Corporate Existence; Compliance with Law	
5.2	Executive Offices; Corporate or Other Names; Conduct of Business	
5.3	Authority; Compliance with Other Agreements and Instruments and Government Regulations	
5.4	No Governmental Approvals Required	
5.5	Subsidiaries	
5.6	Financial Statements	
5.7	No Other Liabilities; No Material Adverse Changes	
5.8	Title To and Location of Property	
5.9	Intellectual Property	
5.10	Litigation	
5.11	Binding Obligations	
5.12	No Default	
5.13	ERISA	
5.14	Regulation U; Investment Company Act	
5.15	Disclosure	
5.16	Tax Liability	
5.17	Hazardous Materials	
5.18	Security Interests	
5.19	Insurance	
5.20	Leases and Equipment	
5.21	Cape Town Convention	

- 5.22 Depreciation Policies
- 5.23 Swap Contracts
- 5.24 Eligible Leases
- 5.25 Preservation of International Interests and Liens
- 5.26 Solvency
- 5.27 Anti-Corruption Laws; Sanctions

## 6. AFFIRMATIVE COVENANTS (OTHER THAN INFORMATION AND REPORTING REQUIREMENTS)

- 6.1 Payment of Taxes and Other Potential Liens
- 6.2 Preservation of Existence
- 6.3 Maintenance of Property
- 6.4 Maintenance of Insurance
- 6.5 Compliance with Applicable Law
- 6.6 Inspection Rights
- 6.7 Keeping of Records and Books of Account
- 6.8 Compliance with Agreements
- 6.9 Use of Proceeds
- 6.10 Hazardous Materials Laws
- 6.11 Future Subsidiaries
- 6.12 Payment of Obligations
- 6.13 Conduct of Business
- 6.14 Further Assurances; Schedule Supplements
- 6.15 Financial Covenants
- 6.16 Subordination of Third Party Fees
- 6.17 Maintenance of Borrowing Base
- 6.18 Placards
- 6.19 Maintenance of Current Depreciation Policies
- 6.20 Preservation of International Interests and Liens
- 6.21 Maintenance of JMC Management Agreement
- 6.22 Interest Rate Protection
- 6.23 Maintenance of Eligible Collateral
- 6.24 Maintenance of Records
- 6.25 Excluded Assets

## 7. NEGATIVE COVENANTS

- 7.1 Modification of Formation Documents
- 7.2 Failure to Act/Duty to Act
- 7.3 Modification of Debt
- 7.4 Transfers to Restricted Subsidiaries
- 7.5 Disposition of Property
- 7.6 Mergers
- 7.7 Hostile Acquisitions
- 7.8 Distributions
- 7.9 ERISA
- 7.10 Change in Nature of Business; Change in Control
- 7.11 Swap Contracts
- 7.12 Liens and Negative Pledges
- 7.13 Indebtedness and Guaranteed Indebtedness
- 7.14 Transactions with Affiliates
- 7.15 Subsidiary Indebtedness
- 7.16 Restricted Subsidiaries
- 7.17 New Shareholders
- 7.18 Redemptions; Dividends
- 7.19 Investments
- 7.20 Additional Bank Accounts

## 8. INFORMATION AND REPORTING REQUIREMENTS

- 8.1 Reports and Notices
- 8.2 Budgets
- 8.3 Other Reports

## 9. EVENTS OF DEFAULT; RIGHTS AND REMEDIES

- 9.1 Events of Default
- 9.2 Remedies
- 9.3 Waivers by Borrower
- 9.4 Proceeds

## 10. SUCCESSORS AND ASSIGNS

11. DISPUTE RESOLUTION

- 11.1 Alternative Dispute Resolution Agreement
- 11.2 No Limitation on Remedies
- 11.3 Inconsistency

12. MISCELLANEOUS

- 12.1 Complete Agreement; Modification of Agreement
- 12.2 Reimbursement and Expenses
- 12.3 Indemnity
- 12.4 No Waiver
- 12.5 Severability; Drafting
- 12.6 Conflict of Terms
- 12.7 Notices
- 12.8 Binding Effect; Assignment
- 12.9 Right of Setoff
- 12.10 Sharing of Setoffs
- 12.11 Section Titles
- 12.12 Counterparts
- 12.13 Time of the Essence
- 12.14 GOVERNING LAW; VENUE
- 12.15 WAIVER OF JURY TRIAL
- 12.16 Amendments; Consents
- 12.17 Foreign Lenders and Participants
- 12.18 Acknowledgement and Consent to Bail-In of EEA Financial Institutions
- 12.19 Disclaimer of Fiduciary Obligations
- 12.20 Electronic Transmissions.

13. AGENT

- 13.1 Appointment and Authorization and Delegation of Duties
- 13.2 Lenders' Credit Decisions
- 13.3 Agent and Affiliates
- 13.4 Proportionate Interest in any Collateral
- 13.5 Action by Agent
- 13.6 Liability of Agent
- 13.7 Indemnification
- 13.8 Successor Agent
- 13.9 Collateral Matters
- 13.10 No Obligations of Borrower

14. COMMITMENT COSTS AND RELATED MATTERS.

- 14.1 Eurodollar Costs and Related Matters
  - 14.2 Capital Adequacy
  - 14.3 Federal Reserve System/Wire Transfers
  - 14.4 Assignment of Commitments Under Certain Circumstances; Duty to Mitigate
-

## INDEX OF SCHEDULES AND EXHIBITS

Schedule A	Revolving Commitment – Pro Rata Share
Schedule 1.1a	Advance Rates
Schedule 1.1b	Eligible Leases
Schedule 1.1c	Equipment
Schedule 1.1d	Excluded Assets
Schedule 1.1e	Material Contracts
Schedule 1.1f	Permitted Indebtedness
Schedule 1.1g	Permitted Liens/Liens of Record
Schedule 1.1h	Schedule of Documents
Schedule 1.1i	Spot Market Assets
Schedule 5.2	Executive Offices; Corporate or Other Names; Conduct of Business
Schedule 5.7	No Other Liabilities; No Material Adverse Changes
Schedule 5.9	Trade Names
Schedule 5.10	Litigation
Schedule 5.17	Hazardous Materials
Schedule 5.19	Insurance
Schedule 5.22	Depreciation Policies
Schedule 6.4	Insurance as of the Closing Date
Schedule 7.13	Indebtedness and Guaranteed Indebtedness existing on the Closing Date
Schedule 7.19	Investments Existing as of the Closing Date
Exhibit A	Form of Borrowing Base Certificate
Exhibit B	Form of Borrowing Notice
Exhibit C	Form of Compliance Certificate
Exhibit D	Form of Commitment Assignment and Acceptance
Exhibit E	Form of Mortgage
Exhibit F	Form of Beneficial Interest Pledge Agreement
Exhibit G	Form of Owner Trustee Mortgage
Exhibit H	Form of Owner Trustee Guaranty
Exhibit I	Form of Placard

---

**THIRD AMENDED AND RESTATED  
LOAN AND SECURITY AGREEMENT**

**THIS THIRD AMENDED AND RESTATED LOAN AND SECURITY AGREEMENT** (“Agreement”), is entered into as of February 19, 2019, between AEROCENTURY CORP., a Delaware corporation (“Borrower”), MUFG UNION BANK, N.A., together with any other Lender hereunder from time to time (collectively, the “Lenders” and individually, a “Lender”), MUFG UNION BANK, N.A., as administrative agent (in such capacity, “Agent”) and as Sole Lead Arranger, UMPQUA BANK, as Syndication Agent (in such capacity, “Syndication Agent”), ZIONS BANCORPORATION, N.A. (fka ZB, N.A.) dba California Bank & Trust, as Co-Documentation Agent (in such capacity, collectively with each other Co-Documentation Agent, “Documentation Agent”), and U.S. BANK NATIONAL ASSOCIATION, as Co-Documentation Agent (in such capacity, collectively with each other Co-Documentation Agent, “Documentation Agent”), effective as of the Closing Date, with reference to the following facts:

RECITALS

- A. Borrower is in the business of purchasing and leasing aircraft and aircraft engines and equipment.
- B. Pursuant to that certain Second Amended and Restated Loan and Security Agreement dated as of May 30, 2014, (as amended from time to time, the “Existing Agreement”), the financial institutions as lender parties thereto (collectively, the “Existing Lenders”) and MUFG Union Bank, N.A., as administrative agent for the Existing Lenders, agreed to make available to Borrower a revolving credit facility (the “Existing Loan”), to be used for the purpose of refinancing existing revolving debt, acquiring aircraft and aircraft engines, and supporting Borrower’s working capital needs and general corporate purposes.
- C. Borrower has requested that Lenders provide Borrower with a modified revolving line of credit in an amount equal to the Revolving Commitment to be used by Borrower for among other things, refinancing the Existing Loan, acquiring Eligible Assets, and supporting Borrower’s working capital needs and general corporate purposes.
- D. Lenders are willing to extend such a revolving line of credit to Borrower, subject to the terms and conditions set forth herein.
- E. Borrower has requested and the parties hereto hereby agree that the Existing Agreement shall be amended and restated in its entirety (without novation) as set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

**1. DEFINITIONS AND ACCOUNTING TERMS**

1.1 Defined Terms. As used in this Agreement, the following terms shall have the respective meanings set forth below:

“Account Debtor” means any Person who is obligated under an Account.

“Accounts” means all “accounts,” as such term is defined in the UCC, now owned or hereafter acquired by Borrower, including (a) all accounts receivable, payments and pre-payments under Leases, other receivables, book debts and other forms of obligations (other than forms of obligations evidenced by chattel paper, documents or instruments), whether arising out of goods sold or services rendered by it or from any other transaction (including any such obligations that may be characterized as an account or contract right under the UCC), (b) all purchase orders or receipts for goods or services, (c) all rights to any goods represented by any of the foregoing (including unpaid sellers’ rights of rescission, reclamation and stoppage in transit and rights to returned, reclaimed or repossessed goods), (d) all monies due or to become due to Borrower under all purchase orders and contracts for the sale of goods or the performance of services or both by Borrower or in connection with any other transaction (whether or not yet earned by performance on the part of Borrower) now or hereafter in existence, including the right to receive the proceeds of said purchase orders and contracts, and (e) all collateral security and guaranties of any kind, now or hereafter in existence, given by any Person with respect to any of the foregoing.

“Acquisition” means any transaction, or any series of related transactions, consummated after the Closing Date, by which Borrower and/or any of its Subsidiaries-directly or indirectly (a) acquires any ongoing business or all or substantially all of the assets of any Person engaged in any ongoing business, whether through purchase of assets, merger or otherwise, (b) acquires control of securities of a Person engaged in an ongoing business representing more than 50% of the ordinary voting power for the election of directors or other governing position if the business affairs of such Person are managed by a board of directors or other governing body or (c) acquires control of more than 50% of the ownership interest in any partnership, joint venture, limited liability company, business trust or other Person engaged in an ongoing business that is not managed by a board of directors or other governing body.

“Advance Rate(s)” means the applicable percentages set forth in **Schedule 1.1a**

“Affiliate” means, with respect to any Person, another Person that, directly or indirectly, Controls, or is Controlled by or is under common Control with such other Person. For the purpose of this definition, “Control” or “Controlled” means the possession, directly or indirectly, of the power to direct or cause the direction of its management or policies, whether through the ownership of voting securities, by contract or otherwise.

“Agent” means MUFG Union Bank, N.A. when acting in its capacity as Agent under any of the Loan Documents, or any successor Agent.

“Agreement” means this Third Amended and Restated Loan and Security Agreement, as the same may, from time to time, be amended, supplemented, modified or restated.

“Aircraft” means each aircraft purchased by Borrower described in a Mortgage, together with any and all Parts (including Engines) which are either incorporated or installed in or attached to such aircraft’s airframe or required to be subject to the lien and security interest of such Mortgage.

“Allocated Overhead Expenses” means, in any period, the sum of consolidated (i) management fees, (ii) professional fees, and general, administrative and other fees, and (iii) insurance expenses as reported in the Borrower’s quarterly Financial Statements times the ratio of (a) revenue attributable to Excluded Subsidiaries to (b) the Borrower’s consolidated operating lease revenue as calculated in the Revenue Concentration Limit covenant set forth in **Section 6.15.9**.

“Alternative Dispute Resolution Agreement” means one or more Alternative Dispute Resolution Agreement(s) executed by Agent, each Lender, Borrower and, if applicable, Subsidiary, in connection with the Loans.

“Anti-Corruption Laws” means all laws, rules, and regulations of any jurisdiction applicable to Borrower or its Subsidiaries from time to time concerning or relating to bribery or corruption.

“Applicable Base Rate” means the percentage as calculated in **Section 2.2.1(a)**.

“Applicable Base Rate Margin” means the percentage determined by reference to **Table 1** in **Section 2.2.1(c)** of this Agreement.

“Applicable Law” means, in respect of any Person, all provisions of constitutions, statutes, rules, regulations and orders of governmental bodies or regulatory agencies applicable to such Person, and all orders and decrees of all courts and arbitrators in proceedings or actions to which the Person in question is a party or by which it or its properties are bound.

“Applicable LIBOR Margin” means the percentage determined by reference to **Table 1** in **Section 2.2.1(c)** of this Agreement.

“Applicable LIBOR Rate” means the percentage as calculated in **Section 2.2.1(b)**.

“Applicable Unused Line Fee Percentage” means one half of one percent (0.50%).

“Appraisal” means (i) for the existing Eligible Assets reflected on the Borrower’s Borrowing Base Certificate as of December 31, 2018, the lease-adjusted current market value appraisal from an Appraiser; or (ii) with respect to any Equipment purchased after the Closing Date, a maintenance-adjusted current market value appraisal from an Appraiser; or, (iii) with respect to Spot Market Assets, a Spot Market Asset Appraisal; or (iv) if a Default exists, such other type of appraisal (e.g., extended desktop, visual inspection) as shall be required by Agent, of an item of Equipment to determine the Appraised Value of such Equipment, performed by an Appraiser retained by Agent on behalf of the Lenders.

“Appraised Value” means, with respect to an item of Equipment that is not a Spot Market Asset, the average of two Appraisals (calculated by using the unrounded amounts of the two Appraisals and rounding the product to the nearest whole dollar), one of which is performed by AVITAS, Inc. and the other is performed by a different Appraiser substantially concurrently, and, in the case of a Spot Market Asset, the most recent Appraisal with respect to such Asset.

“Appraiser” means (i) any of Ascend – Flight Global Advisory Service, Oriel Consult Limited, or AVITAS, Inc., or (ii) any other independent appraiser acceptable to Agent that is a member of the International Society of Transport Aircraft Trading (“ISTAT”) (or if ISTAT ceases to exist, any similar professional aircraft appraiser organization that is acceptable to Agent).

“APU” means, whether or not installed on an airframe, the auxiliary power unit of the manufacture and model described in any Mortgage, together with any and all modules and Parts which are either incorporated or installed from time to time in or attached to such APU.

“Assets” means all of Borrower’s assets and property, whether now existing or owned or hereafter created or acquired, and wherever located, including, but not limited to:

(a) all accounts, chattel paper (including tangible and electronic chattel paper), contract rights, deposit accounts, documents (including negotiable documents), equipment (including the Equipment and all accessions and additions thereto, including at any time all Propellers, APUs and Landing Gear, and all parts, components, equipment, instruments, appliances, avionics, radio and radar devices, cargo handling systems and loose equipment that are at such time incorporated or installed in or attached thereto or to an Aircraft or Engine), general intangibles (including payment intangibles and software), goods (including fixtures), instruments (including promissory notes), inventory (including all goods held for sale or lease or to be furnished under a contract of service, and including returns and repossessions), investment property (including securities and securities entitlements), leases, letter of credit rights, money, and all of Borrower’s books and records with respect to any of the foregoing, and the computers and equipment containing said books and records;

(b) all common law and statutory copyrights and copyright registrations, applications for registration, now existing or hereafter arising, in the United States of America or in any foreign jurisdiction, obtained or to be obtained on or in connection with any of the forgoing, or any parts thereof or any underlying or component elements of any of the forgoing, together with the right to copyright and all rights to renew or extend such copyrights and the right (but not the obligation) of Agent to sue in its own name and/or in the name of the Borrower for past, present and future infringements of copyright;

(c) all trademarks, service marks, trade names and service names and the goodwill associated therewith, together with the right to trademark and all rights to renew or extend such trademarks and the right (but not the obligation) of Agent to sue in its own name and/or in the name of the Borrower for past, present and future infringements of trademark;

(d) all (i) patents and patent applications filed in the United States Patent and Trademark Office or any similar office of any foreign jurisdiction, and interests under patent license agreements, including, without limitation, the inventions and improvements described and claimed therein, (ii) licenses pertaining to any patent whether Borrower is licensor or licensee, (iii) income, royalties, damages, payments, accounts and accounts receivable now or hereafter due and/or payable under and with respect thereto, including, without limitation, damages and payments for past, present or future infringements thereof, (iv) right (but not the obligation) to sue in the name of Borrower and/or in the name of Agent for past, present and future infringements thereof, (v) rights corresponding thereto throughout the world in all jurisdictions in which such patents have been issued or applied for, and (vi) reissues, divisions, continuations, renewals, extensions and continuations-in-part with respect to any of the foregoing; and

(e) any and all cash proceeds and/or noncash proceeds of any of the foregoing, including, without limitation, insurance proceeds, and all supporting obligations and the security therefor or for any right to payment. All terms above have the meanings given to them in the New York Uniform Commercial Code, as amended or supplemented from time to time.

“Authorized Party” means each Person identified in **Section 2.14**.

“Authorized Signatory” means (i) with respect to any Compliance Certificates delivered to Agent hereunder, (a) the chief executive officer, (b) the president, or (c) the chief financial officer or deputy financial officer, in each case of Borrower, and (ii) with respect to all other documents required to be executed by Borrower and delivered to Agent and/or Lenders hereunder, each of the foregoing persons or such other senior personnel of Borrower as may be duly authorized and designated in writing by Borrower to execute documents, agreements, and instruments on behalf of Borrower and to pledge Borrower’s real and personal property.

“Aviation Authority” means the FAA, the Joint Airworthiness Authorities of the European Union /European Aviation Safety Agency and/or any other governmental authority which, from time to time, has control or supervision of civil aviation or has jurisdiction over the airworthiness, operation and/or maintenance of an item of Equipment.

“Bail-In Action” means the exercise of any Write-Down and Conversion Powers by the applicable EEA Resolution Authority in respect of any liability of an EEA Financial Institution.

“Bail-In Legislation” means, with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule.

“Bankruptcy Code” means the Bankruptcy Code (11 U.S.C. Sections 101 et seq.).

“Base Rate” means the highest of (i) the rate of interest most recently announced by Agent as to its U.S. dollar “Reference Rate”, (ii) the Federal Funds Rate plus one-half of one percent (0.50%) or (iii) one month LIBOR plus one and one half percent (1.50%).

“Base Rate Loans” means a Revolving Loan which Borrower requests to be made as a Base Rate Loan or a Revolving Loan which is reborrowed as, or converted to, a Base Rate Loan, in accordance with the provisions of **Sections 2.1.2** and **2.1.4(b)**, provided, that, if the Base Rate shall be less than zero, such rate shall be deemed zero for purposes of this Agreement.

“Beneficial Interest” means a beneficial interest in a trust which owns one or more items of Equipment.

“Beneficial Interest Pledge Agreement” means a Beneficial Interest Pledge Agreement, to be entered into among Borrower, Owner Trustee, and Agent, whereby Borrower pledges to Agent, as security for certain obligations under this Agreement, all of the beneficial interest of Borrower, as beneficial owner under a particular Trust Agreement.

“Books and Records” means all books, records, board minutes, contracts, licenses, insurance policies, environmental audits, business plans, files, accounting books and records, Financial Statements (actual and pro forma), and filings with Governmental Authorities.

“Borrower Only Adjusted EBITDA” means Consolidated Adjusted EBITDA less EBITDA from Excluded Entities.

“Borrower Only Debt Service” means the sum of (a) Recourse Phantom Amortization, (b) Recourse Cash Interest Expense and (c) Maintenance Expense.

“Borrower Only EBITDA” means Consolidated EBITDA less EBITDA from Excluded Entities.

“Borrowing Availability” means, at any time, the lesser of (a) the Maximum Amount, or (b) the Borrowing Base Availability.

“Borrowing Base” means, at any time, an amount equal to the aggregate sum of the product of the following, calculated for each asset constituting Eligible Collateral: (i) the Advance Rate as applied to each item of Equipment included in Eligible Collateral times (ii) the Appraised Value of such Equipment.

“Borrowing Base Availability” means, at any time, an amount equal to (a) the Borrowing Base shown on the Borrowing Base Certificate most recently delivered by Borrower to Agent and on other information available to Agent less (b) the sum of (i) the amount then

outstanding under the Credit Facility plus (ii) the total amount of any deferred rent and maintenance reserves due to the Borrower from any Lessee or former Lessee pursuant to a Deferral Agreement plus (iii) the Maintenance Reserve Amount.

“Borrowing Base Certificate” means a certificate in the form attached hereto as **Exhibit A**.

“Borrowing Base Deficiency” means, at any time, the amount, if any, by which the aggregate amount of any Loans then outstanding exceeds the Borrowing Base Availability.

“Borrowing Notice” means a written request for a Loan substantially in the form of **Exhibit B** signed by an Authorized Signatory of Borrower and properly completed to provide all information required to be included therein.

“Business Day” means any day that is not a Saturday, Sunday, or other day on which banks in the State of California are authorized or required to close, and in reference to LIBOR Loans means a Business Day that is also a day on which banks in the city of London are open for interbank or foreign exchange transactions.

“Canadian Employee Obligations” is defined in the definition of “Immaterial Subsidiary”.

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

“Cape Town Eligible Lease” means those certain Leases which create International Interests under the Cape Town Convention.

“Capital Lease Obligations” means all monetary obligations of a Person under any leasing or similar arrangement which, in accordance with GAAP, is classified as a capital lease.

“Cash” means, when used in connection with any Person, all monetary and non-monetary items owned by that Person that are treated as cash in accordance with GAAP, consistently applied.

“Cash Equivalents” means, when used in connection with any Person, that Person’s Investments in:

- (a) Government Securities due within one year after the date of the making of the Investment;
- (b) readily marketable direct obligations of any State of the United States of America or any political subdivision of any such State or any public agency or instrumentality thereof given on the date of such Investment a credit rating of at least AA by Moody’s Investors Service, Inc. or AA by Standard & Poor’s Rating Group (a division of McGraw Hill, Inc.), in each case due within one year from the making of the Investment;
- (c) certificates of deposit issued by, bank deposits in, Eurodollar deposits through, bankers’ acceptances of, and repurchase agreements covering Government Securities executed by Lender or any bank incorporated under the Applicable Law of the United States of America, any State thereof or the District of Columbia and having on the date of such Investment combined capital, surplus and undivided profits of at least \$250,000,000, or total assets of at least \$5,000,000,000, in each case due within one year after the date of the making of the Investment;
- (d) certificates of deposit issued by, bank deposits in, Eurodollar deposits through, bankers’ acceptances of, and repurchase agreements covering Government Securities executed by Lender or any branch or office located in the United States of America of a bank incorporated under the Applicable Law of any jurisdiction outside the United States of America having on the date of such Investment combined capital, surplus and undivided profits of at least \$500,000,000, or total assets of at least \$15,000,000,000, in each case due within one year after the date of the making of the Investment;
- (e) repurchase agreements covering Government Securities executed by a broker or dealer registered under Section 15(b) of the Securities Exchange Act of 1934, as amended, having on the date of the Investment capital of at least \$50,000,000, due within ninety (90) days after the date of the making of the Investment; provided that the maker of the Investment receives written confirmation of the transfer to it of record ownership of the Government Securities on the books of a “primary dealer” in such Government Securities or on the books of such registered broker or dealer, as soon as practicable after the making of the Investment;
- (f) readily marketable commercial paper or other debt securities issued by corporations doing business in and incorporated under the Applicable Law of the United States of America or any State thereof or of any corporation that is the holding company for a bank described in clause (c) or (d) above given on the date of such Investment a credit rating of at least P 1 by Moody’s Investors Service, Inc. or A 1 by Standard & Poor’s Rating Group (a division of McGraw Hill, Inc.), in each case due within one year after the date of the making of the Investment;
- (g) “money market preferred stock” issued by a corporation incorporated under the Applicable Law of the United States of America or any State thereof (i) given on the date of such Investment a credit rating of at least AA by Moody’s Investors Service, Inc. and AA by Standard & Poor’s Rating Group (a division of McGraw Hill, Inc.), in each case having an investment period not exceeding fifty (50) days or (ii) to the extent that investors therein have the benefit of a standby letter of credit issued by Lender or a bank described in clauses (c) or (d) above; provided that (y) the amount of all such Investments issued by the same issuer does not exceed \$5,000,000 and (z) the aggregate amount of all such Investments does not exceed \$15,000,000;

(h) a readily redeemable “money market mutual fund” sponsored by a bank described in clause (c) or (d) hereof, or a registered broker or dealer described in clause (e) hereof, that has and maintains an investment policy limiting its investments primarily to instruments of the types described in clauses (a) through (g) hereof and given on the date of such Investment a credit rating of at least AA by Moody’s Investors Service, Inc. and AA by Standard & Poor’s Rating Group (a division of McGraw Hill, Inc.); and

(i) corporate notes or bonds having an original term to maturity of not more than one year issued by a corporation incorporated under the Applicable Law of the United States of America, or a participation interest therein; provided that (i) commercial paper issued by such corporation is given on the date of such Investment a credit rating of at least AA by Moody’s Investors Service, Inc. and AA by Standard & Poor’s Rating Group (a division of McGraw Hill, Inc.), (ii) the amount of all such Investments issued by the same issuer does not exceed \$5,000,000 and (iii) the aggregate amount of all such Investments does not exceed \$15,000,000.

“Change in Control” means (a) any transaction or series of related transactions in which any Unrelated Person or two or more Unrelated Persons acting in concert acquire beneficial ownership (within the meaning of Rule 13d 3(a)(1) under the Securities Exchange Act of 1934, as amended), directly or indirectly, of 20% or more of the ownership interests in Borrower, (b) Borrower consolidates with or merges into another Person or conveys, transfers or leases its properties and assets substantially as an entirety to any Person or any Person consolidates with or merges into Borrower, in either event pursuant to a transaction in which the ownership interests in Borrower are changed into or exchanged for cash, securities or other property, with the effect that any Unrelated Person becomes the beneficial owner, directly or indirectly, of 20% or more of ownership interests in Borrower or that the Persons who were the holders of ownership interests in Borrower immediately prior to the transaction hold less than 80% of the interests of the surviving entity after the transaction, (c) any change in an executive officer of Borrower (provided no change in control shall occur upon the death or incapacitation of an executive officer), or (d) a “change in control” as defined in any document governing Indebtedness of Borrower which gives the holders of such Indebtedness the right to accelerate or otherwise require payment of such Indebtedness prior to the maturity date thereof. For purposes of the foregoing, the term “Unrelated Person” means any Person other than (i) any Affiliate of any thereof and members of the immediate family of any thereof, (ii) a Subsidiary of Borrower or (iii) an employee stock ownership plan or other employee benefit plan covering the employees of Borrower and its Subsidiaries.

“Charges” means all Federal, state, county, city, municipal, local, foreign or other governmental Taxes (including Taxes owed to PBGC at the time due and payable), levies, assessments, charges, liens, and all additional charges, interest, penalties, expenses, claims or encumbrances upon or relating to (a) the Collateral, (b) the Obligations, (c) the employees, payroll, income or gross receipts of Borrower, (d) the ownership or use of any assets by Borrower, or (e) any other aspect of Borrower’s business.

“Chattel Paper” means all “chattel paper,” as such term is defined in the UCC, now owned or hereafter acquired by any Person, wherever located, but excluding Leases.

“Claim” means any and all suits, actions, or proceedings in any court or forum, at law, in equity or otherwise; costs, fines, deficiencies, or penalties; asserted claims or demands by any Person; arbitration demands, proceedings or awards; damages, losses, liabilities and expenses (including reasonable attorneys’ fees and disbursements and other costs of collection, defense or appeal); enforcement of rights and remedies; or criminal, civil or regulatory investigations.

“Closing Date” means the time and Business Day on which the conditions set forth in **Section 4.1** are satisfied or waived.

“Code” means the Internal Revenue Code of 1986, as amended from time to time.

“Collateral” means all of the collateral covered by the Collateral Documents.

“Collateral Documents” means, collectively, all of those documents set forth in **Section 3.1**, including without limitation the following and any agreements, documents, and instruments executed, filed or registered in connection therewith: this Agreement, to the extent it constitutes a security agreement, the Mortgage, the Owner Trustee Mortgage, any Security Agreement, UCC financing statements, a Beneficial Interest Pledge Agreement (if any), an Owner Trustee Guaranty (if any), and such other agreements, pledges and security instruments, and all amendments thereto, instruments and documents as Agent may reasonably require pursuant to this Agreement.

“Commitment Assignment and Acceptance” means a commitment assignment and acceptance substantially in the form of **Exhibit D**.

“Compliance Certificate” means a Compliance Certificate in the form attached hereto as **Exhibit C** signed by an Authorized Signatory.

“Consolidated Adjusted EBITDA” means Consolidated EBITDA less Taxes paid in cash, plus Maintenance Expense, plus pro forma EBITDA for acquired Eligible Assets that have been subject to a Lease for less than a full calendar year, calculated as the product of (x) monthly GAAP rent for the mid-period acquisitions multiplied by (y) (12 minus the number of months the acquisition has been subject to a Lease in the trailing twelve month period) for such Eligible Asset.

“Consolidated Cash Interest Expense” means for the purpose of calculating the Interest Coverage Ratio and the Debt Service Coverage Ratio, for any period, the excess of (a) the Interest Expense (including imputed interest expense in respect of Capital Lease Obligations) of Borrower and its Subsidiaries for such period, determined on a consolidated basis in accordance with GAAP minus (b) to the extent included in such consolidated Interest Expense for such period, noncash amounts attributable to amortization of debt discounts, upfront fees and other financing costs (including legal and accounting costs) or accrued interest payable in kind for such period.

“Consolidated EBITDA” means an amount determined on a consolidated basis equal to net income (or loss) plus the sum of the following items (without duplication to the extent deducted in determining such consolidated net income and all determined in accordance with

GAAP): (a) Interest Expense, (b) depreciation, (c) Tax expense, (d) amortization, and if applicable EBITDA will include addbacks incurred in the trailing twelve-month period for the following items: (e) Merger Settlement Losses, (f) Merger Expenses, and (g) Fleet Renewal Expenses.

“Consolidated Maintenance Expense” means Maintenance Expense related to the Collateral and to the Excluded Assets.

“Consolidated Total Debt Service” means the sum of (a) Phantom Amortization, (b) Consolidated Cash Interest Expense and (c) Consolidated Maintenance Expense.

“Contract” means, individually and collectively, all contracts, leases, undertakings, and agreements (other than rights evidenced by Chattel Paper, Documents or Instruments) in or under which any Person may now or hereafter have any right, title or interest, including any agreement relating to the terms of payment or the terms of performance of any Account.

“Contracting State” shall have the meaning given to such term under Article 4 of the Cape Town Convention.

“Contractual Obligation” means, as to any Person, any provision of any outstanding security issued by that Person or of any material agreement, instrument or undertaking to which that Person is a party or by which it or any of its property is bound.

“Credit Facility” means the revolving credit facility provided hereunder in respect of the Revolving Loans.

“Custodial Agreement” means an agreement pursuant to which a Person is acting as custodian for Borrower with respect to original “chattel paper” or such other documents as may be addressed under such agreement.

“Custodian” means any custodian under the Custodial Agreement.

“Debt Service Coverage Ratio” shall have the meaning given such term in **Section 6.15.3**.

“Default” means any event which, with the passage of time or notice or both, would, unless cured or waived, become an Event of Default.

“Defaulting Lender” means a Lender which (a) fails to fund any amounts due from such Lender to Agent, another Lender or Borrower under this Agreement within one (1) Business Day following written notice by the Agent of such failure to fund, unless such Lender notifies the Agent and the Borrower in writing that such failure is the result of such Lender’s determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, provided such Lender shall cease to be a “Defaulting Lender” immediately upon the cure of such failure to fund, (b) has notified the Borrower or the Agent in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender’s obligation to fund a Loan hereunder and states that such position is based on such Lender’s determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), or (c) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under the Bankruptcy Code or any other similar debtor relief law, (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity or (iii) become the subject of a Bail-In Action.

“Default Rate” means (i) for all then outstanding and any future Base Rate Loans, a per annum default rate equal to the Applicable Base Rate plus two percent (2.0%), and (ii) for all then outstanding LIBOR Loans, a per annum default rate equal to the Applicable LIBOR Rate plus two percent (2.0%), which Default Rate with respect to any LIBOR Loans shall be in effect until the end of the LIBOR Loan Period, at which time (provided an Event of Default is then continuing) any such LIBOR Loan(s) shall automatically convert to Base Rate Loan(s) and accrue interest at the Default Rate set forth herein for Base Rate Loans.

“Deferral Agreement” means an executed deferral agreement between Borrower and any lessee or former lessee of the Eligible Collateral, permitting the lessee to defer scheduled rent and/or maintenance reserves payments due under the applicable lease.

“Distribution” means, with respect to any shares of capital stock or membership interests or any warrant or option to purchase an equity security or other equity security issued by a Person, (a) the retirement, redemption, purchase or other acquisition for Cash or for Property by such Person of any such security, (b) the declaration or (without duplication) payment by such Person of any dividend in Cash or in Property on or with respect to any such security, (c) any Investment by such Person in the holder of 5% or more of any such security if a purpose of such Investment is to avoid characterization of the transaction as a Distribution and (d) any other payment in Cash or Property by such Person constituting a distribution under Applicable Law with respect to such security.

“Documents” means all “documents,” as such term is defined in the UCC, now owned or hereafter acquired by any Person, wherever located, including all bills of lading, dock warrants, dock receipts, warehouse receipts, and other documents of title, whether negotiable or non-negotiable.

“Dollars” means lawful currency of the United States.

“EBITDA from Excluded Entities” in any period means Excluded Entities Revenue, less Allocated Overhead Expenses.

“EEA Financial Institution” means (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution

described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

“EEA Member Country” means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

“EEA Resolution Authority” means any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegatee) having responsibility for the resolution of any EEA Financial Institution.

“Electronic Transmission” shall mean each document, instruction, authorization, file, information and any other communication transmitted, posted or otherwise made or communicated by e-mail or E-Fax, or otherwise to or from an E-System or other equivalent service.

“Eligible Asset” means, at any time, an item of Equipment that meets the following criteria:

- (a) the purchase price of which has been paid in full and it is not subject to any other financing;
- (b) as to which an Equipment Owner or Lessor has good and marketable title, and on which Agent has a fully perfected first priority Lien and which is not subject to any other Lien other than Permitted Liens;
- (c) as to which, if owned by Owner Trustee, the Borrower shall have executed and delivered to Agent a Beneficial Interest Pledge Agreement covering, among other things, the Borrower’s Beneficial Interest in the owner trust which owns such item(s) of Equipment and/or Lease, and as to which the Owner Trustee shall have executed and delivered to Agent an (x) Owner Trustee Mortgage covering, among other things, such items of Equipment and/or Lease, (y) a Trust Agreement and (z) an Owner Trustee Guaranty;
- (d) as to which the Equipment Owner or Lessor shall have executed and delivered to Agent and/or filed (i) a Mortgage covering, among other things, such items of Equipment and/or Lease and (ii) the other documentation required in respect of Equipment;
- (e) with respect to items of Equipment, it has not suffered an Event of Loss, it is being used solely for lawful purposes and in the ordinary course of business of the Equipment Owner; and
- (f) in the case of Equipment subject to Lease, it is insured against loss by either the Equipment Owner or the Lessee in accordance with this Agreement and industry practice;

“Eligible Assignee” means (a) another Lender (other than any Defaulting Lender), (b) with respect to any Lender, any Affiliate of that Lender (other than any Defaulting Lender), (c) any commercial bank having total assets of \$1,000,000,000 or more, (d) any (i) savings bank, savings and loan association or similar financial institution or (ii) insurance company engaged in the business of writing insurance which, in either case (A) has total assets of \$1,000,000,000 or more, (B) is engaged in the business of lending money and extending credit under Credit Facility substantially similar to those extended under this Agreement and (C) is operationally and procedurally able to meet the obligations of a Lender hereunder to the same degree as a commercial bank and (e) any other financial institution (including a mutual fund or other fund) having total assets of \$1,000,000,000 or more which meets the requirements set forth in subclauses (B) and (C) of clause (d) above; provided that each Eligible Assignee must either (aa) be organized under the laws of the United States of America, any State thereof or the District of Columbia or (bb) be organized under the laws of the Cayman Islands or any country which is a member of the Organization for Economic Cooperation and Development, or a political subdivision of such a country, and (i) act hereunder through a branch, agency or funding office located in the United States of America and (ii) be exempt from withholding of Tax on interest and deliver the documents related thereto pursuant to **Section 12.17**.

“Eligible Collateral” means (i) Equipment included in the Collateral that is subject to an Eligible Lease and for which an Advance Rate is provided on Schedule 1.1a or (ii) Equipment included in the Collateral that is not subject to a Lease but is an Eligible Asset and for which an Advance Rate is provided on Schedule 1.1a; provided that (a) the Geographic Concentration Limit for all Assets constituting Eligible Collateral (excluding Spot Market Assets) shall not be exceeded at any time and (b) the Weighted Average Age of all Assets constituting Eligible Collateral is at all times fifteen (15) years or less. For purposes of establishing age of the Equipment, the Equipment’s “life” shall be deemed to have commenced on the first day of the month listed by the manufacturer as the Equipment’s date of manufacture. Further, in order to be deemed Eligible Collateral, Agent shall possess a first priority security interest in said Collateral to secure the payment, promptly when due, and the punctual performance of all of the liabilities in connection therewith that is (a) electronically recorded on the International Registry (Cape Town Convention), (b) filed with the FAA in the case of (1) any Aircraft that are registered with the FAA and (2) all Engines, whether attached to an Aircraft or a Leased Spare Engine and (c) thereafter, promptly, to the satisfaction of Agent, and as soon as practical and in any event within one hundred and eighty (180) days following registration with the International Registry, perfected through all additional required local foreign jurisdiction security conventions (if any), to secure the payment, promptly when due.

“Eligible Lease” shall mean a lease for Equipment to an unaffiliated Person in which:

- (a) Borrower is the lessor of the Equipment;
- (b) the lease arose in the ordinary course of business of Borrower;
- (c) the Equipment has been delivered to the Lessee (subject to the last sentence of this definition) and is currently subject to the lease;
- (d) neither the lease nor the Equipment is subject to any currently outstanding assignment, claim, lien, security interest or other limitation on the absolute title of Borrower;

(e) the lease payments and maintenance reserves are not more than ninety (90) days past due with respect to any payment required thereby;

(f) the lease is freely assignable by the Lessor (with any notices or consents required in connection therewith having been previously obtained, and subject to any lease requirements concerning the net worth of the assignee) and prohibits assignment in whole or in part by the Lessee thereof without the prior written consent of Lessor;

(g) the lease and the Equipment being leased constitute Collateral;

(h) the remaining lease term at the time of entry into the pool of Eligible Collateral is for a period of ten years or less;

(i) it is a triple net contract and with respect to which the Lessee thereunder is responsible for all payments in connection therewith, including, but not limited to, payment of all Taxes (including sales and use Taxes), insurance and maintenance expenses (or payment of maintenance reserves in lieu thereof) and all other expenses pertaining to the assets subject thereto;

(j) it is a non-cancelable lease and provides that the Lessee's obligations thereunder are absolute and unconditional and which obligations are not, either pursuant to the terms of such Lease or otherwise, subject to contingencies, defense, deduction, set-off, reduction, claim or counterclaim of any kind whatsoever and as to which no defenses, deductions, set offs, reductions, claims or counterclaims exist or have been asserted by the Lessee or anyone on its behalf and the Borrower has no obligations thereunder, including, without limitation, any service or maintenance of the related Equipment, other than the obligation to sell, lease or finance the Equipment and grant a covenant of quiet enjoyment to such Lessee; provided, however, that (i) in the case of leases with terms of less than twelve months in which Borrower may be responsible for maintenance and (ii) Borrower may assume the obligation to pay some or all of the cost of engine overhaul, airworthiness directives or manufacturer or government ordered modifications required during the term of the Lease, so long as the Lease states that such obligation is solely that of Borrower and imposes no obligation on the Lenders, in their capacity as lenders to Borrower, and Lessee's only remedy for breach of the obligation is an independent action against Borrower as Lessor, and Lessee waives any and all right to offset such obligation against lease payments owed Borrower;

(k) the Lessee is not a resident of, and the Equipment will not be subject to the laws of any, foreign jurisdiction in which, in the sole determination of Agent, the ability of Agent to perfect a first priority security interest in the Equipment is unsatisfactory or the ability of Agent to foreclose upon the Equipment and receive possession to or sell said Equipment is unsatisfactory;

(l) with respect to which the Borrower's books and records are accurate, complete and genuine;

(m) it requires the Lessee to comply with all maintenance, return, alteration, replacement, pooling and sublease conditions as typically found in leases for similar types of aircraft, engines or equipment and as necessary to maintain at all times the airworthiness certification and serviceability status of the related Equipment pursuant to all applicable governmental and regulatory requirements;

(n) it requires the Lessee to provide liability insurance, all risk ground and flight coverage for damage or loss of the related Equipment, and war risk insurance (if applicable), and with respect to which Agent is named as loss payee;

(o) it requires the Lessee to provide confiscation and expropriation insurance, with deductibles that are acceptable to Agent, for Equipment operated (x) on routes with respect to which it is customary for air carriers flying comparable routes to carry such insurance or (y) in any area designated by companies providing such coverage as a recognized or threatened war zone or area of hostilities or an area where there is a substantial risk of confiscation or expropriation, unless Agent has confirmed in writing to the Borrower that, based on Agent's assessment of the credit quality of the Lessee and Lessee's ability to self-insure against such risk and Agent's assessment of the magnitude of the risk of such loss based on its conclusion regarding the government having jurisdiction over the collateral, such insurance is not necessary;

(p) the Lessee is not based in, and the Lease requires that the related Equipment not be operated in, unless appropriate insurance as determined by Agent is obtained, any country or any jurisdiction, that would not be covered by or would void any insurance coverage required hereunder, or any country which is subject to any United States, the European Union or United Nations sanctions or the lease to which would violate United States law, rule or regulation or other restrictions;

(q) the sole original of which is in the possession of Agent or Custodian, or, with respect to chattel paper, if there shall be more than one original, then the sole counterpart which shall constitute "chattel paper" for purposes of perfection by possession under the UCC shall be in the possession of Agent or its designee; and

(r) the Lessee under which is not a Subsidiary, employee, agent or other Affiliate of the Borrower;

provided, that all of the leases set forth on **Schedule 1.1b** as of the Closing Date are Eligible Leases except as otherwise provided therein, provided, further, with respect to an Equipment acquired by Borrower, it shall be deemed to be subject to an Eligible Lease even if the Equipment has not been delivered to Lessee and the Eligible Lease has not yet commenced so long as (i) the Eligible Lease has been fully executed and (ii) the Lessee has made a commercially reasonable deposit under the terms of the Eligible Lease.

"Environmental Liabilities and Costs" means all liabilities, obligations, responsibilities, remedial actions, removal costs, losses, damages, costs and expenses that relate to any health or safety condition regulated under any Environmental Law or in connection with any other environmental matter or Release, threatened Release, or the presence of any Hazardous Material.

"Engine" means each engine described in any Mortgage (each of which has 550 or more rated takeoff horsepower or the

equivalent of such horsepower), together with any and all Parts which are either incorporated or installed in or attached to such engine or required to be subject to the lien and security interest of such Mortgage.

“Equipment” means new and used regional Aircraft, including the attached Engines thereto and new and used Leased Spare Engines. The Aircraft or the Engine, as applicable, shall not be older than fifteen (15) years on the date Borrower purchased such Aircraft or Engine, shall be in good working order immediately or within a reasonable period of time, as determined by Agent, and shall be usable for commercial flight purposes immediately or within a reasonable period of time, as determined by Agent; provided, the Aircraft and Engines set forth in **Schedule 1.1c** shall be included in the definition of “Equipment” except as otherwise provided therein.

“Equipment Owner” means the Borrower or Owner Trustee.

“ERISA” means the Employee Retirement Income Security Act of 1974 and the regulations thereunder.

“ERISA Affiliate” means any trade or business (whether or not incorporated) which is a member of a “controlled group of corporations,” a group of trades or businesses under “common control,” or an “affiliated service group,” which includes Borrower within the meaning of Sections 414(b), (c), (m) or (o) of the Internal Revenue Code of 1986.

“E-System” shall mean any electronic system and any other internet or extranet-based site, whether such electronic system is owned, operated, hosted or utilized by the Agent, any of its Affiliates or any other Person, providing for access to data protected by passcodes or other security system.

“EU Bail-In Legislation Schedule” means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

“Event of Default” means any of the events specified in **Section 9.1**.

“Event of Loss” means:

(a) if an item of Equipment is not subject to a Lease, any of the following events:

(i) the actual or constructive total loss of such item of Equipment or the agreed or compromised total loss of such item of Equipment;

(ii) its destruction, damage beyond economic repair or being rendered permanently unfit for normal use for any reason whatsoever; and

(iii) any capture, condemnation, confiscation, requisition, purchase, seizure or forfeiture of, or any taking for use or of title to, such item of Equipment, in each case, that shall have resulted in the loss of possession or title of such item of Equipment by the Lessor (other than a requisition for use for not more than one hundred eighty (180) days by the United States Government) or

(b) if an item of Equipment is subject to a Lease, any events defined as an “Event of Loss,” “Casualty Occurrence” or similar term in such Lease.

(c) For purposes of this Agreement, the date that an Event of Loss is deemed to have occurred shall be as follows:

(i) if an item of Equipment is not subject to a Lease,

(x) in the event of an actual loss of such item of Equipment, on the date of such loss;

(y) in the event of damage which results in a constructive or compromised or arranged total loss of such item of Equipment, on the date of the event giving rise to such damage;

(z) in the case of an Event of Loss referred to in clause (a)(ii) above, on the date of the occurrence of such event, or

(ii) if an item of Equipment is subject to a Lease, at such times as are set forth in such Lease of such item of Equipment for the foregoing events.

In no event will the Event of Loss date be later than the earlier to occur of (i) the Borrower’s or Agent’s (as applicable) receipt of insurance proceeds in respect of such Equipment or (ii) the date that is ninety (90) days after the date of such loss, damage or destruction.

“Excess Proceeds” has the meaning set forth in **Section 6.25**.

“Excluded Assets” means up to six (6) Aircraft and associated Engines set forth on **Schedule 1.1d** while pledged as collateral for the Permitted Excluded Subsidiary Financing.

“Excluded Entities Revenue” means in any period, operating lease revenue from Excluded Assets.

“Excluded Subsidiaries” means, so long as each such Person’s debt under the Term Loan Facility is outstanding, ACY SN 19002 Limited, a company organized under the laws of the United Kingdom, ACY SN 19003 Limited, a company organized under the laws of the United Kingdom, ACY SN 15129 LLC, a Delaware limited liability company, and ACY E-175 LLC, a Delaware limited liability company.

“Excluded Swap Obligation” means, with respect to Borrower or any guarantor, (x) as it relates to all or a portion of any Swap Obligation if, and to the extent that, such Swap Obligation (or any guaranty thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of Borrower’s or guarantor’s failure for any reason to constitute an “eligible contract participant” as defined in the Commodity Exchange Act and the regulations thereunder at the time the guaranty of Borrower or guarantor becomes effective with respect to such Swap Obligation or (y) as it relates to all or a portion of the grant by Borrower or a guarantor of a security interest, any Swap Obligation if, and to the extent that, such Swap Obligation (or such security interest in respect thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of Borrower’s or guarantor’s failure for any reason to constitute an “eligible contract participant” as defined in the Commodity Exchange Act and the regulations thereunder at the time the security interest of Borrower or guarantor becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a Master Agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such guaranty or security interest is or becomes illegal.

“Excluded Taxes” means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient: (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. Federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Revolving Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or Revolving Commitment or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to **Section 2.17**, amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender acquired the applicable interest in a Loan or Revolving Commitment or to such Lender immediately before it changed its lending office, (c) Taxes attributable to such Recipient's failure to comply with **Section 2.17(f)**, and (d) any U.S. Federal withholding Taxes imposed under FATCA.

“FAA” means the Federal Aviation Administration or any Governmental Authority succeeding to the functions thereof.

“FATCA” means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof and any agreement entered into pursuant to Section 1471(b)(1) of the Code and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities and implementing such Sections of the Code.

“Federal Funds Rate” means, as of any date of determination, the rate set forth in the weekly statistical release designated as H.15 (519), or any successor publication, published by the Federal Reserve Board (including any such successor, “H.15(519)”) for such date opposite the caption “Federal Funds (Effective)”. If for any relevant date such rate is not yet published in H.15(519), the rate for such date will be the rate set forth in the daily statistical release designated as the Composite 3:30 p.m. Quotations for U.S. Government Securities, or any successor publication, published by the Federal Reserve Bank of New York (including any such successor, the “Composite 3:30 p.m. Quotation”) for such date under the caption “Federal Funds Effective Rate”. If on any relevant date the appropriate rate for such date is not yet published in either H.15(519) or the Composite 3:30 p.m. Quotations, the rate for such date will be the arithmetic mean of the rates for the last transaction in overnight Federal funds arranged prior to 9:00 a.m. (New York City time) on that date by each of three leading brokers of Federal funds transactions in New York City selected by Agent. For purposes of this Agreement, any change in the Base Rate due to a change in the Federal Funds Rate shall be effective as of the opening of business on the effective date of such change.

“Field Examination” means an inspection and/or audit of the Borrower, which Field Examination may be conducted at Agent’s direction by Agent and any of its officers, employees, and agents. The Field Examination may include, without limitation, the review, audit, Appraisal, physical verification, and such other reviews of the Equipment and Borrower’s books and records in connection therewith as shall be deemed appropriate by Agent in its sole discretion.

“Financial Statements” means the income statement, balance sheet and statement of cash flows of Borrower and its Subsidiaries, internally prepared for each Fiscal Quarter and audited for each Fiscal Year, in each case prepared in accordance with GAAP including the notes and schedules thereto.

“Fiscal Quarter” means any of the quarterly accounting periods of Borrower, specifically ending March 31, June 30, September 30, and December 31 of each year.

“Fiscal Year” means the twelve (12) month fiscal period of Borrower ending December 31 of each year. Subsequent changes of the Fiscal Year of Borrower shall not change the term “Fiscal Year” unless Agent shall consent in writing to such change.

“Fleet Renewal Expenses” means book value impairment incurred by Borrower as losses on Spot Market Assets disposed of during the Fleet Renewal Period which shall not exceed an aggregate amount of \$6,500,000.00.

“Fleet Renewal Period” means the period between August 31, 2018 and March 31, 2019, during which Borrower may dispose of Spot Market Assets (and/or account for any impairment of such Assets).

“Foreign Lender” means a Lender that is resident or organized under the laws of a jurisdiction other than the United States of

America or any State thereof or the District of Columbia.

“Funded Debt” shall mean, as of the last day of any Fiscal Quarter, all indebtedness, liabilities, and obligations for which Borrower has recourse liability, now existing or hereafter arising, for money borrowed by Borrower or a Subsidiary whether or not evidenced by any note, indenture, or agreement (including, without limitation, the Notes and any indebtedness for money borrowed from an Affiliate), as determined in accordance with GAAP, consistently applied.

“GAAP” means generally accepted accounting principles as in effect from time to time in the United States, consistently applied.

“Geographic Concentration Limit” means the following limitations on the percentage (based on Appraised Value) of contribution of Eligible Collateral toward the Borrowing Base that may be Located (as defined below) in the following regions:

- Tier I: There shall be no limit on the percentage of Eligible Collateral that is Located in the USA, Canada, EU, UK, Japan, South Korea, Australia, New Zealand or South Africa.
- Tier II: No more than 35% of the borrowing Base shall arise from Eligible Collateral Located in the following countries (on an aggregate basis): any country in Asia that is not included in Tier I or III; any Caribbean country; any Central American country not included in Tier I or III; any South American country not included in Tier I or III; any European country not included in Tier I or III; or any Middle Eastern country not included in Tier I or III.
- Tier III: No more than 10% of the Borrowing Base shall arise from eligible Collateral Located in the following countries (on an aggregate basis): any African country not included in Tier I or II, Afghanistan, Bolivia, Ecuador, India, Iraq, Lebanon, Mongolia, Myanmar, Nepal, Pakistan, Russia, Sri Lanka, Venezuela, or Yemen.
- Further, at no time shall the Borrowing Base arising from Eligible Collateral Located in Tier II and Tier III countries (on an aggregate basis) exceed 35%.
- For purposes of this definition, an Equipment is deemed “Located” in a particular country if (i) with respect to an Equipment subject to an Eligible Lease, such country is the country of domicile for the Lessee under such Eligible Lease as set forth in the Eligible Lease and, if the Lessee’s country of domicile is not set forth in the Eligible Lease, such country is where such Lessee’s executive offices are located, and (ii) with respect to an Equipment that is Off-Lease, such Equipment is registered on that country’s aircraft registry.
- The Geographic Concentration Limit shall be calculated without taking into consideration the Spot Market Assets.

“Governmental Authority” means (a) any international, foreign, federal, state, county or municipal government, or political subdivision thereof, (b) any governmental or quasi-governmental agency, authority, board, bureau, commission, department, instrumentality or public body, including any Aviation Authority, or (c) any court or administrative tribunal of competent jurisdiction.

“Government Securities” means readily marketable (a) direct full faith and credit obligations of the United States of America or obligations guaranteed by the full faith and credit of the United States of America and (b) obligations of an agency or instrumentality of, or corporation owned, controlled or sponsored by, the United States of America that are generally considered in the securities industry to be implicit obligations of the United States of America.

“Guaranteed Indebtedness” means, with respect to any Person, any obligation of such Person guaranteeing any indebtedness, lease, dividend, or other obligation (“primary obligations”) of any other Person (the “primary obligor”) in any manner, including any obligation or arrangement of such Person (a) to purchase or repurchase any such primary obligation, (b) to advance or supply funds (1) for the purchase or payment of any such primary obligation, or (2) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency or any balance sheet condition of the primary obligor, (c) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation, or (d) to indemnify the owner of such primary obligation against loss in respect thereof. The amount of any “Guaranteed Indebtedness” at any time shall be deemed to be an amount equal to the lesser at such time of (x) the stated or determinable amount of the primary obligation in respect of which such Guaranteed Indebtedness is made, and (y) the maximum amount for which such Person may be liable pursuant to the terms of the instrument embodying such Guaranteed Indebtedness; or, if not stated or determinable, the maximum reasonably anticipated liability (assuming full performance) in respect thereof.

“Guaranty” means that certain Subsidiary Guaranty dated as of October 1, 2018 executed by JHC in favor of Agent, on behalf of the Lenders, and any other instrument of guaranty executed by a Subsidiary of Borrower, in form and substance satisfactory to Agent, with respect to the Obligations; in each case either as originally executed or as it may from time to time be supplemented, modified, amended, extended or supplanted.

“Hazardous Material” means any substance, material or waste, the generation, handling, storage, treatment or disposal of which is regulated by any Governmental Authority, or forms the bases of liability now or hereafter under, any Environmental Law in any jurisdiction in which

Borrower has owned, leased, or operated real property or disposed of hazardous materials.

“Immaterial Subsidiary” means JFC so long as it does not own any Assets and generates no revenue other than funds sufficient to pay the payroll obligations for two (2) technical employees employed by it as of the Closing Date and while the employment thereof continues thereafter (“Canadian Employee Obligations”).

“Indebtedness” means: (a) with respect to Borrower, the Obligations; (b) all indebtedness of Borrower for borrowed money or for the deferred purchase price of property or services (including reimbursement and all other obligations with respect to surety bonds, letters of credit and bankers’ acceptances, whether or not matured); (c) all obligations evidenced by notes, bonds, debentures or similar instruments; (d) all indebtedness created or arising under any conditional sale or other title retention agreements with respect to property acquired by Borrower (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property); (e) all Capital Lease Obligations; (f) all Guaranteed Indebtedness; (g) all Indebtedness referred to in clauses (b), (c), (d), (e) or (f) above secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien upon or in property (including accounts and contract rights) owned by such Person, even though such Person has not assumed or become liable for the payment of such Indebtedness; (h) all liabilities under Title IV of ERISA; (i) the net present value of the non-cancelable payments owed by Borrower as lessee under any lease which is qualified as an operating lease in accordance with GAAP for engines, aircraft and engine parts, using a 10% discount rate; (j) all Swap Obligations, and (k) all obligations with respect to deposits or maintenance reserves to the extent not supported by cash reserved specifically therefor; provided, however, that the term Indebtedness shall not include trade accounts payable within ninety (90) days of the date the respective goods are delivered or the respective services are rendered.

“Indemnified Person” means Agent and each Lender and each of the foregoing parties’ respective Affiliates and their officers, directors, employees, agents and advisors.

“Indemnified Taxes” means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of Borrower under any Loan Document and (b) to the extent not otherwise described in (a), Other Taxes.

“Instruments” means all “instruments,” as such term is defined in the UCC, now owned or hereafter acquired by Borrower, wherever located, including all certificated securities and all notes and other evidences of indebtedness, other than instruments that constitute, or are a part of a group of writings that constitute, Chattel Paper.

“Intellectual Property” means all of the following now owned or hereafter acquired by Borrower: (a) patents, trademarks, trade dress, trade names, service marks, copyrights, trade secrets and all other intellectual property or Licenses thereof; and (b) all Proceeds of the foregoing.

“Interest Coverage Ratio” shall have the meaning given such term in **Section 6.15.2**

“Interest Expense” means, with respect to any fiscal period, the consolidated interest expense of Borrower and its Subsidiaries for that period, determined in accordance with GAAP, consistently applied, as reported in Borrower’s Financial Statements filed with the SEC (but excluding gains and losses from fair value of derivative charges, whether or not included in other comprehensive income or net income).

“International Interest” shall have the meaning given to such term in the Cape Town Convention.

“International Registry” shall have the meaning given to such term in the Cape Town Convention.

“Investment” means, when used in connection with any Person, any investment by or of that Person, whether by means of purchase or other acquisition of stock or other securities of any other Person or by means of a loan, advance creating a debt, capital contribution, guaranty or other debt or equity participation or interest in any other Person, including any partnership and joint venture interests of such Person. The amount of any Investment shall be the amount actually invested (minus any return of capital with respect to such Investment which has actually been received in Cash or has been converted into Cash), without adjustment for subsequent increases or decreases in the value of such Investment.

“JFC” means JetFleet Canada, a company organized under the laws of Canada, which is a Subsidiary of JMC.

“JHC” means JetFleet Holding Corp., a California corporation.

“JMC” means JetFleet Management Corp., a California corporation.

“JMC Management Agreement” means that certain Second Amended and Restated Management Agreement between Borrower and JMC entered into as of August 17, 2015, as amended, or any successor agreement thereto.

“JMC Subordination Agreement” means that certain Amended and Restated Subordination Agreement (Management Agreement), dated as of December 20, 2017, entered into by and among Borrower, JMC and Agent with respect to the JMC Management Agreement, as such agreement may be amended or restated from time to time.

“Landing Gear” means, whether or not installed on an airframe, each landing gear, (nose gear and main gear), together with any and all modules and Parts which are either incorporated or installed from time to time in or attached to such Landing Gear.

“Lease” means, with respect to an item of Equipment, any written lease agreement, general terms agreement other similar arrangement, as may be in effect between a Lessor, including an Equipment Owner, and a Lessee, as such agreement or arrangement may be

amended, modified, extended, supplemented, assigned or novated from time to time in accordance with the terms thereof and the Loan Documents.

“Leased Spare Engine” means an Engine that is not attached to an airframe and leased by Lessor to Lessee as a standalone engine for installation on an airframe or as a spare.

“Lender” means each Lender named in **Schedule A** and each other party that may be named a “Lender” under this Agreement.

“Lender Commitment Amount” means the amount of funds a Lender has committed to advance to Borrower pursuant to the terms hereof, such amount calculated at any time by taking the product of such Lender’s Pro Rata Share and the Revolving Commitment.

“Lender Hedging Obligations” means all obligations arising from time to time under Swap Contracts required hereunder with respect to the Loan and entered into from time to time between Borrower and a Swap Contract Counterparty; provided that if such Swap Contract Counterparty ceases to be the Agent, a Lender hereunder or an Affiliate of either of them, Lender Hedging Obligations shall only include such obligations to the extent arising from transactions entered into at the time such Swap Contract Counterparty was the Agent, a Lender hereunder or an Affiliate of either of them pursuant to any Swap Contract.

“Lessee” means the lessee of Equipment subject to a Lease.

“Lessor” means any Equipment Owner party to a Lease as lessor.

“LIBOR” means, for any LIBOR Loan Period, the greater of (a) zero and (b) the rate determined by Agent to be the per annum rate (rounded upward to the nearest one-hundredth of one percent (1/100%)) at which deposits in immediately available funds and in lawful money of the United States would be offered to Agent by reference to the Reuters Screen LIBOR 01 Page (or any replacement or successor page or service) at approximately 11:00 a.m. (London time) two (2) Business Days before the first day of such LIBOR Loan Period, in an amount equal to the principal amount of, and for a length of time equal to the LIBOR Loan Period for, the LIBOR Loan sought by Borrower.

“LIBOR Basis” means a per annum interest rate equal to the quotient of (a) LIBOR divided by (b) one minus the LIBOR Reserve Percentage, stated as a decimal. The LIBOR Basis shall be rounded upward to the nearest one-sixteenth of one percent (1/16%) and, once determined, shall remain unchanged during the applicable LIBOR Loan Period, except for changes to reflect adjustments in the LIBOR Reserve Percentage.

“LIBOR Loan” means a Revolving Loan that Borrower requests to be made as a LIBOR Loan or that is reborrowed as, or converted to, a LIBOR Loan, in each case in accordance with the provisions of **Section 2.1.4**.

“LIBOR Loan Period” means, for each LIBOR Loan, each one (1), two (2), three (3) or six (6) month period (or such other longer or shorter period as approved by Lenders), as selected by Borrower pursuant to **Section 2.1.4**, during which LIBOR applicable to such LIBOR Loan shall remain unchanged; provided, that (a) any applicable LIBOR Loan Period that would otherwise end on a day that is not a Business Day shall be extended to the next succeeding Business Day, unless such Business Day falls in another calendar month, in which case such LIBOR Loan Period shall end on the immediately preceding Business Day, (b) any applicable LIBOR Loan Period which begins on a day for which there is no numerically corresponding day in the calendar month during which such LIBOR Loan Period is to end shall (subject to clause (a) above) end on the last day of such calendar month, and (c) no LIBOR Loan Period shall extend beyond the Maturity Date.

“LIBOR Reserve Percentage” means the percentage in effect from time to time under Regulation D of the Board of Governors of the Federal Reserve System as the maximum reserve requirement applicable with respect to Eurocurrency Liabilities (as that term is defined in Regulation D), whether or not any Lender has any Eurocurrency Liabilities subject to such reserve requirement at that time. The LIBOR Basis for any LIBOR Loan shall be adjusted as of the effective date of any change in the LIBOR Reserve Percentage.

“License” means any license under any written agreement now owned or hereafter acquired by Borrower granting the right to use any Intellectual Property or other license of rights or interests now held or hereafter acquired by Borrower.

“Lien” means, with respect to any property, any security deed, mortgage, deed to secure debt, deed of trust, lien, pledge, assignment, charge, security interest, title retention agreement, negative pledge, levy, execution, seizure, attachment, garnishment, or other encumbrance of any kind in respect of such property, whether or not choate, vested, or perfected.

“Loan Documents” means collectively, this Agreement, the Notes, any Guaranty, the Collateral Documents, and any and all other agreements, documents, or instruments (including financing statements) entered into in connection with the transactions contemplated by this Agreement, together with all alterations, amendments, changes, extensions, modifications, refinancings, refundings, renewals, replacements, restatements, or supplements, of or to any of the foregoing.

“Loans” means all loans and advances made by Lenders to or for the benefit of Borrower under this Agreement or under any of the Loan Documents.

“Maintenance Expense” means all expenses related to maintenance of the Collateral performed by the Borrower which is unrelated to maintenance reserve accounting.

“Maintenance Reserve Amount” means, (a) for the initial 180 day period following the Closing Date, the lesser of (i) \$2,500,000.00 or (ii) the amount reflected on the Borrower’s balance sheet as “Maintenance Reserves and Accrued Costs” as of the date of measurement, and (b) after such 180 day period, the lesser of (i) \$5,000,000.00 or (ii) the amount reflected on the Borrower’s balance sheet as “Maintenance Reserves and Accrued Costs” as of the date of measurement.

“Master Agreement” means Master Agreement as defined in the definition of “Swamp Contract.”

“Material Adverse Effect” means a material adverse effect on (a) the business, property, assets, operations or condition (financial or otherwise) of Borrower, (b) the ability of Borrower to pay or perform in accordance with the terms of any of the Loan Documents taken as a whole, or (c) the rights and remedies of Agent or any Lender under any of the Loan Documents.

“Material Contracts” means those instruments, agreements and contracts set forth on **Schedule 1.1e** hereto, as such schedule shall be updated by the Borrower from time to time.

“Maturity Date” means the earliest of (a) February 19, 2023 or (b) the date of prepayment in full by Borrower of the Obligations in accordance with the provisions of **Section 2.8**.

“Maximum Amount” means One Hundred Forty-Five Million and 00/100 Dollars (\$145,000,000.00), or such other decreased or increased amount as provided for under **Sections 2.8** and **Section 2.18**, respectively, of this Agreement.

“Merger” means Borrower’s merger with JetFleet Holding Corp.

“Merger Settlement Loss” means the amount of the loss recognized under GAAP by the Borrower in connection with the Merger not to exceed \$5,000,000.00 in the aggregate.

“Merger Expenses” means up to \$2,400,000 in out-of-pocket and non-payable management fee expenses related to the Merger.

“Merger Shareholder Equity Reduction” means the reduction in shareholder equity of Borrower resulting from the Merger not to exceed \$2,800,000 in the aggregate.

“Minimum Tangible Net Worth” shall have the meaning given such term in **Section 6.15.6**.

“Mortgage” means each Mortgage and Security Agreement and any mortgage supplement thereto or each such other security instrument required by Applicable Law, made by Borrower in favor of Agent as security for certain obligations under this Agreement.

“Negative Pledge” means a Contractual Obligation which contains a covenant binding on Borrower or any of its Subsidiaries that prohibits Liens on any of its Property, other than (a) any such covenant contained in a Contractual Obligation granting or relating to a particular Lien which affects only the Property that is the subject of such Lien; (b) any such covenant that does not apply to Liens securing the Obligations; and (c) customary permitted junior Liens to be agreed upon by Borrower and Lender.

“Net Book Value” means with respect to an item of Equipment, the book value of such item of Equipment determined in accordance with GAAP as set forth on Borrower’s and its Subsidiaries’ Financial Statements (which shall be the cost of such Equipment if such calculation is being determined at the time of acquisition of such Equipment), utilizing depreciation methods consistent with current practice and GAAP.

“Net Income” means, with respect to any fiscal period, the consolidated net income (or loss) of Borrower and its Subsidiaries for that period, determined in accordance with GAAP, consistently applied.

“Non-Recourse Debt” shall mean Indebtedness for which the remedy for nonpayment or non-performance of any obligation or any default in respect thereof is limited to specified collateral securing such indebtedness and in respect of which the Borrower is not subject to any personal liability except to the extent agreed to by Agent in its sole discretion.

“Note” means any note, including any Revolving Note, executed and delivered by Borrower to any Lender, as applicable, under this Agreement, and “Notes” means collectively all such notes executed and delivered by Borrower to each Lender under this Agreement.

“Obligations” means all loans, advances, debts, expenses reimbursements, fees, liabilities and obligations, for the performance of covenants, tasks or duties or for payment of monetary amounts (whether or not such performance is then required or contingent, or amounts are liquidated or determinable) owing by Borrower to any Lender of any kind or nature, present or future, whether or not evidenced by any note, agreement or other instrument, arising under or in connection with this Agreement or any of the other Loan Documents (including, without limitation, any Lender Hedging Obligations), and all covenants and duties regarding such amounts, which term includes all principal, interest (including interest which accrues after the commencement of any case or proceeding in bankruptcy, or for the reorganization of Borrower), fees, Charges, expenses, reasonable attorneys’ fees and any other sum chargeable to Borrower under this Agreement or any of the other Loan Documents, and all principal and interest due in respect of the Loans; provided that the “Obligations” shall exclude any Excluded Swap Obligations.

“Off-Lease” means when Equipment is either (i) not subject to a valid Lease or (ii) is subject to a valid Lease but where a required rent or reserve payment due from Lessee is ninety (90) days past due or the Lessee is otherwise in default thereunder.

“Other Connection Taxes” means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document).

“Other Taxes” means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from

any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment.

“Overadvance” means a Base Rate Loan or LIBOR Loan which, on the date such Loan is made, causes the aggregate amount of all Loans then outstanding to exceed the lesser of the (i) Maximum Amount or (ii) Borrowing Base Availability.

“Owner Trustee” means bank or trust company reasonably satisfactory to Agent acting as trustee of an aircraft owner trust under a Trust Agreement with Borrower as the beneficiary.

“Owner Trustee Guaranty” means an Owner Trustee Guaranty made by Owner Trustee in favor of Agent, as security for certain obligations under this Agreement, and guaranteeing Owner Trustee’s performance of the obligations under the respective Owner Trustee Mortgage.

“Owner Trustee Mortgage” means a Mortgage and Security Agreement made by Owner Trustee in favor of Agent with respect to a Trust Agreement (in connection with certain Equipment), as security for certain obligations under this Agreement.

“Parts” means, at any time, all parts, components, equipment, instruments, appliances, avionics, radio and radar devices, cargo handling systems and loose equipment that are at such time incorporated or installed in or attached to an airframe, Engine, Propeller, APU or Landing Gear.

“Payment Date” means the last day of each LIBOR Loan Period for a LIBOR Loan.

“PBGC” means the Pension Benefit Guaranty Corporation or any successor thereto.

“Permitted Excluded Subsidiary Financing” means the financing provided to the Excluded Subsidiaries under the Term Loan Facility, which is Non-Recourse Debt with respect to Borrower or other Subsidiaries.

“Permitted Indebtedness” means, as applied to Borrower, (a) Indebtedness of Borrower under this Agreement and the Notes, (b) Indebtedness incurred in the ordinary course of Borrower’s business which is unsecured and does not constitute Funded Debt, and (c) Indebtedness existing as of the Closing Date and included on Schedule 1.1f hereto, including the Permitted Excluded Subsidiary Financing.

“Permitted Liens” means, as applied to Borrower: (a) Liens securing Taxes (excluding any Lien imposed pursuant to any of the provisions of ERISA) or the claims of materialmen, mechanics, carriers, repairmen, warehousemen, or landlords or other like Liens, but which (1) have been bonded, or (2) which are being contested in good faith by appropriate proceedings and for which Borrower shall have set aside on its books adequate reserves with respect thereto in accordance with GAAP; (b) Liens consisting of deposits or pledges made in the ordinary course of business in connection with, or to secure payment of, obligations under worker’s compensation, unemployment insurance, or similar legislation; (c) Liens constituting encumbrances in the nature of zoning restrictions, easements, and rights of way or restrictions of record on use of real property which, in the reasonable judgment of Agent, do not materially detract from the value of such property or impair the use thereof in the business of Borrower; (d) Liens of record set forth in Schedule 1.1g; (e) Liens created under the Loan Documents; (f) the rights of any Lessee or sublessee under any Lease to utilize an any Collateral pursuant to the terms of a Lease; (g) Liens arising in connection with legal or equitable proceedings against Borrower, which Borrower is contesting with diligence and good faith and which Liens do not have a Material Adverse Effect; (h) liens in respect of personal property leases that do not affect any assets included in the Borrowing Base, which, in the aggregate, are not substantial in amount and do not materially detract from the value of the property subject thereto or interfere with the ordinary conduct of the business of the Borrower so as to cause a Material Adverse Effect; (i) any Lien on any asset not included in the Borrowing Base to secure Indebtedness permitted hereunder; (j) Liens securing Indebtedness that has since been repaid in full, which filings Borrower cannot independently terminate; (k) Liens arising out of judgments that do not constitute an Event of Default under this Agreement; (l) any Lien arising by virtue of any statutory or common law provision relating to banker’s liens, rights of set-off or similar rights and remedies as to deposit accounts or other funds maintained with a creditor depository institution in the ordinary course of business; (m) Liens securing Capital Lease Obligations on assets subject to such leases provided that such capitalized leases are otherwise permitted under this Agreement; (n) Liens arising from the following types of liabilities of a lessee or any other operator of an item of Equipment, so long as such liabilities are either not yet due or are being contested in good faith through appropriate proceedings that do not give rise to any reasonable likelihood of the sale, forfeiture or other loss of such item of Equipment, title thereto or Agent’s security interest therein or of criminal or unindemnified civil liability on the part of the Borrower, any Lender or any Agent and with respect to which the lessee maintains adequate reserves (in the reasonable judgment of the Borrower): (A) fees or charges of any airport or air navigation authority, (B) judgments, or (C) salvage or other rights of insurers; and (o) Liens on assets not included in the Borrowing Base evidenced by UCC financing statements which are expressly permitted under the terms of the Loan Documents; provided that none of the foregoing Liens would have priority over the security interest in favor of Agent under the Loan Documents.

“Permitted Rights of Others” means those Right of Others consisting of (a) an interest (other than a legal or equitable co ownership interest, an option or right to acquire a legal or equitable co ownership interest and any interest of a ground lessor under a ground lease), that does not materially impair the fair market value or use of Property for the purposes for which it is or may reasonably be expected to be held, (b) an option or right to acquire a Lien that would be a Permitted Lien, (c) the subordination of a lease or sublease in favor of a financing entity and (d) a license, or similar right, of or to Intellectual Property granted in the ordinary course of business.

“Person” means any individual or entity, including a trustee, sole proprietorship, partnership, limited partnership, limited liability partnership, joint venture, trust, unincorporated organization, association, corporation, limited liability company, institution, public benefit corporation, entity or government (whether Federal, state, county, city, municipal or otherwise, including any instrumentality, division, agency, body or department thereof).

“Phantom Amortization” shall be equal to eight percent (8%) of Total Debt.

“Plan” means, with respect to Borrower or any of its Affiliates, at any time, an employee benefit plan, as defined in Section 3(3) of ERISA, which Borrower or any of its Affiliates maintains, contributes to or has an obligation to contribute to on behalf of participants who are or were employed by any of them.

“Pricing Leverage Ratio” means the ratio of Total Debt to Tangible Net Worth, as calculated from time to time.

“Pro Forma EBITDA” means a pro forma EBITDA amount used in calculating the financial covenant in **Section 6.15.3** of the Debt Service Leverage Ratio, for a given period, calculated as agreed to by Agent, attributable to Eligible Collateral acquired by Borrower during such period but for which at the time there is not a full four quarters of operating history on which to base the EBITDA calculation.

“Proceeds” means “proceeds,” as such term is defined in the UCC and, in any event, shall include: (a) any and all proceeds of any insurance, indemnity, warranty or guaranty payable to Borrower from time to time with respect to any Collateral; (b) any and all payments (in any form whatsoever) made or due and payable to Borrower from time to time in connection with any requisition, confiscation, condemnation, seizure or forfeiture of any Collateral by any governmental body, authority, bureau or agency (or any person acting under color of Governmental Authority); (c) any claim of Borrower against third parties for past, present or future infringement or dilution of any Intellectual Property or for injury to the goodwill associated with any Intellectual Property; (d) any recoveries by Borrower against third parties with respect to any litigation or dispute concerning any Collateral; and (e) any and all other amounts from time to time paid or payable under or in connection with any Collateral, upon disposition or otherwise.

“Propeller” means each propeller described in a Mortgage.

“Property” means any real property, personal property, or Intellectual Property owned, leased or operated by Borrower, Owner Trustee or any Subsidiary.

“Pro Rata Share” means, with respect to each Lender, the percentage of the Revolving Commitment set forth opposite the name of that Lender on **Schedule A**, as such percentage may be increased or decreased pursuant to a Commitment Assignment and Acceptance executed in accordance with **Section 12.7.2**.

“Prospective International Interest” shall have the meaning given to such term in the Cape Town Convention.

“Quarterly Payment Date” means each March 31, June 30, September 30, and December 31.

“Recipient” means (a) Agent and (b) any Lender, as applicable.

“Recourse Cash Interest Expense” means Consolidated Cash Interest Expense *less* Interest Expense paid in Cash for Non-Recourse Debt.

“Recourse Phantom Amortization” shall be equal to eight percent (8%) of Funded Debt.

“Reference Rate” means the variable per annum rate of interest most recently announced by Agent at its corporate headquarters as the “MUFG Union Bank, N.A. Reference Rate,” with the understanding that the “MUFG Union Bank, N.A. Reference Rate” is one of Agent’s index rates and merely serves as a basis upon which effective rates of interest are calculated for loans making reference thereto and may not be the lowest or best rate at which Agent calculates interest or extends credit. The Reference Rate shall be adjusted on the last Business Day of the calendar month of any change in the “MUFG Union Bank, N.A. Reference Rate.” The Reference Rate, as adjusted, shall constitute the Reference Rate on the date when such adjustment is made and shall continue as the applicable Reference Rate until further adjustment.

“Release” means, as to Borrower, any release, spill, emission, leaking, pumping, injection, deposit, disposal, discharge, dispersal, dumping, leaching or migration of Hazardous Materials in the indoor or outdoor environment by Borrower, including the movement of Hazardous Materials through or in the air, soil, surface water, ground water or property.

“Requisite Lenders” means, as of the date of any determination and except as otherwise expressly set forth herein to be all the Lenders, (a) if the Revolving Commitment is then in effect, the Lenders having in the aggregate 50.1% or more of the Revolving Commitment then in effect, and (b) if the Revolving Commitment has then been suspended or terminated and there is then any Indebtedness evidenced by the Notes, the Lenders holding Notes evidencing in the aggregate 50.1% or more of the aggregate Indebtedness then evidenced by the Notes; provided that the Revolving Commitment and the Note held by any Defaulting Lender shall be excluded for purposes of making a determination of Requisite Lenders.

“Restricted Subsidiary” means (i) any Excluded Subsidiary and (ii) any Immaterial Subsidiary.

“Revolving Commitment” means, subject to **Sections 2.8** and **2.18**, One Hundred Forty-Five Million and 00/100 Dollars (\$145,000,000.00). The respective Pro Rata Shares of the Lenders with respect to the Revolving Commitment are set forth in **Schedule A**.

“Revolving Loan” means a loan(s) made by the Lenders to Borrower pursuant to **Section 2.1**.

“Revolving Note” means each and collectively those certain promissory notes executed and delivered by Borrower to each Lender in accordance with its Pro Rata Share of the Revolving Commitment, dated as of the Closing Date, in the original aggregate principal amount of the Revolving Commitment, together with any other notes executed and delivered by Borrower to any Lender evidencing at any time any portion

of the Loans.

“Right of Others” means, as to any Property in which a Person has an interest, any legal or equitable right, title or other interest (other than a Lien) held by any other Person in that Property, and any option or right held by any other Person to acquire any such right, title or other interest in that Property, including any option or right to acquire a Lien; provided, however, that (a) no covenant restricting the use or disposition of Property of such Person contained in any Contractual Obligation of such Person and (b) no provision contained in a contract creating a right of payment or performance in favor of a Person that conditions, limits, restricts, diminishes, transfers or terminates such right shall be deemed to constitute a Right of Others.

“Sanctions” means sanctions administered or enforced from time to time by the U.S. government, including those administered by the U.S. Department of the Treasury’s Office of Foreign Assets Control or any successor thereto, the U.S. Department of Commerce, the U.S. Department of State, or any government having jurisdiction over Borrower or one of its Subsidiaries.

“Schedule of Documents” means the schedule, including all appendices, exhibits or schedules thereto, listing certain documents and information to be delivered in connection with this Agreement and the other Loan Documents and the transactions contemplated hereunder and thereunder, substantially in the form of Schedule 1.1h.

“SEC” means the United States Securities Exchange Commission.

“Security Agreement” means the Security Agreement dated as of October 1, 2018 executed by JHC in favor of Agent, the Security Agreement dated as of the date hereof executed by JMC in favor of Agent, in each case on behalf of the Lenders, and any other security agreement executed by a Subsidiary, in form and substance satisfactory to Agent; in each case as originally executed or as it may from time to time be supplemented, modified, amended, extended or supplanted.

“Special Eurodollar Circumstance” means the application or adoption after the Closing Date of any Law or interpretation, or any change therein or thereof, or any change in the interpretation or administration thereof by any Governmental Authority, central bank or comparable authority charged with the interpretation or administration thereof, or compliance by Lender or its LIBOR lending office with any request or directive (whether or not having the force of Law) of any such Governmental Authority, central bank or comparable authority.

“Spot Market Appraisal” means a specific appraisal performed by an Appraiser conducted at the time the Asset is transitioned to a Spot Market Asset. The appraisal methodology for the Spot Market Appraisal will be on the basis of a 180-day orderly liquidation value.

“Spot Market Assets” means the assets listed on Schedule 1.1i and, if designated as a Spot Market Asset by the Borrower by written notice to Agent before March 31, 2019, one (1) Pratt & Whitney engine with serial number FA0041. Eligible Assets designated as Spot Market Assets cannot be reclassified as Eligible Assets at a later date.

“Stock” means all certificated and uncertificated shares, options, warrants, general or limited partnership interests, participation or other equivalents (regardless of how designated) of or in a corporation, partnership, limited liability company or equivalent entity whether voting or nonvoting, including common stock, preferred stock, or any other “equity security” (as such term is defined in Rule 3a11-1 of the General Rules and Regulations promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934).

“Subsidiary” means, as of any date of determination and with respect to any Person, any corporation, limited liability company or partnership (whether or not, in any case, characterized as such or as a “joint venture”), whether now existing or hereafter organized or acquired: (a) in the case of a corporation or limited liability company, of which a majority of the securities having ordinary voting power for the election of directors or other governing body (other than securities having such power only by reason of the happening of a contingency) are at the time beneficially owned by such Person and/or one or more Subsidiaries of such Person, or (b) in the case of a partnership, of which a majority of the partnership or other ownership interests are at the time beneficially owned by such Person and/or one or more of its Subsidiaries.

“Subsidiary Guaranty” means a guaranty made by a Subsidiary in favor of Agent, whereby such Subsidiary guaranties performance of the Obligations under the Loan Documents.

“Swap Contract” means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a “Master Agreement”), including any such obligations or liabilities under any Master Agreement.

“Swap Contract Counterparty” means any Person that is the Agent, a Lender or an Affiliate of either of them at the time it enters into a Swap Contract, in its capacity as a party to a Swap Contract, whether or not such Person subsequently ceases to be the Agent, a Lender or an Affiliate of either of them.

“Swap Obligation” means, with respect to Borrower, Subsidiary or any guarantor, any obligation to pay or perform under any agreement, contract or transaction that constitutes a “swap” within the meaning of Section 1a(47) of the Commodity Exchange Act.

“Swap Termination Value” means, in respect of any one or more Swap Contracts, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Contracts, (a) for any date on or after the date such Swap Contracts have been closed out and

termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Swap Contracts, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Contracts (which may include the Agent, a Lender or any Affiliate of either of them).

“Tangible Net Worth” means on any date of determination, the following with respect to Borrower and its Subsidiaries on a consolidated basis: (a) the sum of the total assets less the total liabilities minus (b) intangibles (excluding gains and losses from fair value of derivatives charges whether or not included in other comprehensive income or net income) on such date, all as determined in accordance with GAAP, consistently applied.

“Taxes” means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), value added taxes, or any other goods and services, use or sales taxes, assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“Term Loan Facility” means a term loan facility to one or more Excluded Subsidiaries in the minimum aggregate principal amount of \$44,310,000.00, or such other amount as agreed to by Agent in its sole discretion, to be secured by the Excluded Assets.

“Termination Date” means the date on which the Loans and all other Obligations under this Agreement and the other Loan Documents are indefeasibly paid in full, in cash, and Borrower shall have no further right to borrow any moneys or obtain other credit extensions or financial accommodations under this Agreement.

“Total Debt” is defined as all indebtedness, liabilities, and obligations, whether recourse or non-recourse to the Borrower, now existing or hereafter arising, for money borrowed by Borrower and its Subsidiaries whether or not evidenced by any note, indenture, or agreement (including, without limitation, the indebtedness under the Revolving Loan and any indebtedness for money borrowed from an affiliate), as determined in accordance with GAAP, consistently applied; provided that for the purposes hereof Total Debt shall not include Lender Hedging Obligations.

“Total Debt Service” means the sum of (i) Phantom Amortization, (ii) Interest Expense, and (iii) Maintenance Expense, subject to adjustment by both positive and negative pro forma EBITDA for major acquisitions and divestitures.

“Trust Agreement” means a Trust Agreement between Owner Trustee, as owner trustee, and Borrower, as the sole beneficiary, as amended, supplemented or otherwise modified from time to time, whereby the parties agreed, among other things, that Owner Trustee shall act as trustee with respect to the “Equipment” and “Lease Agreement” as defined therein.

“UCC” means the Uniform Commercial Code as the same may, from time to time, be enacted and in effect in the State of New York; provided, that in the event by reason of mandatory provisions of law, any or all of the attachment, perfection or priority of Agent’s Lien on any Collateral is governed by the Uniform Commercial Code as enacted and in effect in a jurisdiction other than the State of New York, the term “UCC” means the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for purposes of the provisions hereof relating to such attachment, perfection or priority and for purposes of definitions related to such provisions.

“Unused Line Fee” shall have the meaning ascribed thereto in **Section 2.4.1**.

“Utilization Rate” shall have the meaning given such term in **Section 6.15.8**.

“Weighted Average Age” means the average age of the portfolio of Eligible Collateral supporting the Borrowing Base weighted according to the relative contribution of such asset to the total Borrowing Base. The Weighted Average Age is determined by adding together, for each item of Eligible Collateral supporting the Borrowing Base, the product equal to (i) the fraction resulting from dividing the contribution to the Borrowing Base of such Eligible Collateral by the aggregate contribution to the Borrowing Base of all Eligible Collateral supporting the Borrowing Base times (ii) the age of such Eligible Collateral (for purposes of establishing age of Equipment, the Equipment’s “life” shall be deemed to have commenced on the first day of the month listed by the manufacturer as the Equipment’s date of manufacture).

“Wholly-Owned Subsidiary” means a Subsidiary of Borrower, 100% of the capital stock or other equity interest of which is owned, directly or indirectly, by Borrower, except for director’s qualifying shares required by Applicable Law.

“Write-Down and Conversion Powers” means, with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which writedown and conversion powers are described in the EU Bail-In Legislation Schedule.

1.2 Accounting Terms. All accounting terms used, but not specifically defined, in this Agreement shall be construed and defined in accordance with GAAP.

1.3 UCC. Any terms that are defined in the UCC and used, but not specifically defined, in this Agreement shall be construed and defined in accordance with the UCC.

1.4 Construction. For purposes of this Agreement and the other Loan Documents, the following rules of construction shall apply, unless specifically indicated to the contrary: (a) wherever from the context it appears appropriate, each term stated in either the singular or plural shall include the singular and the plural, and pronouns stated in the masculine, feminine or neuter gender shall include the masculine, the feminine and the neuter; (b) the term “or” is not exclusive; (c) the term “including” (or any form thereof) shall not be limiting or exclusive; (d) all references to statutes and related regulations shall include any amendments thereof and any successor statutes and regulations; (e) the words “herein,” “hereof”

and “hereunder” or other words of similar import refer to this Agreement as a whole, including the exhibits and schedules hereto, as the same may from time to time be amended, modified or supplemented, and not to any particular section, subsection or clause contained in this Agreement; (f) all references in this Agreement or in the schedules to this Agreement to sections, schedules, disclosure schedules, exhibits, and attachments shall refer to the corresponding sections, schedules, disclosure schedules, exhibits, and attachments of or to this Agreement; and (g) all references to any instruments or agreements, including references to any of the Loan Documents, shall include any and all modifications or amendments thereto and any and all extensions or renewals thereof.

1.5 USA Patriot Act Notice. Each Lender is subject to the USA Patriot Act and hereby notifies Borrower that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (as amended and supplemented from time to time, the “Patriot Act”), each Lender is required to obtain, verify and record information that identifies Borrower, which information includes the name and address of Borrower and other information that will allow each Lender to identify Borrower in accordance with the Patriot Act.

1.6 Rounding. Except as expressly otherwise provided herein, any financial ratios required to be maintained by Borrower pursuant to this Agreement (or required to be satisfied in order for a specific action to be permitted under this Agreement) shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

## 2. REVOLVING COMMITMENT

2.1 Revolving Loans. Subject to the terms and conditions of this Agreement, Lenders shall, pro rata according to that Lender’s Pro Rata Share of the Revolving Commitment, extend Revolving Loans to Borrower from time to time until the Maturity Date. The aggregate amount of Loans outstanding shall not exceed at any time the Borrowing Availability. Prior to the Maturity Date, Borrower may repay at any time any outstanding Loans and any amounts so repaid may be reborrowed, up to Borrowing Availability. Loans shall be evidenced by and repayable in accordance with the terms of the Notes and this Agreement.

2.1.1 Choice of Interest Rate. Any Revolving Loan shall, at the option of Borrower, be made either as a Base Rate Loan or as a LIBOR Loan; provided, that if a Default or Event of Default has occurred and is continuing, all Loans shall be made as Base Rate Loans. If Borrower fails to give notice to Agent specifying whether any LIBOR Loan is to be repaid or reborrowed on a Payment Date, such LIBOR Loan shall be repaid and then reborrowed as a Base Rate Loan on the Payment Date. Each request for a Revolving Loan shall, among other things, specify (1) the date of the proposed Revolving Loan, which shall be a Business Day, (2) the amount of the Revolving Loan, (3) whether it is to be a Base Rate Loan or a LIBOR Loan, and (4) the LIBOR Loan Period, if applicable.

2.1.2 Request for Base Rate Loan. Borrower shall give to Agent, irrevocable notice of a request for a Base Rate Loan by delivering to Agent a Borrowing Notice for such Base Rate Loan not later than 11:00 a.m. (California time) on the date of the proposed Base Rate Loan. Each Base Rate Loan shall be in a principal amount of not less than Two Hundred Fifty Thousand and 00/100 Dollars (\$250,000.00) and in an integral multiple of \$25,000.00.

2.1.3 Tranches. At no time shall there be more than five (5) tranches collectively of Base Rate and LIBOR Loans outstanding.

2.1.4 LIBOR Loans. Borrower shall give to Agent irrevocable notice of a request for a LIBOR Loan by delivering to Agent a Borrowing Notice for such LIBOR Loan not later than two (2) Business Days prior to the date of the proposed LIBOR Loan. Agent shall determine the applicable LIBOR Basis as of the Business Day prior to the date of the requested LIBOR Loan. Each determination by Agent of a LIBOR Basis shall, absent manifest error, be deemed final, binding and conclusive upon Borrower. The LIBOR Loan Period for each LIBOR Loan shall be fixed at one (1), two (2), three (3) or six (6) months.

(a) (i) Each LIBOR Loan shall be in a principal amount of not less than Five Million and 0/100 Dollars (\$5,000,000.00) and in an integral multiple of \$100,000.00, and (ii) the total aggregate principal amount of all LIBOR Loans and Base Rate Loans outstanding at any one time shall not exceed Borrowing Availability.

(b) At least two (2) Business Days prior to each Payment Date for a LIBOR Loan, Borrower shall give irrevocable written notice to Lender specifying whether all or a portion of such LIBOR Loan outstanding on the Payment Date (i) is to be repaid and then reborrowed in whole or in part as a new LIBOR Loan, in which case such notice shall also specify the LIBOR Loan Period that Borrower shall have selected for such new LIBOR Loan; provided, that if a Default or Event of Default has occurred and is continuing, Borrower shall not have the option to repay and then reborrow such LIBOR Loan as a new LIBOR Loan, (ii) is to be repaid and then reborrowed in whole or in part as a Base Rate Loan, or (iii) is to be repaid and not reborrowed; provided, that any such borrowings described in clauses (i) and (ii) above shall be in a principal amount of not less than \$5,000,000.00 and in an integral multiple of \$100,000. Upon such Payment Date such LIBOR Loan will, subject to the provisions of this Agreement, be so repaid and, as applicable, reborrowed.

2.1.5 Request and Disbursement. Any notice in connection with a requested Revolving Loan under this Agreement that is received by Agent after 11:00 a.m. (California time) on any Business Day, or at any time on a day that is not a Business Day, shall be deemed received by Agent on the next Business Day. Agent shall, upon the reasonable request of Borrower from time to time, provide to Borrower such information with regard to the LIBOR Basis as Borrower may request. Promptly following receipt of a request for a Loan, Agent shall notify each Lender by telephone or telecopier (and if by telephone, promptly confirmed by telecopier) of the date and type of Loan, the applicable LIBOR Loan Period, and that Lender’s Pro Rata Share of the Loan. Not later than 10:00 a.m., California time, on the date specified for any Loan (which must be a Business Day), each Lender shall make its Pro Rata Share of the Loan in immediately available funds available to Agent at Agent’s office. Prior to 3:00 p.m. (California time) on the date of a Revolving Loan, Agent shall, subject to the satisfaction of the conditions set forth in **Section 4.2**, disburse the amount of the requested Revolving Loan by wire transfer pursuant to Borrower’s written instructions.

2.1.6 Pre-Purchase Draw Exception. In the event that Borrower requests a draw to be used to finance the purchase of

identified Equipment, which draw would cause an Overadvance under the Borrowing Base, but would not be an Overadvance if the identified Equipment were treated at the time of the draw as an Eligible Asset subject to an Eligible Lease, Agent shall permit such a draw, notwithstanding any provisions of this Agreement to the contrary, provided, however, that the following conditions are satisfied:

- (a) Borrower and seller of the Equipment have executed a purchase agreement for Equipment, and the Equipment, once purchased, would qualify as an Eligible Asset,
- (b) Borrower and lessee of the Equipment have executed a Lease therefor, which once the Aircraft is delivered to Lessee, would qualify as an Eligible Lease;
- (c) Borrower has received a commercially reasonable deposit from such Lessee under such Lease;
- (d) Borrower has provided to Agent a pro-forma Borrowing Base Certificate demonstrating there is sufficient Borrowing Base Availability after giving effect to the requested draw and the deemed treatment of the Equipment as an Eligible Asset subject to an Eligible Lease as of the date of the draw pursuant to the terms hereunder; and
- (e) Within three (3) days following the purchase of such identified Equipment, (i) such Equipment shall be an Eligible Asset and (ii) with respect to such Equipment, Borrower shall satisfy the requirements set forth in **Section 4.2.10**, with the exception of **Section 4.2.10(e)** which shall be satisfied no later than one-hundred and eighty (180) days after such purchase.

For the avoidance of doubt, for purposes of this Section, the Advance Rate applicable to such Equipment when making the calculations set forth in (d) above shall be that which would be applicable to such Equipment on the date of commencement of the Lease therefor, assuming the Equipment is an Eligible Asset subject to an Eligible Lease.

## 2.2 Payment of Interest; Interest Rate.

### 2.2.1 Loans. Interest on Revolving Loans shall be payable as follows:

(a) Base Rate Loans. Interest on each outstanding Base Rate Loan shall be computed for the actual number of days elapsed on the basis of a year of 360 days and shall be payable to Agent for the ratable benefit of Lenders, in arrears (i) on the first Business Day of each month, (ii) on the Maturity Date, and (iii) if any interest accrues or remains payable after the Maturity Date or during the continuance of an Event of Default, upon demand by Agent. Interest shall accrue and be payable on each Base Rate Loan at a per annum interest rate equal to the Base Rate plus the Applicable Base Rate Margin (“Applicable Base Rate”).

(b) LIBOR Loans. Interest on each outstanding LIBOR Loan shall be computed for the actual number of days elapsed on the basis of a year of 360 days and shall be payable to Agent, for the ratable benefit of Lenders, in arrears (i) on the Payment Date if a LIBOR Loan Period of one, two or three months, (ii) on the 90<sup>th</sup> day and the last day of the applicable LIBOR Loan Period in the case of any LIBOR Loan with a LIBOR Loan Period of six months, (iii) on the Maturity Date, and (iv) if any interest accrues or remains payable after the Maturity Date or during the continuance of an Event of Default, upon demand by Agent. Interest shall accrue and be payable on each LIBOR Loan at a per annum interest rate equal to the LIBOR Basis applicable to such LIBOR Loan plus the Applicable LIBOR Margin (“Applicable LIBOR Rate”).

(c) Applicable Margins. The Applicable Base Rate Margin and the Applicable LIBOR Margin shall be determined based on the Pricing Leverage Ratio as reported in the most recent Compliance Certificate (delivered to Agent pursuant to **Section 8**) by reference to Table 1 below.

TABLE 1			
Level	Pricing Leverage Ratio	Applicable LIBOR Margin	Applicable Base Rate Margin
I	< 3.00x	3.25%	2.25%
II	≥ 3.00x – < 3.25x	3.50%	2.50%
III	≥ 3.25x	3.75%	2.75%

2.2.2 Default Rate. Upon the occurrence and during the continuance of an Event of Default, interest on all outstanding Obligations shall, upon the election of Agent or the Requisite Lenders, confirmed by written notice from Agent to Borrower, accrue and be payable at the Default Rate. Interest accruing at the Default Rate shall be payable to Agent, for the ratable benefit of Lenders, on demand and in any event on the Maturity Date. Agent shall not be required to (1) accelerate the maturity of the Loans or (2) exercise any other rights or remedies under the Loan Documents, in order to charge the Default Rate. Upon the occurrence and during the continuance of an Event of Default specified in **Sections 9.1.5, 9.1.6, or 9.1.7**, the interest rate shall be increased automatically to the Default Rate without the necessity of any action by Agent or the Requisite Lenders.

2.2.3 Replacement Rate of Interest. If at any time (i) the Agent determines (which determination shall be conclusive absent manifest error) or the Requisite Lenders notify the Agent that adequate and reasonable means do not exist for ascertaining LIBOR (including, without limitation, because LIBOR is not available or published on a current basis) and such circumstances are unlikely to be temporary, (ii) the supervisor for the administrator of LIBOR or a Governmental Authority having jurisdiction over the Agent has made a public statement identifying a specific date after which LIBOR shall no longer be used for determining interest rates for loans, or (iii) any applicable interest rate specified herein is no longer a widely recognized benchmark rate for newly originated loans in the United States syndicated loan market in the applicable currency, then the Agent and the Borrower shall endeavor to establish an alternate rate of interest (the “Replacement Rate”) to LIBOR that gives due consideration to the then prevailing market convention for determining a rate of interest for syndicated loans in the United States at such time, and shall enter into an amendment to this Agreement to reflect such alternate rate of interest and such other related changes to this Agreement as may be applicable. Notwithstanding anything to the contrary in Section 12.16, such amendment shall become effective without any further action or consent of any other party to this Agreement so long as the Agent shall not have received, within five (5) Business Days of the date notice of the Replacement

Rate is provided to the Lenders, a written notice from the Requisite Lenders stating that such Requisite Lenders object to such amendment. Until the Replacement Rate is determined (but, in the case of the circumstances described in clause (ii) of the first sentence of this **Section 2.2.3**, only to the extent LIBOR for the applicable interest period is not available or published at such time on a current basis), (x) in connection with any request for a LIBOR Loan, such Loan shall be made as a Base Rate Loan, and (y) each LIBOR Loan shall, unless then repaid in full, convert to a Base Rate Loan on the next Payment Date for such LIBOR Loan. Notwithstanding anything else herein, any definition of Replacement Rate shall provide that in no event shall such Replacement Rate be less than zero for the purposes of this Agreement. To the extent the Replacement Rate is approved by the Agent in connection with this clause, the Replacement Rate shall be applied in a manner consistent with market practice; provided, that, in each case, to the extent such market practice is not administratively feasible for the Agent, the Replacement Rate shall be applied as otherwise reasonably determined by the Agent (it being understood that any such modification by the Agent shall not require the consent of, or consultation with, any of the Lenders).

2.3 **Maximum Rate of Interest.** In no event shall the aggregate of all interest on the Obligations charged or collected pursuant to the terms of this Agreement or pursuant to the Notes exceed the highest rate permissible under any law that a court of competent jurisdiction shall, in a final determination, deem applicable. In the event that such a court determines that a Lender has charged or received interest under this Agreement or the Notes in excess of the highest applicable rate, the rate in effect under this Agreement and the Notes shall automatically be reduced to the maximum rate permitted by Applicable Law and Lender shall promptly apply such excess to reduce the principal balance of the Obligations, or if the principal balance of the Obligations owing have been paid in full, Lender shall promptly apply such excess to reduce any other Obligations, and if all Obligations have been paid in full, then Lender shall refund to Borrower any interest received by Lender in excess of the maximum lawful rate; provided, that if at any time thereafter the rate of interest payable hereunder is less than the highest applicable rate, Borrower shall continue to pay interest hereunder at the highest applicable rate, until such time as the total interest received by Lender from the making of Loans hereunder is equal to the total interest that Lender would have received had the interest rate payable hereunder been (but for the operation of this **Section 2.3**) the interest rate payable since the Closing Date as otherwise provided in this Agreement. It is the intent of this Agreement that Borrower not pay or contract to pay, and that Lender not receive or contract to receive, directly or indirectly, interest in excess of that which may be paid by Borrower under Applicable Law.

2.4 **Fees.** Borrower shall pay to Agent:

2.4.1 **Unused Line Fee.** A fee for the ratable benefit of Lenders (the “**Unused Line Fee**”) commencing as of the Closing Date, payable quarterly in arrears, on each Quarterly Payment Date, commencing on March 31, 2019, and ending on the Termination Date. The Unused Line Fee shall be, for each day after the Closing Date through the Maturity Date, an amount equal to (a) the difference between (1) the Maximum Amount, and (2) the closing balance of the Loans for such day, multiplied by (b) the Applicable Unused Line Fee Percentage, the product of which is then divided by (c) 360.

2.4.2 **Fees to Agent.** On the Closing Date and on each other date upon which a fee is payable or costs are reimbursable, Borrower shall pay to Agent such fees or cost reimbursements as heretofore agreed upon by letter agreement dated as of October 1, 2018, between Borrower and MUFG Union Bank, N.A., as Agent, which fees and cost reimbursements shall be solely for its own account and are nonrefundable.

2.5 **Late Payments.** If any installment of principal or interest or any fee or cost or other amount payable under any Loan Document to any Lender is not paid when due, it shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate, to the fullest extent permitted by Applicable Law. Accrued and unpaid interest on past due amounts (including, without limitation, interest on past due interest) shall be compounded monthly, on the last day of each calendar month, to the fullest extent permitted by Applicable Law.

2.6 **Repayment and Prepayment.**

2.6.1 **Repayment and Voluntary Prepayment.** Borrower shall pay the principal balance of the Loans and all other Obligations in full on the Maturity Date. The principal amount of any Base Rate Loan may be prepaid prior to the Maturity Date at any time; provided, that any such prepayments shall be in an amount equal to or greater than \$100,000.00. The principal amount of any LIBOR Loan together with all accrued and unpaid interest thereon may be prepaid prior to the applicable Payment Date, together with any breakage fees as set forth in **Section 2.6.5**, upon three (3) Business Days’ prior notice to Lender. Each notice of prepayment shall be irrevocable.

2.6.2 **Overadvances.** Borrower shall immediately repay to Agent, for the ratable benefit of Lenders, any amount of a Base Rate Loan or LIBOR Loan which causes an Overadvance. Overadvances constitute Obligations that are evidenced by the Notes, secured by the Collateral, and entitled to all of the benefits of the Loan Documents.

2.6.3 **Mandatory Prepayment.** No later than ninety (90) days after the occurrence of any Borrowing Base Deficiency, Borrower shall repay all or such portion of the Loans in an amount equal to such deficiency, together with any breakage fees as set forth in **Section 2.6.5**. Upon (i) the sale of any Collateral for a sale price that exceeds \$2,500,000.00 and is outside the ordinary course of business or (ii) the receipt of proceeds in excess of \$2,500,000.00 from any recovery under any applicable insurance policies (or otherwise) in connection with an Event of Loss, Borrower shall repay immediately all or such portion of the Loans in an amount equal to the proceeds from such sale or recovery.

2.6.4 **Mandatory Repayment – Change in Control.** Upon the occurrence of a Change in Control, the Revolving Commitment (or any part thereof, as elected by the Requisite Lenders) shall be terminated, and all outstanding Loans (or any part thereof, as elected by the Requisite Lenders) shall be repaid in full, together with all accrued interest thereon and any breakage fees as set forth in **Section 2.6.5**.

2.6.5 **Breakage Fees.** Upon payment or prepayment of any LIBOR Loan (other than as the result of a conversion required under **Section 14.1.3** on a day other than the last day in the applicable LIBOR Loan Period (whether voluntarily, involuntarily, by reason of acceleration, or otherwise), or upon the failure of Borrower (for a reason other than the breach by a Lender of its obligation to make a LIBOR Loan pursuant to this Agreement) to borrow on the date or in the amount specified for a LIBOR Loan in any Notice of Borrowing, Borrower shall pay to Lender within five (5) Business Days after demand a prepayment fee or failure to borrow fee, as the case may be (determined as though 100% of the LIBOR Loan had

been funded in the London Eurodollar Market (the “Designated Eurodollar Market”) equal to the sum of:

(a) \$250 payable to Agent only;

plus

(b) the amount, if any, by which (i) the additional interest would have accrued on the amount prepaid or not borrowed at the LIBOR Basis (not including the Applicable LIBOR Margin) if that amount had remained or been outstanding through the last day of the applicable LIBOR Loan Period exceeds (ii) the interest Lenders could recover by placing such amount on deposit in the Designated Eurodollar Market for a period beginning on the date of the prepayment or failure to borrow and ending on the last day of the applicable LIBOR Loan Period (or, if no deposit rate quotation is available for such period, for the most comparable period for which a deposit rate quotation may be obtained).

Each Lender’s determination of the amount of any prepayment fee payable under this Section shall be conclusive in the absence of manifest error.

2.7 Term. The Credit Facility shall be in effect until the Maturity Date. The Credit Facility and all other Obligations related thereto shall be automatically due and payable in full on the Maturity Date, unless earlier due and payable or terminated as provided in this Agreement.

2.8 Early Termination or Reduction. The Credit Facility may be terminated, in whole or in an increment of \$5,000,000.00 and integral multiples of \$1,000,000.00 in excess thereof, by Borrower prior to the Maturity Date upon five (5) Business Days’ prior written notice to Agent; provided, that at such time Borrower shall (a) prepay all amounts outstanding under the Credit Facility which exceed the reduced Revolving Commitment amount elected by Borrower, (b) pay all accrued interest thereon and fees and charges incurred in connection therewith, and (c) reimburse Lenders for any loss or out-of-pocket expenses incurred by Lenders in connection with such prepayment and termination, including those breakage fees set forth in **Section 2.6.5**.

2.9 Note and Accounting. Agent shall provide a quarterly accounting to Borrower of the Loans and other transactions under this Agreement, including Agent’s calculation of principal and interest. Each and every such accounting shall, absent manifest error, be deemed final, binding and conclusive upon Borrower, unless Borrower, within thirty (30) days after the date any such accounting is rendered, provides Agent with written notice of any objection which Borrower may have to any item in such accounting, describing the basis for such objection with specificity. In that event, only those items expressly objected to in such notice shall be deemed to be disputed by Borrower, and in the event the parties cannot resolve their dispute, such dispute shall be resolved in accordance with the terms and conditions of the Alternative Dispute Resolution Agreement.

2.10 Manner of Payment.

2.10.1 When Payments Due.

(a) Except as expressly set forth in this Agreement, each payment (including any prepayment) by Borrower on account of the principal of or interest on the Loans and any other amount owed to Lenders on account of the Obligations shall be made not later than 11:00 a.m. (California time) on the date specified for payment under this Agreement to Agent in lawful money of the United States and in immediately available funds. Any payment received by Agent on a day that is not a Business Day or after 11:00 a.m. (California time) on a Business Day, shall be deemed received on the next Business Day. The amount of all payments received by Agent for the account of each Lender shall be immediately paid by Agent to the applicable Lender in immediately available funds and, if such payment was received by Agent by 11:00 a.m., California time, on a Business Day and not so made available to the account of a Lender on that Business Day, Agent shall reimburse that Lender for the cost to such Lender of funding the amount of such payment at the Federal Funds Rate. All payments shall be made in lawful money of the United States of America.

(b) If any payment on any Obligation is specified to be made upon a day that is not a Business Day, it shall (subject to the provisions of the LIBOR Loan Period which may require payment by one (1) earlier Business Day) be deemed to be specified to be made on the next succeeding day that is a Business Day, and such extension of time shall in such case be included in computing interest and fees, if any, in connection with such payment.

2.10.2 No Deductions. Borrower shall pay principal, interest, fees, and all other amounts due on the Obligations without set-off or counterclaim or any deduction whatsoever.

2.10.3 Inadequate Payments. If, on the date on which any amount (including any payment of principal, interest or other costs and expenses) shall be due and payable by Borrower to Lenders, the amount received by any such Lenders from Borrower shall not be adequate to pay the entire amount then due and payable, then Agent shall be authorized, but shall not be obligated, to make a Base Rate Loan to Borrower in the amount of the deficiency.

2.11 Application of Payments. Borrower irrevocably waives the right to direct the application of any and all payments received at any time by any Lender from or on behalf of Borrower and specifically waives the provisions of California Civil Code Sections 1479 and 2822 or similar provisions under any other Applicable Law giving Borrower the right to designate application of payments. All amounts received by Agent for application to the Obligations shall be applied by Agent in the following order of priority: (i) to the payment of any fees then due and payable, (ii) to the payments of all other amounts not otherwise referred to in this **Section 2.11** then due and payable hereunder or under the other Loan Documents (including any costs and expenses incurred by Agent as a result of a Default or an Event of Default), (iii) to the payment of interest then due and payable on the Loans, ratably among the Lenders in accordance with the amounts of interest then due to the Lenders, and (iv) to the payment of principal then due and payable under the Loans and Lender Hedging Obligations then due and payable on a *pari passu* basis, ratably among the parties entitled thereto in accordance with the amounts of principal and Lender Hedging Obligations then due and payable to such parties. Notwithstanding the foregoing, Borrower irrevocably agrees that, during the occurrence of an Event of Default, Lenders shall have the

continuing exclusive right to determine the order and method of the application of payments against the then due and payable Obligations of Borrower in Lenders' sole discretion and to revise such application prospectively or retroactively in Lenders' sole discretion.

2.12 Use of Proceeds. The proceeds of the Loans shall be used by Borrower to refinance existing revolving debt, to acquire aircraft and engines, and to support Borrower's working capital needs and general corporate purposes. Borrower will not, directly or indirectly, use any part of any Loan proceeds for the purpose of purchasing or carrying any margin stock within the meaning of Regulation U of the Board of Governors of the Federal Reserve System or to extend credit to any Person for the purpose of purchasing or carrying any such margin stock, or for any purpose which violates, or is inconsistent with, Regulation X of such Board of Governors.

2.13 All Obligations to Constitute One Obligation. All Obligations related to the Credit Facility constitute one general obligation of Borrower and shall be secured by Agent's Liens upon all of the Collateral, and by all other Liens previously, now or at any time in the future granted by Borrower to Agent or any Lender to the extent provided in the Collateral Documents and permitted by this Agreement.

2.14 Authorization to Make Loans. Agent and each Lender (each, an "Authorized Party") are authorized to make the Loans based on telephonic or other oral or written instructions received from any Person that an Authorized Party believes in good faith to be an authorized representative of Borrower, or at the discretion of such Authorized Party, if such Loans are necessary to satisfy any of the Obligations. Borrower consents to the recordation of any telephonic or other communications between an Authorized Party and Borrower for the purpose of maintaining such party's business records of such transactions.

2.15 Authorization to Debit Accounts. Borrower authorizes each Authorized Party, upon prior notice to Borrower, to debit any of Borrower's bank accounts with such party for the purpose of Borrower's payment of principal, interest or other costs and expenses due and payable by Borrower to Lenders under this Agreement.

2.16 Agent's Right to Assume Funds Available for Revolving Loans. Unless Agent shall have been notified by any Lender no later than 10:00 a.m. on the Business Day of the proposed funding by Agent of any Revolving Loan that such Lender does not intend to make available to Agent such Lender's portion of the total amount of such Revolving Loan, Agent may assume that such Lender has made such amount available to Agent on the date of the Revolving Loan and Agent may, in reliance upon such assumption, make available to Borrower a corresponding amount. If Agent has made funds available to Borrower based on such assumption and such corresponding amount is not in fact made available to Agent by such Lender, Agent shall be entitled to recover such corresponding amount on demand from such Lender. If such Lender does not pay such corresponding amount forthwith upon Agent's demand therefor, Agent promptly shall notify Borrower and Borrower shall pay such corresponding amount to Agent. Agent also shall be entitled to recover from such Lender interest on such corresponding amount in respect of each day from the date such corresponding amount was made available by Agent to Borrower to the date such corresponding amount is recovered by Agent, at a rate per annum equal to the daily Federal Funds Rate. Nothing herein shall be deemed to relieve any Lender from its obligation to fulfill its share of the Revolving Commitment or to prejudice any rights which Agent or Borrower may have against any Lender as a result of any default by such Lender hereunder.

2.17 Withholding of Taxes.

(a) Payments Free of Taxes. Any and all payments by or on account of any obligation of Borrower under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by Applicable Law. If any Applicable Law (as determined in the good faith discretion of an applicable withholding agent) requires the deduction or withholding of any Tax from any such payment by a withholding agent, then the applicable withholding agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with Applicable Law and, if such Tax is an Indemnified Tax, then the sum payable by Borrower shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this **Section 2.17**) the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(b) Payment of Other Taxes by Borrower. Borrower shall timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of Agent timely reimburse it for, Other Taxes.

(c) Evidence of Payments. As soon as practicable after any payment of Taxes by Borrower to a Governmental Authority pursuant to this **Section 2.17**, Borrower shall deliver to Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to Agent.

(d) Indemnification by Borrower. Borrower shall indemnify each Recipient, within ten (10) days after demand therefor, for the full amount of any Indemnified Taxes (including Taxes imposed or asserted on or attributable to amounts payable under this Section) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to Borrower by a Lender (with a copy to Agent), or by Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(e) Indemnification by the Lenders. Each Lender shall severally indemnify Agent, within ten (10) days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that Borrower has not already indemnified Agent for such Indemnified Taxes and without limiting the obligation of Borrower to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of **Section 12.8.5** relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by Agent shall be conclusive absent manifest error. Each Lender hereby authorizes

Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by Agent to the Lender from any other source against any amount due to Agent under this paragraph (e).

(f) Status of Lenders.

(i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to Borrower and Agent, at the time or times reasonably requested by Borrower or Agent, such properly completed and executed documentation reasonably requested by Borrower or Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by Borrower or Agent, shall deliver such other documentation prescribed by Applicable Law or reasonably requested by Borrower or Agent as will enable Borrower or Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in **Section 2.17(f)(ii)(A)**, **2.17(f)(ii)(B)** and **2.17(f)(ii)(D)** below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing, in the event that Borrower is a U.S. Person,

(A) any Lender that is a U.S. Person shall deliver to Borrower and Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of Borrower or Agent), an executed copy of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;

(B) any Foreign Lender shall comply with **Section 12.17**.

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to Borrower and Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of Borrower or Agent), executed copies of any other form prescribed by Applicable Law as a basis for claiming exemption from or a reduction in U.S. Federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by Applicable Law to permit Borrower or Agent to determine the withholding or deduction required to be made; and

(D) if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to Borrower and Agent at the time or times prescribed by law and at such time or times reasonably requested by Borrower or Agent such documentation prescribed by Applicable Law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by Borrower or Agent as may be necessary for Borrower and Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (D), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify Borrower and Agent in writing of its legal inability to do so.

(g) Treatment of Certain Refunds. If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this **Section 2.17** (including by the payment of additional amounts pursuant to this **Section 2.17**), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this **Section 2.17** with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this paragraph (g) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (g), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (g) the payment of which would place

the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(h) Survival; Defined Terms. Each party's obligations under this **Section 2.17** shall survive the resignation or replacement of the Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Revolving Commitments and the repayment, satisfaction or discharge of all obligations under any Loan Document. For purposes of this **Section 2.17**, the term "Applicable Law" includes FATCA.

## 2.18 Optional Increase to the Revolving Commitment.

2.18.1 Provided that no Default or Event of Default then exists, Borrower may request, from time to time, on or after the Closing Date, in writing, that the then effective Revolving Commitment be increased up to an aggregate amount not in excess of One Hundred Sixty Million and 00/100 Dollars (\$160,000,000.00). Any request under this **Section 2.18**, which request shall be in minimum increments of Five Million and 00/100 Dollars (\$5,000,000.00), shall be submitted by Borrower to Lenders through Agent not less than thirty (30) days prior to the proposed increase, specify the proposed effective date and amount of such increase, and be accompanied by (i) a certificate signed by an Authorized Signatory, stating that no Default or Event of Default exists as of the date of the request or will result from the requested increase and (ii) an updated Appraisal of the Collateral satisfactory to Agent, in its sole and absolute discretion. Any such request shall be approved by Agent if Borrower provides the foregoing items and Agent receives sufficient commitments from Lenders pursuant to **Sections 2.18.2** through **2.18.4** to fund the requested increase.

2.18.2 Borrower shall be solely responsible for requesting a commitment from each Lender to assume a portion of the proposed increase to the Revolving Commitment, and Borrower shall copy Agent on all such requests. Each Lender may approve or reject such request in its sole and absolute discretion, and any Lender who fails to send an affirmative written response to Borrower, with a copy to Agent, within ten (10) Business Days after receipt of such request, shall be deemed to have rejected Borrower's request.

2.18.3 In responding to a request under this Section, each Lender that is willing to assume a portion of the proposed increase to the Revolving Commitment shall specify the amount of the proposed increase that it is willing to assume. Each consenting Lender shall be entitled to participate ratably (based on its Pro Rata Share of the Revolving Commitment before such increase) in any resulting increase in the Revolving Commitment, subject to the right of Agent to adjust allocations of the increased Revolving Commitment so as to result in the amounts of the Pro Rata Shares of the Lenders being in integral multiples of \$100,000.00.

2.18.4 If the aggregate principal amount offered to be assumed by the consenting Lenders is less than the amount requested, Borrower may (i) reject the proposed increase in its entirety, (ii) accept the offered amounts, or (iii) designate new lenders who qualify as Eligible Assignees and which are reasonably acceptable to Agent as additional Lenders hereunder in accordance with this Agreement (each, a "New Lender"), which New Lenders may assume the amount of the increase in the Revolving Commitment that has not been assumed by the consenting Lenders.

2.18.5 After completion of the foregoing, Agent shall give written notification to the Lenders and any New Lenders of the increase to the Revolving Commitment which shall thereupon become effective, and in connection with such notification, Agent will distribute to the Borrower and the Lenders a revised **Schedule 2.18** reflecting the then applicable Pro Rata Shares of the Lenders.

2.18.6 Each New Lender shall become an additional party hereto as a Lender concurrently with the effectiveness of the proposed increase in the Revolving Commitment upon its execution of an instrument of joinder to this Agreement, which is in form and substance reasonably acceptable to Agent and which, in any event, contains the representations, warranties, indemnities and other protections afforded to Agent and the other Lenders which would be granted or made by an Eligible Assignee by means of the execution of a Commitment Assignment and Acceptance.

2.18.7 Subject to the foregoing, any increase to the Revolving Commitment requested under this Section shall be effective upon the date agreed to by Agent and Borrower and shall be in the principal amount equal to (i) the amount which consenting Lenders are willing to assume as increases to their respective Revolving Commitment plus (ii) the amount assumed by New Lenders. Upon the effectiveness of any such increase, each Revolving Loan outstanding shall be refinanced with new Loans reflecting the adjusted Pro Rata Share of each Lender in the Revolving Commitment if there is any change thereto and Borrower shall:

(a) issue a replacement Revolving Note to each affected Lender and a new Revolving Note to each New Lender, and the Pro Rata Share of each Lender will be adjusted, as applicable, to give effect to the increase in the Revolving Commitment;

(b) execute and deliver to Agent such amendments to the Loan Documents as Agent may reasonably request relating to such increase to, among other things, assure the continued priority and perfection the Lien granted by Borrower to Agent, for the ratable benefit of Lenders and Non-Lenders, upon all of Borrower's right, title and interest in the Collateral; and

(c) pay to the existing Lenders any breakage costs as set forth in **Section 2.6.5**, which are payable in connection with the refinancing of any LIBOR Loans.

## 3. SECURITY

3.1 Grant of Security Interest. To secure the prompt payment and performance of all Obligations,

3.1.1 Borrower has granted and pledged, and hereby reaffirms such grant and pledge, to Agent a continuing security interest in all presently existing and hereafter acquired or arising Assets, including all Assets that immediately prior to the Closing Date constituted Collateral securing any part of the Existing Loan, in order to secure prompt repayment of any and all Obligations and in order to secure prompt performance by Borrower of each of its covenants and duties under the Loan Documents. Such security interest constitutes a valid, first priority security interest in the presently existing Assets, and will constitute a valid first priority security interest in Assets acquired after the date hereof. Notwithstanding the foregoing, Agent shall not be granted any security interest in the Excluded Assets or the equity interests in the Excluded Subsidiaries except as provided under **Section 3.1.2**, below;

3.1.2 Borrower shall cause each Subsidiary (other than an Immaterial Subsidiary) to (i) grant to Agent a perfected security interest and Lien on and (ii) assign to Agent, all right, title and interest of it in and to all of its Assets (other than the Excluded Assets), whether now existing or owned or hereafter acquired; provided, however, that Borrower (or the Excluded Subsidiary which is the owner thereof) shall only be required to grant a perfected security interest and Lien in Excluded Assets and the equity interests in the Excluded Subsidiaries upon repayment of the applicable Permitted Excluded Subsidiary Financing and release by the Permitted Excluded Subsidiary Financing lender, provided, further, that such Excluded Assets shall not become Eligible Collateral for the purposes of the Borrowing Base;

3.1.3 Borrower shall grant to Agent a first priority perfected, secured Lien on, and assign to Agent, all right, title and interest of the Borrower in and to all "Collateral" (as such term is defined in the Mortgage) whether now existing or owned or hereafter acquired, by the delivery to Agent of a fully executed Mortgage and Security Agreement in the form of **Exhibit E** hereto (as amended, modified or supplemented from time to time, the "Mortgage");

3.1.4 Borrower shall cause the Owner Trustee, if any, to pledge to Agent all of the Borrower's right, title and interest in a Beneficial Interest under a Trust Agreement by the delivery to Agent a fully executed Beneficial Interest Pledge Agreement, each in the form of **Exhibit F** hereto (each, as amended, modified or supplemented from time to time, a "Beneficial Interest Pledge Agreement");

3.1.5 Borrower shall cause the Owner Trustee, if any, to execute and deliver to Agent an Owner Trustee Mortgage and Security Agreement in favor of Agent in the form of **Exhibit G** hereto (as amended, modified or supplemented from time to time, an "Owner Trustee Mortgage");

3.1.6 Borrower shall cause the Owner Trustee, if any, to execute and deliver to Agent an Owner Trustee Guaranty in the form of **Exhibit H**, guarantying the performance of the Obligations (as amended, modified or supplemented from time to time, an "Owner Trustee Guaranty"); and

3.1.7 Borrower shall make or cause any Person to make such filings, registrations, or otherwise with the FAA, International Registry, the U.S. Patents and Trademarks Office and otherwise under the UCC and all other Applicable Law as shall be required to perfect the Lien of Agent with respect to all Collateral under the Collateral Documents or any other Loan Documents, including but not limited to the following:

(a) UCC financing statements, naming Agent as secured party and Agent for the benefit of Lenders in order to perfect and preserve Agent's first priority Lien on the Collateral shall have been filed in such states in the United States of America as required, in the judgment of Agent, to perfect the Lien of Agent in all UCC Collateral;

(b) the Lien and International Interest (or Prospective International Interest), and any and all assignments and prospective assignments, as applicable, thereof, of the Mortgage and an Owner Trustee Mortgage, if any, with respect to the Equipment and Cape Town Eligible Leases with respect thereto owned by the Borrower and each Subsidiary as of the date of this Agreement shall have been registered with the International Registry and, with respect to all Engines and U.S. registered aircraft, the FAA; provided that if the International Registry does not then provide as a "drop down" registration category the serial number of any item of Equipment to be registered, then the Borrower shall register the same by "free text" notation in the International Registry and shall subsequently register such item of Equipment in its serial number category as soon as such registration category is available on the International Registry;

(c) without limiting the generality of the foregoing, all filings with the United States Patent and Trademark Office necessary or desirable to perfect Agent's Lien on all patents and trademarks of the Borrower; and

(d) the Lien as applicable, of the Mortgage and Owner Trustee Mortgage, if any, with respect to the Equipment and Leases owned by the Borrower and each Subsidiary as of the date of this Agreement and not located in a Contracting State shall have been registered with the appropriate authorities pursuant to Applicable Law.

3.2 **Priority of Agent's Security Interest.** Borrower represents, warrants and agrees as follows: (1) upon the execution of this Agreement by the parties hereto and all other documents contemplated hereby (as referenced in **Section 3.1** above) and as a result of the filing by Agent of appropriate financing statements in the appropriate jurisdictions and appropriate documentation with the FAA, Agent's Liens in the Collateral are and will be fully perfected Liens on all Collateral, which Liens are and will, until the Termination Date, be enforceable as first priority, fully perfected Liens as against all other creditors of, and purchasers from, Borrower; (2) all actions necessary or desirable to protect and perfect such Liens in favor of Agent in all of the Collateral has been duly taken; (3) Borrower or Owner Trustee, as applicable, are and will be the sole owner of each such item of the Collateral, and have and will have good and marketable title to such Collateral free and clear of any and all Liens except for Permitted Liens; and (4) no effective security agreement, mortgage, deed of trust, financing statement, equivalent security or Lien instrument or continuation statement covering all or any part of the Collateral is or will be on file or of record in any public office, except those filed by Borrower in favor of Agent pursuant to the Loan Documents, and those relating to other Permitted Liens. Borrower shall defend the right, title and interest of Agent in and to the Collateral against the claims and demands of all Persons whomsoever, and shall take such actions, including (i) the prompt delivery of all original Instruments, Chattel Paper and certificated Stock owned by Borrower to Agent, (ii) notification of Agent's interest in Collateral at Agent's request, and (iii) the institution of litigation against third parties as shall be prudent in order to protect and preserve Borrower's and Agent's

respective and several interests in the Collateral. All Chattel Paper shall be marked with the following legend:

“THIS WRITING AND THE OBLIGATIONS EVIDENCED OR SECURED HEREBY ARE SUBJECT TO THE LIEN OF MUFG UNION BANK, N.A., AS ADMINISTRATIVE AGENT”

### 3.3 Agent's Rights.

3.3.1 In addition to any and all rights under the Collateral Documents, at any time after the occurrence and continuance of an Event of Default, Agent may, at any time in Agent's own name or in the name of Borrower, (1) communicate with Account Debtors, parties to Contracts and Leases, and obligors in respect of Instruments, Chattel Paper or other Collateral to verify to Agent's satisfaction the existence, amount and terms of any such Accounts, Contracts, Instruments, Chattel Paper, Leases or other Collateral, and (2) without prior notice to Borrower, notify Account Debtors, parties to Contracts, parties to Leases, and obligors in respect of Chattel Paper, Instruments, or other Collateral that such Collateral has been assigned to Agent and that payments shall be made directly to Agent. Upon the request of Agent, Borrower shall so notify such Account Debtors, parties to Contracts, parties to Leases, and obligors in respect of Instruments, Chattel Paper, Leases or other Collateral.

3.3.2 It is expressly agreed by Borrower and Owner Trustee that Borrower and Owner Trustee, as applicable, shall remain liable under each Contract, License and Lease to observe and perform all the conditions and obligations to be observed and performed by it thereunder, and Agent shall have no obligation or liability whatsoever to any Person under any Contract, License or Lease (between Borrower, Owner Trustee and any Person other than Agent) by reason of or arising out of the execution, delivery or performance of this Agreement, and Agent shall not be required or obligated in any manner (1) to perform or fulfill any of the obligations of Borrower thereunder, (2) to make any payment or inquiry, or (3) to take any action of any kind to collect or enforce any performance or the payment of any amounts which may have been assigned to it or to which it may be entitled at any time or times under or pursuant to any Contract, License or Lease.

3.3.3 For the purposes of allowing Agent to conduct a Field Examination, Borrower shall, with respect to each owned, leased, or controlled property or facility, during normal business hours and upon reasonable prior notice (unless a Default or Event of Default has occurred and is continuing, in which event no notice shall be required and Agent shall have access at any and all times): (1) provide access to such facility or property to Agent and any of its officers, employees and Agent, as frequently as Agent determines to be appropriate; (2) permit Agent and any of its officers, employees and Agent to inspect, audit and make extracts from all of Borrower's books and records; and (3) subject to the Lessee's rights under any Lease, permit Agent to inspect, review, evaluate and make physical verifications and appraisals of any Equipment and other Collateral in any manner and through any medium that Agent considers advisable, and Borrower shall provide to Agent, at Borrower's cost and expense, such clerical and other assistance as may be reasonably requested with regard thereto. Borrower shall make available to Agent and its counsel, as quickly as practicable under the circumstances, originals or copies of all of Borrower's books and records and any other instruments and documents which Agent may reasonably request. Borrower shall deliver any document or instrument reasonably necessary for Agent, as it may from time to time request, to obtain records from any service bureau or other Person that maintains records for Borrower. Borrower's obligation to reimburse Agent for the costs of such Field Examinations shall not exceed \$10,000 per year.

3.3.4 Upon the occurrence and during the continuance of an Event of Default, Borrower, at its own expense, shall cause its independent certified public accountants to prepare and deliver to Agent at any time and from time to time, promptly upon Agent's request: (1) a reconciliation of all Accounts; (2) an aging of all Accounts; (3) trial balances; and (4) test verifications of such Accounts as Agent may request. Borrower, at its own expense, shall cause its independent certified public accountants to deliver to Agent the results of (i) any physical verifications of all or any portion of the Collateral made or observed by such accountants, and (ii) any verifications of Borrower's Accounts, in each case when and if any such verifications are conducted. Agent shall be permitted to observe and consult with Borrower and Borrower's certified public accountants in the performance of these tasks.

3.4 Power of Attorney. To the extent permitted by Applicable Law, Borrower hereby irrevocably makes, constitutes, and appoints Agent (and any of Agent's officers, employees or Agent designated by Agent) as Borrower's true and lawful attorney-in-fact, with power to: (a) sign the name of Borrower on any document to be executed, recorded or filed in order to perfect or continue perfected Agent's Lien upon the Collateral if Borrower fails to do so promptly after request therefor by Agent, including filing any financing or continuation statement without the signature of Borrower to the extent permitted by applicable law; (b) at any time after the occurrence and continuance of an Event of Default, sign Borrower's name on any invoice or bill of lading relating to any Account, drafts against Account Debtors, schedules and assignments of Accounts, verifications of Accounts and notices to Account Debtors; (c) at any time after the occurrence and continuance of an Event of Default, send requests for verification of Accounts; (d) at any time after the occurrence and continuance of an Event of Default, endorse Borrower's name on any checks, notices, acceptances, money orders, drafts, or other forms of payment or security that may come into Agent's possession; and (e) at any time that a Default or Event of Default has occurred and is continuing, (1) notify the post office authorities to change the address for delivery of Borrower's mail to an address designated by Agent, to receive and open all mail addressed to Borrower, and to retain all mail relating to the Collateral and forward all other mail to Borrower, (2) make, settle, and adjust all claims under Borrower's policies of insurance and make all determinations and decisions with respect to such policies of insurance, and (3) settle and adjust disputes and claims respecting the Accounts directly with Account Debtors, for amounts and upon terms which Agent determines to be reasonable, and Agent may cause to be executed and delivered any documents and releases which Agent determines to be necessary. The appointment of Agent as Borrower's attorney-in-fact, and each and every one of Agent's rights and powers, being coupled with an interest, is irrevocable until all of the Obligations have been fully repaid and performed and Agent's obligation to provide Loans hereunder is terminated. NEITHER LENDERS NOR ANY OF THEIR OFFICERS, DIRECTORS, EMPLOYEES, LENDERS OR REPRESENTATIVES SHALL BE RESPONSIBLE TO BORROWER FOR ANY ACT OR FAILURE TO ACT PURSUANT TO THE POWERS GRANTED UNDER THE POWER OF ATTORNEY HEREIN OR OTHERWISE, EXCEPT FOR ITS OR THEIR OWN GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, NOR FOR ANY PUNITIVE, EXEMPLARY, INDIRECT OR CONSEQUENTIAL DAMAGES.

3.5 Grant of License to Use Intellectual Property Collateral. For the purpose of enabling Agent to exercise its rights and remedies under the Loan Documents, Borrower hereby grants to Agent an irrevocable, non-exclusive license (exercisable only upon the occurrence and continuance of an Event of Default and without payment of royalty or other compensation to Borrower) to use, transfer, license or sublicense any Intellectual

Property now owned, licensed to, or hereafter acquired by Borrower, and wherever the same may be located, and including in such license access to all media in which any of the licensed items may be recorded or stored and to all computer and automatic machinery software and programs used for the compilation or printout thereof, and Borrower represents, warrants and agrees that any such license or sublicense is not and will not be in conflict with the contractual or commercial rights of any other Person; provided, that such license will terminate on the Termination Date.

3.6 Reinstatement. The provisions of this **Section 3** shall to the extent permitted by Applicable Law remain in full force and effect and continue to be effective even if: (a) any petition is filed by or against Borrower or Owner Trustee for liquidation or reorganization; (b) Borrower or Owner Trustee becomes insolvent or makes an assignment for the benefit of creditors; (c) a receiver or trustee is appointed for all or any significant part of Borrower's or Owner Trustee's assets; or (d) at any time payment and performance of the Obligations, or any part thereof, is, pursuant to Applicable Law, rescinded or reduced in amount, or must otherwise be restored or returned by any obligee of the Obligations, whether as a "voidable preference," "fraudulent transfer" or otherwise, all as though such payment or performance had not been made. In the event that any payment, or any part thereof, is rescinded, reduced, restored or returned, the Obligations and Agent's Liens in the Collateral shall be reinstated and deemed reduced only by any amount paid and not so rescinded, reduced, restored or returned.

3.7 Release of Security Interest. Provided no Default or Event of Default exists and no Overadvance would result, Agent shall from time to time execute partial releases of Collateral sold by Borrower in the ordinary course of its business in accordance with this Agreement from the security interests under the Loan Documents which partial releases shall be in form reasonably satisfactory to Agent.

#### 4. CONDITIONS PRECEDENT

4.1 Conditions Precedent to Closing. Lenders shall not be obligated to make any Loan, or to take, fulfill, or perform any other action under this Agreement, until the following conditions have been satisfied to Agent's reasonable satisfaction or waived in writing by Agent:

4.1.1 Agent shall have received:

- (a) originals of the documents set forth on **Schedule 1.1h** (Schedule of Documents), each duly executed by the appropriate parties, together with such other assurances, certificates, documents or consents related to the foregoing as Agent and/or Lenders reasonably may require, all in form and substance satisfactory to Agent and Lenders;
- (b) such documentation as Agent may reasonably require to establish the due organization, valid existence and good standing of Borrower, its qualification to engage in business in each material jurisdiction in which it is engaged in business or required to be so qualified, its authority to execute, deliver and perform the Loan Documents to which it is a party, the identity, authority and capacity of each Authorized Signatory thereof authorized to act on its behalf, including certified copies of articles of organization and amendments thereto, bylaws and operating agreements and amendments thereto, certificates of good standing and/or qualification to engage in business, tax clearance certificates, certificates of corporate resolutions, incumbency certificates, certificates of Authorized Signatory, and the like;
- (c) a list of all of Borrower's Material Contracts and a copy of such Material Contracts requested by Agent;
- (d) a copy of all insurance certificates or other evidence of insurance for the Collateral;
- (e) originals of favorable written opinions, dated as of the date hereof, of independent and internal counsel to the Borrower, addressed to Agent and Lenders (and their respective participants and assigns) and otherwise in form and substance satisfactory to Agent as to such matters as Agent shall determine;
- (f) copies of all consents and authorizations of, permits from or filings with, any Governmental Authority or other Person required in connection with the execution, delivery, performance or enforceability of the Loan Documents or any provision thereof and no material changes in governmental regulations affecting the Borrower, Agent or the Lenders shall have occurred;
- (g) (i) a certified lien search for the State of Delaware and the State of California with respect to the Borrower and each of its Subsidiaries, (ii) an International Registry search with respect to each applicable item of Equipment; (iii) an FAA search with respect to each applicable item of Equipment, (iv) a Federal tax lien search with respect to the Borrower and each of its Subsidiaries, and any other searches as may be required by Agent; and
- (h) the "chattel paper" original of each Lease, which thereafter until the Termination Date shall be held by Agent or McAfee & Taft as Agent's designee or such other party as Agent may designate; provided Agent shall not be liable in the event of any damage, loss or destruction of any of such documents or instruments.

4.1.2 All of the financing statements and other documentation described in **Section 3.1.7** shall have been filed with the appropriate Governmental Agencies, and Agent shall hold a first priority perfected Lien in the Collateral, for the ratable benefit of Lenders, subject only to Permitted Liens.

4.1.3 With respect to all Equipment, and subject to **Section 6.23**, the following statements shall be true, and Agent shall have received evidence reasonably satisfactory to it (including, with respect to each item of Equipment which is eligible for registration with the International Registry, a printout of the "priority search certificate" from the International Registry showing the Equipment Owner's ownership interest with respect to such Equipment under a contract of sale) with respect to each item of Equipment and any related Lease included in the Borrowing Base to the effect that:

- (a) the Borrower is in compliance with the applicable requirements of the Mortgage and Applicable Law;

(b) the applicable Equipment Owner has good title under Applicable Law to such item of Equipment, free and clear of Liens other than (i) Permitted Liens and (ii) the Lien of Agent;

(c) the Borrower has completed all registrations and filings required by any Aviation Authority in such jurisdiction and Agent shall hold a first priority Lien on each item of Equipment under Applicable Law (or with respect to Assets for which a pre-filing has been made, Agent shall be the beneficiary of a second priority Lien on such Equipment, and documentation sufficient to terminate any first priority lien on such Equipment shall have been delivered to Agent or to an escrow with such documentation to be filed upon payoff of such lien through Revolving Loan proceeds) and has provided, or is in a position to provide, all opinions of independent counsel as required by Agent; and

(d) Agent shall have received evidence reasonably satisfactory to it (including, with respect to each Cape Town Eligible Lease, a printout of the "priority search certificate" (as defined in the Regulations for the International Registry) from the International Registry relating to the Lessor's interest in and International Interest with respect to such item of Equipment under such Lease and including, with respect to all Leases that are not Cape Town Eligible, an original, favorable written opinion of independent counsel addressed to Agent and Lenders (and their respective participants and assigns) with respect to Agent's Lien on such item of Equipment;

4.1.4 Payment by Borrower to Agent of all fees, costs, and expenses of closing (including reasonable fees of legal counsel to Agent presented as of the Closing Date);

4.1.5 No action, proceeding, investigation, regulation or legislation shall have been instituted, threatened or proposed before any court, Governmental Authority or legislative body to enjoin, restrain or prohibit, or to obtain damages in respect of, or which is related to or arises out of, this Agreement or any other Loan Document or the consummation of the transactions contemplated hereby or thereby and which, in any Lender's sole judgment, would make it inadvisable to consummate the transactions contemplated by this Agreement or any other Loan Document;

4.1.6 Payment by Borrower to each Lender of any of the fees due to each Lender;

4.1.7 No circumstance or event shall have occurred, including but not limited to any litigation, actions, suits, proceedings or investigations pending as to Borrower, that constitutes a Material Adverse Effect as of the Closing Date;

4.1.8 All of the representations and warranties of Borrower under this Agreement shall be true and correct as of the Closing Date;

4.1.9 Borrower shall be in compliance with all the terms and provisions of the Loan Documents, and no Default or Event of Default shall have occurred and be continuing;

4.1.10 Agent shall have completed its independent business and legal due diligence, including but not limited to financial, legal and insurance reviews, with results satisfactory to Agent;

4.1.11 Each Lender and Agent each shall have obtained satisfactory credit or other required internal approval(s) in connection with the transactions contemplated by this Agreement and the Loan Documents;

**4.1.12** The Closing Date shall occur on or before February 28, 2019;

**4.1.13** Borrower shall have established a non-interest bearing account with Agent;

4.1.14 The Excluded Subsidiaries shall have closed or concurrently close the Term Loan Facility;

4.1.15 All legal matters relating to the Loan Documents shall be satisfactory to Sheppard, Mullin, Richter & Hampton LLP, legal counsel to MUFG Union Bank, N.A., in all of its capacities hereunder;

4.1.16 Agent shall have received a certificate, certified by an Authorized Signatory of Borrower, describing the terms of the Term Loan Facility; and

4.1.17 Agent shall have received a pro-forma Compliance Certificate and Borrowing Base Certificate based on financial information as of the Closing Date, evidencing compliance with the Borrowing Base and the applicable covenants.

If any other term of any Loan Document should conflict, or appear to conflict, with this **Section 4.1**, the terms of this **Section 4.1** shall control, and Borrower shall have no rights under this Agreement or any other Loan Document until each of the conditions of this **Section 4.1** has been complied with to Agent's and Lenders' satisfaction or specifically waived in a writing by Lenders.

4.2 Conditions to All Loans. It shall be a condition to the funding of any Loan that the following statements be true on the date of each such funding or advance:

4.2.1 Agent shall have timely received a Borrowing Notice or telephonic request, as applicable, together with a Borrowing Base Certificate dated as of the date of such Borrowing Notice;

4.2.2 Agent shall determine that, after giving effect to the requested Revolving Loan, no Overadvance will occur;

4.2.3 all of the representations and warranties of Borrower under this Agreement and the other Loan Documents shall be true and correct as of such date, except to the extent any such representations and warranties relate to an earlier date, both before and after giving effect to the funding or issuance of such Loan, and Agent shall have received, if it so elects, a certification to that effect signed by an Authorized Signatory;

4.2.4 Borrower shall be in compliance with all the terms and provisions of the Loan Documents, and no Default or Event of Default shall have occurred and be continuing;

4.2.5 no circumstance or event shall have occurred since the Closing Date, or would result from the funding, advance or incurrence of any Loan, that constitutes a Material Adverse Effect;

4.2.6 other than matters described in **Schedule 5.10** or not required as of the Closing Date to be therein described, there shall not then be pending or threatened any action, suit, proceeding or investigation against or affecting Borrower or any of its Subsidiaries or any Property of any of them before any Governmental Authority that constitutes a Material Adverse Effect;

4.2.7 Agent shall have received, in form and substance satisfactory to Agent, such other assurances, certificates, documents or consents related to the foregoing as Agent may reasonably require;

4.2.8 Agent shall hold a perfected, first priority Lien on all Collateral, for the ratable benefit of Lenders, subject only to Permitted Liens and those liens referenced in clause (b) of **Section 4.2.10**;

4.2.9 With respect to an item of Equipment that is owned by an Owner Trustee, or with respect to each Lease to a Lessee domiciled or whose chief executive office is located in a non-U.S. jurisdiction, which is or is to be included in the Borrowing Base on such Borrowing Date, Agent shall have received the documentation set forth in the definition of "Eligible Lease," (including, without limitation, the Owner Trustee Guaranty(ies), Owner Trustee Mortgage(s), Trust Agreement(s), and Beneficial Interest Pledge Agreement(s)); and

4.2.10 With respect to all Equipment, and subject to **Section 6.23**, the following statements shall be true, and Agent shall have received evidence reasonably satisfactory to it with respect to each item of Equipment and any related Lease included in the Borrowing Base to the effect that:

(a) the Borrower is in compliance with the applicable requirements of the Mortgage and Applicable Law;

(b) the applicable Equipment Owner has good title under Applicable Law to such item of Equipment, free and clear of Liens other than (i) Permitted Liens and (ii) the Lien of Agent;

(c) the Borrower has completed all registrations and filings required by any Aviation Authority in such jurisdiction and Agent shall hold a first priority Lien on each item of Equipment under Applicable Law and has provided, or is in a position to provide, all opinions of independent counsel as required by Agent;

(d) with respect to each Cape Town Eligible Lease, Agent shall have received evidence reasonably satisfactory to it (including, a printout of the "priority search certificate" as defined in the Regulations for the International Registry) from the International Registry relating to the Lessor's interest in and International Interest with respect to such item of Equipment under such Lease;

(e) with respect to all Leases that are not Cape Town Eligible, Agent shall have received an original, favorable written opinion of independent counsel addressed to Agent and Lenders (and their respective participants and assigns) with respect to Agent's Lien on such item of Equipment;

(f) with respect to each item of Equipment which is eligible for registration with the International Registry, Agent shall have received a printout of the "priority search certificate" from the International Registry showing the Equipment Owner's ownership interest with respect to such Equipment under a contract of sale; and

(g) with respect to such item of Equipment and any related Lease, the Borrower is in compliance with the applicable provisions of this Agreement, the Mortgage and all other Loan Documents.

Notwithstanding the foregoing, but subject to clause (b) of this **Section 4.2.10**, if the Mortgage or Owner Trustee Mortgage and/or Lease for any item of Equipment is not available on any Borrowing Date, but provided, in the case of a Lease of any item of Equipment, the parties hereto agree nevertheless to close on the financing of such item of Equipment so long as a (x) a Prospective International Interest or International Interest in such Equipment and such Mortgage or Owner Trustee Mortgage (and Lease if it is a Cape Town Eligible Lease) has been duly registered in favor of Agent at the International Registry; (y) no prior International Interest in such item of Equipment has been filed, and such Lease shall have been registered at the International Registry prior to the registration of such Prospective International Interest or International Interest in favor of Agent; and (z) the Borrower shall cause the Mortgage or Owner Trustee Mortgage, as applicable (and Lease if the aircraft is a U.S. registered aircraft) to be filed with the FAA within three (3) days of such registration of Prospective International Interest or International Interest.

The request and acceptance by Borrower of the proceeds of the Loan shall be deemed to constitute, as of the date of such Loan, (1) a representation and warranty by Borrower that the conditions in this **Section 4.2** have been satisfied, and (2) a confirmation by Borrower of the granting and continuance of Agent's Liens pursuant to the Collateral Documents.

## 5. REPRESENTATIONS AND WARRANTIES

Borrower represents, warrants and agrees that from and after the Closing Date and until the Termination Date:

5.1 Corporate Existence; Compliance with Law. Borrower is a corporation duly formed, validly existing and in good standing under the Applicable Law of Delaware. Borrower is duly qualified or registered to transact business and is in good standing in Delaware and California and in each other jurisdiction in which the conduct of its business or the ownership or leasing of its Property makes such qualification or registration necessary and in which the failure to be so qualified or registered could have a Material Adverse Effect. Borrower has all requisite power and authority to conduct its business, to own, pledge, mortgage or otherwise encumber and operate its Property, to lease the Property it operates under lease, to conduct its business as now or proposed to be conducted, to execute and deliver each Loan Document to which it is a party and to perform its Obligations. Borrower is in compliance with all Applicable Law and other legal requirements applicable to its business, has obtained all authorizations, consents, approvals, orders, licenses and permits from, and has accomplished all filings, registrations and qualifications with, or obtained exemptions from any of the foregoing from, any Governmental Authority that are necessary for the transaction of its business.

5.2 Executive Offices; Corporate or Other Names; Conduct of Business. The locations of Borrower's executive offices, principal place of business, corporate offices, warehouses, other locations of Collateral and locations where all of Borrower's records with respect to Collateral are kept are as set forth in **Schedule 5.2** and, except as set forth in such schedule, such locations have not changed during the preceding twelve (12) months. Borrower shall not change its (a) name, (b) chief executive office, (c) principal place of business or jurisdiction of formation, or (d) location of its records concerning the Collateral, without, in each instance, giving thirty (30) days' prior written notice thereof to Agent and taking all actions deemed necessary or appropriate by Agent to protect and perfect Agent's Liens continuously upon the Collateral.

5.3 Authority; Compliance with Other Agreements and Instruments and Government Regulations. The execution, delivery and performance by Borrower, any Owner Trustee, and any Subsidiary of the Loan Documents to which each is a party have been duly authorized by all necessary corporate action, and do not and will not:

5.3.1 Require any consent or approval not heretofore obtained of any member, partner, director, stockholder, security holder or creditor of such party;

5.3.2 Violate or conflict with any provision of such party's operating agreement, charter, articles of incorporation or bylaws, as applicable;

5.3.3 Result in or require the creation or imposition of any Lien (other than pursuant to the Loan Documents) or Right of Others upon or with respect to any Property now owned or leased or hereafter acquired or leased by such party;

5.3.4 Violate any Applicable Law applicable to such party; or

5.3.5 Result in a breach of or constitute a default under, or cause or permit the acceleration of any obligation owed under, any indenture or loan or credit agreement or any other Contractual Obligation to which such party is a party or by which such party or any of its property is bound or affected; and such party is not in violation of, or default under, any Applicable Law or Contractual Obligation, or any indenture, loan or credit agreement, in any respect.

5.4 No Governmental Approvals Required. Except as previously obtained or made, no authorization, consent, approval, order, license or permit from, or filing, registration or qualification with, any Governmental Authority is or will be required to authorize or permit under Applicable Law the execution, delivery and performance by Borrower, Owner Trustee and any Subsidiary of the Loan Documents to which it is a party.

5.5 Subsidiaries. Borrower has no Subsidiaries as of the Closing Date other than JHC, JMC, and JFC, and the Excluded Subsidiaries consisting of ACY SN 19002 Limited, ACY SN 19003 Limited, ACY SN 15129 LLC, and ACY E-175 LLC.

5.6 Financial Statements. Borrower has furnished to Lender the audited Financial Statements of Borrower as of the Fiscal Year ending December 31, 2017 (including balance sheets and income statements) and the unaudited Financial Statements of Borrower as of the Fiscal Quarter ending September 30, 2018. The financial information contained therein fairly presents in all material respects the financial condition, results of operations and changes in financial position of Borrower as of such dates and for such periods.

5.7 No Other Liabilities; No Material Adverse Changes. Borrower and its Subsidiaries do not have any material liability or material contingent liability required under GAAP to be reflected or disclosed, and not reflected or disclosed, in the balance sheets described in **Section 5.6** other than liabilities and contingent liabilities arising in the ordinary course of business since the date of such Financial Statements. Except as set forth on **Schedule 5.7**, as of the Closing Date, no circumstance or event has occurred that constitutes a Material Adverse Effect.

5.8 Title To and Location of Property. Borrower and its Subsidiaries have valid title to the Property, including all Equipment, as reflected in the balance sheet described in **Section 5.6**, other than items of Property or exceptions to title which are in each case immaterial and Property subsequently sold or disposed of in the ordinary course of business. Such Property is free and clear of all Liens and Rights of Others, other than those described in **Schedule 5.7** and Permitted Liens and Permitted Rights of Others.

5.9 Intellectual Property. Borrower and its Subsidiaries own, or possess, the right to use to the extent necessary in their respective businesses, all Intellectual Property, and no such Intellectual Property conflicts with the valid Intellectual Property of any other Person. Except as set forth in **Schedule 5.9**, Borrower has not used any trade name, trade style or "dba" during the five year period ending on the Closing Date.

5.10 Litigation. Except for matters set forth in **Schedule 5.10**, there are no actions, suits, proceedings or investigations pending as to which Borrower or any of its Subsidiaries have been served or have received notice or, to the best knowledge of Borrower, threatened against or affecting Borrower or any of its Subsidiaries or any Property of any of them, the Collateral, or any other transactions contemplated by this Agreement.

5.11 Binding Obligations. Each of the Loan Documents to which Borrower, Owner Trustee, and any Subsidiary is a party will, when executed and delivered by such party, constitute the legal, valid and binding obligation of such party, enforceable against such party in accordance with its terms.

5.12 No Default. No event has occurred and is continuing that is a Default or Event of Default.

5.13 ERISA. Neither Borrower nor any of its Subsidiaries has any Pension Plans. Neither Borrower nor any of its Subsidiaries has incurred or expects to incur any withdrawal liability to any Multiemployer Plan (as defined herein). As used herein, "Pension Plan" means any "employee pension benefit plan" (as such term is defined in Section 3(2) of ERISA) and "Multiemployer Plan" means any employee benefit plan of the type described in Section 001(a)(3) of ERISA to which Borrower or any of its ERISA affiliates contributes or is obligated to contribute.

5.14 Regulation U; Investment Company Act. No part of the proceeds of any Loan hereunder will be used to purchase or carry, or to extend credit to others for the purpose of purchasing or carrying, any margin stock in violation of Regulation U. Neither Borrower nor any of its Subsidiaries is or is required to be registered as an "investment company" under the Investment Company Act of 1940.

5.15 Disclosure. No written statement made by an Authorized Signatory to Lender in connection with this Agreement, or in connection with any Loan, as of the date thereof contained any untrue statement of a material fact or omitted a material fact necessary to make the statement made not misleading in light of all the circumstances existing at the date the statement was made.

5.16 Tax Liability. Borrower and its Subsidiaries have filed all Tax returns which are required to be filed, and have paid, or made provision for the payment of, all Taxes with respect to the periods, Property or transactions covered by said returns, or pursuant to any assessment received by Borrower or any of its Subsidiaries, except such Taxes, if any, as are being contested in good faith by appropriate proceedings and as to which adequate reserves have been established and maintained.

5.17 Hazardous Materials. Except as described in **Schedule 5.17**, as of the Closing Date (a) neither Borrower nor any of its Subsidiaries at any time has disposed of, discharged, released or threatened the release of any Hazardous Materials in violation of any Hazardous Materials Law, (b) to the best knowledge of Borrower, no condition exists that violates any Hazardous Material Law affecting any real property owned by Borrower or any of its Subsidiaries, (c) no real property or any portion thereof is or has been utilized by Borrower or any of its Subsidiaries as a site for the manufacture of any Hazardous Materials and (d) to the extent that any Hazardous Materials are used, generated or stored by Borrower or any of its Subsidiaries on any real property, or transported to or from such real property by Borrower or any of its Subsidiaries, such use, generation, storage and transportation are in compliance with all Hazardous Materials Laws.

5.18 Security Interests. Upon the execution and delivery of all of this Agreement and the Collateral Documents and the completion of all actions to perfect the security interests so created, as set forth in **Section 3.1.7**, Agent will hold a valid first priority security interest in the Collateral described therein securing the Obligations.

5.19 Insurance. **Schedule 5.19** lists all current insurance of any nature maintained by Borrower, as well as a summary of the terms of such insurance provided **Schedule 5.19** shall list insurance for Equipment leased pursuant to an Eligible Lease. Borrower shall deliver to Agent endorsements to all of its (a) "All Risk" and business interruption insurance policies naming Agent as loss payee, and (b) general liability and other liability policies naming Agent as an additional insured. All policies of insurance on real and personal property will include an endorsement, in form and substance acceptable to Agent, showing loss payable to Agent (Form 438 BFU or equivalent) and extra expense and business interruption endorsements. Such endorsement, or an independent instrument furnished to Agent, will provide that the insurer will endeavor to give at least thirty (30) days' prior written notice to Agent before any such policy or policies of insurance shall be canceled. Upon the occurrence and continuation of a Default or Event of Default, Borrower hereby directs all present and future insurers under its and its Subsidiaries' "All Risk" policies of insurance to pay all proceeds payable thereunder directly to Agent for the ratable benefit of Lenders. Agent reserves the right at any time, upon review of Borrower's risk profile, to require additional forms and limits of insurance to adequately protect Lenders' interests in accordance with Agent's normal practices for similarly situated borrowers, and if the circumstances are unusual, in Agent's sole opinion.

5.20 Leases and Equipment. Each of the following is true and correct with respect to each Lease for an item of Equipment included in the Borrowing Base:

5.20.1 The amounts of rent and other amounts due under each Lease, as shown on the Borrower's books and records and on any statement or schedule delivered to Agent in connection therewith, are the true and correct amounts actually owed to the Borrower and the other Lessors;

5.20.2 The Borrower has not and will not enter into any agreement with a Lessee of any Equipment which provides, directly or indirectly, for the crediting of any obligation or liability of the Borrower to such Lessee against future rentals accruing under the Lease, other than as provided therein;

5.20.3 The Lessor delivered to Agent or its designee an original counterpart of such Lease;

5.20.4 The documents and information delivered to Agent pursuant to **Section 4** with respect to such Equipment and Leases have been so delivered; and

5.20.5 All rentals, fees, costs, expenses and charges paid or payable by the Lessee under any Lease, including without limitation, any brokerage and other fees paid to the Borrower do not violate any Applicable Law relating to the maximum fees, costs, expenses or charges that can be charged in any jurisdiction in which any Equipment is located or in which the corresponding Lessee is located, or in which a transaction was consummated, or in any other jurisdiction which may have jurisdiction with respect to any such Equipment, Lease or Lessee.

5.21 Cape Town Convention.

5.21.1 The Borrower is (a) a “Transactional User Entity” (as such term is defined in the Regulations for the International Registry); (b) “situated”, for the purposes of the Cape Town Convention, in the United States; and (c) has the “power to dispose” (as such term is used in the Cape Town Convention) of the Equipment;

5.21.2 The Equipment are “aircraft objects” (as such term is defined in the Cape Town Convention);

5.21.3 The Borrower has identified any and all Cape Town Eligible Leases, and has notified Agent of such Leases, in writing;

5.21.4 The payment of principal of and interest on the Notes, and the performance by the Borrower of the Obligations, are “associated rights” (as such term is defined in the Cape Town Convention) with respect to the Equipment.

5.22 Depreciation Policies. The Borrower’s depreciation policies with respect to the Equipment are as set forth on **Schedule 5.22**. These policies have been in effect substantially without change since January 1, 1998.

5.23 Swap Contracts. Borrower is not a party to any Swap Contract as of the Closing Date.

5.24 Eligible Leases. A list of all items of Eligible Assets subject to a Lease in effect as of the Closing Date is set forth in **Schedule 1.1b**.

5.25 Preservation of International Interests and Liens. Borrower shall or shall cause any other Person, as applicable, to (i) register with the FAA and/or International Registry and/or create a Lien in favor of Agent under Applicable Law, and thereafter maintain, such Lien and, as applicable, the International Interest of each Mortgage and Owner Trustee Mortgage, if any, and the International Interest of each Lease with a Lessee domiciled or with its chief executive office in a Contracting State; and (ii) maintain the rights and International Interests of the Equipment Owner in the Equipment, as against any third parties under Applicable Law and as against all third parties, whether in any Contracting State under the Cape Town Convention or otherwise.

5.26 Solvency. Borrower is, and after giving effect to the transactions contemplated hereby, will be, Solvent. “Solvent” for purposes of this Agreement means, with respect to any Person, that the aggregate present fair saleable value of such Person’s assets is in excess of the total amount of its probable liabilities on its existing debts as they become absolute and matured, such Person has not incurred debts beyond its foreseeable ability to pay such debts as they mature, and such Person has capital adequate to conduct the business it is presently engaged in or is about to engage in.

5.27 Anti-Corruption Laws; Sanctions. Borrower, its Subsidiaries and their respective officers and employees and to the knowledge of Borrower its directors and agents, are in compliance with Anti-Corruption Laws and applicable Sanctions in all material respects. Borrower has implemented and maintains in effect for itself and its Subsidiaries policies and procedures to ensure compliance by Borrower, its Subsidiaries, and their respective officers, employees, directors, and agents with Anti-Corruption Laws and applicable Sanctions. None of Borrower, any of its Subsidiaries or, to the knowledge of Borrower, any director or officer of Borrower or any of its Subsidiaries is an individual or entity that is, or is 50% or more owned (individually or in the aggregate, directly or indirectly) or controlled by individuals or entities (including any agency, political subdivision or instrumentality of any government) that are (i) the target of any Sanctions or (ii) located, organized or resident in a country or territory that is, or whose government is, the subject of Sanctions, currently Crimea, Cuba, Iran, North Korea, Sudan and Syria. Borrower will not request any Loan, and will not use, and Borrower will ensure that its Subsidiaries and its or their respective directors, officers, employees and agents shall not use, the proceeds of any Loan in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Laws. Borrower will not, directly or indirectly, use the proceeds of the Loans, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other Person, (i) to fund any activities or business of or with any Person, or in any country or territory, that, at the time of such funding, is, or whose government is, the subject of Sanctions, or (ii) in any other manner that would result in a violation of Sanctions by any Person (including any Person participating in the Loans, whether as underwriter, advisor, investor, or otherwise).

**6. AFFIRMATIVE COVENANTS (OTHER THAN INFORMATION AND REPORTING REQUIREMENTS)**

So long as any portion of the Loan remains in force and/or any Obligation remains unpaid, Borrower shall, and shall cause its Subsidiaries to, unless Requisite Lenders otherwise consent:

6.1 Payment of Taxes and Other Potential Liens. Pay and discharge promptly all Taxes, assessments and governmental charges or levies imposed upon any of them, upon its respective Property or any part thereof and upon its respective income or profits or any part thereof, except that Borrower and its Subsidiaries shall not be required to pay or cause to be paid any Tax that is not yet past due, or is being contested in good faith by appropriate proceedings so long as the relevant entity has established and maintains adequate reserves for the payment of the same.

6.2 Preservation of Existence. Preserve and maintain its respective existences in the jurisdiction of its formation and all material authorizations, rights, franchises, privileges, consents, approvals, orders, licenses, permits, or registrations from any Governmental Authority that are necessary for the transaction of its respective business and qualify and remain qualified to transact business in each jurisdiction in which such qualification is necessary in view of its respective business or the ownership or leasing of its respective Property.

6.3 Maintenance of Property. Maintain, or, with respect to Property subject to Leases, require the Lessees to maintain, in good working order and condition, consistent with industry practice and standards (taking into consideration normal wear and tear), all of its Property and not permit any waste thereof, and, in the ordinary course of business, make all needful and proper repairs, replacements, additions and improvements thereto as are necessary for the conduct of its business, except that the failure to maintain, preserve and protect a particular item of Property that is

at the end of its useful life or that is not of significant value, either intrinsically or to the operations of Borrower, shall not constitute a violation of this covenant.

**6.4** Maintenance of Insurance. Maintain or cause Lessee(s), as applicable, liability, casualty and other insurance (subject to customary deductibles and retentions) on all Property with responsible insurance companies in such amounts and against such risks as is carried by responsible companies engaged in similar businesses and owning similar assets in the general areas in which Borrower and its Subsidiaries operate and shall furnish to Lenders statements of its insurance coverage and shall promptly, upon Agent's request, furnish other or additional insurance deemed necessary by Agent to the extent that such insurance may be available. Borrower shall take all actions required to maintain the foregoing insurance and/or to comply with all requirements of such insurance coverage. Prior to any Loan disbursement, Agent shall be named as additional insureds on all liability insurance, all risk ground and flight coverage for damage or loss of the related Equipment, and war risk insurance (if applicable) and Agent shall be named as a loss payee under all hull insurance policies insuring the Collateral. Borrower shall deliver to Agent endorsements to all of its (a) "All Risk" and business interruption insurance policies naming Agent as loss payee, and (b) general liability and other liability policies naming Agent as an additional insured. All policies of insurance on real and personal property will include an endorsement, in form and substance acceptable to Agent, showing loss payable to Agent (Form 438 BFU or equivalent) and extra expense and business interruption endorsements. Such endorsement, or an independent instrument furnished to Agent, will provide that the insurer will give at least thirty (30) days' prior written notice to Agent before any such policy or policies of insurance shall be canceled. Upon the occurrence and continuation of a Default or Event of Default, Borrower hereby directs all present and future insurers under its and its Subsidiaries' "All Risk" policies of insurance to pay all proceeds payable thereunder directly to Agent for the ratable benefit of Lenders. Agent reserves the right at any time, upon review of Borrower's risk profile, to require additional forms and limits of insurance to adequately protect Lenders' interests in accordance with Agent's normal practices for similarly situated borrowers, and if the circumstances are unusual, in Agent's sole opinion.

**6.5** Compliance with Applicable Law. Comply with all Applicable Law, except that Borrower and its Subsidiaries need not comply with an Applicable Law then being contested by any of them in good faith by appropriate proceedings. The Borrower will maintain in effect and enforce policies and procedures designed to ensure compliance by Borrower, its Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions.

**6.6** Inspection Rights. Upon reasonable notice, at any time during regular business hours and as often as reasonably requested (but not so as to materially interfere with the business of Borrower or any of its Subsidiaries) permit Agent, or any authorized employee or representative thereof, to examine, audit and make copies and abstracts from the records and books of account of, and to visit and inspect the Property of, Borrower and its Subsidiaries and to discuss the affairs, finances and accounts of Borrower and its Subsidiaries with any of its officers, key employees or accountants. In addition, Agent shall cause a Field Examination to be completed annually. If no Event of Default or Potential Default shall be in existence, Borrower shall reimburse Agent for the reasonable expense of such annual Field Examination whether the examination is performed by Agent or a third party approved by Agent. If any Field Examination shall be made during the continuance of a Potential Default or an Event of Default, Borrower shall reimburse Agent for the reasonable expense of such Field Examination without limit. At all times, it is understood and agreed by Borrower that all expenses in connection with any such Field Examination which may be incurred by Borrower, any officers and employees thereof and the attorneys and independent certified public accountants therefor shall be expenses payable by Borrower and shall not be expenses of Agent or Lenders. Agent shall complete a Field Examination within 90 days of the Closing Date, with the scope of such Field Examination to be determined by Agent.

**6.7** Keeping of Records and Books of Account. Keep adequate records and books of account reflecting all financial transactions in conformity with GAAP, consistently applied, and in material conformity with all applicable requirements of any Governmental Authority having regulatory jurisdiction over Borrower and its Subsidiaries.

**6.8** Compliance with Agreements. Promptly and fully comply with all Contractual Obligations to which any one or more of them is a party, except for any such Contractual Obligations (a) the performance of which would cause a Default or (b) then being contested by any of them in good faith by appropriate proceedings.

**6.9** Use of Proceeds. Use the proceeds of the Loans only for the purposes set forth in this Agreement.

**6.10** Hazardous Materials Laws. Keep and maintain all real property used and/or owned by Borrower and any of its Subsidiaries and each portion thereof in compliance in all material respects with all applicable Hazardous Materials Laws and promptly notify Lender in writing (attaching a copy of any pertinent written material) of (a) any and all material enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened in writing by a Governmental Authority pursuant to any applicable Hazardous Materials Laws, (b) any and all material claims made or threatened in writing by any Person against Borrower relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Materials and (c) discovery by any senior officer of any of Borrower of any material occurrence or condition on any real property adjoining or in the vicinity of such real property that could reasonably be expected to cause such real property or any part thereof to be subject to any restrictions on the ownership, occupancy, transferability or use of such real property under any applicable Hazardous Materials Laws.

**6.11** Future Subsidiaries. Other than (i) JHC, (ii) JMC, (iii) JFC, and (iv) the Excluded Subsidiaries consisting of ACY SN 19002 Limited, ACY SN 19003 Limited, ACY SN 15129 LLC and ACY E-175 LLC, Borrower shall not create nor allow to exist any Subsidiary.

**6.12** Payment of Obligations. (a) Pay and discharge or cause to be paid and discharged all Obligations in a timely manner; (b) pay and discharge, or cause to be paid and discharged, its Indebtedness in the ordinary course of business prior to an Event of Default; (c) pay and discharge, or cause to be paid and discharged promptly, all Charges; and (d) pay all lawful claims for labor, materials, supplies and services or otherwise, before any thereof shall become in default.

**6.13** Conduct of Business. (a) Conduct its business substantially as now conducted or as otherwise permitted hereunder; and (b) at all times maintain, preserve and protect all of the Collateral and keep the same in good repair, working order and condition consistent with industry practices and standards (taking into consideration ordinary wear and tear and excluding inventory and parts which by their nature may not be in

good repair, working order or condition) and from time to time make, or cause to be made, all necessary or appropriate repairs, replacements and improvements thereto consistent with industry practices and standards.

6.14 **Further Assurances; Schedule Supplements.** At any time and from time to time, upon the written request of Agent and at the sole expense of Borrower, promptly and duly execute and deliver any and all such further instruments and documents and take such further action as such Agent may reasonably request to obtain the full benefits of this Agreement and to protect, preserve and maintain all respective parties' rights in the Collateral and under this Agreement. Upon the occurrence and continuation of a Default or Event of Default and as often as Agent may thereafter require, Borrower will supplement each Schedule to this Agreement with respect to any matter hereafter arising that, if existing or occurring as of the Closing Date, would have been required to be set forth or described in such Schedule; provided, that such supplement shall not be deemed to be an amendment thereof unless expressly consented to in writing by Agent.

6.15 **Financial Covenants.** Maintain the following financial covenants on a consolidated basis, each of which shall be calculated in accordance with GAAP consistently applied as of the end of each Fiscal Quarter, and, where indicated, on a twelve (12) month trailing basis:

6.15.1 **Maximum Leverage Ratio.** A ratio of Funded Debt to Tangible Net Worth of (i) not more than 3.75 : 1.00 for the Fiscal Quarters ended December 31, 2018, March 31, 2019, June 30, 2019 and September 30, 2019, and (ii) for each Fiscal Quarter thereafter, of not more than 3.50 : 1.00, measured at the end of each Fiscal Quarter.

6.15.2 **Interest Coverage Ratio.** An Interest Coverage Ratio of at least 2.25 to 1.00. For purposes of this **Section 6.15.2**, "**Interest Coverage Ratio**" means the ratio calculated as follows (calculated on a twelve (12) month trailing basis): Consolidated EBITDA, divided by Consolidated Cash Interest Expense.

6.15.3 **Debt Service Coverage Ratio.** From the date of this Agreement, a Debt Service Coverage Ratio of at least 1.05: 1.00, calculated on a twelve (12) month trailing basis. "**Debt Service Coverage Ratio**" means the ratio of (a) (i) Consolidated Adjusted EBITDA to (b) Consolidated Total Debt Service for such period.

6.15.4 **Minimum Recourse Debt Interest Coverage Ratio.** From the date of this Agreement, a Minimum Recourse Debt Interest Coverage Ratio of not less than 2.25 : 1.00. "**Minimum Recourse Debt Interest Coverage Ratio**" means the ratio of Borrower Only EBITDA divided by Recourse Cash Interest Expense. Compliance with the covenant calculated pursuant to this **Section 6.15.4** is required for the period following the closing of the Term Loan Facility.

6.15.5 **Minimum Recourse Debt Service Coverage Ratio.** From the date of this Agreement, a Minimum Recourse Debt Service Coverage Ratio of at least 1.05 : 1.00. "**Minimum Recourse Debt Service Coverage Ratio**" means the ratio of Borrower Only Adjusted EBITDA divided by Borrower Only Debt Service. Compliance with the covenant calculated pursuant to this **Section 6.15.5** is required for the period following the closing of the Term Loan Facility.

**6.15.6** **Minimum Tangible Net Worth Covenant.** "**Minimum Tangible Net Worth**" shall be an amount equal to or greater than the sum of the following: (i) eighty five percent (85%) of Tangible Net Worth as of June 30, 2018, (ii) fifty percent (50%) of Net Income reported in each successive Fiscal Quarter with no deduction for operating losses reported for such Fiscal Quarter, (iii) one hundred percent (100%) of the net proceeds from any additional equity offering in excess of Five Million and 00/100 Dollars (\$5,000,000.00), and (iv) fifty percent (50%) of any incremental additive equity associated with any Acquisition, less the Merger Shareholder Equity Reduction and less Fleet Renewal Expenses.

**6.15.7** **No Net Loss.** Borrower shall not suffer a consolidated net loss, as calculated according to GAAP, as of the end of any Fiscal Quarter, calculated on a twelve (12) month trailing basis. For the avoidance of doubt, net loss shall exclude the Merger Settlement Loss, Merger Expenses and Fleet Renewal Expenses incurred during the trailing twelve (12) month period.

6.15.8 **Utilization Covenant.** The Utilization Rate shall be at least seventy-five percent (75%) calculated on a twelve (12) month trailing basis and weighted by the Appraised Value of each item of Equipment (excluding Spot Market Assets). "**Utilization Rate**" means the sum of (i) the number of days each item of Equipment (excluding Spot Market Assets) is subject to an Eligible Lease during the measurement period multiplied by its Appraised Value divided by the sum of (ii) the number of days each item of Equipment (excluding Spot Market Assets) is owned multiplied by its Appraised Value.

6.15.9 **Revenue Concentration Limit.** Borrower shall have (i) no more than twenty-five percent (25%) of Borrower's annual operating lease revenue (excluding maintenance reserves) from any one (1) Lessee nor (ii) more than forty-two percent (42%) of Borrower's annual operating lease revenue (excluding maintenance reserves) from any two (2) Lessees through the Fiscal Quarter ended September 30, 2019, and forty percent (40%) of Borrower's annual operating lease revenue (excluding maintenance reserves) from any two (2) Lessees for each Fiscal Quarter ended December 31, 2019 and thereafter, each calculated on a twelve (12) month trailing basis. For purposes of this **Section 6.15.9**, operating lease revenue shall include "Proforma Revenue" for Eligible Assets that have been subject to a Lease for less than a full calendar year, calculated until a full calendar year has elapsed after the date such Eligible Asset is pledged as Collateral as the product of (x) monthly GAAP rent for the mid-period acquisitions multiplied by (y) 12 minus the number of months the Eligible Asset has been subject to a Lease in the trailing twelve month period for such Eligible Asset. Operating lease revenue for this **Section 6.15.9** shall include rents under finance leases as if they are accounted for as operating leases, consistent with current practice.

6.16 **Subordination of Third Party Fees.** Provide a subordination, on terms satisfactory to Agent, of any fees paid to any Subsidiaries or Affiliates of Borrower pursuant to ongoing contractual arrangements for services provided to Borrower, including without limitation, licensing, management and marketing fees.

6.17 **Maintenance of Borrowing Base.** Maintain the value of the Borrowing Base at all times such that no Borrowing Base Deficiency occurs.

6.18 Placards. Affix and maintain or use its best efforts to cause each Lessee under a Lease to affix to and maintain on all item(s) of Eligible Assets a placard bearing an inscription substantially in the form attached hereto as **Exhibit I** or such other inscription as Agent from time to time may reasonably request. The Borrower shall, on a quarterly basis, provide to Agent a list of all Eligible Assets subject to a Lease indicating, to the best knowledge of the Borrower, which items of Equipment have placards affixed and on which no such placard is affixed.

6.19 Maintenance of Current Depreciation Policies. Maintain its method of depreciating its assets substantially consistent with past practices as set forth in **Schedule 5.22** and promptly notify Lender of any deviation from such practices.

6.20 Preservation of International Interests and Liens. At its expense, cause (i) the registration with the International Registry of the International Interests with respect to the Mortgage and each Lease with a Lessee domiciled or with its chief executive office in a Contracting State or otherwise create a Lien in favor of Agent under Applicable Law, and (ii) maintain the rights and International Interests of the Equipment Owner in the Equipment or otherwise maintain such Lien, as against any third parties under Applicable Law and as against all third parties, whether in any Contracting State under the Cape Town Convention or otherwise. The Borrower agrees to furnish Agent with copies of all documents relating to the foregoing and with recording and registration data as promptly as practicable following the issuance of the same by the FAA, the International Registry, or such other Person under Applicable Law.

6.21 Maintenance of JMC Management Agreement. Provide prompt notice to Agent of any amendment or termination of the JMC Management Agreement.

6.22 Interest Rate Protection. Within thirty (30) days after the Closing Date, to the extent necessary to fix or hedge interest rate fluctuations on not less than the greater of (a) fifty percent (50%) of the aggregate Loan balance at Closing and (b) \$50,000,000, the Borrower shall enter into, and provide evidence thereof to the Agent, a Swap Contract(s) to fix or hedge on such terms (including the tenor thereof) reasonably satisfactory to the Agent.

6.23 Maintenance of Eligible Collateral. Agent shall possess a first priority security interest in any Equipment included in the Collateral which shall be (i) electronically recorded on the International Registry (Cape Town Convention), (ii) filed with the FAA in the case of (A) any Aircraft that are registered with the FAA and (B) all Engines and (iii) promptly, to the satisfaction of Agent, and as soon as practical and in any event within one hundred and eighty (180) days following registration with the International Registry, perfected through all additional required local foreign jurisdiction security conventions (if any) to secure the payment, promptly when due.

6.24 Maintenance of Records. Borrower shall cause all lessees of Equipment to maintain adequate maintenance and usage records in English in accordance with applicable aviation regulations.

6.25 Excluded Assets.

(a) If an Excluded Asset is no longer pledged as collateral for any Permitted Excluded Subsidiary Financing and such Asset remains owned by the Excluded Subsidiary, Borrower shall promptly notify the Agent thereof and cause the Excluded Subsidiary to become a Subsidiary hereunder by causing its assets to be subjected to a Lien securing the Obligations, including its execution of a Subsidiary Guaranty and Security Agreement, and will take such actions as shall be necessary or shall be requested by the Lenders to grant and perfect such Liens.

(b) Except as provided in subsection (c) below, if the sale or disposition of an Excluded Asset generates funds in excess of the amount sufficient to prepay or repay the Permitted Excluded Subsidiary Financing secured by such Excluded Asset and pay the third-party costs associated with such prepayment or repayment and sale (the "Excess Proceeds"), Borrower shall promptly notify the Agent thereof and either (i) cause such Excluded Subsidiary to become a Subsidiary hereunder in accordance with Subsection 6.25(a), or (ii) cause the Excess Proceeds to be transferred to Borrower's possession such that, in either case, the Excess Proceeds become part of the Collateral.

(c) So long as the loan tranche under the Term Loan Facility owing by any of the Excluded Subsidiaries which owns the Aircraft described on **Schedule 1.1d** and bearing serial numbers, respectively, 19002 (the "Air Nostrum 1 Aircraft"), 19003 (the "Air Nostrum 2 Aircraft") and, together with Air Nostrum 1 Aircraft, the "Air Nostrum Aircraft"), or 15129 ("Adria Aircraft") (with such Excluded Subsidiaries referred to herein, respectively, as the "Air Nostrum 1 Borrower", the "Air Nostrum 2 Borrower" and the "Adria Borrower", with the Air Nostrum 1 Borrower and Air Nostrum 2 Borrower referred to herein together as the "Air Nostrum Borrower") remains outstanding, then the following shall apply:

(1) With respect to Excess Proceeds from Aircraft that is an Excluded Asset other than Air Nostrum Aircraft and Adria Aircraft, such Excess Proceeds may be applied as provided in the Term Loan Facility, which provides for the application of such Excess Proceeds, promptly following availability, to be used, to either (x) prepay (in full or in part) the indebtedness under the Term Loan Facility by such Excluded Subsidiary that owns such Aircraft or any other Excluded Subsidiary, or (y) if the loan tranche owing by Adria Borrower under the Term Loan Facility is then outstanding, deposit such Excess Proceeds in a cash collateral account for repayment of the Adria Debt established under the Term Loan Facility (the "Adria Cash Collateral Account").

- (2) With respect to Excess Proceeds from either Air Nostrum Aircraft, such Excess Proceeds shall, promptly following availability, be used, (x) first, to satisfy the loan tranche under the Term Loan Facility owing by the other Air Nostrum (and owing by either Air Nostrum 1 Borrower or Air Nostrum 2 Borrower) to the extent such loan tranche is then outstanding, and (y) second, to satisfy the loan tranche thereunder secured by the Adria Aircraft (and owing by the Adria Borrower), which must be done by upon receipt of such Excess Proceeds, unless Borrower obtains Agent's prior written consent for the deposit of such Excess Proceeds into the Adria Cash Collateral Account.
- (3) With respect to Excess Proceeds from the Adria Aircraft, (x) if the indebtedness under the Term Loan Facility owing by Air Nostrum 1 Borrower or Air Nostrum 2 Borrower is then outstanding, then such Excess Proceeds may be used to prepay (in full or in part) the indebtedness under the Term Loan Facility by the Air Nostrum Borrower or the other Excluded Subsidiary owning the Aircraft leased to Republic Airline, Inc., and (y) if the indebtedness under the Term Loan Facility owing by Air Nostrum 1 Borrower and Air Nostrum 2 Borrower is then no longer outstanding, Borrower shall comply with subsection (b) above and such Excess Proceeds shall become Collateral.
- (d) Once the applicable loan tranches of the Term Loan Facility secured by the Air Nostrum Aircraft and the Adria Aircraft and repaid, such Aircraft shall no longer be part of the Excluded Assets and the Excluded Subsidiaries owning such Aircraft are no longer borrowers under the Term Loan Facility.

## 7. NEGATIVE COVENANTS

Borrower covenants and agrees that, without Requisite Lenders' prior written consent, from the Closing Date until the Termination Date, Borrower and its Subsidiaries shall not, directly or indirectly, by operation of law or otherwise:

7.1 Modification of Formation Documents. Amend its certificate of incorporation or formation documents that could have or reasonably be expected to have a Material Adverse Effect.

7.2 Failure to Act/Duty to Act. Take any action or omit to take any action, which act or omission would constitute a material default or a material event of default pursuant to, or noncompliance with, any contract, lease (including any Leases), mortgage, deed of trust or instrument to which it is a party or by which it or any of its property is bound, or any document creating a Lien and which would have a Material Adverse Effect on Borrower's business.

7.3 Modification of Debt. Cancel or modify any debt owing to it, except for reasonable consideration in the ordinary course of its business or which would not have a Material Adverse Effect on Borrower's financial condition.

7.4 Transfers to Restricted Subsidiaries. Allow Cash or any other Collateral to be directly or indirectly transferred to any Restricted Subsidiary; provided that, so long as no Default or Event of Default then exists, Borrower may transfer to JFC, on a monthly basis, funds sufficient to satisfy the Canadian Employee Obligations for the applicable month.

7.5 Disposition of Property. Make any sale, transfer or other disposition in any single transaction or series of related transactions of any asset or group of related assets of Borrower or any of its Subsidiaries, whether now owned or hereafter acquired ("Disposition"), except a Disposition by Borrower to a Wholly-Owned Subsidiary that is not a Restricted Subsidiary.

7.6 Mergers. Merge or consolidate with or into any Person, except (A) mergers and consolidations of (i) a Subsidiary of Borrower that is not a Restricted Subsidiary into Borrower or a Wholly-Owned Subsidiary that is not a Restricted Subsidiary or (ii) Subsidiaries with each other (but not a merger involving a Subsidiary and a Restricted Subsidiary) and (B) a merger or consolidation of a Person (that is not a Restricted Subsidiary) into Borrower or with or into a Wholly-Owned Subsidiary of Borrower that is not prohibited by **Section 7.7**; provided that (a) Borrower is the surviving entity, (b) no Change in Control results therefrom, (c) no Default or Event of Default then exists or would result therefrom, (d) Borrower executes such amendments to the Loan Documents as Agent may reasonably determine are appropriate as a result of such merger and/or Borrower shall cause any Subsidiary to execute such amendments to the Loan Documents or additional Loan Documents, including but not limited to a Subsidiary Guaranty and Security Agreement, as Agent may reasonably determine are appropriate as a result of such merger, (e) the aggregate consideration paid or to be paid (whether cash, notes, stock, or assumption of debt or otherwise) by the Borrower and/or its Subsidiaries in any one such merger or consolidation does not exceed \$10,000,000.00, and (f) such aggregate consideration with respect to all such mergers or consolidations shall not exceed \$15,000,000.00 in any Fiscal Year. Without limitation, no such merger or consolidation shall result in a violation of the terms of **Section 6.2** or **Section 6.13**. The Borrower shall promptly notify the Agent of any merger or consolidation involving the Borrower.

7.7 Hostile Acquisitions. Directly or indirectly use the proceeds of any Loan in connection with the Acquisition of part or all of a voting interest of five percent (5%) or more in any corporation or other business entity if such Acquisition is opposed by the board of directors of such corporation or business entity.

7.8 Distributions. Make any Distribution, whether from capital, income or otherwise, whether in Cash or other Property; provided, Borrower may declare or pay a dividend if no Default or Event of Default exists prior to or after giving effect to such declaration, payment or reserve for payment.

7.9 ERISA. Create or maintain any Pension Plans or incur any withdrawal liability to any Multiemployer Plan (as defined herein).

7.10 Change in Nature of Business; Change in Control. Make any material change in the nature of the business of Borrower and its Subsidiaries, taken as a whole, or at any time, permit any Change in Control to occur.

7.11 Swap Contracts. Not enter into any Swap Contract, unless (i) such Swap Contract was entered into by such Person in the ordinary course of business for the purpose of directly mitigating risks associated with liabilities, commitments, investments, assets, or property held or reasonably anticipated by such Person, or changes in the value of securities issued by such Person, and not for purposes of speculation, (ii) such Swap Contract does not contain any provision exonerating the non-defaulting party from its obligation to make payments on outstanding transactions to the defaulting party other than normal setoff or netting rights, and (iii) with respect to a Swap Contract required hereunder, such Swap Contract was entered into with a Swap Contract Counterparty.

7.12 Liens and Negative Pledges. Create, incur, assume or suffer to exist any Lien or Negative Pledge of any nature upon or with respect to any of its respective Property or any Collateral or engage in any sale and leaseback transaction with respect to any of its respective Property or any Collateral, whether now owned or hereafter acquired, except:

7.12.1 Liens and Negative Pledges under the Loan Documents;

7.12.2 Permitted Liens;

7.12.3 Liens on Property acquired by Borrower or any of its Subsidiaries that were in existence at the time of the acquisition of such Property and were not created in contemplation of such acquisition;

7.12.4 Liens securing purchase money Indebtedness permitted by **Section 7.13.3** on and limited to the capital assets acquired, constructed or financed with the proceeds of such Indebtedness or with the proceeds of any Indebtedness directly or indirectly refinanced by such Indebtedness;

7.12.5 Liens securing Lender Hedging Obligations; or

7.12.6 Liens on the Excluded Assets and the equity interests in the Excluded Subsidiaries, securing the Permitted Excluded Subsidiary Financing.

7.13 Indebtedness and Guaranteed Indebtedness. Create, incur or assume any Indebtedness or guaranty obligation except:

7.13.1 Indebtedness and Guaranteed Indebtedness existing on the Closing Date and disclosed in **Schedule 7.13**, and refinancings, renewals, extensions or amendments that do not increase the amount thereof;

7.13.2 Indebtedness and Guaranteed Indebtedness under the Loan Documents;

7.13.3 Indebtedness and Guaranteed Indebtedness owed to Borrower or any of its Subsidiaries (other than a Restricted Subsidiary except the Excluded Subsidiaries with respect to the Permitted Excluded Subsidiary Financing);

7.13.4 Indebtedness consisting of Capital Lease Obligations, or otherwise incurred to finance the purchase or construction of capital assets (which shall be deemed to exist if the Indebtedness is incurred at or within ninety (90) days before or after the purchase or construction of the capital asset), or to refinance any such Indebtedness;

7.13.5 Indebtedness related to Lender Hedging Obligations;

7.13.6 Guaranteed Indebtedness in support of the obligations of a Wholly-Owned Subsidiary (other than a Restricted Subsidiary), provided that such obligations are not prohibited by this Agreement; and

7.13.7 Permitted Indebtedness.

7.14 Transactions with Affiliates. Make, or suffer to exist, any loan or advance or extend any credit to any Person, including, without limitation, any Affiliate of the Borrower other than, but to the extent not otherwise prohibited hereunder:

7.14.1 advances to Affiliates in the ordinary course of business not to exceed \$250,000.00 in the aggregate outstanding at any time;

7.14.2 trade credit advanced in the ordinary course of business;

7.14.3 transactions between or among Borrower and its Subsidiaries; and

7.14.4 transactions on overall terms at least as favorable to Borrower or its Subsidiaries as would be the case in an arm's length transaction between unrelated parties of equal bargaining power.

7.15 Subsidiary Indebtedness. Permit (whether or not otherwise permitted under **Section 7.13**) any Subsidiary to create, incur, assume or suffer to exist any Indebtedness or guaranty obligation, except (a) Indebtedness and Guaranteed Indebtedness in existence on the Closing Date, (b) Indebtedness owed to Borrower or another Subsidiary of Borrower (to the extent not otherwise prohibited hereunder), (c) Capital Lease Obligations

and purchase money obligations of a Subsidiary in respect of Property used or leased by that Subsidiary; and (d) with respect to the Excluded Subsidiaries, the Permitted Excluded Subsidiary Financing.

7.16 Restricted Subsidiaries. Notwithstanding anything to the contrary in this Agreement or any other Loan Document:

7.16.1 permit any Restricted Subsidiary (i) to possess any Assets other than, with respect to the Excluded Subsidiaries, the Excluded Assets or any cash, cash equivalents or other proceeds other than proceeds from the ownership and operation of the Excluded Assets and, with respect to JFC, Cash sufficient to pay the Canadian Employee Obligations; (ii) incur any Indebtedness or Liens other than those permitted in accordance with the Permitted Excluded Subsidiary Financing; (iii) to conduct any business other than, with respect to the Excluded Subsidiaries, owning and operating the Excluded Assets (and activities incidental thereto); or (iv) except as otherwise permitted under **Section 7.1**, to amend its organizational documents;

7.16.2 create, assume, incur or suffer to exist any Lien on or in respect of any of its Assets for the benefit of any Restricted Subsidiary;

7.16.3 transfer, cause to be transferred, to any Restricted Subsidiary, any Assets constituting Collateral or of the type of Asset constituting Collateral (including, but not limited to, Cash) (except to the extent permitted under **Section 7.4**); or

7.16.4 make any Investment in any Restricted Subsidiary other than ownership of the Stock thereof.

7.17 New Shareholders. Issue or otherwise grant shares of stock to any new shareholders unless (i) Agent has confirmed that such transaction would not cause a violation of the Patriot Act and (ii) such new shareholder(s) has executed a stock pledge agreement and stock power in favor of Agent for the ratable benefit of Lenders, in form and substance satisfactory to Agent.

7.18 Redemptions; Dividends. Purchase, redeem, retire or otherwise acquire, directly or indirectly, or make any sinking fund payments with respect to, any shares of its Stock now or hereafter outstanding or set apart any sum for any such purpose; provided, however, that the Borrower may repurchase its issued and outstanding shares of Stock provided the sum of all dividends and stock repurchases in any Fiscal Year shall not exceed fifty percent (50%) of the Net Income for the prior four Fiscal Quarters.

7.19 Investments. Make or suffer to exist any Investment, other than:

7.19.1 Investments in existence on the Closing Date and disclosed on **Schedule 7.19**;

7.19.2 Investments consisting of Cash Equivalents;

7.19.3 Investments in a Person that is the subject of an Acquisition not prohibited by **Section 7.7**;

7.19.4 Investments consisting of advances to officers, directors and employees of Borrower and its Subsidiaries for travel, entertainment, relocation, anticipated bonus and analogous ordinary business purposes;

7.19.5 Investments in a Subsidiary that is a Wholly-Owned Subsidiary (to the extent not otherwise prohibited hereunder); provided that Borrower shall not (a) create or allow to exist any Subsidiary (unless with respect to Subsidiaries (excluding any Immaterial Subsidiary and, subject to **Section 6.25**, any Excluded Subsidiary) the same shall have executed and delivered to the Agent a guaranty and a security agreement each in form acceptable to the Agent creating in favor of the Agent a first priority perfected Lien on its assets, and, if Agent so requests in its discretion, Borrower shall have delivered to Agent a pledge of 100% of the stock of such Subsidiary in form and substance satisfactory to Agent), or (b) purchase or otherwise acquire (unless no Default exists or would exist immediately thereafter) including, without limitation, by way of share exchange, any part or amount of the capital stock or assets of, or make any Investments in any other Person, except for stock, obligations or securities received in settlement of debts owing to it created in the ordinary course of business and Investments otherwise expressly permitted under this Agreement.

7.19.6 Investments consisting of the extension of credit to customers or suppliers of Borrower and its Subsidiaries in the ordinary course of business and any Investments received in satisfaction or partial satisfaction thereof;

7.19.7 Investments received in connection with the settlement of a bona fide dispute with another Person; or

7.19.8 Investments representing all or a portion of the sales price of Property sold or services provided to another Person.

7.20 Additional Bank Accounts. Directly or indirectly, open, maintain or otherwise have any checking, savings or other accounts where money is or may be deposited or maintained outside the United States of America, except as may be required for the receipt of Lease payments from a Lessee located in a non-U.S. jurisdiction.

## **8. INFORMATION AND REPORTING REQUIREMENTS**

8.1 Reports and Notices. Borrower represents, warrants and agrees that, from and after the Closing Date until the Termination Date, Borrower shall deliver, or cause to be delivered, to Agent:

8.1.1 within sixty (60) days following the end of each of the first three (3) Fiscal Quarters for each Fiscal Year, (unless an extension is approved by the SEC), SEC Form 10-Q of Borrower for such Fiscal Quarter; provided that the timely EDGAR SEC filing of such Form

10-Q, along with delivery of a hard or .pdf copy to Agent of such Form 10-Q, shall satisfy this requirement; provided further that if any such Form 10-Q is not filed with the SEC within such sixty (60) day time period, then Borrower shall instead deliver, or cause to be delivered, to Agent internally prepared consolidated Financial Statements of Borrower and its Subsidiaries (including income statement, balance sheet, and statement of cash flows) on or before the end of the sixty (60) day period;

8.1.2 within sixty (60) days following the end of each of the first three (3) Fiscal Quarters, a certification from Borrower, in the form of a Compliance Certificate;

8.1.3 within ninety (90) days following the end of each Fiscal Year, (unless an extension is approved by the SEC) or, in any event, within fifteen (15) days of a timely filing with the SEC, (a) the consolidated Financial Statements of Borrower for such Fiscal Year; (b) an unqualified report and opinion by an independent certified public accounting firm acceptable to Agent with respect to such Financial Statements, (c) any management letters of such public accounting firm addressed to Borrower, (d) internally prepared consolidating unaudited balance sheets of Borrower and its consolidated Subsidiaries (for clarity, including Excluded Subsidiaries), as of the end of such Fiscal Year and the related consolidating unaudited statements of income and cash flow of Borrower and its consolidated Subsidiaries (for clarity, including Excluded Subsidiaries) for such fiscal year setting forth in each case in comparative form the figures for the corresponding previous year, and certified by an Authorized Signatory of Borrower as being prepared in accordance with GAAP and fairly stated in all material respects; and (d) a Compliance Certificate; provided that the timely EDGAR SEC filing of a Form 10-K, along with delivery of a hard or .pdf copy to Agent of such Form 10-K, shall satisfy the requirements of subsections 8.1.3(a) and (b); provided further, that if such Form 10-K is not filed with the SEC within such ninety (90) day time period, then the Borrower shall instead deliver, or cause to be delivered, to Agent internally prepared consolidated Financial Statements of Borrower and its Subsidiaries for such Fiscal Year (including income statement, balance sheet, and statement of cash flows) on or before the end of the period ending one hundred five (105) days after the end of the Fiscal Year;

8.1.4 Within (60) days following the end of each Fiscal Quarter, internally prepared consolidating unaudited balance sheets of Borrower and its consolidated Subsidiaries (for clarity, including Excluded Subsidiaries), as of the end of such Fiscal Quarter, and the related consolidating unaudited statements of income, and cash flows of Borrower and its consolidated Subsidiaries (for clarity, including Excluded Subsidiaries) for such fiscal quarter, setting forth in each case in comparative form the figures for the corresponding periods in the previous year, and certified by an Authorized Signatory of Borrower as being prepared in accordance with GAAP and fairly stated in all material respects;

8.1.5 as soon as practicable and in any event within 15 days after the end of each calendar month, a report listing the Leases of Equipment in the Borrowing Base (in form and substance reasonably satisfactory to the Agent);

8.1.6 as soon as available, but in any event within fifteen (15) days after the end of the immediately preceding calendar month, a Borrowing Base Certificate of the Borrower showing, as of the end of such calendar month setting forth, among other things, (i) a list of the Eligible Assets that are subject to an Eligible Lease; (ii) a list of all Equipment acquired and all Equipment sold by the Borrower since the date of the last Borrowing Base Certificate delivered to Agent; (iii) and a lease receivables aging report, which covers both Leases under which the Lessees are current and Leases under which the Lessees are delinquent (all of the foregoing in form and substances reasonably satisfactory to Agent);

8.1.7 as soon as available, but in any event within fifteen (15) days after the end of June 30 and December 31 of each Fiscal Year, two substantially concurrent Appraisals, each performed by an Appraiser acceptable to Agent and at Borrower's expense, with respect to all Eligible Assets. In addition, upon the request of any Lender, Borrower shall permit Agent to retain an Appraiser to conduct additional Appraisals, which shall be performed at Borrower's expense once per Fiscal Year with subsequent additional Appraisals at the requesting Lender's expense;

8.1.8 within twenty (20) days following the receipt by Agent of the Borrowing Base Certificate covering the last month of a Fiscal Quarter, an Appraisal with respect to Eligible Assets added to the Borrowing Base during the Fiscal Quarter just ended;

8.1.9 concurrently with the submission to the lender under the Term Loan Facility, unaudited Financial Statements of the Excluded Subsidiaries that are borrowers thereunder (required to be delivered under the Term Loan Facility within one hundred eighty (180) days after the end of each Fiscal Year of the Excluded Subsidiaries);

8.1.10 promptly upon their becoming available, copies of any (a) correspondence or notices received by the Borrower or any Subsidiary from any Governmental Authority which regulates the operations of the Borrower or any Subsidiary, including as to environmental matters and Hazardous Material, relating to an actual or threatened change or development which would have, or would reasonably be expected to have, a Material Adverse Effect on the Borrower or any Subsidiary; (b) written reports submitted to the Borrower by its independent accountants in connection with any annual or interim audit of the books of the Borrower made by such accountants; and (c) any appraisals received by the Borrower or any Subsidiary with respect to its Assets;

8.1.11 promptly, notice in writing of (i) any litigation, legal proceeding or dispute, other than disputes in the ordinary course of business or, whether or not in the ordinary course of business, involving amounts, individually or in the aggregate, in excess of \$200,000.00, affecting the Borrower or any Subsidiary as a defendant, whether or not fully covered by insurance, and regardless of the subject matter thereof, or, if no monetary amounts are claimed in connection therewith, which proceeding or dispute, if determined or resolved against the Borrower or any Subsidiary is reasonably likely to have a Material Adverse Effect on the Borrower or any Subsidiary, (ii) any cancellation or threatened cancellation by any insurance carrier of any insurance policy or policies carried by the Borrower or by any of its Subsidiaries on the assets and properties of the Borrower or any Subsidiary or (iii) any resignation or termination of any director or executive or senior officer of the Borrower;

8.1.12 promptly, and in any event within one (1) Business Day of when the Borrower becomes aware or, in the exercise of reasonable due diligence should have become aware of the same, notice in writing in the event that at any time the outstanding principal amount of the Loans to the Borrower shall exceed the amount of the Borrowing Base, and promptly, and in any event within five (5) Business Days, notify

in writing the Agent of any material damage to or other Event of Loss with respect to any Eligible Assets;

8.1.13 promptly upon the earlier of the date on which the Borrower becomes aware or, in the exercise of reasonable due diligence should have become aware of the same, notify the Agent (or, in the case of (f) below, the Agent) by telephone (to be confirmed within three calendar days in writing from the Borrower to each Bank) of the occurrence of any of the following:

(a) any Default;

(b) any default or event of default under any contract or contracts and the default or event of default involves payments by the Borrower in an aggregate amount equal to or in excess of \$200,000.00;

(c) a default or event of default under or as defined in any evidence of or agreements for any Indebtedness for borrowed money under which the Borrower's liability is equal to or in excess of \$200,000.00, individually or in the aggregate, whether or not an event of default thereunder has been declared by any party to such agreement or any event which, upon the lapse of time or the giving of notice or both, would become an event of default under any such agreement or instrument or would permit any party to any such instrument or agreement to terminate or suspend any commitment to lend to the Borrower or to declare or to cause any such indebtedness to be accelerated or payable before it would otherwise be due;

(d) any change in any Applicable Law, including, without limitation, changes in Tax laws and regulations, which would have a Material Adverse Effect on the Borrower or any Subsidiary;

(e) any litigation, administrative proceeding, investigation, business development, or change in financial condition which could reasonably have a Material Adverse Effect on the Borrower or any Subsidiary;

(f) any instance in which Equipment are operated (x) on routes with respect to which it is customary for air carriers flying comparable routes to carry confiscation or expropriation insurance or (y) in any area designated by companies providing such coverage as a recognized or threatened war zone or area of hostilities or an area where there is a substantial risk of confiscation or expropriation;

8.1.14 promptly upon receipt thereof or concurrently with delivery thereof by the Borrower, as the case may be, copies of any correspondence, requests, reports, statements, claims, consents, notices or other documents of any kind received or sent by the Borrower under or with respect to any Material Contract which evidence or relate to an event or circumstance which would have, or would reasonably be expected to have, a Material Adverse Effect on the Borrower or any Subsidiary;

8.1.15 promptly upon the filing thereof with the SEC one copy of each Financial Statement, report, notice or proxy statement sent by the Borrower to stockholders generally, and, a copy of each regular or periodic report, and any registration statement, or prospectus in respect thereof, filed by the Borrower with any securities exchange or with federal or state securities and exchange commissions or any successor agency; and

8.1.16 subject to the prohibitions set forth in **Section 7.1** hereof, promptly deliver to the Agent copies of any material amendments, modifications or supplements to (i) certificate of incorporation or by-laws and (ii) any Material Contract, certified, with respect to the certificate of incorporation, by the appropriate state officials, and, with respect to the other foregoing documents, by the secretary or assistant secretary of the Borrower.

8.2 **Budgets.** within ninety (90) days following the end of each Fiscal Year Borrower shall deliver to Agent its annual budget for the next Fiscal Year (such budget to include forecasted balance sheet, income statement and cash flow statement of Borrower).

8.3 **Other Reports.** Borrower shall notify Agent promptly of any occurrence causing a material loss or decline in value of any Collateral and the estimated (or actual, if available) amount of such loss or decline. Borrower shall, upon the request of any Lender or Agent, furnish to Agent such other reports in connection with the affairs, business, financial condition, operations, prospects or management of Borrower or the Collateral, all in reasonable detail, and Borrower shall advise Agent promptly, in reasonable detail, of: (a) any Lien, other than Permitted Liens, attaching to or asserted against any of the Collateral; (b) any material change in the composition of the Collateral; and (c) the occurrence of any other event which could reasonably be expected to have a Material Adverse Effect.

## **9. EVENTS OF DEFAULT; RIGHTS AND REMEDIES**

9.1 **Events of Default.** The occurrence of any one or more of the following events (regardless of the reason therefor) shall constitute an "Event of Default" under this Agreement:

9.1.1 Borrower shall fail to make any regularly scheduled payment of principal or interest in respect of any Obligations within three (3) Business Days after the same shall become due and payable or is declared due and payable (provided that no grace period shall apply to nonpayment of the Obligations on the Maturity Date); or

9.1.2 Borrower or Owner Trustee, as applicable, shall fail or neglect to perform, keep or observe any of the covenants, promises, agreements, requirements, conditions or other terms, Obligations (other than under **Section 9.1.1**) or provisions contained in this Agreement or any of the other Loan Documents and such default shall have continued for a period of thirty (30) days after Agent's or any Lender's notice to Borrower and/or Owner Trustee, as applicable, of such default hereunder; provided, there shall be no grace period for Borrower's failure to perform, keep or observe any of the covenants, promises, agreements, requirements, conditions or other terms or provisions contained in **Section 6.15** and **Section 7** (except for **Section 7.12**); or

9.1.3 an event of default shall occur under any Indebtedness to which Borrower is a party, or by which any such Person or its property is bound, and such event of default (1) involves the failure to make any payment, whether of principal, interest or otherwise, and whether due by scheduled maturity, required prepayment, acceleration, demand or otherwise, in respect of any Indebtedness (other than the Obligations) of such Person in an aggregate amount exceeding \$250,000, or (2) causes (or permits any holder of such Indebtedness or a trustee to cause) such Indebtedness, or a portion thereof, in an aggregate amount exceeding \$250,000 to become due prior to its stated maturity or prior to its regularly scheduled dates of payment; or

9.1.4 any representation or warranty in this Agreement or any other Loan Document, or in any written statement, report or certificate pursuant hereto or thereto, shall be untrue or incorrect in any material respect as of the date when made or deemed to be made by the Borrower or any Subsidiaries; or

9.1.5 any of the assets of Borrower or any Subsidiary having a value of \$1,000,000 or more shall be attached, seized, levied upon or subjected to a writ or distress warrant or come within the possession of any receiver, trustee, custodian or assignee for the benefit of creditors of such Person, and any of the foregoing shall remain unstayed or undismissed for sixty (60) consecutive days; or any Person other than Borrower or any Subsidiary shall apply for the appointment of a receiver, trustee or custodian for the assets of Borrower or any Subsidiary and the order appointing such receiver, trustee or custodian shall remain unstayed or undismissed for sixty (60) consecutive days; or Borrower or any Subsidiary shall have concealed, removed or permitted to be concealed or removed, any part of its Property with intent to hinder, delay or defraud its creditors or any of them or made or suffered a transfer of any of its property or the incurring of an obligation which may be fraudulent under any bankruptcy, fraudulent transfer or other similar law; or

9.1.6 a case or proceeding shall have been commenced involuntarily against Borrower or any Subsidiary in a court having competent jurisdiction seeking a decree or order: (1) under the Bankruptcy Code or any other applicable Federal, state or foreign Bankruptcy or other similar law, and seeking either (i) the appointment of a custodian, receiver, liquidator, assignee, trustee or sequestrator (or similar official) of such Person or of any substantial part of its properties, or (ii) the reorganization or winding up or liquidation of the affairs of any such Person and such case or proceeding shall remain undismissed or unstayed for sixty (60) consecutive days or such court shall enter a decree or order granting the relief sought in such case or proceeding; or (2) invalidating or denying (i) any Person's right, power, or competence to enter into or perform any of its obligations under any Loan Document, or (ii) the validity or enforceability of this Agreement or any other Loan Document or any action taken hereunder or thereunder; or

9.1.7 Borrower or any Subsidiary shall (1) file a petition under the Bankruptcy Code or any other applicable Federal, state or foreign bankruptcy or other similar law, (2) consent to the institution of proceedings thereunder or to the filing of any such petition or to the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee or sequestrator (or similar official) of any such Person or of any substantial part of its properties, (3) fail generally to pay (or admit in writing its inability to pay) its debts as such debts become due, or (4) take any corporate action in furtherance of any such action; or

9.1.8 final judgment or judgments (after the expiration of all times to appeal therefrom) for the payment of money in excess of \$1,000,000 in the aggregate shall be rendered against Borrower or any Subsidiary, unless the same shall be (i) fully covered by insurance (subject to any contractual deductibles) and the issuer(s) of the applicable policies shall have acknowledged substantial coverage in writing within fifteen (15) days of judgment, or (ii) vacated, stayed, bonded, paid or discharged within a period of fifteen (15) days from the date of such judgment; or

9.1.9 Borrower or any Subsidiary voluntarily or involuntarily dissolves or is dissolved, terminates or is terminated; or

9.1.10 Borrower or any Subsidiary is enjoined, restrained, or in any way prevented by the order of any court or other Governmental Authority, the effect of which order restricts such Person from conducting all or any material part of its business; or

9.1.11 the loss, suspension, revocation or failure to renew any License or permit now held or hereafter acquired by Borrower or any Subsidiary, which loss, suspension, revocation or failure to renew could reasonably be expected to have a Material Adverse Effect; or

9.1.12 any Lien or any provision of any Loan Document shall for any reason cease to be valid, binding and enforceable in accordance with its terms, or any Lien granted, or intended by the Loan Documents to be granted, to Agent shall cease to be a valid and perfected Lien having the first priority (or a lesser priority if expressly permitted in the Loan Documents) in any of the Collateral covered or purported to be covered thereby; or

9.1.13 any Change of Control of Borrower shall have occurred; or

9.1.14 The occurrence of any event of default or the equivalent thereof under any other Debt Instrument (as defined below), in each case following any applicable grace period, under any term, condition or covenant of any bond, note, debenture, guaranty, trust agreement, mortgage or similar instrument to which the Borrower or any Subsidiary is a party or by which it is bound, or by which any of its properties or assets may be affected (a "Debt Instrument") if the outstanding Indebtedness or obligations of the Borrower or such Subsidiary under such Debt Instrument exceeds \$1,000,000.00 in aggregate principal amount and (x) may be declared to be due and payable by reason of such default or event of default prior to the date on which such indebtedness or obligations would otherwise become due and payable, with or without the giving of notice or the passage of time or both, or to terminate or suspend any commitment to make advances or lend monies or to accelerate the rate of payment of unpaid Indebtedness or to terminate the Borrower or such Subsidiary as a servicer or manager of such Indebtedness or the assets secured thereby, and (y) is due and payable and unpaid; or

9.1.15 A circumstance or event has occurred that constitutes a Material Adverse Effect; or

9.1.16 An event of default shall occur under any Indebtedness to which any Subsidiary is a party, or by which any such Person or its property is bound, and such event of default (1) involves the failure to make any payment, whether of principal, interest or otherwise, and whether due by scheduled maturity, required prepayment, acceleration, demand or otherwise, in respect of any Indebtedness of such Person in an aggregate amount exceeding \$250,000, or (2) causes (or permits any holder of such Indebtedness to cause) such Indebtedness, or a portion thereof, in an aggregate amount exceeding \$250,000 to become due prior to its stated maturity or prior to its regularly scheduled dates of payment; or

9.1.17 An event of default shall occur under any Permitted Excluded Subsidiary Financing; or

9.1.18 There occurs under any Swap Contract an Early Termination Date (as defined in such Swap Contract) resulting from (A) any event of default under such Swap Contract as to which any Borrower or any Subsidiary is the Defaulting Party (as defined in such Swap Contract) or (B) any Termination Event (as so defined) under such Swap Contract as to which any Borrower or any Subsidiary is an Affected Party (as so defined) and, in either event, the Swap Termination Value owed by such Borrower or such Subsidiary as a result thereof is greater than \$250,000.

## 9.2 Remedies.

9.2.1 If any Default or Event of Default has occurred and is continuing, then Agent may, with the prior written approval of Requisite Lenders, exercise one or more of the following remedies: (1) upon notice to Borrower from Agent, increase the rate of interest applicable to the Loans to the Default Rate effective as of the date of the initial Default; or (2) terminate or suspend Lenders' obligation to make further Loans. In addition, if any Event of Default shall have occurred and be continuing, Agent may (upon prior written approval of Requisite Lenders), without notice, take any one or more of the following actions: (i) declare all or any portion of the Obligations to be forthwith due and payable, whereupon such Obligations shall become and be due and payable; or (ii) exercise any rights and remedies provided to Agent under the Loan Documents or at law or equity, including all remedies provided under the UCC; provided, that upon the occurrence of an Event of Default specified in **Sections 9.1.5, 9.1.6 or 9.1.7**, the Obligations shall become immediately due and payable (and any obligation of Lenders to make further Loans, if not previously terminated, shall immediately be terminated) without declaration, notice or demand by Agent.

9.2.2 In addition to all other rights and remedies of Agent or Lenders under this Agreement (except to the extent any such Collateral is subject to a lease (including any Lease) which provides for the quiet use and enjoyment of such Collateral by the Lessee thereunder), Borrower expressly agrees that, upon the occurrence of any Event of Default and prior written approval of Requisite Lenders, Agent may collect, receive, assemble, process, appropriate and realize upon the Collateral, or any part thereof, and may forthwith sell, lease, assign, give an option or options to purchase or otherwise dispose of and deliver said Collateral (or contract to do so), or any part thereof, in one or more parcels at public or private sale or sales, at any exchange at such prices as it may deem best, for cash or on credit or for future delivery without assumption of any credit risk. Agent shall have the right upon any such public sale or sales and, to the extent permitted by law, upon any such private sale or sales, to purchase for the benefit of such Agent by credit bid the whole or any part of said Collateral so sold, free of any right or equity of redemption, which equity of redemption Borrower hereby releases. Such sales may be adjourned, or continued from time to time with or without notice.

9.2.3 Borrower further agrees, upon the occurrence of an Event of Default and at Agent's request (except to the extent any such Collateral is subject to a Lease which provides for the quiet use and enjoyment of such Collateral by the Lessee thereunder), to assemble the Collateral and make it available to Agent at places which Agent shall reasonably select. Until Agent is able to effect a sale, lease, or other disposition of the Collateral and except to the extent any such Collateral is subject to a Lease which provides for the quiet use and enjoyment of such Collateral by the Lessee thereunder, Agent shall have the right to complete, assemble, use or operate the Collateral or any part thereof, to the extent that Agent deems appropriate, for the purpose of preserving such Collateral or its value or for any other purpose. Agent shall have no obligation to Borrower to maintain or preserve the rights of Borrower as against third parties with respect to any Collateral while such Collateral is in the possession of Agent. Agent may, if it so elects, seek the appointment of a receiver or keeper to take possession of any Collateral and to enforce any of Agent's remedies with respect to such appointment without prior notice or hearing. To the maximum extent permitted by Applicable Law, Borrower waives all claims, damages, and demands against Agent, its Affiliates, Agent, and the officers and employees of any of them arising out of the repossession, retention or sale of any Collateral except such as are determined in a final judgment by a court of competent jurisdiction to have arisen out of the gross negligence or willful misconduct of such Person. Borrower agrees that ten (10) days' prior notice by Agent to Borrower of the time and place of any public sale or of the time after which a private sale may take place is reasonable notification of such matters. Borrower shall remain liable for any deficiency if the proceeds of any sale or disposition of the Collateral are insufficient to pay all amounts to which Agent is entitled.

9.2.4 Each Lender's rights and remedies under this Agreement shall be cumulative and nonexclusive of any other rights and remedies which Lenders may have under any Loan Document or at law or in equity. Recourse to the Collateral shall not be required. All rights, remedies and powers provided in this Agreement may be exercised only to the extent that the exercise thereof does not violate any Applicable Law, and all provisions of this Agreement are intended to be subject to any Applicable Law that may be controlling and to be limited, to the extent necessary, so that they do not render this Agreement invalid, unenforceable, in whole or in part.

9.3 Waivers by Borrower. Except as otherwise provided for in this Agreement and to the fullest extent permitted by Applicable Law, Borrower waives: (a) presentment, demand and protest, and notice of presentment, dishonor, intent to accelerate, acceleration, protest, default, nonpayment, maturity, release, compromise, settlement, extension or renewal of any or all Loan Documents, the Notes or any other notes, commercial paper, Accounts, Contracts, Documents, Instruments, Chattel Paper and guaranties at any time held by Lender on which Borrower may in any way be liable, and hereby ratifies and confirms whatever Lender may do in this regard; (b) all rights to notice and a hearing prior to Lender's taking possession or control of, or to Lender's replevin, attachment or levy upon, any Collateral or any bond or security which might be required by any court prior to allowing Lender to exercise any of its remedies; and (c) the benefit of all valuation, appraisal and exemption laws. Borrower acknowledges that it has been advised by counsel with respect to this Agreement, the other Loan Documents and the transactions evidenced hereby and thereby.

9.4 Proceeds. The Proceeds of any sale, disposition or other realization upon any Collateral shall be applied by any Lender upon receipt as set forth in **Section 2.11**.

## **10. SUCCESSORS AND ASSIGNS**

Each Loan Document shall be binding on and shall inure to the benefit of Borrower, Lenders, Agent and their respective successors and assigns, except as otherwise provided herein or therein. Borrower shall not assign, transfer, hypothecate or otherwise convey its rights, benefits, obligations or duties under any Loan Document without the prior written consent of all of the Lenders, and any such purported assignment, transfer, hypothecation or other conveyance by Borrower without the prior express written consent of the Requisite Lenders shall be void. The terms and provisions of this Agreement and the other Loan Documents are for the purpose of defining the relative rights and obligations of Borrower and Lenders with respect to the transactions contemplated hereby and thereby, and there shall be no third party beneficiaries of any of the terms and provisions of any of the Loan Documents. Subject to **Section 12.8.5** of this Agreement, each Lender reserves the right at any time to create and sell a participation in any portion of the Loans and the Loan Documents and to sell, transfer or assign any or all of its rights in the Loans and under the Loan Documents.

## **11. DISPUTE RESOLUTION**

11.1 Alternative Dispute Resolution Agreement. Any controversy or claim between or among the parties, their agents and employees, arising under or in connection with (1) this Agreement or any of the other Loan Documents, (2) any negotiations, correspondence or communications relating to this Agreement or any of the other Loan Documents, whether or not incorporated herein or therein, or any indebtedness evidenced hereby or thereby, (3) the administration or management of this Agreement or any of the other Loan Documents or any indebtedness evidenced hereby or thereby, or (4) any alleged agreements, promises, representations or transactions in connection herewith or therewith, including any claim or controversy which arises out of or is based upon an alleged tort, shall be subject to and resolved in accordance with the Alternative Dispute Resolution Agreement.

11.2 No Limitation on Remedies. No provision of, or the exercise of any rights under, **Section 11.1** shall limit the right of any party to the Alternative Dispute Resolution Agreement to exercise self-help remedies such as set-off, to foreclose against any Collateral, or to obtain provisional or ancillary remedies such as injunctive relief or the appointment of a receiver from a court having jurisdiction before, during or after the pendency of any mediation or arbitration.

11.3 Inconsistency. To the extent any provision of the Alternative Dispute Resolution Agreement is inconsistent with the other terms of this Agreement, the terms of the Alternative Dispute Resolution Agreement shall prevail.

## **12. MISCELLANEOUS**

12.1 Complete Agreement; Modification of Agreement. This Agreement and the other Loan Documents constitute the complete agreement among the parties with respect to the subject matter hereof and thereof, supersede all prior agreements, commitments, understandings or inducements (oral or written, expressed or implied), and may not be modified, altered or amended except by a written agreement signed by Agent, Lenders, Borrower and each other Person executing this Agreement or any other Loan Document, as applicable.

12.2 Reimbursement and Expenses. Borrower will promptly pay:

12.2.1 without regard for whether any Loans are made, all reasonable out-of-pocket expenses of Agent in connection with the preparation, negotiation, execution, and delivery of this Agreement, the Notes and the other Loan Documents, including all due diligence, all post-closing matters, syndication, and the transactions contemplated hereunder and thereunder and the making of the Loans, including, recording and filing fees, and the reasonable attorneys' fees and disbursements of counsel for Agent;

12.2.2 all reasonable out-of-pocket expenses of Agent in connection with the administration or monitoring of the Loans, the Collateral, this Agreement and the other Loan Documents in accordance with the provisions thereof, the restructuring and refinancing of the transaction herein contemplated, and in connection with the preparation, negotiation, execution, and delivery of any waiver, amendment, or consent by Agent relating to this Agreement or the other Loan Documents, including, auditing costs and expenses with respect to the Collateral and the reasonable attorneys' fees and expenses of counsel;

12.2.3 all of Agent's out-of-pocket costs and expenses of obtaining performance under this Agreement or the other Loan Documents, of collection of the Obligations, in any arbitration, mediation, legal action or proceeding (including any case under the Bankruptcy Code or similar laws), which, in each case, shall include reasonable fees and expenses of counsel for Agent and each Lender;

12.2.4 all Charges levied on, or assessed, placed or made against any Collateral, the Notes or the other Loan Documents or the Obligations; and

12.2.5 whenever Agent or any Lender sustains or incurs any losses or out-of-pocket expenses in connection with (1) the failure by Borrower to borrow or reborrow any LIBOR Loan, or reborrow any Revolving Loan as a LIBOR Loan, in each case, after having given notice of its intention to borrow in accordance with **Section 2.1.5** (whether by the election of Borrower not to proceed or the failure to satisfy any of the conditions set forth in **Section 4**), or (2) prepayment of any LIBOR Loan in whole or in part, Borrower shall pay to Agent and each Lender, upon the earlier of Agent's and/or each Lender's demand or the Maturity Date an amount sufficient to compensate Agent and each Lender for all such losses and out-of-pocket expenses. Agent's and each Lender's good faith determination of the amount of such losses and out-of-pocket expenses, shall, absent manifest error, be deemed final, binding and conclusive upon Borrower. Losses subject to reimbursement under this Agreement shall include expenses incurred by any Lender or any participant of any Lender permitted under this Agreement in connection with the

re-employment of funds prepaid, repaid, not borrowed, or paid, as the case may be, and any lost profit of any Lender or any participant of any Lender over the remainder of the LIBOR Loan Period for such prepaid LIBOR Loan.

### 12.3 Indemnity.

12.3.1 Borrower shall indemnify and hold each Indemnified Person harmless from and against any Claim which may be instituted or asserted against or incurred by any such Indemnified Person as the result of credit having been extended or not extended under this Agreement and the other Loan Documents or otherwise in connection with or arising out of the transactions contemplated hereunder or thereunder, including any Claim for Environmental Liabilities and Costs and legal costs and expenses of disputes between the parties to this Agreement; provided, that Borrower shall not be liable for indemnification of an Indemnified Person to the extent that (a) such Claim is brought by any Indemnified Person against Borrower and Borrower is the prevailing party thereunder or (b) any such Claim is finally determined by a court of competent jurisdiction to have resulted from such Indemnified Person's gross negligence or willful misconduct. NO INDEMNIFIED PERSON SHALL BE RESPONSIBLE OR LIABLE TO ANY OTHER PARTY TO ANY LOAN DOCUMENT, ANY SUCCESSOR, ASSIGNEE OR THIRD PARTY BENEFICIARY OR ANY OTHER PERSON ASSERTING CLAIMS DERIVATIVELY THROUGH SUCH PARTY, FOR INDIRECT, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES WHICH MAY BE ALLEGED AS A RESULT OF CREDIT HAVING BEEN EXTENDED OR NOT EXTENDED UNDER THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR AS A RESULT OF ANY OTHER TRANSACTION CONTEMPLATED HEREUNDER OR THEREUNDER.

12.3.2 In any suit, proceeding or action brought by Agent or any Lender relating to any item of Collateral or any amount owing hereunder, or to enforce any provision of any item of Collateral, Borrower shall save, indemnify and keep Agent and each Lender harmless from and against all expense, loss or damage suffered by reason of such action or any defense, setoff, or counterclaim asserted for any reason by the other party or parties to such litigation and however arising unless (a) such suit, proceeding or action is brought by Agent or any Lender against Borrower and Borrower is the prevailing party thereunder, or (b) any such suit, proceeding or action is finally determined by a court of competent jurisdiction to have resulted from Agent's or any Lender's gross negligence or willful misconduct. All obligations of Borrower with respect to any item of Collateral shall be and remain enforceable against, and only against, Borrower and shall not be enforceable against Agent or any Lender. This **Section 12.3.2** shall survive the Termination Date.

12.4 No Waiver. Neither Agent's nor any Lender's failure, at any time or times, to require strict performance by Borrower of any provision of any Loan Document, nor Agent's or any Lender's failure to exercise, nor any delay in exercising, any right, power or privilege under this Agreement, (a) shall waive, affect or diminish any right of such Agent or any Lender thereafter to demand strict compliance and performance therewith, or (b) shall operate as a waiver thereof. Any suspension or waiver of a Default, Event of Default, or other provision under the Loan Documents must be in writing signed by an authorized employee of Agent or any Lender to be effective and shall not suspend, waive or affect any other Default or Event of Default, whether the same is prior or subsequent thereto and whether of the same or of a different type, and shall not be construed as a bar to any right or remedy which Agent or any Lender would otherwise have had on any future occasion.

12.5 Severability; Drafting. Wherever possible, each provision of the Loan Documents shall be interpreted in such manner as to be effective and valid under Applicable Law, but if any provision of any Loan Document shall be prohibited by or invalid under Applicable Law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of such Loan Document. Except as otherwise expressly provided herein or in any other Loan Document, all undertakings, agreements, covenants, warranties and representations of or binding upon Borrower and all rights of Agent and Lender, all as contained in the Loan Documents, shall not terminate or expire, but rather shall survive such termination or cancellation and shall continue in full force and effect until the Termination Date; provided, that the reimbursement and expense provisions of **Section 12.2**, the indemnity provisions of **Section 12.2.5**, the governing law and venue provisions of **Section 12.14** and the Alternative Dispute Resolution Agreement referred in **Sections 11** and **12.15** shall all survive the Termination Date. In the event of a dispute between any of the parties hereto over the meaning of this Agreement, all parties shall be deemed to have been the drafter hereof, and any Applicable Law that states that contracts are construed against the drafter shall not apply.

12.6 Conflict of Terms. Except as otherwise provided in any Loan Document by specific reference to the applicable provisions of this Agreement, if any provision contained in this Agreement is in conflict with, or inconsistent with, any provision in any other Loan Document, the provision contained in this Agreement shall govern and control.

### 12.7 Notices.

12.7.1 All notices and other communications under this Agreement and the other Loan Documents shall be in writing and shall be deemed to have been given three (3) days after deposit in the mail, first class mail, postage prepaid, or one (1) day after being entrusted to a reputable commercial overnight delivery service, or when sent out by facsimile transmission addressed to the party to which such notice is directed at its address determined as provided in this **Section 12.7.1**. All notices and other communications under this Agreement shall be given to the parties hereto at the following addresses:

(a) If to Borrower:

AeroCentury Corp.  
1440 Chapin Avenue, Suite 310  
Burlingame, CA 94010-4011  
Telephone No.: (650) 340-1888  
Facsimile No.: (650) 696-3929

(b) If to Agent:

MUFG Union Bank, N.A.

General Industries – West Division  
Attn: Kevin Sullivan, Director  
445 South Figueroa Street, 13th Floor  
Los Angeles, CA 90071

with a copy to:

MUFG Union Bank, N.A.  
Attn: Maria F. Maia, Director  
445 South Figueroa Street 13th Floor  
Los Angeles, CA 90071  
Telephone No.: (858) 552\*\*\*\*\*

and:

Sheppard Mullin Richter & Hampton LLP  
Four Embarcadero Center, 17th Floor  
San Francisco, CA 94111-4106  
Attn: Juliette M. Ebert, Esq.  
Telephone No.: (415) 434-\*\*\*\*  
Facsimile No.: (415) 434-\*\*\*\*

12.7.2 Any party to this Agreement may change the address to which notices shall be directed under this **Section 12.7.2** by giving ten (10) days' written notice of such change to the other parties.

12.8 Binding Effect: Assignment.

12.8.1 This Agreement and the other Loan Documents to which Borrower is a party will be binding upon and inure to the benefit of Borrower, Agent, each of Lenders, and their respective successors and assigns, except that Borrower may not assign its rights hereunder or thereunder or any interest herein or therein without the prior written consent of all Lenders. Each Lender represents that it is not acquiring its Note with a view to the distribution thereof within the meaning of the Securities Act of 1933, as amended (subject to any requirement that disposition of such Note must be within the control of such Lender). Any Lender may at any time pledge its Note or any other instrument evidencing its rights as a lender under this Agreement to a Federal Reserve Bank, but no such pledge shall release that lender from its obligations hereunder or grant to such Federal Reserve Bank the rights of a Lender hereunder absent foreclosure of such pledge.

12.8.2 From time to time following the Closing Date, each Lender may assign to one or more Eligible Assignees all or any portion of its Pro Rata Share of the Revolving Commitment; provided that (i) such Eligible Assignee, if not then a Lender or an Affiliate of the assigning Lender, shall be approved by Agent and, provided no Default or Event of Default then exists, Borrower, which approval(s) shall not be unreasonably withheld, conditioned or delayed; (ii) such assignment shall be evidenced by a Commitment Assignment and Acceptance, a copy of which shall be furnished to Agent as provided below; (iii) except in the case of an assignment (a) to an Affiliate of the assigning Lender or to another Lender or (b) of the entire remaining Revolving Commitment of the assigning Lender, the assignment shall not assign a Pro Rata Share of the Revolving Commitment that is equivalent to less than \$5,000,000.00; (iv) the effective date of any such assignment shall be as specified in the Commitment Assignment and Acceptance, but not earlier than the date which is five (5) Business Days after the date Agent has received the Commitment Assignment and Acceptance; and (v) such Eligible Assignee shall execute an Alternative Dispute Resolution Agreement, in form and substance satisfactory to Agent. Upon the effective date of such Commitment Assignment and Acceptance, the Eligible Assignee named therein shall be a Lender for all purposes of this Agreement, with the Pro Rata Share of the Revolving Commitment therein set forth and, to the extent of such Pro Rata Share, the assigning Lender shall be released from its further obligations under this Agreement. Borrower agrees that it shall execute and deliver (against delivery by the assigning Lender to Borrower of its Note(s)) to such assignee Lender, Note(s) evidencing that assignee Lender's Pro Rata Share of the Revolving Commitment, and to the assigning Lender, Note(s) evidencing the Pro Rata Share retained by the assigning Lender.

12.8.3 By executing and delivering a Commitment Assignment and Acceptance, the Eligible Assignee thereunder acknowledges and agrees that: (i) other than the representation and warranty that it is the legal and beneficial owner of the Pro Rata Share of the Revolving Commitment being assigned thereby free and clear of any adverse claim, the assigning Lender has made no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with this Agreement or the execution, legality, validity, enforceability, genuineness or sufficiency of this Agreement or any other Loan Document; (ii) the assigning Lender has made no representation or warranty and assumes no responsibility with respect to the financial condition of Borrower or the performance by Borrower of the Obligations; (iii) it has received a copy of this Agreement, together with copies of the most recent Financial Statements delivered pursuant to **Section 8** and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into such Commitment Assignment and Acceptance; (iv) it will, independently and without reliance upon Agent or any Lender and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement; (v) it appoints and authorizes Agent to take such action and to exercise such powers under this Agreement as are delegated to Agent by this Agreement; and (vi) it will perform in accordance with their terms all of the obligations which by the terms of this Agreement are required to be performed by it as a Lender.

12.8.4 Agent shall maintain at Agent's Office a copy of each Commitment Assignment and Acceptance delivered to it and a register (the "Register") of the names and address of each of the Lenders and the Pro Rata Share of the Commitments held by each Lender, giving effect to each Commitment Assignment and Acceptance. The Register shall be available during normal business hours for inspection by Borrower or any Lender upon reasonable prior notice to Agent. After receipt of a completed Commitment Assignment and Acceptance executed by any Lender and an Eligible Assignee, and receipt of a non-refundable assignment fee of Three Thousand Five Hundred Dollars (\$3,500.00) from

such Lender or Eligible Assignee, Agent shall, promptly following the effective date thereof, provide to Borrower and the Lenders a revised **Schedule A** giving effect thereto. Borrower, Agent and the Lenders shall deem and treat the Persons listed as Lenders in the Register as the holders and owners of the Pro Rata Share of the Revolving Commitment listed therein for all purposes hereof, and no assignment or transfer of any such Pro Rata Share of the Revolving Commitment shall be effective, in each case unless and until a Commitment Assignment and Acceptance effecting the assignment or transfer thereof shall have been accepted by Agent and recorded in the Register as provided above. Prior to such recordation, all amounts owed with respect to the applicable Pro Rata Share of the Revolving Commitment shall be owed to the Lender listed in the Register as the owner thereof, and any request, authority or consent of any Person who, at the time of making such request or giving such authority or consent, is listed in the Register as a Lender shall be conclusive and binding on any subsequent holder, assignee or transferee of the corresponding Pro Rata Share of the Revolving Commitment.

12.8.5 Each Lender may from time to time grant participations to one or more banks or other financial institutions (a "Participant") in a portion of its Pro Rata Share of the Revolving Commitment; provided, however, that (i) such Lender's obligations under this Agreement shall remain unchanged; (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations; (iii) the participating banks or other financial institutions shall not be a Lender hereunder for any purpose except, if the participation agreement so provides, (A) for the purposes of **Section 12.2.5** but only to the extent that the cost of such benefits to Borrower does not exceed the cost which Borrower would have incurred in respect of such Lender absent the participation and (B) for the purposes of **Sections 2.17, 14.1, and 14.2** (subject to the requirements and limitations therein, including the requirements under **Section 2.17(e)** (it being understood that the documentation required under **Section 2.17(e)** shall be delivered to the Lender who sells the participation)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to **Section 12.8.2**; provided, that, such participating bank (1) agrees to be subject to the provisions of **Section 12.10** as if it were an assignee under **Section 12.8.2**, and (2) shall not be entitled to receive any greater payment under **Sections 2.17, 14.1, and 14.2**, with respect to any participation, than the Lender from whom it acquired the applicable participation would have been entitled to receive; (iv) Borrower, Agent and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement; (v) the participation interest shall be expressed as a percentage of the granting Lender's Pro Rata Share of the Revolving Commitment as it then exists or in the granting Lender's Pro Rata Share of the Revolving Commitment, so long as the amount of the participation interest is not affected thereby; and (vi) the consent of the holder of such participation interest shall not be required for amendments or waivers of provisions of the Loan Documents other than those which (A) extend the Maturity Date or any other date upon which any payment of money is due to the Lenders, (B) reduce the rate of interest on the Notes, any fee or any other monetary amount payable to the Lenders, (C) reduce the amount of any installment of principal due under the Notes, or (D) release any material Collateral from the Lien of the Collateral Documents, except if such release of material Collateral occurs in connection with a disposition permitted under this Agreement or **Section 3.7**, in which case such release shall not require the consent of any of the Lenders or of any holder of a participation interest in the Revolving Commitment. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under any Loan Document (the "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any Revolving Commitments, Loans, or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such Revolving Commitment, Loan, or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations.

12.9 Right of Setoff. If an Event of Default has occurred and is continuing, Agent or any Lender (but in each case only with the consent of the Requisite Lenders) may exercise its rights under Article 9 of the Uniform Commercial Code and other Applicable Law and, to the extent permitted by Applicable Law, apply any funds in any deposit account maintained with it by Borrower and/or any Property of Borrower in its possession against the Obligations.

12.10 Sharing of Setoffs. Each Lender severally agrees that if it, through the exercise of any right of setoff, banker's lien or counterclaim against Borrower, or otherwise, receives payment of the Obligations held by it that is ratably more than any other Lender, through any means, receives in payment of the Obligations held by that Lender, then, subject to Applicable Law: (a) the Lender exercising the right of setoff, banker's lien or counterclaim or otherwise receiving such payment shall purchase, and shall be deemed to have simultaneously purchased, from each of the other Lenders a participation in the Obligations held by the other Lenders and shall pay to the other Lenders a purchase price in an amount so that the share of the Obligations held by each Lender after the exercise of the right of setoff, banker's lien or counterclaim or receipt of payment shall be in the same proportion that existed prior to the exercise of the right of setoff, banker's lien or counterclaim or receipt of payment; and (b) such other adjustments and purchases of participations shall be made from time to time as shall be equitable to ensure that all of the Lenders share any payment obtained in respect of the Obligations ratably in accordance with each Lender's share of the Obligations immediately prior to, and without taking into account, the payment; provided that, if all or any portion of a disproportionate payment obtained as a result of the exercise of the right of setoff, banker's lien, counterclaim or otherwise is thereafter recovered from the purchasing Lender by Borrower or any Person claiming through or succeeding to the rights of Borrower, the purchase of a participation shall be rescinded and the purchase price thereof shall be restored to the extent of the recovery, but without interest. Each Lender that purchases a participation in the Obligations pursuant to this **Section 12.10** shall from and after the purchase have the right to give all notices, requests, demands, directions and other communications under this Agreement with respect to the portion of the Obligations purchased to the same extent as though the purchasing Lender were the original owner of the Obligations purchased. Borrower expressly consents to the foregoing arrangements and agrees that any Lender holding a participation in an Obligation so purchased pursuant to this **Section 12.10** may exercise any and all rights of setoff, banker's lien or counterclaim with respect to the participation as fully as if the Lender were the original owner of the Obligation purchased.

12.11 Section Titles. The Section titles and Table of Contents contained in this Agreement and any other Loan Document are and shall be without substantive meaning or content of any kind whatsoever and are not a part of the agreement between the parties hereto.

12.12 Counterparts. Each Loan Document may be executed in any number of identical counterparts, which shall constitute an original and collectively and separately constitute a single instrument or agreement.

12.13 Time of the Essence. Time is of the essence for payment and performance of the Obligations.

12.14 GOVERNING LAW; VENUE. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN ANY OF THE LOAN DOCUMENTS, IN ALL RESPECTS, INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS AND THE OBLIGATIONS ARISING HEREUNDER AND THEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE, WITHOUT REGARD TO THE PRINCIPLES THEREOF REGARDING CONFLICTS OF LAWS (OTHER THAN SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW), AND ANY APPLICABLE LAWS OF THE UNITED STATES OF AMERICA. BORROWER HEREBY CONSENTS AND AGREES, PURSUANT TO SECTION 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW, THAT THE STATE OR FEDERAL COURTS LOCATED IN THE COUNTY OF NEW YORK, NEW YORK SHALL HAVE EXCLUSIVE JURISDICTION TO HEAR AND DETERMINE ANY CLAIMS OR DISPUTES BETWEEN BORROWER AND ANY CREDIT FACILITY LENDER PERTAINING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR TO ANY MATTER ARISING OUT OF OR RELATED TO THIS AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS; PROVIDED, THAT CREDIT FACILITY LENDERS AND BORROWER ACKNOWLEDGE THAT ANY APPEALS FROM THOSE COURTS MAY HAVE TO BE HEARD BY A COURT LOCATED OUTSIDE OF NEW YORK, NEW YORK; AND FURTHER PROVIDED, THAT NOTHING IN THIS AGREEMENT SHALL BE DEEMED OR OPERATE TO PRECLUDE AGENT OR ANY CREDIT FACILITY LENDER FROM BRINGING SUIT OR TAKING OTHER LEGAL ACTION IN ANY OTHER JURISDICTION TO COLLECT THE OBLIGATIONS, TO REALIZE ON THE COLLATERAL OR ANY OTHER SECURITY FOR THE OBLIGATIONS, OR TO ENFORCE A JUDGMENT OR OTHER COURT ORDER IN FAVOR OF SUCH AGENT OR CREDIT FACILITY LENDER. BORROWER EXPRESSLY SUBMITS AND CONSENTS TO SUCH JURISDICTION IN ANY ACTION OR SUIT COMMENCED IN ANY SUCH COURT, AND BORROWER HEREBY WAIVES ANY OBJECTION WHICH IT MAY HAVE BASED UPON LACK OF PERSONAL JURISDICTION, IMPROPER VENUE OR FORUM NON CONVENIENS AND HEREBY CONSENTS TO THE GRANTING OF SUCH LEGAL OR EQUITABLE RELIEF AS IS DEEMED APPROPRIATE BY SUCH COURT. BORROWER HEREBY WAIVES PERSONAL SERVICE OF THE SUMMONS, COMPLAINT AND OTHER PROCESS ISSUED IN ANY SUCH ACTION OR SUIT AND AGREES THAT SERVICE OF SUCH SUMMONS, COMPLAINTS AND OTHER PROCESS MAY BE MADE BY REGISTERED OR CERTIFIED MAIL ADDRESSED TO BORROWER AT THE ADDRESS SET FORTH IN **SECTION 12.7.1** AND THAT SERVICE SO MADE SHALL BE DEEMED COMPLETED UPON THE BORROWER'S ACTUAL RECEIPT THEREOF. TO THE EXTENT THE CHOICE OF LAW AND VENUE PROVISIONS IN ANY LOAN DOCUMENT ENTERED INTO AS OF THE CLOSING DATE IS INCONSISTENT WITH THIS PROVISION, SUCH LOAN DOCUMENT IS HEREBY MODIFIED TO THE EXTENT APPLICABLE BY INCORPORATING THIS PROVISION THEREIN.

12.15 WAIVER OF JURY TRIAL. AS SET FORTH IN THE ALTERNATIVE DISPUTE RESOLUTION AGREEMENT, BORROWER, AGENT AND EACH LENDER WAIVE ITS RIGHT TO A TRIAL BY JURY AND AGREES TO HAVE ANY DISPUTE BETWEEN OR AMONG ANY OTHER PARTY(IES) RESOLVED PURSUANT TO THE TERMS OF THE ALTERNATIVE DISPUTE RESOLUTION AGREEMENT.

12.16 Amendments; Consents. No amendment, modification, supplement, extension, termination or waiver of any provision of this Agreement or any other Loan Document, no approval or consent thereunder, and no consent to any departure by Borrower or any other party therefrom, may in any event be effective unless in writing signed by Agent with the written approval of the Requisite Lenders (and, in the case of any amendment, modification or supplement of or to any Loan Document to which Borrower is a party, signed by Borrower, and, in the case of any amendment, modification or supplement to **Section 13**, signed by Agent, respectively), and then only in the specific instance and for the specific purpose given; and no amendment, modification, supplement, termination, waiver or consent may be effective:

12.16.1 to amend or modify the principal of, or the amount of principal (other than in accordance with **Sections 2.8 or 2.18**), principal prepayments or the rate of interest payable on, any Note, or the amount of the Revolving Commitment or the Pro Rata Share of any Lender or the amount of any commitment fee payable to any Lender, or any other fee or amount payable to any Lender under the Loan Documents or to waive an Event of Default consisting of the failure of Borrower to pay when due principal, interest or any fee, without the approval in writing of all the Lenders affected thereby;

12.16.2 to postpone any date fixed for any payment of principal of, prepayment of principal of or any installment of interest on, any Note or any installment of any fee, or to extend the term of the Revolving Commitment, without the approval in writing of all the Lenders affected thereby;

12.16.3 to amend the provisions of the definition of "Maturity Date" and "Requisite Lenders", without the approval in writing of all the Lenders;

12.16.4 to release any material Collateral from the Lien of the Collateral Documents (except if such release of material Collateral occurs in connection with a disposition permitted under this Agreement or pursuant to **Section 3.7**, in which case such release shall not require the consent of any Lender), without the written approval of all Lenders;

12.16.5 to release a guarantor under any Guaranty (except to the extent such guarantor is a Subsidiary and such Subsidiary is subject to a merger or consolidation not prohibited under **Section 7.6**), without the written approval of all Lenders;

12.16.6 to amend or waive this **Section 12.16** or any part thereof, without the approval of all the Lenders; or

12.16.7 to amend any provision of this Agreement that expressly requires the consent or approval of all or a specified portion of the Lenders, without the consent of all the Lenders.

Notwithstanding anything herein to the contrary, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder (and any amendment, waiver or consent that by its terms requires the consent of all the Lenders or each affected Lender may be effected with the consent of the applicable Lenders other than Defaulting Lenders, except that (x) the Revolving Commitment of any Defaulting Lender may not be increased or extended, or the maturity of any of its Loan may not be extended, the rate of interest on any of its Loans may not be reduced and the principal amount of any of its Loans may not be forgiven, in each case without the consent of such Defaulting Lender and (y) any amendment, waiver or consent requiring the consent of all the Lenders or each affected Lender that by its terms affects any Defaulting

Lender more adversely than the other affected Lenders shall require the consent of such Defaulting Lender.

Any amendment, modification, supplement, termination, waiver or consent pursuant to this **Section 12.16** shall apply equally to, and shall be binding upon, all the Lenders and Agent. Notwithstanding the foregoing, the Agent and Borrower may amend any Loan Document to correct any errors, mistakes, omissions, defects or inconsistencies, or to affect administrative changes that are not adverse to any Lender, and such amendment shall become effective without further consent of any other party to such Loan Document other than the Agent and Borrower.

12.17 Foreign Lenders and Participants. Each Foreign Lender shall deliver to Borrower (with a copy to Agent), on or before the Closing Date (or on or before accepting an assignment or receiving a participation interest herein pursuant to **Section 12.8.2**, if applicable) two duly completed copies, signed by an authorized officer, of either Form 1001 (relating to such Lender and entitling it to a complete exemption from withholding on all payments to be made to such Lender by Borrower pursuant to this Agreement) or Form W-8BEN (relating to all payments to be made to such Foreign Lender by the Borrower pursuant to this Agreement) of the United States Internal Revenue Service or such other evidence (including, if reasonably necessary, Form W-9) satisfactory to Borrower and Agent that no withholding under the federal income Tax laws is required with respect to such Foreign Lender. Thereafter and from time to time, each such Foreign Lender shall (a) promptly submit to Borrower (with a copy to Agent), such additional duly completed and signed copies of one of such forms (or such successor forms as shall be adopted from time to time by the relevant United States taxing authorities) as may then be available under then current United States laws and regulations to avoid, or such evidence as is satisfactory to Borrower and Agent of any available exemption from, United States withholding Taxes in respect of all payments to be made to such Foreign Lender by Borrower pursuant to this Agreement and (b) take such steps as shall not be materially disadvantageous to it, in the reasonable judgment of such Foreign Lender, and as may be reasonably necessary (including the re designation of its LIBOR lending office, if any) to avoid any requirement of Applicable Law that Borrower make any deduction or withholding for Taxes from amounts payable to such Foreign Lender. In the event that Borrower or Agent become aware that a participation has been granted pursuant to **Section 12.8.5** to a financial institution that is a Foreign Lender, then, upon request made by Borrower or Agent to the Lender which granted such participation, such Lender shall cause such participant financial institution to deliver the same documents and information to Borrower and Agent as would be required under this Section if such financial institution were a Lender.

12.18 Acknowledgement and Consent to Bail-In of EEA Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any EEA Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

- (a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and
- (b) the effects of any Bail-in Action on any such liability, including, if applicable:
  - (i) a reduction in full or in part or cancellation of any such liability;
  - (ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or
  - (iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any EEA Resolution Authority.

12.19 Disclaimer of Fiduciary Obligations. In connection with all aspects of the transactions contemplated hereby (including in connections with any amendment, or waiver or other modification hereof or of any other Loan Document), the Borrower acknowledges and agrees, and acknowledges its understanding, that: (i) the services regarding this Agreement provided by the Lenders are arm's length commercial transactions between the Borrower, on the one hand, and the Lenders, on the other hand, and (ii) each Lender is and has been acting solely as a principal and, except expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as a fiduciary for the Borrower.

12.20 Electronic Transmissions.

(a) Each of Borrower, the Agent, the Lenders, and each of their Affiliates is authorized (but not required) to transmit, post or otherwise make or communicate, in its sole discretion, Electronic Transmissions in connection with any Loan Document and the transactions contemplated therein. The Borrower hereby acknowledges and agrees that the use of Electronic Transmissions is not necessarily secure and that there are risks associated with such use, including risks of interception, disclosure and abuse and each indicates it assumes and accepts such risks by hereby authorizing the transmission of Electronic Transmissions.

(b) All uses of an E-System shall be governed by and subject to and this Section 12.20, separate terms and conditions posted or referenced in such E-System and related contractual obligations executed by the Borrower, the Agent and the Lenders in connection with the use of such E-System.

(c) All E-Systems and Electronic Transmissions shall be provided "as is" and "as available." None of the Agent or any of its Affiliates, nor the Borrower or any of its respective Affiliates warrants the accuracy, adequacy or completeness of any E-Systems or Electronic Transmission, and each disclaims all liability for errors or omissions therein. No warranty of any kind is made by the Agent or any of its Affiliates, or the Borrower or any of its respective Affiliates in connection with any E-Systems or Electronic Transmission, including any warranty of merchantability, fitness for a particular purpose, non-infringement of third-party rights or freedom from viruses or other code defects. The Agent, the Borrower and its Subsidiaries, and the Lenders agree that the Agent has no responsibility for maintaining or providing any equipment, software,

services or any testing required in connection with any Electronic Transmission or otherwise required for any E-System. The Agent and the Lenders agree that the Borrower has no responsibility for maintaining or providing any equipment, software, services or any testing required in connection with any Electronic Transmission or otherwise required for any E-System.

### 13. AGENT

13.1 Appointment and Authorization and Delegation of Duties. Subject to **Section 12.8.2**, each of the Lenders and potential Swap Contract Counterparties with respect to Lender Hedging Obligations hereby irrevocably appoints and authorizes Agent to take such action as agent on its behalf and to exercise such powers under the Loan Documents as are delegated to Agent by the terms thereof or are reasonably incidental, as determined by Agent, thereto. This appointment and authorization is intended solely for the purpose of facilitating the servicing of the Loans and does not constitute appointment of Agent as trustee for any Lender or as representative of any Lender for any other purpose. Notwithstanding any provision to the contrary contained elsewhere herein or in any other Loan Document, the Agent shall not have any duties or responsibilities, except those expressly set forth herein, nor shall the Agent have or be deemed to have any fiduciary relationship with any Lender or participant or any Swap Contract Counterparty with respect to Lender Hedging Obligations, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against the Agent. Without limiting the generality of the foregoing sentence, the use of the term "Agent" or "Administrative Agent" herein and in the other Loan Documents with reference to the Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable Law. Instead, such term is used merely as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties. The Agent may execute any of its duties under this Agreement or any other Loan Document by or through its agents, employees or attorneys-in-fact and shall be entitled to advice of counsel and other consultants or experts concerning all matters pertaining to such duties. The Agent shall not be responsible for the negligence or misconduct of any agent or attorney-in-fact that it selects in the absence of gross negligence or willful misconduct.

13.2 Lenders' Credit Decisions. Each Lender agrees that it has, independently and without reliance upon Agent, any other Lender or the directors, officers, Agent, employees or attorneys of the foregoing parties, and instead in reliance upon information supplied to it by or on behalf of Borrower and upon such other information as it has deemed appropriate, made its own independent credit analysis and decision to enter into this Agreement. Each Lender also agrees that it shall, independently and without reliance upon Agent, any other Lender or the directors, officers, Agent, employees or attorneys of the foregoing parties, continue to make its own independent credit analyses and decisions in acting or not acting under the Loan Documents.

13.3 Agent and Affiliates. MUFG Union Bank, N.A. (and each successor Agent) has the same rights and powers under the Loan Documents as any other Lender and may exercise the same as though it were not Agent, and the term "Lender" or "Lenders" includes MUFG Union Bank, N.A. in its individual capacity. MUFG Union Bank, N.A. (and each successor Agent) and its Affiliates may accept deposits from, lend money to and generally engage in any kind of banking, trust or other business with Borrower or any Affiliate of Borrower, as if it were not Agent and without any duty to account therefor to Lenders. MUFG Union Bank, N.A. (and each successor Agent) need not account to any other Lender for any monies received by it in its capacity as a Lender hereunder. Agent shall not be deemed to hold a fiduciary relationship with any Lender and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or otherwise exist against Agent.

13.4 Proportionate Interest in any Collateral. Agent, on behalf of Lenders (and Swap Contract Counterparties with respect to Lender Hedging Obligations), shall hold in accordance with the Loan Documents all items of any Collateral or interests therein to be received or held by Agent. Subject to Agent's and Lenders' rights to reimbursement for their costs and expenses hereunder (including reasonable attorneys' fees and disbursements and other professional services and the reasonably allocated costs of attorneys employed by Agent or a Lender) and subject to the application of payments in accordance with **Section 9.4**, each Lender shall have an interest in such collateral or interests therein in the same proportion that the aggregate obligations owed such Lender, under the Loan Documents and/or Lender Hedging Obligations, as applicable, bears to the aggregate obligations owed under the Loan Documents and all Lender Hedging Obligations, without priority or preference among Lenders.

13.5 Action by Agent.

13.5.1 Absent actual knowledge of Agent of the existence of a Default, Agent may assume that no Default has occurred and is continuing, unless Agent (or the Lender that is then Agent) has received notice from Borrower stating the nature of the Default or has received notice from a Lender stating the nature of the Default and that such Lender considers the Default to have occurred and to be continuing.

13.5.2 Agent has only those obligations under the Loan Documents as are expressly set forth therein.

13.5.3 Except for any obligation expressly set forth in the Loan Documents and as long as Agent may assume that no Event of Default has occurred and is continuing, Agent may, but shall not be required to, exercise its discretion to act or not act, except that Agent shall be required to act or not act upon the instructions of the Requisite Lenders (or of all the Lenders, to the extent required by **Section 12.16**) and those instructions shall be binding upon Agent and all Lenders, provided that Agent shall not be required to act or not act if to do so would be contrary to any Loan Document or to Applicable Law or would result, in the reasonable judgment of Agent, in substantial risk of liability to Agent.

13.5.4 If Agent has received a notice specified in **Section 13.5.1**, Agent shall immediately give notice thereof to Lenders and shall act or not act upon the instructions of the Requisite Lenders (or of all the Lenders, to the extent required by **Section 12.16**), provided that Agent shall not be required to act or not act if to do so would be contrary to any Loan Document or to Applicable Law or would result, in the reasonable judgment of Agent, in substantial risk of liability to Agent, and except that if the Requisite Lenders fail, for five (5) Business Days after the receipt of notice from Agent, to instruct Agent, then Agent, in its sole discretion, may act or not act as it deems advisable for the protection of the interests of Lenders.

13.5.5 Agent shall have no liability to any Lender for acting, or not acting, as instructed by the Requisite Lenders,

notwithstanding any other provision hereof.

13.6 **Liability of Agent.** Neither Agent nor any of its directors, officers, Agent, employees or attorneys shall be liable for any action taken or not taken by them under or in connection with the Loan Documents, except for their own gross negligence or willful misconduct. Without limitation on the foregoing, Agent and its directors, officers, Agent, employees and attorneys:

13.6.1 May treat the payee of any Note as the holder thereof until Agent receives notice of the assignment or transfer thereof, signed by the payee, and may treat each Lender as the owner of that Lender's interest in the Obligations for all purposes of this Agreement until Agent receives notice of the assignment or transfer thereof, signed by that Lender;

13.6.2 May consult with legal counsel (including in-house legal counsel), accountants (including in-house accountants) and other professionals or experts selected by it, or with legal counsel, accountants or other professionals or experts for Borrower or Lenders, and shall not be liable for any action taken or not taken by it in good faith in accordance with any advice of such legal counsel, accountants or other professionals or experts selected by it with reasonable care;

13.6.3 Shall not be responsible to any Lender for any statement, warranty or representation made in any of the Loan Documents or in any notice, certificate, report, request or other statement (written or oral) given or made in connection with any of the Loan Documents except for those expressly made by it;

13.6.4 Except to the extent expressly set forth in the Loan Documents, shall have no duty to ask or inquire as to the performance or observance by Borrower of any of the terms, conditions or covenants of any of the Loan Documents or to inspect any collateral or any Property, books or records of Borrower;

13.6.5 Will not be responsible to any Lender for the due execution, legality, validity, enforceability, genuineness, effectiveness, sufficiency or value of any Loan Document, any other instrument or writing furnished pursuant thereto or in connection therewith, or any collateral;

13.6.6 Will not incur any liability by acting or not acting in reliance upon any Loan Document, notice, consent, certificate, statement, request or other instrument or writing reasonably believed by it to be genuine and signed or sent by the proper party or parties; and

13.6.7 Will not incur any liability for any arithmetical error in computing any amount paid or payable by the Borrower or paid or payable to or received or receivable from any Lender under any Loan Document, including, without limitation, principal, interest, commitment fees, Loans and other amounts; provided that, promptly upon discovery of such an error in computation, the Agent, the Lenders and (to the extent applicable) and the Borrower shall make such adjustments as are necessary to correct such error and to restore the parties to the position that they would have occupied had the error not occurred.

13.7 **Indemnification.** Each Lender shall, ratably in accordance with its Pro Rata Share of the Revolving Commitment (if the Revolving Commitment is then in effect) or in accordance with its proportion of the aggregate Indebtedness then evidenced by the Notes (if the Revolving Commitment has then been terminated), indemnify and hold Agent and its directors, officers, Agent, employees and attorneys harmless against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever (including reasonable attorneys' fees and disbursements and allocated costs of attorneys employed by Agent) that may be imposed on, incurred by or asserted against it or them in any way relating to or arising out of the Loan Documents (other than losses incurred by reason of the failure of Borrower to pay the Indebtedness represented by the Notes) or any action taken or not taken by it as Agent thereunder, except such as result from its own gross negligence or willful misconduct. Without limitation on the foregoing, each Lender shall reimburse Agent upon demand for that Lender's Pro Rata Share of any out of pocket cost or expense incurred by Agent in connection with the negotiation, preparation, execution, delivery, amendment, waiver, restructuring, reorganization (including a bankruptcy reorganization), enforcement or attempted enforcement of the Loan Documents, to the extent that Borrower or any other party is required by **Section 12.2** to pay that cost or expense but fails to do so upon demand. Nothing in this **Section 13.7** shall entitle Agent or any indemnitee referred to above to recover any amount from Lenders if and to the extent that such amount has theretofore been recovered from Borrower. To the extent that Agent or any indemnitee referred to above is later reimbursed such amount by Borrower, it shall return the amounts paid to it by Lenders in respect of such amount.

13.8 **Successor Agent.** Agent may, and at the request of the Requisite Lenders shall, resign as Agent upon reasonable notice to Lenders and Borrower effective upon acceptance of appointment by a successor Agent. If Agent shall resign as Agent under this Agreement, the Requisite Lenders shall appoint from among Lenders a successor Agent for Lenders, which successor Agent shall be approved by Borrower (and such approval shall not be unreasonably withheld or delayed); provided that in no event shall any successor Agent be a Defaulting Lender. If no successor Agent is appointed prior to the effective date of the resignation of Agent, Agent may appoint, after consulting with Lenders and Borrower, a successor Agent from among Lenders. Upon the acceptance of its appointment as successor Agent hereunder, such successor Agent shall succeed to all the rights, powers and duties of the retiring Agent and the term "Agent" shall mean such successor Agent and the retiring Agent's appointment, powers and duties as Agent shall be terminated. After any retiring Agent's resignation hereunder as Agent, the provisions of this **Section 13**, and **Section 12.2.5**, shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Agent under this Agreement. Notwithstanding the foregoing, if (a) Agent has not been paid those fees referenced in **Section 2.4.2** or has not been reimbursed for any expense reimbursable to it under **Sections 12.2** or **12.2.5**, in either case for a period of at least one (1) year and (b) no successor Agent has accepted appointment as Agent by the date which is thirty (30) days following a retiring Agent's notice of resignation, the retiring Agent's resignation shall nevertheless thereupon become effective and Lenders shall perform all of the duties of Agent hereunder until such time, if any, as the Requisite Lenders appoint a successor Agent as provided for above.

13.9 **Collateral Matters.** (a) Each Lender hereby irrevocably authorizes and directs the Agent to enter into the Loan Documents for the benefit of such Lender. The Agent is hereby authorized on behalf of all of Lenders, without the necessity of any notice to or further consent from

any Lender from time to time prior to, an Event of Default, to take any action with respect to any Collateral or Loan Documents which may be necessary to perfect and maintain perfected the Liens upon the Collateral granted pursuant to the Loan Documents. Each Lender (and Swap Contract Counterparty with respect to Lender Hedging Obligations) hereby irrevocably authorizes the Agent, at its option and in its discretion:

(i) to release any Lien on any property granted to or held by the Agent under any Loan Document (i) upon termination of the Revolving Commitment and payment in full of all Obligations (other than contingent indemnification obligations), (ii) that is sold or to be sold as part of or in connection with any sale permitted or provided for hereunder (including under **Section 3.7**) or under any other Loan Document, (iii) subject to **Section 12.16**, if approved, authorized or ratified in writing by the Requisite Lenders, (iv) in connection with any foreclosure sale or other disposition of Collateral after the occurrence of an Event of Default or (v) to the extent such property constitutes Excluded Asset; and

(ii) to subordinate any Lien on any property granted to or held by the Agent under any Loan Document to the holder of any Lien on such property that is permitted by this Agreement or any other Loan Document.

Upon request by the Agent at any time, each Lender will confirm in writing the Agent's authority to release or subordinate its interest in particular types or items of Collateral pursuant to this **Section 13.9**.

(b) Subject to (ii) above, the Agent shall (and is hereby irrevocably authorized by each Lender), to execute such documents as may be necessary to evidence the release or subordination of the Liens granted to the Agent for the benefit of the Agent and Lenders herein or pursuant hereto upon the applicable Collateral; provided that (i) the Agent shall not be required to execute any such document on terms which, in the Agent's opinion, would expose the Agent to or create any liability or entail any consequence other than the release or subordination of such Liens without recourse or warranty and (ii) such release or subordination shall not in any manner discharge, affect or impair the Obligations or any Liens upon (or obligations of the Borrower in respect of) all interests retained by the Borrower, including the proceeds of the sale, all of which shall continue to constitute part of the Collateral. In the event of any sale or transfer of Collateral, or any foreclosure with respect to any of the Collateral, the Agent shall be authorized to deduct all expenses reasonably incurred by the Agent from the proceeds of any such sale, transfer or foreclosure.

(c) The Agent shall have no obligation whatsoever to any Lender or any other Person to assure that the Collateral exists or is owned by the Borrower any other Person or is cared for, protected or insured or that the Liens granted to the Agent herein or in any of the Loan Documents or pursuant hereto or thereto have been properly or sufficiently or lawfully created, perfected, protected or enforced or are entitled to any particular priority, or to exercise or to continue exercising at all or in any manner or under any duty of care, disclosure or fidelity any of the rights, authorities and powers granted or available to the Agent in this **Section 13.9** or in any of the Loan Documents, it being understood and agreed that in respect of the Collateral, or any act, omission or event related thereto, the Agent may act in any manner it may deem appropriate, in its sole discretion, given the Agent's own interest in the Collateral as one of the Lenders and that the Agent shall have no duty or liability whatsoever to the Lenders.

(d) Each Lender hereby appoints each other Lender as the Agent for the purpose of perfecting Lenders' security interest in assets which, in accordance with Article 9 of the UCC can be perfected only by possession. Should any Lender (other than the Agent) obtain possession of any such Collateral, such Lender shall notify the Agent thereof, and, promptly upon the Agent's request therefor shall deliver such Collateral to the Agent or in accordance with the Agent's instructions.

13.10 No Obligations of Borrower. Nothing contained in this **Section 13** shall be deemed to impose upon Borrower any obligation in respect of the due and punctual performance by Agent of its obligations to Lenders under any provision of this Agreement, and Borrower shall have no liability to Agent or any of Lenders in respect of any failure by Agent or any Lender to perform any of its obligations to Agent or Lenders under this Agreement.

#### **14. COMMITMENT COSTS AND RELATED MATTERS.**

##### **14.1 Eurodollar Costs and Related Matters.**

14.1.1 In the event that any Governmental Authority imposes on any Lender any reserve or comparable requirement (including any emergency, supplemental or other reserve) with respect to the Eurodollar liabilities (as defined in Regulation D or any comparable regulation of any Governmental Authority having jurisdiction over any Lender) of any Lender, Borrower shall pay such lender within five (5) Business Days after demand all amounts necessary to compensate such Lender (determined as though such lender's LIBOR lending office had funded 100% of its LIBOR Loan in the Designated Eurodollar Market) in respect of the imposition of such reserve requirements (provided, that Borrower shall not be obligated to pay any such amount which arose prior to the date which is ninety (90) days preceding the date of such demand or is attributable to periods prior to the date which is ninety (90) days preceding the date of such demand). Such Lender's determination of such amount shall be conclusive in the absence of manifest error.

14.1.2 If, after the date hereof, the existence or occurrence of any Special Eurodollar Circumstance:

(a) shall subject any Lender or its LIBOR lending office to any Tax, duty or other charge or cost with respect to any LIBOR Loan, its Note evidencing such LIBOR Loan(s) or its obligation to make LIBOR Loans, or shall change the basis of taxation of payments to any Lender attributable to the principal of or interest on any LIBOR Loan or any other amounts due under this Agreement in respect of any LIBOR Loan, its Note evidencing such LIBOR Loan(s) or its obligation to make LIBOR Loans, excluding Taxes imposed on or measured in whole or in part by its overall net income by (A) any jurisdiction (or political subdivision thereof) in which it is organized or maintains its principal office or LIBOR lending office or (B) any jurisdiction (or political subdivision thereof) in which it is "doing business";

(b) shall impose, modify or deem applicable any reserve not applicable or deemed applicable on the date hereof

(including any reserve imposed by the Board of Governors of the Federal Reserve System, special deposit, capital or similar requirements against assets of, deposits with or for the account of, or credit extended by, any Lender or its LIBOR lending office); or

(c) shall impose on any Lender or its LIBOR lending office or the Designated Eurodollar Market any other condition affecting any LIBOR Loan, its Note evidencing such LIBOR Loan(s), its obligation to make LIBOR Loans or this Agreement, or shall otherwise affect any of the same;

and the result of any of the foregoing, as determined in good faith by any Lender, increases the cost to any Lender or its LIBOR lending office of making or maintaining any LIBOR Loan or in respect of any LIBOR Loan, any Note evidencing LIBOR Loans or its obligation to make LIBOR Loans or reduces the amount of any sum received or receivable by any Lender or its LIBOR lending office with respect to any LIBOR Loan, its Note evidencing such LIBOR Loan(s) or its obligation to make LIBOR Loans (assuming such Lender's LIBOR lending office had funded 100% of its LIBOR Loan in the Designated Eurodollar Market), then, within five (5) Business Days after demand by such lender (with a copy to Agent), Borrower shall pay to such Lender such additional amount or amounts as will compensate such lender for such increased cost or reduction (determined as though such Lender's LIBOR lending office had funded 100% of its LIBOR Loan in the Designated Eurodollar Market); provided, that Borrower shall not be obligated to pay any such amount which arose prior to the date which is ninety (90) days preceding the date of such demand or is attributable to periods prior to the date which is ninety (90) days preceding the date of such demand. A statement of Lender claiming compensation under this subsection shall be conclusive in the absence of manifest error.

14.1.3 If, after the date hereof, the existence or occurrence of any Special Eurodollar Circumstance shall, in the good faith opinion of Lender, make it unlawful or impossible for Lender or its LIBOR lending office to make, maintain or fund its portion of any LIBOR Loan, or materially restrict the authority of Lender to purchase or sell, or to take deposits of, Dollars in the Designated Eurodollar Market, or to determine or charge interest rates based upon the LIBOR Basis, and Lender shall so notify Agent, then such Lender's obligation to make LIBOR Loans shall be suspended for the duration of such illegality or impossibility and Lender forthwith shall give notice thereof to the other Lenders and Borrower. Upon receipt of such notice, the outstanding principal amount of such Lender's LIBOR Loans, together with accrued interest thereon, automatically shall be converted to Base Rate Loans on either (1) the last day of the LIBOR Loan Period(s) applicable to such LIBOR Loans if such lender may lawfully continue to maintain and fund such LIBOR Loans to such day(s) or (2) immediately if such lender may not lawfully continue to fund and maintain such LIBOR Loans to such day(s), provided that in such event the conversion shall not be subject to payment of a prepayment fee under **Section 2.6.5**. Lenders agrees to endeavor promptly to notify Borrower of any event of which it has actual knowledge, occurring after the Closing Date, which will cause any Lender to notify Agent under this Section, and agrees to designate a different LIBOR lending office if such designation will avoid the need for such notice and will not, in the good faith judgment of such lender, otherwise be materially disadvantageous to such lender. In the event that any Lender is unable, for the reasons set forth above, to make, maintain or fund its portion of any LIBOR Loan, such Lender shall fund such amount as a Base Rate Loan for the same period of time, and such amount shall be treated in all respects as a Base Rate Loan. Any Lender whose obligation to make LIBOR Loans has been suspended under this Section shall promptly notify Agent and Borrower of the cessation of the Special Eurodollar Circumstance which gave rise to such suspension. Borrower shall have the right to terminate the Revolving Commitment of any Lender for which the funding of LIBOR Loans becomes unlawful or impossible, as set forth above, and to substitute a new Lender into this Agreement subject to the provisions of **Section 12.8** of this Agreement.

14.1.4 If, with respect to any proposed LIBOR Loan, any Lender:

(a) reasonably determines that, by reason of circumstances affecting the Designated Eurodollar Market generally that are beyond the reasonable control of such lender, deposits in Dollars (in the applicable amounts) are not being offered to lender in the Designated Eurodollar Market for the applicable LIBOR Loan Period; or

(b) LIBOR Basis as determined by such lender (i) does not represent the effective pricing to lender for deposits in Dollars in the Designated Eurodollar Market in the relevant amount for the applicable LIBOR Loan Period, or (ii) will not adequately and fairly reflect the cost to such lender of making the applicable LIBOR Loans;

then lender forthwith shall give notice thereof to Borrower and Agent, whereupon until such lender notifies Borrower that the circumstances giving rise to such suspension no longer exist, the obligation of Lender to make any future LIBOR Loans shall be suspended.

14.1.5 Each Lender agrees to endeavor promptly to notify Borrower of any event of which it has actual knowledge, occurring after the Closing Date, which will entitle any Lender to compensation pursuant to this Section, and agrees to designate a different LIBOR lending office if such designation will avoid the need for or reduce the amount of such compensation and will not, in the good faith judgment of such lender, otherwise be materially disadvantageous to lender. Any request for compensation by any Lender under this Section shall set forth the basis upon which it has been determined that such an amount is due from Borrower, a calculation of the amount due, and a certification that the corresponding costs have been incurred by such lender.

14.2 **Capital Adequacy.** If, after the date hereof, any Lender (or any Affiliate of any Lender) shall have reasonably determined that the adoption of any Applicable Law, governmental rule, regulation or order regarding the capital adequacy of banks or bank holding companies, or any change therein, or any change in the interpretation or administration thereof by any Governmental Authority, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by any Lender (or any Affiliate of any Lender) with any request or directive regarding capital adequacy (whether or not having the force of law) of any such Governmental Authority, central bank or comparable agency, has or would have the effect of reducing the rate of return on the capital of Lender (or any Affiliate of Lender) as a consequence of any of such Lender's obligations hereunder to a level below that which it could have achieved but for such adoption, change or compliance (taking into consideration the policies of any Lender (or Affiliate of any Lender) with respect to capital adequacy immediately before such adoption, change or compliance and assuming that the capital of such Lender (or Affiliate of such Lender) was fully utilized prior to such adoption, change or compliance), then, upon demand by such Lender, Borrower shall immediately pay to such lender such additional amounts as shall be sufficient to compensate such lender for any such reduction actually suffered; provided, that there shall be no duplication of amounts paid to any Lender pursuant to this sentence and **Section 14.1**. For purposes of this **Section 14.2**, a change in Applicable Law, governmental rule, regulation or order shall include, without limitation, (x) any change made or which becomes effective on the basis of a law, treaty, rule, regulation, interpretation

administration or implementation then in force, the effective date of which change is delayed by the terms of such law, treaty, rule, regulation, interpretation, administration or implementation, (y) the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111-203, H.R. 4173) and all requests, rules, regulations, guidelines, interpretations or directives promulgated thereunder or issued in connection therewith, regardless of the date enacted, adopted, issued or promulgated, whether before or after the Closing Date and (z) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States regulatory authorities, in each case pursuant to Basel III. Such Lender's determination of the amount to be paid to such lender by Borrower as a result of any event referred to in this **Section 14.2** shall, absent manifest error, be deemed final, binding and conclusive upon Borrower.

14.3 **Federal Reserve System/Wire Transfers.** The obligation of any Lender to make any loan by wire transfer to Borrower or any other Person shall be subject to all Applicable Law, including the policy of the Board of Governors of the Federal Reserve System on Reduction of Payments System Risk as in effect from time to time. Borrower acknowledges that such laws, regulations and policy may delay the transmission of any funds to Borrower.

14.4 **Assignment of Commitments Under Certain Circumstances; Duty to Mitigate.** In the event (i) any Lender requests compensation pursuant to **Section 14.1** or **14.2**, above, (ii) any Lender delivers a notice described in **Section 14.1** or **14.2**, above, (iii) any Lender refuses to consent to any amendment, waiver or other modification of any Loan Document requested by any Borrower and which amendment, waiver or other modification is required under this Agreement for such amendment, waiver or other modification, or (iv) any Lender defaults in its obligations to make Loans or other extensions of credit hereunder, Borrower may, at its sole expense and effort (including with respect to the assignment fee referred to in **Section 12.8.2**), upon notice to such Lender and Agent, require such Lender to transfer and assign, without recourse (in accordance with and subject to the restrictions contained in **Section 12.8.2**), all of its interests, rights and obligations under this Agreement to an Eligible Assignee that shall assume such assigned obligations (which Eligible Assignee may be another Lender, if a Lender accepts such assignment); provided that (x) such assignment shall not conflict with any law, rule or regulation or order of any court or other Governmental Authority having jurisdiction, (y) Borrower shall have received the prior written consent of Agent, which consent shall not unreasonably be withheld or delayed, and (z) the Borrower or such assignee shall have paid to the affected Lender in immediately available funds an amount equal to the sum of the principal of and interest accrued to the date of such payment on the outstanding Loans of such Lender, respectively, affected by such assignment plus all fees and other amounts accrued for the account of such Lender hereunder; provided further that, if prior to any such transfer and assignment the circumstances or event that resulted in such Lender's claim for compensation or notice, as referred to above in (i) and (ii) of this **Section 14.4**, as the case may be, cease to cause such Lender to suffer increased costs or reductions in amounts received or receivable or reduction in return on capital, or cease to have the consequences specified in **Section 14.1** or **14.2**, above, or cease to result in amounts being payable under **Section 14.1** or **14.2**, as the case may be, or if such Lender shall waive its right to claim or notice under **Section 14.1** or **14.2**, as applicable in respect of such circumstances or event or shall consent to the proposed amendment, waiver, consent or other modification, as the case may be, then such Lender shall not thereafter be required to make any such transfer and assignment hereunder. Each Lender hereby grants to Agent an irrevocable power of attorney (which power is coupled with an interest) to execute and deliver, on behalf of such Lender as assignor, any Commitment Assignment and Acceptance necessary to effectuate any assignment of such Lender's interests hereunder in the circumstances contemplated by this paragraph. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such filing or assignment, delegation and transfer.

---

IN WITNESS WHEREOF, this Agreement has been duly executed as of the date first written above.

**BORROWER:**

AEROCENTURY CORP.,  
a Delaware corporation

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

---

**ADMINISTRATIVE AGENT, SOLE LEAD ARRANGER AND LENDER:**

MUFG UNION BANK, N.A.

By: \_\_\_\_\_  
Name: Maria F. Maia  
Title: Director

---

**SYNDICATION AGENT AND LENDER:**

UMPQUA BANK

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_



**CO-DOCUMENTATION AGENT AND LENDER:**

ZIONS BANCORPORATION, N.A. (fka ZB, N.A.) dba CALIFORNIA BANK AND TRUST

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

---

**CO-DOCUMENTATION AGENT AND LENDER:**

U.S. BANK NATIONAL ASSOCIATION

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

---

**LENDER:**

COLUMBIA STATE BANK

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

---

Schedule A

Revolving Commitment

<b>Lender</b>	<b>Commitment</b>	<b>Pro Rata Share</b>
MUFG Union Bank, N.A.	\$37,000,000	25.52%
Umpqua Bank	\$35,000,000	24.14%
Zions Bancorporation, N.A. (fka ZB, N.A.) dba California Bank & Trust	\$30,000,000	20.69%
U.S. Bank National Association	\$28,000,000	19.31%
Columbia State Bank	\$15,000,000	10.34%
TOTAL:	\$145,000,000	100.00%

---

## Schedule 1.1a

## Advance Rates

Equipment Type	Leased Advance Rate*	Off-Lease Advance Rate	Maximum Days Off-Lease at Leased Advance Rate
Bombardier (Canadair Regional Jet Series 700, 705 and 900)	75%	40%	180
Bombardier (deHavilland Dash 8Q-400 Series)	75%	40%	180
ATR (Aerei da Trasporto Regionale 42 and 72 Series)	75%	40%	180
Bombardier (deHavilland Dash 8Q-300 Series)	60%	0%	180
Embraer (E-175/190/195)	75%	40%	180
Embraer (E-145)	40%	0%	180
Leased Spare Engines	70%	0%	180
Spot Market Assets that are part of the Collateral	60% for initial 180 day period after the Closing Date (or, for Engine FA0041, after designation as Spot Market Asset if so designated); 25% thereafter until 270 days after the Closing Date (or designation for Engine FA0041); and 0% after the 270 day period	N/A	N/A

\* The calculation of the Advance Rate shall be subject to the following provisions:

(a) Subject to clause (b) below and other than with respect to Spot Market Assets, once an Equipment has been Off-Lease for the number of days listed in the column entitled "Maximum Days Off-Lease at Leased Advance Rate", the Advance Rate for the Asset shall be the reduced Advance Rate for such Equipment in the column entitled "Off-Lease Advance Rate".

(b) If an Equipment requires maintenance or repairs necessary to make it Eligible to Enter Service (as defined below) and if such maintenance or repairs are commenced promptly after Borrower regains possession of the Equipment, then the 180 day period set forth under the column entitled "Maximum Days Off-Lease at Leased Advance Rate" shall not commence until the earlier of (i) the date such maintenance or repairs are completed; or (ii) 50 days after the Lease for such equipment terminated (or, with respect to repossessed Equipment, the date Borrower repossesses such Equipment).

(c) The term "Eligible to Enter Service" means that the Equipment is Eligible Equipment but requires maintenance or repairs in order to allow the Equipment to be put in a condition commercially suitable for lease or resale to operators.

Schedule 1.1b

Eligible Leases

Serial number	Model	Lessee
15128	CRJ900	Adria Airways
15207	CRJ900	Adria Airways
15215	CRJ900	Adria Airways
10165	Bombardier CRJ700	American Airlines
10171	Bombardier CRJ700	American Airlines
10178	Bombardier CRJ700	American Airlines
145126	Embraer 145	BMI
145134	Embraer 145	BMI
145201	Embraer 145	BMI
4205	Bombardier Q400	Croatia Airlines
4211	Bombardier Q400	Croatia Airlines
546	deHavilland DHC 8-300	Island Aviation
15055	Bombardier CRJ705	Jazz
FA0041	Pratt & Whitney Engine	NTE Aviation
406	deHavilland DHC 8-300	Skyward
407	deHavilland DHC 8-300	Skyward
20202	Fokker 50	Skyward
236	deHavilland DHC 8-300	Wideroe

Schedule 1.1c

Equipment

Manufacturer	Serial number	Model	Lessee
Bombardier	15128	CRJ900	Adria Airways
Bombardier	15207	CRJ900	Adria Airways
Bombardier	15215	CRJ900	Adria Airways
Bombardier	10165	CRJ700	American Airlines
Bombardier	10171	CRJ700	American Airlines
Bombardier	10178	CRJ700	American Airlines
Embraer	145126	145	BMI
Embraer	145134	145	BMI
Embraer	145201	145	BMI
Bombardier	4205	Q400	Croatia Airlines
Bombardier	4211	Q400	Croatia Airlines
Bombardier	546	DHC 8-300	Island Aviation
Bombardier	15055	CRJ705	Jazz
Bombardier	406	DHC 8-300	Skyward
Bombardier	407	DHC 8-300	Skyward
Fokker	20202 (*)	Fokker 50	Skyward
Bombardier	236	DHC 8-300	Wideroe
Pratt & Whitney	FA0041 (**)	PW150A	NTE Aviation
Bombardier	238	DHC 8-300	Spot Market Asset
Saab	449	Saab 340B Plus	Spot Market Asset
Saab	454	Saab 340B Plus	Spot Market Asset
Saab	453 (***)	Saab 340B Plus	Part out
Bombardier	4020 (***)	Q400	Part out
Pratt & Whitney	FA0137(***)	PW150A	Part out

(\*) Not Eligible Collateral and not included in Borrowing Base due to aircraft type.

(\*\*) May be designated as Spot Market Asset before March 31, 2019.

(\*\*\*) Not Eligible Collateral and not included in Borrowing Base.

Schedule 1.1d

Excluded Assets

Excluded Assets may include up to the following:

1. Bombardier CRJ 1000 series Aircraft with msn 19002 (with two (2) GE model CF34-8C5 Engines, esn 194897 & 194896)
  2. Bombardier CRJ 1000 series Aircraft with msn 19003 (with GE model CF34-8C5 Engines, esn 194975 & 194976)
  3. Embraer E-175 series Aircraft with msn 17000168 (with two (2) GE model CF34-8E5 Engines, esn 193478 & 193479)
  4. Embraer E-175 series Aircraft with msn 17000172 (with two (2) GE model CF34-8E5 Engines, esn 193484 & 193489)
  5. Embraer E-175 series Aircraft with msn 17000173 (with two (2) GE model CF34-8E5 Engines, esn 193492 & 193499)
  6. Bombardier CRJ-900 series Aircraft with msn 15129 (with two (2) GE model CF34-8C5 Engines, esn 194584 & 194585)
-

Schedule 1.1e

Material Contracts

Third Amended and Restated Management Agreement between Borrower and JMC entered into as of January 21, 2019.

Third Amended and Restated Loan and Security Agreement dated as of February 19, 2019, between, Borrower, Agent and Lenders.

Indemnity Agreement dated as of February 8, 2019 among Borrower, Norddeutsche Landesbank Girozentrale, New York Branch, the “participants” party thereto, and Wilmington Trust Company, executed in connection with the Term Loan Facility.

Real Estate Lease for 1440 Chapin Avenue, Suite 310, Burlingame, CA 94010.

Eligible Leases as listed on Schedule 1.1b

---

Schedule 1.1f

Permitted Indebtedness

See Schedule 7.13

---

Schedule 1.1g

Liens of Record

None.

---

Schedule 1.1h

Schedule of Documents

Third Amended Loan and Security Agreement  
Third Amended and Restated Mortgage and Security Agreement  
Borrowing Base Certificate  
Compliance Certificate  
Third Amended and Restated Revolving Note for:  
    MUFG Union Bank, N.A.  
    California Bank & Trust  
    U.S. Bank National Association  
    Umpqua Bank  
    Columbia State Bank  
Reaffirmation of Guaranty and Security Agreement executed by JHC  
Stock Pledge Agreement executed by Borrower (re JHC)  
Stock Power in blank  
UCC for Stock Pledge  
Guaranty executed by JMC  
Security Agreement executed by JMC  
Alternative Dispute Resolution executed by JMC  
UCC (JMC)

---

Schedule 1.1i

Spot Market Assets

Spot Market Assets include the following:

#	SN	Mfg.	Model
1	238	Bombardier	DHC-8-311
2	321*	Saab	340B
3	449	Saab	340B Plus
4	454	Saab	340B Plus
5	4019*	Bombardier	DHC-8-402
6	4021*	Bombardier	DHC-8-402

\*As of the Closing Date, these Equipment are no longer owned by Borrower and not part of the Collateral and listed above for the purposes of calculating certain financial covenants hereunder.

---

Schedule 5.2

Executive Offices: Corporate or Other Names; Conduct of Business

Executive Officers:

Michael Magnusson, President

Toni M. Perazzo, Sr. Vice President – Finance & Secty.

Corporate Headquarters, Principal Office and Location of Records re: Collateral

1440 Chapin Avenue, Suite 310, Burlingame, CA 94010

---

Schedule 5.7

No Other Liabilities; No Material Adverse Changes

None.

---

Schedule 5.9

Trade Names

None.

---

Litigation

1. **Mechanic's Lien Litigation with Embraer Aircraft Maintenance Services.** Borrower is currently engaged in litigation with Embraer regarding approximately \$350,000 owed to Embraer by Colgan, a former lessee of an aircraft (Saab 340 MSN 242) leased by Borrower to Colgan, which filed bankruptcy while the aircraft was on lease to Colgan. Soon after Colgan's bankruptcy, Embraer notified the Company of the imposition of a mechanic's lien on the Aircraft with respect to Colgan's unpaid debt. Approximately one year later, and while the Colgan bankruptcy proceedings were still in progress, Embraer filed a complaint against the Company for the Colgan debt. The Company made a settlement offer to Embraer, but Embraer did not respond to any overtures. The litigation remained inactive for an extended period thereafter, and during that period of inactivity by Embraer, the Company entered into a lease with a purchase option for the Aircraft with a Ukrainian carrier which was exercised by the carrier. The purchase transaction documents acknowledged the mechanic's lien and contained a post-closing agreement to remove the Embraer lien from title record. The Colgan bankruptcy eventually was closed, and Colgan unsecured creditors received a nominal amount in satisfaction of pre-bankruptcy unsecured claims.

After several pre-trial motions in which Borrower prevailed, including a court ruling against Embraer's claims of unjust enrichment and attempting to claim attachment of proceeds under the mechanics lien statute, Embraer filed a motion to amend the complaint to add a conversion claim and a third-party beneficiary claim. The court allowed Embraer to amend its complaint and the underlying lawsuit has a scheduled trial date of May 2019.

In November 2018, Embraer filed a summary judgment motion on its claims. Borrower's Counsel has responded to the motion, and also moved in its response for the court to enter summary judgment for Borrower, since in depositions held in November 2018, Embraer admitted that it had not file its lawsuit within one year of completion of the work that is the subject of the litigation. The effect under the Tennessee mechanic's lien statute is that the claimed lien against the aircraft is of no further force and effect. The court's ruling on both parties' motions are pending.

Since the claim does not arise from a contract between the parties there is no potential liability for Embraer's attorneys' fees should Embraer prevail in the litigation.

---

Schedule 5.17

Hazardous Materials

None.

---

## Schedule 5.19

Insurances

	<b>Name of Lessee</b>	<b>Insurance Certificate</b>	<b>Type of Insurance</b>
236	Wideroe's Flyveselskap AS	Marsh	Hull/ All Risks Liability War Risk
238	Wideroe's Flyveselskap AS	Marsh	Hull/ All Risks Liability War Risk
406	Skyward Express Limited	Fred Black Insurance Brokers, Ltd	Hull/ All Risks Liability War Risk
407	Skyward Express Limited	Fred Black Insurance Brokers, Ltd	Hull/ All Risks Liability War Risk
546	Island Aviation Limited	Global Insurance Brokers, Ltd	Hull/ All Risks Liability War Risk
4205	Croatia Airlines d.d.	Albatros Vericherungsdienste GmbH	Hull/ All Risks Liability War Risk
4211	Croatia Airlines d.d.	Albatros Vericherungsdienste GmbH	Hull/ All Risks Liability War Risk
10165	American Airlines, Inc.	Willis Tower Watson	Hull/ All Risks Liability War Risk
10171	American Airlines, Inc.	Willis Tower Watson	Hull/ All Risks Liability War Risk
10178	American Airlines, Inc.	Willis Tower Watson	Hull/ All Risks Liability War Risk
15055	Jazz Aviation, LP	Marsh	Hull/ All Risks Liability War Risk
15128	Adria Airways d.d.	Albatros Vericherungsdienste GmbH	Hull/ All Risks Liability War Risk
15207	Adria Airways d.d.	Albatros Vericherungsdienste GmbH	Hull/ All Risks Liability War Risk
15215	Adria Airways d.d.	Albatros Vericherungsdienste GmbH	Hull/ All Risks Liability War Risk
20202	Skyward Express Limited	Fred Black Insurance Brokers, Ltd	Hull/ All Risks Liability War Risk
145126	Airline Investment Limited	Albatros Vericherungsdienste GmbH	Hull/ All Risks Liability War Risk
145134	Airline Investment Limited	Albatros Vericherungsdienste GmbH	Hull/ All Risks Liability War Risk
145201	Airline Investment Limited	Albatros Vericherungsdienste GmbH	Hull/ All Risks Liability War Risk
FA0041 (Engine)	NTE Aviation LLC	JMB Insurance Agency	Spares All Risks Liability War Risk

ACY Off-lease Assets: JetFleet Management Corp and AeroCentury CorpCrystal and Company, Inc

Possessed, Spares and Equipment Hull/ Liability

449,454

---

ACY Company Policy JetFleet Management Corp and AeroCentury CorpCrystal and Company, Inc

Premises and Products Liability

---

ACY Company Policy AeroCentury Corp. Acord

Directors' and Officers' Liability Insurance

---

Schedule 5.22

Depreciation Policies

The Company's interests in aircraft and aircraft engines are recorded at cost, which includes acquisition costs. It is the Company's policy to hold aircraft for approximately twelve years unless market conditions dictate otherwise. Therefore, depreciation of aircraft is initially computed using the straight-line method over the twelve-year period to an estimated residual value based on appraisal. For an aircraft engine held for lease as a spare, the Company estimates the length of time that it will hold the aircraft engine based upon estimated usage, repair costs and other factors, and depreciates it to the appraised residual value over such period using the straight-line method.

The Company periodically reviews plans for lease or sale of its aircraft and aircraft engines and changes, as appropriate, the remaining expected holding period for such assets. Estimated residual values are reviewed and adjusted periodically, based upon updated estimates obtained from an independent appraiser. Decreases in the fair value of aircraft could affect not only the current value but also the estimated residual value.

---

Schedule 6.4

Insurance as of the Closing Date

See Schedule 5.19

---

Schedule 7.13

Indebtedness and Guaranteed Indebtedness Existing on the Closing Date

1. Guaranteed Indebtedness pursuant to:

- a. Guaranty dated as of December 31, 2018 in favor of Republic Airline, Inc. related to Lease Agreement [N109Q] and documents executed in connection therewith.
  - b. Guaranty dated as of December 31, 2018 in favor of Republic Airline, Inc. related to Lease Agreement [N110Q] and documents executed in connection therewith.
  - c. Guaranty dated as of December 31, 2018 in favor of Republic Airline, Inc. related to Lease Agreement [N111Q] and documents executed in connection therewith.
  - d. Deed of Amendment and Restatement dated February 8, 2019, among ACY SN 19003 Limited, Air Nostrum, Lineas Aereas Del Mediterraneo, S.A., and Borrower, with respect to the lease of Aircraft bearing serial number 19002.
  - e. Deed of Amendment and Restatement dated February 8, 2019, among ACY SN 19003 Limited, Air Nostrum, Lineas Aereas Del Mediterraneo, S.A., and Borrower, with respect to the lease of Aircraft bearing serial number 19003.
  - f. Indemnity Agreement dated as of February 8, 2019 among Borrower, Norddeutsche Landesbank Girozentrale, New York Branch, the “participants” party thereto, and Wilmington Trust Company.
  - g. Membership Interest Pledge Agreement, between Borrower and Wilmington Trust Company, dated February 8, 2019, with respect to the Borrower’s membership interest in ACY SN 15129 LLC.
  - h. Membership Interest Pledge Agreement, between Borrower and Wilmington Trust Company, dated February 8, 2019, with respect to the Borrower’s membership interest in ACY E-175 LLC.
  - i. Membership Interest Pledge Agreement, between Borrower and Wilmington Trust Company, dated February 8, 2019, with respect to the Borrower’s membership interest in ACY SN 19002 Limited.
  - j. Membership Interest Pledge Agreement, between Borrower and Wilmington Trust Company, dated February 8, 2019, with respect to the Borrower’s membership interest in ACY SN 19003 Limited.
-

Schedule 7.19

Investments Existing as of the Closing Date

None.

---

EXHIBIT A

Form of Borrowing Base Certificate

[APPENDED]

---

**EXHIBIT A**

Form of Borrowing Base Certificate

BORROWING BASE CERTIFICATE

To: MUFG UNION BANK, as Agent

This Borrowing Base Certificate (“Certificate”) is executed and delivered by AeroCentury Corp., a Delaware corporation (“Borrower”), to MUFG Union Bank, N.A. (“Agent”) pursuant to that certain Third Amended and Restated Loan and Security Agreement dated as of February 19, 2019, among MUFG Union Bank, N.A., together with other Lenders thereunder from time to time (collectively, the “Lenders”) and MUFG Union Bank, N.A., as Agent (as amended, extended, renewed, supplemented or otherwise modified from time to time, the “Loan Agreement”). Any terms used herein and not defined herein shall have the meanings set forth for such terms in the Loan Agreement. This Certificate covers the calendar month ending \_\_\_\_\_, 20\_\_ (the “Determination Date”), and is delivered to Agent pursuant to Section 8.1.5 of the Loan Agreement.

As of the Determination Date, all Equipment subject to an Eligible Lease are listed on **Schedule 1** attached hereto. Attached hereto as **Schedule 2** is a list of all Equipment acquired and all Equipment sold by the Borrower since the date of the last Borrowing Base Certificate delivered to Agent. Attached hereto as **Schedule 3** is Borrower’s leasing receivables aging report as of the Determination Date, which covers both Leases under which the Lessees are current and Leases under which the Lessees are delinquent, in either case as of such date. Attached hereto as **Schedule 4** is the list of Eligible Collateral supporting the Borrowing Base. Attached hereto as **Schedule 5** is the list of Assets excluded from the Borrowing Base calculation due to noncompliance with the Weighted Average Age and/or Geographic Concentration Limit requirements.

The following calculations determine the Borrowing Base and the Borrowing Base Availability as of the Determination Date under the Revolving Commitment described in the Loan Agreement and related Loan Documents. Such calculations are derived from the Books and Records of Borrower in accordance with the relevant definitions of financial terms set forth in the Loan Agreement:

**I. BORROWING BASE**

Borrower’s Borrowing Base as of the Determination Date is \$\_\_\_\_\_, calculated as:<sup>1</sup>

<b>1.</b>	(i) Bombardier (CRJ Series 700, 705 and 900; deHavilland Dash 8Q-400); ATR 42 and 72; Embraer 175/190/195 Aircraft subject to Eligible Lease (or Off-Lease for not more than 180 days)		
	(ii) times 75%	×	.75
	(a) Total Borrowing Base amount for Bombardier (CRJ Series 700, 705 and 900; deHavilland Dash 8Q-400); ATR 42 and 72; Embraer 175/190/195 Aircraft subject to Eligible Lease (or Off-Lease for not more than 180 days) [1(i) × 1(ii)]		\$ _____
<b>2.</b>	(i) Bombardier (CRJ Series 700, 705 and 900; deHavilland Dash 8Q-400); ATR 42 and 72; Embraer 175/190/195 Aircraft not subject to Eligible Lease for more than 180 days		
	(ii) times 40%	×	.40
	(a) Total Borrowing Base amount for Bombardier (CRJ Series 700, 705 and 900; deHavilland Dash 8Q-400); ATR 42 and 72; Embraer 175/190/195 Aircraft not subject to Eligible Lease for more than 180 days [2(i) × 2(ii)]		\$ _____
<b>3.</b>	(i) Leased Spare Engines (or Off-Lease for not more than 180 days)	\$	\$ _____
	(ii) times 70%	×	.70
	(a) Total Borrowing Base amount for Leased Spare Engines (or Off-Lease for not more than 180 days) [3(i) × 3(ii)]		\$ _____
<b>4.</b>	(i) Bombardier (deHavilland Dash 8Q-300) Aircraft subject to Eligible Lease (or Off-Lease for not more than 180 days)	\$	\$ _____
	(ii) times 60%	×	.60
	(a) Total Borrowing Base amount for Bombardier (deHavilland 8Q-300) Aircraft subject to Eligible Lease (or Off-Lease for not more than 180 days) [4(i) × 4(ii)]		\$ _____
<b>5.</b>	(i) Embraer (E-145) Aircraft subject to Eligible Lease (or Off-Lease for not more than 180 days)	\$	\$ _____
	(ii) times 40%	×	.40
	(a) Total Borrowing Base amount for Embraer (E-145) Aircraft subject to Eligible Lease (or Off-Lease for not more than 180 days) [5(i) × 5(ii)]		\$ _____
<b>6.</b>	(i) Spot Market Assets (180 day period from designation)	\$	\$ _____
	(ii) times 60%	×	.60
	(a) Total Borrowing Base amount for Spot Market Assets (180 days) [6(i) × 6(ii)]		\$ _____
<b>7.</b>	(i) Spot Market Assets (180 days – 270 days from designation)	\$	\$ _____

(ii) times 25% × .25

(a) Total Borrowing Base amount for Spot Market Assets (270 days) [7(i) x 7(ii)]

\$

\$ \_\_\_\_\_

**BORROWING BASE: [1(a)+2(a)+3(a)+4(a)+5(a)+6(a)+7(a)]:**

\$ \_\_\_\_\_

**II. BORROWING AVAILABILITY**

Borrower's Borrowing Availability under the Revolving Commitment as of the Determination Date is \$ \_\_\_\_\_, calculated as the lesser of the following (1 or 2):

**1.** Maximum Amount (\$145,000,000.00 subject to Sections 2.8 and 2.18 of the Loan Agreement)

\$ \_\_\_\_\_

Or

**2.** Borrowing Base Availability

(i) Borrowing Base (above) \$

(ii) less amount outstanding as of the Determination Date under the Credit Facility - \$

(iii) less the total amount of deferred rent and maintenance reserves due to the Borrower from any Lessee or former Lessee pursuant to a Deferral Agreement \$

(iv) less the Maintenance Reserve Amount - \$

**BORROWING BASE AVAILABILITY**

\$ \_\_\_\_\_

**BORROWING AVAILABILITY**

**[Lesser of II.1 or II.2 above]:**

\$ \_\_\_\_\_

This Certificate is executed on \_\_\_\_\_, 20\_\_, by the \_\_\_\_\_ of Borrower, an Authorized Signatory. The undersigned hereby further certifies that each and every matter contained herein is derived from the Books and Records of Borrowers and is true and correct in all material respects.

AEROCENTURY CORP.,  
a Delaware corporation

[Printed name]

<sup>1</sup> Amount in (i) for 1 through 7 is based on aggregate Appraised Value of Equipment.

SCHEDULE 1

TO BORROWING BASE CERTIFICATE

Eligible Asset subject to an Eligible Lease

[TO BE APPENDED]

---

SCHEDULE 2  
TO BORROWING BASE CERTIFICATE

Part 1

Equipment Acquired

[TO BE APPENDED]

---

SCHEDULE 2  
TO BORROWING BASE CERTIFICATE

Part 2

Equipment Sold

[TO BE APPENDED]

---

SCHEDULE 3

TO BORROWING BASE CERTIFICATE

Leasing Receivables Aging Report

[TO BE APPENDED]

---





**EXHIBIT B**

Form of Borrowing Notice

[APPENDED]

---

**EXHIBIT B**

**Form of Borrowing Notice**

**BORROWING NOTICE**

1. This BORROWING NOTICE is executed and delivered by AeroCentury Corp., a Delaware corporation (“Borrower”), to MUFG Union Bank, N.A. (“Agent”) pursuant to that certain Third Amended and Restated Loan and Security Agreement dated as of February 19, 2019, among MUFG Union Bank, N.A., together with any other Lender thereunder from time to time (collectively, the “Lenders”) and MUFG Union Bank, N.A., as Agent (as amended, extended, renewed, supplemented or otherwise modified from time to time, the “Loan Agreement”). Any terms used herein and not defined herein shall have the meanings set forth for such terms in the Loan Agreement.

2. Borrower hereby requests a Loan pursuant to the Loan Agreement as follows:

(a) AMOUNT OF REQUESTED LOAN:<sup>2</sup> \$ \_\_\_\_\_

(b) DATE OF REQUESTED LOAN: \_\_\_\_\_

(c) TYPE OF REQUESTED LOAN (Check one box):

BASE RATE LOAN

LIBOR RATE LOAN, FOR A LIBOR LOAN PERIOD OF \_\_\_\_\_ MONTHS<sup>3</sup>

3. In connection with this request, Borrower certifies that:

(a) After giving effect to such Loan, no Overadvance shall have occurred (the aggregate amount of all Loans then outstanding shall not exceed the lesser of the (i) Maximum Amount or (ii) the Borrowing Base Availability).

(b) Now and as of the date of the requested Loan, except (i) for representations and warranties which expressly relate to a particular date or which are no longer true and correct as a result of a change permitted by the Loan Agreement or the other Loan Documents, or (ii) as disclosed by Borrower and approved in writing by Agent, each representation and warranty made by Borrower in Section 5 of the Loan Agreement will be true and correct in all material respects, both immediately before and after giving effect to such Loan, as though such representations and warranties were made on and as of that date;

(c) No circumstance or event has occurred that constitutes a Material Adverse Effect since the Closing Date;

(d) Other than matters described in Schedule 5.10 (Litigation) to the Loan Agreement or not required as of the Closing Date to be described therein or disclosed by Borrower and approved in writing by the Lender, there is no action, suit, proceeding or investigation pending or, to the best knowledge of Borrower (on behalf of Borrower and its Subsidiaries, if any), threatened against or affecting Borrower or any Subsidiary or any Property of any of them before any Governmental Authority; and

(e) No Default or Event of Default presently exists or will have occurred and be continuing as a result of the Borrowing requested hereunder.

4. This Borrowing Notice is executed on \_\_\_\_\_, 20\_\_, by an Authorized Signatory of Borrower. The undersigned, in such capacity, hereby certifies, on behalf of Borrower, each and every matter contained herein to be true and correct.

AEROCENTURY CORP.,  
a Delaware corporation

By:

Name:

Title:

<sup>2</sup> Each LIBOR Loan must be in a principal amount of at least \$5,000,000.00 and in an integral multiple of \$100,000. Each Base Rate loan must be in a principal amount of at least \$250,000.00 and in an integral multiple of \$25,000. A maximum of 5 tranches of Base Rate Loans and LIBOR Loans collectively may be outstanding at once.

<sup>3</sup> Specify whether 1, 2, 3 or 6-month Libor Loan Period.



EXHIBIT C

Form of Compliance Certificate

[APPENDED]

---

**EXHIBIT C**

**COMPLIANCE CERTIFICATE**

To: MUFG UNION BANK, N.A., AGENT

This Compliance Certificate (this "Certificate") is executed and delivered by AeroCentury Corp., a Delaware corporation ("Borrower"), to MUFG Union Bank, N.A. ("Agent") pursuant to that certain Third Amended and Restated Loan and Security Agreement dated as of February 19, 2019, among MUFG Union Bank, N.A., together with any other Lender thereunder from time to time (collectively, the "Lenders") and MUFG Union Bank, N.A., as Agent (as amended, extended, renewed, supplemented or otherwise modified from time to time, the "Loan Agreement"). Any terms used herein and not defined herein shall have the meanings set forth for such terms in the Loan Agreement.

This Certificate is delivered in accordance with Section 8.1 of the Loan Agreement by an Authorized Signatory of Borrower. This Certificate is delivered with respect to the Fiscal [Quarter/Year] ended \_\_\_\_\_, 20\_\_ ("Determination Date"). Computations and other information indicating the Pricing Leverage Ratio and compliance with respect to the covenants contained in Sections 6.15.1, 6.15.2, 6.15.3, 6.15.4, 6.15.5, 6.15.6, 6.15.7, 6.15.8 and 6.15.9 of the Loan Agreement are set forth below:

**1. Pricing Leverage Ratio (for purposes of Section 2.2.1(c))**

Total Debt (all indebtedness of Borrower or a Subsidiary, recourse and non-recourse)	\$	
divided by		
Tangible Net Worth (as calculated for Section 6.15.6 below)	\$	
<b>Ratio of Total Debt to Tangible Net Worth</b>		<b>\$</b>

**2. Section 6.15.1: Maximum Leverage Ratio**

**A ratio of Funded Debt to Tangible Net Worth ("Maximum Leverage Ratio") as of Determination Date of not more than 3.75x (3.50x after September 30, 2019), calculated as follows:**

Funded Debt means all indebtedness, liabilities, and obligations for which Borrower has recourse liability, now existing or hereafter arising, for money borrowed by Borrower or a Subsidiary whether or not evidenced by any note, indenture, or agreement (including, without limitation, the Notes and any indebtedness for money borrowed from an Affiliate), as determined in accordance with GAAP, consistently applied \$

Tangible Net Worth means the following with respect to Borrower and its Subsidiaries:

(a) total assets	\$	
(b) less total liabilities	\$	
(c) less intangibles (excluding gains and losses from fair value of derivatives charges whether or not included in other comprehensive income or net income)	\$	
<b>Tangible Net Worth</b>		<b>\$</b>

**Ratio of Funded Debt to Tangible Net Worth**

**3. Section 6.15.2: Interest Coverage Ratio**

**As of the Determination Date an Interest Coverage Ratio of at least 2.25x, calculated on a twelve (12) month trailing basis as follows:**

EBITDA equal to the sum of the following (calculated on a twelve month trailing basis):

(a) Net income (loss)	\$	
(b) plus Interest Expense		
(c) plus Taxes	\$	
(d) plus depreciation	\$	
(e) plus amortization	\$	
(f) plus Fleet Renewal Expenses (not to exceed \$6,500,000 in aggregate)	\$	
(g) plus the Merger Settlement Loss (not to exceed \$5,000,000 in aggregate)	\$	
(h) plus for each Fiscal Quarter in which a Merger Expense is incurred, such Merger Expense incurred in the trailing consecutive 12 months (not to exceed \$2,400,000 in aggregate)	\$	

**Consolidated EBITDA** \$

*Divided by the calculation resulting from:*

(a) consolidated Interest Expense (including imputed interest related to Capital Lease Obligations)	\$	
(b) less non-cash amounts for debt discounts, other financing costs and amortization of amendment fees	\$	
<b>Consolidated Cash Interest Expense</b>		<b>\$</b>

**Ratio of Consolidated EBITDA to Consolidated Cash Interest Expense**

**4. Section 6.15.3: Debt Service Coverage Ratio**

**A Debt Service Coverage Ratio of at least 1.05x, calculated on a twelve month trailing basis as follows:**

**Consolidated Adjusted EBITDA** equal to the sum of the following (calculated on a twelve month trailing basis):

(i)	Consolidated EBITDA (as calculated for Section 6.15.2 above)	\$	_____
(ii)	less Taxes paid in cash		_____
(iii)	plus Maintenance Expense		_____
(iv)	plus Pro Forma EBITDA*		_____

**Consolidated Adjusted EBITDA** \$ \_\_\_\_\_

Consolidated Total Debt Service equal to the sum of:

(i)	Phantom Amortization (equal to 8.0% of Total Debt)	\$	_____
(ii)	plus Consolidated Cash Interest Expense (as calculated for Section 6.15.2)	\$	_____
(iii)	plus Consolidated Maintenance Expense	\$	_____

**Total Debt Service** \$ \_\_\_\_\_

**Ratio of Consolidated Adjusted EBITDA to Consolidated Total Debt Service**

\* Pro Forma EBITDA (relates to Eligible Equipment subject to a Lease for less than one year)

**5. Section 6.15.4: Minimum Recourse Debt Interest Coverage Ratio (Required following closing of Term Loan Facility)**

**A Minimum Recourse Debt Interest Coverage Ratio of at least 2.25x calculated as follows:**

Consolidated EBITDA (as calculated for Section 6.15.2 above)	\$	_____
less EBITDA from Excluded Entities	\$	_____
Borrower Only EBITDA		\$ _____
divided by the calculation resulting from:		
Consolidated Cash Interest Expense (as calculated for Section 6.15.2 above)	\$	_____
less Cash Interest Expense for Non-Recourse Debt	\$	_____
Recourse Cash Interest Expense		\$ _____
<b>Ratio of Borrower Only EBITDA to Recourse Cash Interest Expense</b>		_____

**6. Section 6.15.5: Minimum Recourse Debt Service Coverage Ratio (Required following closing of Term Loan Facility)**

**A Minimum Recourse Debt Interest Service Ratio of at 1.05x, calculated as follows:**

Consolidated Adjusted EBITDA as calculated for Section 6.14.3 above)	\$	_____
Less EBITDA from Excluded Subsidiaries	\$	_____
<b>Borrower Only Adjusted EBITDA</b>		
divided by the calculation resulting from:		
(i) Recourse Phantom Amortization (equal to 8.0% of Funded Debt)	\$	_____
(ii) plus Recourse Cash Interest Expense (as calculated for Section 6.15.4 above)	\$	_____
(iii) plus Maintenance Expense	\$	_____
Borrower Only Debt Service		\$ _____
<b>Ratio of Borrow Only Adjusted EBITDA to Borrower Only Debt Service</b>		_____

**7. Section 6.15.6: Minimum Tangible Net Worth**

**Tangible Net Worth as calculated in Section 6.15.1** \$ \_\_\_\_\_

**Minimum Tangible Net Worth equal to the sum of:**

(i) 85% of Tangible Net Worth at June 30, 2018	\$	_____
(ii) plus 50% of Net Income reported in each successive Fiscal Quarter with no deduction for any losses	\$	_____
(iii) plus 100% of net proceeds from any additional equity offering in excess of \$5,000,000	\$	_____
(iv) plus 50% of any incremental additive equity associated with any Acquisition	\$	_____
(v) less Merger Shareholder Equity Reduction (not to exceed \$2,800,000 in aggregate)	\$	_____
(vi) less Fleet Renewal Expenses (not to exceed \$6,500,000 in aggregate)	\$	_____

**Total Minimum Tangible Net Worth** \$ \_\_\_\_\_

**Excess (deficient) Tangible Net Worth Compared to Total Minimum Tangible Net Worth** \$ \_\_\_\_\_

8. **Section 6.15.7: No Net Loss**

**No net loss as of the end of any Fiscal Quarter**

Net income calculated according to GAAP on a twelve (12) month trailing basis.\*

\$ \_\_\_\_\_

\* Net loss will exclude (i) the Merger Settlement Loss (not to exceed \$5,000,000 in aggregate), (ii) Merger Expenses for the calculation for the Fiscal Quarter in which such Merger Expenses were incurred (not to exceed \$2,400,000 in aggregate) and (iii) Fleet Renewal Expenses (not to exceed \$6,500,000 in aggregate).

9. **Section 6.15.8: Utilization**

**Utilization Rate shall be at least 75% calculated on a twelve month trailing basis and excluding Spot Market Assets.**

Utilization Rate equals:

- (i) Number of days each item of Equipment is subject to an Eligible Lease during the measuring period *multiplied by* such Equipment's Appraised Value
- (ii) *divided by* the number of days such item of Equipment is owned *multiplied by* such Equipment's Appraised Value

\_\_\_\_\_  
\_\_\_\_\_

**Utilization Rate**

\_\_\_\_\_

10. **Section 6.15.9: Revenue Concentration Limit**

No more than 25% of Borrower's annual operating lease revenue may be from any one Lessee nor may more than 42% through the fiscal quarter ended September 30, 2019 and 40% for each fiscal quarter ended December 31, 2019 and thereafter of Borrower's annual operating lease revenue be from any two Lessees, calculated on a twelve month trailing basis; provided, however, that for purposes of calculating compliance with this section, the operating lease revenue attributable to Eligible Assets acquired but not subject to a Lease for one full year and included in Borrower's total annual operating lease revenue shall be deemed to be the product of (x) the monthly rental set forth in such Lease multiplied by (y) twelve (12).\*\* Operating lease revenue for this Section 6.15.9 shall include rents under finance leases as if they are accounted for as operating leases.

Revenue Concentration from One Lessee equals:

- (i) Borrower's annual operating lease revenue (excluding maintenance reserves) from largest grossing Lessee
- (ii) *divided by* total annual operating lease revenue (excluding maintenance reserves)

\$ \_\_\_\_\_  
\$ \_\_\_\_\_

**Revenue Concentration from One Lessee**

\_\_\_\_\_

Revenue Concentration from Two Lessees equals:

- (i) Borrower's annual operating lease revenue (excluding maintenance reserves) from two largest grossing Lessees
- (ii) *divided by* total annual operating lease revenue (excluding maintenance reserves)

\$ \_\_\_\_\_  
\$ \_\_\_\_\_

**Revenue Concentration from Two Lessees**

\_\_\_\_\_

\*\* Enclosed herewith is the revenue concentration calculation for each Lessee

8. A review of the activities of Borrower during the fiscal period covered by this Certificate has been made under the supervision of the undersigned with a view to determining whether during such fiscal period Borrower performed and observed all of its Obligations. To the best knowledge of the undersigned, during the fiscal period covered by this Certificate, all covenants and conditions have been so performed and observed and no Default or Event of Default has occurred and is continuing, with the exceptions set forth below in response to which Borrower has taken or proposes to take the following actions (if none, so state).

9. The undersigned a Senior Officer of Borrower certifies that the calculations made and the information contained herein are derived from the books and records of Borrower, as applicable, and that each and every matter contained herein correctly reflects those books and records.

10. To the best knowledge of the undersigned no event or circumstance has occurred that constitutes a Material Adverse Effect since the date the most recent Compliance Certificate was executed and delivered, with the exceptions set forth below (if none, so state).

Dated: \_\_\_\_\_

Printed Name and Title of Senior Officer of AeroCentury Corp.

\_\_\_\_\_

**EXHIBIT D**

**Form of Commitment Assignment and Acceptance**

**[APPENDED]**

---

**EXHIBIT D**

**Form of Commitment Assignment and Acceptance**

**COMMITMENT ASSIGNMENT AND ACCEPTANCE AGREEMENT**

This COMMITMENT ASSIGNMENT AND ACCEPTANCE AGREEMENT (this "Assignment and Acceptance") dated as of \_\_\_\_\_, 20\_\_ is made between \_\_\_\_\_ (the "Assignor") and \_\_\_\_\_ (the "Assignee").

RECITALS

WHEREAS, the Assignor is party to that certain Third Amended and Restated Loan and Security Agreement dated as of February 19, 2019 (as amended, restated, modified or supplemented from time to time, the "Loan Agreement"), among Borrower, MUFG Union Bank, N.A., together with any other Lenders from time to time (collectively, the "Lenders") and MUFG Union Bank, N.A., as Agent. All capitalized terms used herein and not otherwise defined shall have the respective meanings ascribed to them in the Loan Agreement.

WHEREAS, as provided under the Loan Agreement, the Assignor has committed to making Revolving Loans (the "Committed Loans") to the Borrower for Assignor's Pro Rata Share of the Revolving Commitment in an aggregate amount not to exceed \$\_\_\_\_\_ (the "Commitment").

WHEREAS, [the Assignor has made Committed Loans in the aggregate principal amount of \$\_\_\_\_\_ to the Borrower] [no Committed Loans are outstanding under the Loan Agreement].

WHEREAS, the Assignor wishes to assign to the Assignee [part of the] [all] rights and obligations of the Assignor under the Loan Agreement in respect of its Commitment, in an amount equal to \$\_\_\_\_\_ (the "Assigned Amount") on the terms and subject to the conditions set forth herein and the Assignee wishes to accept assignment of such rights and to assume such obligations from the Assignor on such terms and subject to such conditions.

NOW, THEREFORE, in consideration of the foregoing and the mutual agreements contained herein, the parties hereto agree as follows:

1. Assignment and Acceptance.

(a) Subject to the terms and conditions of this Assignment and Acceptance, (i) the Assignor hereby sells, transfers and assigns to the Assignee, and (ii) the Assignee hereby purchases, assumes and undertakes from the Assignor, without recourse and without representation or warranty (except as provided in this Assignment and Acceptance) \_\_\_% (the "Assignee's Percentage Share") of (A) the Commitment of the Assignor, and (B) all related rights, benefits, security interest, obligations, liabilities and indemnities of the Assignor under and in connection with the Loan Agreement and the Loan Documents. This Assignment shall not constitute a novation of any of the rights and obligations under the Loan Agreement.

(b) With effect on and after the Effective Date (as defined in **Section 5** hereof), the Assignee shall be a party to the Loan Agreement and succeed to all of the rights and the benefits (including the benefit of any security interest) and be obligated to perform all of the obligations of a Lender under the Loan Agreement, with a Commitment in an amount equal to the Assigned Amount. The Assignee agrees that it will perform in accordance with their terms all of the obligations which it is required to perform as a Lender under the Loan Agreement. It is the intent of the parties hereto that the Commitment of the Assignor shall, as of the Effective Date, be reduced by an amount equal to the Assigned Amount and the Assignor shall relinquish its rights and be released from its obligations under the Loan Agreement to the extent such obligations have been assumed by the Assignee; provided, however, the Assignor shall not relinquish its rights under **Sections 12.2** (Reimbursement and Expenses) and **12.3** (Indemnity) of the Loan Agreement to the extent such rights relate to the time prior to the Effective Date.

(c) After giving effect to the assignment and acceptance set forth herein, on the Effective Date the Assignor's Commitment will be \$\_\_\_\_\_ (an amount equal to \_\_\_% of the Revolving Commitment).

(d) After giving effect to the assignment and acceptance set forth herein, on the Effective Date the Assignee's Commitment will be \$\_\_\_\_\_ (an amount equal to \_\_\_% of the Revolving Commitment).

2. Payments.

(a) As consideration for the sale, assignment and transfer contemplated in **Section 1** hereof, the Assignee shall pay to the Assignor on the Effective Date in immediately available funds an amount equal to \$\_\_\_\_\_, representing the Assignee's Percentage Share of the Principal amount of all Committed Loans.

(b) The [Assignor] [Assignee] further agrees to pay to Agent an administrative fee in the amount specified in **Section 12.8.4** of the Loan Agreement.

(c) Agent shall retain all additional amounts paid by the Borrower as a commitment fee or as interest on the Committed Loans outstanding to the Borrower with respect to the Assignee's Commitment.

3. Reallocation of Payments. Any interest, fees and other payments accrued to the Effective Date with respect to the Commitment

shall be for the account of the Assignor. Any interest, fees and other payments accrued on and after the Effective Date with respect to the Assigned Amount shall be for the account of the Assignee. Each of the Assignor and the Assignee agrees that it will hold in trust for the other party any interest, fees and other amounts which it may receive to which the other party is entitled pursuant to the preceding sentence and pay to the other party any such amounts which it may receive promptly upon receipt.

4. Independent Credit Decision. The Assignee (a) acknowledges that it has received a copy of the Loan Agreement and the Schedules and Exhibits thereto, together with copies of the most recent Financial Statements referred to in the Loan Agreement, and such other documents and information as it has deemed appropriate to make its own credit and legal analysis and decision to enter into this Assignment and Acceptance; and (b) agrees that it will, independently and without reliance upon the Assignor, Agents or any Lender and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit and legal decisions in taking or not taking action under the Loan Agreement.

5. Effective Date; Notices.

(a) As between the Assignor and the Assignee, the effective date for this Assignment and Acceptance shall be \_\_\_\_\_, 20\_\_ (the "Effective Date"); provided that the following conditions precedent have been satisfied on or before the Effective Date:

(i) this Assignment and Acceptance shall be executed and delivered by the Assignor and the Assignee and a copy shall have been delivered to Agent;

(ii) the consent of Agent and Borrower (as applicable) required for an effective assignment of the Assigned Amount by the Assignor to the Assignee under the Loan Agreement shall have been duly obtained and shall be in full force and effect as of the Effective Date;

(iii) the Assignee shall pay to the Assignor all amounts due to the Assignor under this Assignment and Acceptance;

(iv) the Assignee shall have complied with all terms and conditions for such assignment and otherwise as set forth in the Loan Agreement;

(v) the administrative fee referred to in **Section 12.8.4** of the Loan Agreement shall have been paid to Agent; and

(vi) the Assignor shall have assigned and the Assignee shall have assumed a percentage equal to the Assignee's Pro Rata Share of the rights and obligations of the Assignor under the Loan Agreement.

(b) Notwithstanding the foregoing, the Effective Date of this Assignment and Acceptance shall not be earlier than five (5) Business Days after the date on which Agent receives a copy of the Assignment and Acceptance as set forth above.

[6. Agent. [INCLUDE ONLY IF THE ASSIGNOR IS AGENT]

(a) The Assignee hereby appoints and authorizes the Assignor to take such action as agent on its behalf and to exercise such powers under the Loan Agreement as are delegated to Agent by the Lenders pursuant to the terms of the Loan Agreement.

(b) The Assignee shall assume no duties or obligations held by the Assignor in its capacity as Agent under the Loan Agreement.]

7. Withholding Tax. The Assignee (a) represents and warrants to the Lenders, Agent and the Borrower that under applicable law and treaties no Tax will be required to be withheld by the Lenders with respect to any payments to be made to the Assignee hereunder, (b) agrees to furnish (if it is organized under the laws of any jurisdiction other than the United States or any state thereof) to Agent and the Borrower prior to the time that Agent or the Borrower is required to make any payment of principal, interest or fees hereunder, duplicate executed originals of either U.S. Internal Revenue Service Form W-8BEN or U.S. Internal Revenue Service Form 1001 (wherein the Assignee claims entitlement to the benefits of a Tax treaty that provides for a complete exemption from U.S. federal income withholding Tax on all payments hereunder) and agrees to provide new Forms W-8BEN or 1001 upon the expiration of any previously delivered form or comparable statements in accordance with applicable U.S. law and regulations and amendments thereto, duly executed and completed by the Assignee, and (c) agrees to comply with all applicable U.S. laws and regulations with regard to such withholding Tax exemption.

8. Representations and Warranties.

(a) The Assignor represents and warrants to the Assignee that (i) it is the legal and beneficial owner of the interest being assigned by it hereunder and that such interest is free and clear of any Lien or other adverse claim; (ii) it is duly organized and existing and it has the full power and authority to take, and has taken, all action necessary to execute and deliver this Assignment and Acceptance and any other documents required or permitted to be executed or delivered by it in connection with this Assignment and Acceptance and to fulfill its obligations hereunder; (iii) no notices to, or consents, authorizations or approvals of, any Person are required (other than any already given or obtained) for its due execution, delivery and performance of this Assignment and Acceptance, and apart from any agreements or undertakings or filings required by the Loan Agreement, no further action by, or notice to, or filing with, any Person is required of it for such execution, delivery or performance; and (iv) this Assignment and Acceptance has been duly executed and delivered by it and constitutes the legal, valid and binding obligation of the Assignor, enforceable against the Assignor in accordance with the terms hereof, subject, as to enforcement, to bankruptcy, insolvency, moratorium, reorganization and other laws of general application relating to or affecting creditors' rights and to general equitable principles.

(b) The Assignor makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with the Loan Agreement or the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Agreement or any other instrument or document furnished pursuant thereto. The Assignor makes no representation or warranty in connection with, and assumes no responsibility with respect to, the solvency, financial condition or statements of the Borrower, or the performance or observance by the Borrower, of any of its respective obligations under the Loan Agreement or any other instrument or document furnished in connection therewith.

(c) The Assignee represents and warrants to the Assignor that (i) it is duly organized and existing and it has full power and authority to take, and has taken, all action necessary to execute and deliver this Assignment and Acceptance and any other documents required or permitted to be executed or delivered by it in connection with this Assignment and Acceptance, and to fulfill its obligations hereunder; (ii) no notices to, or consents, authorizations or approvals of, any Person are required (other than any already given or obtained) for its due execution, delivery and performance of this Assignment and Acceptance; and apart from any agreements or undertakings or filings required by the Loan Agreement, no further action by, or notice to, or filing with, any Person is required of it for such execution, delivery or performance; (iii) this Assignment and Acceptance has been duly executed and delivered by it and constitutes the legal, valid and binding obligation of the Assignee, enforceable against the Assignee in accordance with the terms hereof, subject, as to enforcement, to bankruptcy, insolvency, moratorium, reorganization and other laws of general application relating to or affecting creditors' rights and to general equitable principles; and (iv) it is an Eligible Assignee.

9. Further Assurances. The Assignor and the Assignee each hereby agree to execute and deliver such other instruments, and to take such other action, as either party may reasonably request in connection with the transactions contemplated by this Assignment and Acceptance, including the delivery of any notices or other documents or instruments to the Borrower or Agent, which may be required in connection with the assignment and acceptance contemplated hereby.

10. Miscellaneous.

(a) Any amendment or waiver of any provision of this Assignment and Acceptance shall be in writing and signed by the parties hereto. No failure or delay by either party hereto in exercising any right, power or privilege hereunder shall operate as a waiver thereof and any waiver of any breach of the provisions of this Assignment and Acceptance shall be without prejudice to any rights with respect to any other or further breach thereof.

(b) All payments made hereunder shall be made without any set-off or counterclaim.

(c) The Assignor and the Assignee shall each pay its own costs and expenses incurred in connection with the negotiation, preparation, execution and performance of this Assignment and Acceptance.

(d) This Assignment and Acceptance may be executed in any number of counterparts, and all of such counterparts taken together shall be deemed to constitute one and the same instrument.

(e) THIS ASSIGNMENT AND ACCEPTANCE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK. The Assignor and the Assignee each irrevocably submit to the non-exclusive jurisdiction of any State or Federal court sitting in New York over any suit, action or proceeding arising out of or relating to this Assignment and Acceptance and irrevocably agrees that all claims in respect of such action or proceeding may be heard and determined in such New York State or Federal court. Each party to this Assignment and Acceptance hereby irrevocably waives, to the fullest extent it may effectively do so, the defense of an inconvenient forum to the maintenance of such action or proceeding.

(f) THE ASSIGNOR AND THE ASSIGNEE EACH HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS ASSIGNMENT AND ACCEPTANCE, THE CREDIT AGREEMENT, ANY RELATED DOCUMENTS AND AGREEMENTS OR ANY COURSE OF CONDUCT, COURSE OF DEALING OR STATEMENTS (WHETHER ORAL OR WRITTEN).

IN WITNESS WHEREOF, the Assignor and the Assignee have caused this Assignment and Acceptance to be executed and delivered by their duly authorized officers as of the date first above written.

[ASSIGNOR]

By: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

[ASSIGNEE]

By: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Address:



EXHIBIT E

Form of Mortgage

[APPENDED]

---

EXHIBIT F

Form of Beneficial Interest Pledge Agreement

[APPENDED]

---

**EXHIBIT G**

Form of Owner Trustee Mortgage

[APPENDED]

---

**EXHIBIT H**

Form of Owner Trustee Guaranty

[APPENDED]

---

EXHIBIT I

Form of Placard

**Placard to be used for items of Equipment owned by Owner Trustee:**

THIS AIRCRAFT/ENGINE IS OWNED BY AND LEASED FROM \_\_\_\_\_, AS OWNER TRUSTEE, AND IS SUBJECT TO A FIRST PRIORITY SECURITY INTEREST IN FAVOR OF ONE OR MORE FINANCIAL INSTITUTIONS.

AeroCentury Corp.  
1440 Chapin Avenue, Suite 310  
Burlingame, CA 94010-4011

**Placard to be used for items of Equipment owned by Borrower:**

THIS AIRCRAFT/ENGINE IS OWNED BY AEROCENTURY CORPORATION, OR AN AFFILIATE, AND IS SUBJECT TO A FIRST PRIORITY SECURITY INTEREST IN FAVOR OF ONE OR MORE FINANCIAL INSTITUTIONS.

AeroCentury Corp.  
1440 Chapin Avenue, Suite 310  
Burlingame, CA 94010-4011

[\(Back To Top\)](#)

**Section 3: EX-10.6 (FORM OF ISDA MASTER AGREEMENT,  
SCHEDULE AND CONFIRMATION)**

**ISDA<sup>®</sup>**

International Swaps and Derivatives Association, Inc.

**2002 MASTER AGREEMENT**

**MUFG BANK, LTD ("Party A")  
and  
AEROCENTURY CORP. ("Party B")**

dated as of March 12, 2019

have entered and/or anticipate entering into one or more transactions (each a "Transaction") that are or will be governed by this 2002 Master Agreement, which includes the schedule (the "Schedule"), and the documents and other confirming evidence (each a "Confirmation") exchanged between the parties or otherwise effective for the purpose of confirming or evidencing those Transactions. This 2002 Master Agreement and the Schedule are together referred to as this "Master Agreement".

Accordingly, the parties agree as follows:—

**1. Interpretation**

- (a) **Definitions.** The terms defined in Section 14 and elsewhere in this Master Agreement will have the meanings therein specified for the purpose of this Master Agreement.
- (b) **Inconsistency.** In the event of any inconsistency between the provisions of the Schedule and the other provisions of this Master Agreement, the Schedule will prevail. In the event of any inconsistency between the provisions of any Confirmation and this Master Agreement, such Confirmation will prevail for the purpose of the relevant Transaction.
- (c) **Single Agreement.** All Transactions are entered into in reliance on the fact that this Master Agreement and all Confirmations form a single agreement between the parties (collectively referred to as this “Agreement”), and the parties would not otherwise enter into any Transactions.

**2. Obligations**

(a) **General Conditions.**

- (i) Each party will make each payment or delivery specified in each Confirmation to be made by it, subject to the other provisions of this Agreement.
- (ii) Payments under this Agreement will be made on the due date for value on that date in the place of the account specified in the relevant Confirmation or otherwise pursuant to this Agreement, in freely transferable funds and in the manner customary for payments in the required currency. Where settlement is by delivery (that is, other than by payment), such delivery will be made for receipt on the due date in the manner customary for the relevant obligation unless otherwise specified in the relevant Confirmation or elsewhere in this Agreement.

(iii) Each obligation of each party under Section 2(a)(i) is subject to (1) the condition precedent that no Event of Default or Potential Event of Default with respect to the other party has occurred and is continuing, (2) the condition precedent that no Early Termination Date in respect of the relevant Transaction has occurred or been effectively designated and (3) each other condition specified in this Agreement to be a condition precedent for the purpose of this Section 2(a)(iii).

(b) **Change of Account.** Either party may change its account for receiving a payment or delivery by giving notice to the other party at least five Local Business Days prior to the Scheduled Settlement Date for the payment or delivery to which such change applies unless such other party gives timely notice of a reasonable objection to such change.

(c) **Netting of Payments.** If on any date amounts would otherwise be payable:—

- (i) in the same currency; and
- (ii) in respect of the same Transaction,

by each party to the other, then, on such date, each party's obligation to make payment of any such amount will be automatically satisfied and discharged and, if the aggregate amount that would otherwise have been payable by one party exceeds the aggregate amount that would otherwise have been payable by the other party, replaced by an obligation upon the party by which the larger aggregate amount would have been payable to pay to the other party the excess of the larger aggregate amount over the smaller aggregate amount.

The parties may elect in respect of two or more Transactions that a net amount and payment obligation will be determined in respect of all amounts payable on the same date in the same currency in respect of those Transactions, regardless of whether such amounts are payable in respect of the same Transaction. The election may be made in the Schedule or any Confirmation by specifying that "Multiple Transaction Payment Netting" applies to the Transactions identified as being subject to the election (in which case clause (ii) above will not apply to such Transactions). If Multiple Transaction Payment Netting is applicable to Transactions, it will apply to those Transactions with effect from the starting date specified in the Schedule or such Confirmation, or, if a starting date is not specified in the Schedule or such Confirmation, the starting date otherwise agreed by the parties in writing. This election may be made separately for different groups of Transactions and will apply separately to each pairing of Offices through which the parties make and receive payments or deliveries.

(d) **Deduction or Withholding for Tax.**

(i) **Gross-Up.** All payments under this Agreement will be made without any deduction or withholding for or on account of any Tax unless such deduction or withholding is required by any applicable law, as modified by the practice of any relevant governmental revenue authority, then in effect. If a party is so required to deduct or withhold, then that party ("X") will:—

- (1) promptly notify the other party ("Y") of such requirement;
  - (2) pay to the relevant authorities the full amount required to be deducted or withheld (including the full amount required to be deducted or withheld from any additional amount paid by X to Y under this Section 2(d)) promptly upon the earlier of determining that such deduction or withholding is required or receiving notice that such amount has been assessed against Y;
  - (3) promptly forward to Y an official receipt (or a certified copy), or other documentation reasonably acceptable to Y, evidencing such payment to such authorities; and
-

(4) if such Tax is an Indemnifiable Tax, pay to Y, in addition to the payment to which Y is otherwise entitled under this Agreement, such additional amount as is necessary to ensure that the net amount actually received by Y (free and clear of Indemnifiable Taxes, whether assessed against X or Y) will equal the full amount Y would have received had no such deduction or withholding been required. However, X will not be required to pay any additional amount to Y to the extent that it would not be required to be paid but for:—

(A) the failure by Y to comply with or perform any agreement contained in Section 4(a)(i), 4(a)(iii) or 4(d); or

(B) the failure of a representation made by Y pursuant to Section 3(f) to be accurate and true unless such failure would not have occurred but for (I) any action taken by a taxing authority, or brought in a court of competent jurisdiction, after a Transaction is entered into (regardless of whether such action is taken or brought with respect to a party to this Agreement) or (II) a Change in Tax Law.

(ii) **Liability.** If:—

(1) X is required by any applicable law, as modified by the practice of any relevant governmental revenue authority, to make any deduction or withholding in respect of which X would not be required to pay an additional amount to Y under Section 2(d)(i)(4);

(2) X does not so deduct or withhold; and

(3) a liability resulting from such Tax is assessed directly against X,

then, except to the extent Y has satisfied or then satisfies the liability resulting from such Tax, Y will promptly pay to X the amount of such liability (including any related liability for interest, but including any related liability for penalties only if Y has failed to comply with or perform any agreement contained in Section 4(a)(i), 4(a)(iii) or 4(d)).

### 3. Representations

Each party makes the representations contained in Sections 3(a), 3(b), 3(c), 3(d), 3(e) and 3(f) and, if specified in the Schedule as applying, 3(g) to the other party (which representations will be deemed to be repeated by each party on each date on which a Transaction is entered into and, in the case of the representations in Section 3(f), at all times until the termination of this Agreement). If any “Additional Representation” is specified in the Schedule or any Confirmation as applying, the party or parties specified for such Additional Representation will make and, if applicable, be deemed to repeat such Additional Representation at the time or times specified for such Additional Representation.

(a) **Basic Representations.**

(i) **Status.** It is duly organized and validly existing under the laws of the jurisdiction of its organization or incorporation and, if relevant under such laws, in good standing;

(ii) **Powers.** It has the power to execute this Agreement and any other documentation relating to this Agreement to which it is a party, to deliver this Agreement and any other documentation relating to this Agreement that it is required by this Agreement to deliver and to perform its obligations under this Agreement and any obligations it has under any Credit Support Document to which it is a party and has taken all necessary action to authorize such execution, delivery and performance;

---

(iii) **No Violation or Conflict.** Such execution, delivery and performance do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets;

(iv) **Consents.** All governmental and other consents that are required to have been obtained by it with respect to this Agreement or any Credit Support Document to which it is a party have been obtained and are in full force and effect and all conditions of any such consents have been complied with; and

(v) **Obligations Binding.** Its obligations under this Agreement and any Credit Support Document to which it is a party constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)).

(b) **Absence of Certain Events.** No Event of Default or Potential Event of Default or, to its knowledge, Termination Event with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement or any Credit Support Document to which it is a party.

(c) **Absence of Litigation.** There is not pending or, to its knowledge, threatened against it, any of its Credit Support Providers or any of its applicable Specified Entities any action, suit or proceeding at law or in equity or before any court, tribunal, governmental body, agency or official or any arbitrator that is likely to affect the legality, validity or enforceability against it of this Agreement or any Credit Support Document to which it is a party or its ability to perform its obligations under this Agreement or such Credit Support Document.

(d) **Accuracy of Specified Information.** All applicable information that is furnished in writing by or on behalf of it to the other party and is identified for the purpose of this Section 3(d) in the Schedule is, as of the date of the information, true, accurate and complete in every material respect.

(e) **Payer Tax Representation.** Each representation specified in the Schedule as being made by it for the purpose of this Section 3(e) is accurate and true.

(f) **Payee Tax Representations.** Each representation specified in the Schedule as being made by it for the purpose of this Section 3(f) is accurate and true.

(g) **No Agency.** It is entering into this Agreement, including each Transaction, as principal and not as agent of any person or entity.

#### 4. Agreements

Each party agrees with the other that, so long as either party has or may have any obligation under this Agreement or under any Credit Support Document to which it is a party:—

(a) **Furnish Specified Information.** It will deliver to the other party or, in certain cases under clause (iii) below, to such government or taxing authority as the other party reasonably directs:—

(i) any forms, documents or certificates relating to taxation specified in the Schedule or any Confirmation,

(ii) any other documents specified in the Schedule or any Confirmation; and

---

(iii) upon reasonable demand by such other party, any form or document that may be required or reasonably requested in writing in order to allow such other party or its Credit Support Provider to make a payment under this Agreement or any applicable Credit Support Document without any deduction or withholding for or on account of any Tax or with such deduction or withholding at a reduced rate (so long as the completion, execution or submission of such form or document would not materially prejudice the legal or commercial position of the party in receipt of such demand), with any such form or document to be accurate and completed in a manner reasonably satisfactory to such other party and to be executed and to be delivered with any reasonably required certification,

in each case by the date specified in the Schedule or such Confirmation or, if none is specified, as soon as reasonably practicable.

(b) **Maintain Authorizations.** It will use all reasonable efforts to maintain in full force and effect all consents of any governmental or other authority that are required to be obtained by it with respect to this Agreement or any Credit Support Document to which it is a party and will use all reasonable efforts to obtain any that may become necessary in the future.

(c) **Comply With Laws.** It will comply in all material respects with all applicable laws and orders to which it may be subject if failure so to comply would materially impair its ability to perform its obligations under this Agreement or any Credit Support Document to which it is a party.

(d) **Tax Agreement.** It will give notice of any failure of a representation made by it under Section 3(f) to be accurate and true promptly upon learning of such failure.

(e) **Payment of Stamp Tax.** Subject to Section 11, it will pay any Stamp Tax levied or imposed upon it or in respect of its execution or performance of this Agreement by a jurisdiction in which it is incorporated, organized, managed and controlled or considered to have its seat, or where an Office through which it is acting for the purpose of this Agreement is located ("Stamp Tax Jurisdiction"), and will indemnify the other party against any Stamp Tax levied or imposed upon the other party or in respect of the other party's execution or performance of this Agreement by any such Stamp Tax Jurisdiction which is not also a Stamp Tax Jurisdiction with respect to the other party.

## 5. Events of Default and Termination Events

(a) **Events of Default.** The occurrence at any time with respect to a party or, if applicable, any Credit Support Provider of such party or any Specified Entity of such party of any of the following events constitutes (subject to Sections 5(c) and 6(e)(iv)) an event of default (an "Event of Default") with respect to such party:—

(i) **Failure to Pay or Deliver.** Failure by the party to make, when due, any payment under this Agreement or delivery under Section 2(a)(i) or 9(h)(i)(2) or (4) required to be made by it if such failure is not remedied on or before the first Local Business Day in the case of any such payment or the first Local Delivery Day in the case of any such delivery after, in each case, notice of such failure is given to the party;

(ii) **Breach of Agreement; Repudiation of Agreement.**

(1) Failure by the party to comply with or perform any agreement or obligation (other than an obligation to make any payment under this Agreement or delivery under Section 2(a)(i) or 9(h)(i)(2) or (4) or to give notice of a Termination Event or any agreement or obligation under Section 4(a)(i), 4(a)(iii) or 4(d)) to be complied with or performed by the party in accordance with this Agreement if such failure is not remedied within 30 days after notice of such failure is given to the party; or

(2) the party disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, this Master Agreement, any Confirmation executed and delivered by that party or any

---

Transaction evidenced by such a Confirmation (or such action is taken by any person or entity appointed or empowered to operate it or act on its behalf);

(iii) ***Credit Support Default.***

(1) Failure by the party or any Credit Support Provider of such party to comply with or perform any agreement or obligation to be complied with or performed by it in accordance with any Credit Support Document if such failure is continuing after any applicable grace period has elapsed;

(2) the expiration or termination of such Credit Support Document or the failing or ceasing of such Credit Support Document, or any security interest granted by such party or such Credit Support Provider to the other party pursuant to any such Credit Support Document, to be in full force and effect for the purpose of this Agreement (in each case other than in accordance with its terms) prior to the satisfaction of all obligations of such party under each Transaction to which such Credit Support Document relates without the written consent of the other party; or

(3) the party or such Credit Support Provider disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, such Credit Support Document (or such action is taken by any person or entity appointed or empowered to operate it or act on its behalf);

(iv) ***Misrepresentation.*** A representation (other than a representation under Section 3(e) or 3(f)) made or repeated or deemed to have been made or repeated by the party or any Credit Support Provider of such party in this Agreement or any Credit Support Document proves to have been incorrect or misleading in any material respect when made or repeated or deemed to have been made or repeated;

(v) ***Default Under Specified Transaction.*** The party, any Credit Support Provider of such party or any applicable Specified Entity of such party:—

(1) defaults (other than by failing to make a delivery) under a Specified Transaction or any credit support arrangement relating to a Specified Transaction and, after giving effect to any applicable notice requirement or grace period, such default results in a liquidation of, an acceleration of obligations under, or an early termination of, that Specified Transaction;

(2) defaults, after giving effect to any applicable notice requirement or grace period, in making any payment due on the last payment or exchange date of, or any payment on early termination of, a Specified Transaction (or, if there is no applicable notice requirement or grace period, such default continues for at least one Local Business Day);

(3) defaults in making any delivery due under (including any delivery due on the last delivery or exchange date of) a Specified Transaction or any credit support arrangement relating to a Specified Transaction and, after giving effect to any applicable notice requirement or grace period, such default results in a liquidation of, an acceleration of obligations under, or an early termination of, all transactions outstanding under the documentation applicable to that Specified Transaction; or

(4) disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, a Specified Transaction or any credit support arrangement relating to a Specified Transaction that is, in either case, confirmed or evidenced by a document or other confirming evidence executed and delivered by that party, Credit Support Provider or Specified Entity (or such action is taken by any person or entity appointed or empowered to operate it or act on its behalf);

---

occurrence or existence of:—

(1) a default, event of default or other similar condition or event (however described) in respect of such party, any Credit Support Provider of such party or any applicable Specified Entity of such party under one or more agreements or instruments relating to Specified Indebtedness of any of them (individually or collectively) where the aggregate principal amount of such agreements or instruments, either alone or together with the amount, if any, referred to in clause (2) below, is not less than the applicable Threshold Amount (as specified in the Schedule) which has resulted in such Specified Indebtedness becoming, or becoming capable at such time of being declared, due and payable under such agreements or instruments before it would otherwise have been due and payable; or

(2) a default by such party, such Credit Support Provider or such Specified Entity (individually or collectively) in making one or more payments under such agreements or instruments on the due date for payment (after giving effect to any applicable notice requirement or grace period) in an aggregate amount, either alone or together with the amount, if any, referred to in clause (1) above, of not less than the applicable Threshold Amount;

(vii) **Bankruptcy.** The party, any Credit Support Provider of such party or any applicable Specified Entity of such party:—

(1) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (2) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due; (3) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (4)(A) institutes or has instituted against it, by a regulator, supervisor or any similar official with primary insolvency, rehabilitative or regulatory jurisdiction over it in the jurisdiction of its incorporation or organization or the jurisdiction of its head or home office, a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation by it or such regulator, supervisor or similar official, or (B) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and such proceeding or petition is instituted or presented by a person or entity not described in clause (A) above and either (I) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding -up or liquidation or (II) is not dismissed, discharged, stayed or restrained in each case within 15 days of the institution or presentation thereof; (5) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger); (6) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets; (7) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 15 days thereafter; (8) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (1) to (7) above (inclusive); or (9) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts; or

---

or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, or reorganizes, reincorporates or reconstitutes into or as, another entity and, at the time of such consolidation, amalgamation, merger, transfer, reorganization, reincorporation or reconstitution:—

- (1) the resulting, surviving or transferee entity fails to assume all the obligations of such party or such Credit Support Provider under this Agreement or any Credit Support Document to which it or its predecessor was a party; or
- (2) the benefits of any Credit Support Document fail to extend (without the consent of the other party) to the performance by such resulting, surviving or transferee entity of its obligations under this Agreement.

(b) **Termination Events.** The occurrence at any time with respect to a party or, if applicable, any Credit Support Provider of such party or any Specified Entity of such party of any event specified below constitutes (subject to Section 5(c)) an Illegality if the event is specified in clause (i) below, a Force Majeure Event if the event is specified in clause (ii) below, a Tax Event if the event is specified in clause (iii) below, a Tax Event Upon Merger if the event is specified in clause (iv) below, and, if specified to be applicable, a Credit Event Upon Merger if the event is specified pursuant to clause (v) below or an Additional Termination Event if the event is specified pursuant to clause (vi) below:—

(i) **Illegality.** After giving effect to any applicable provision, disruption fallback or remedy specified in, or pursuant to, the relevant Confirmation or elsewhere in this Agreement, due to an event or circumstance (other than any action taken by a party or, if applicable, any Credit Support Provider of such party) occurring after a Transaction is entered into, it becomes unlawful under any applicable law (including without limitation the laws of any country in which payment, delivery or compliance is required by either party or any Credit Support Provider, as the case may be), on any day, or it would be unlawful if the relevant payment, delivery or compliance were required on that day (in each case, other than as a result of a breach by the party of Section 4(b)):—

- (1) for the Office through which such party (which will be the Affected Party) makes and receives payments or deliveries with respect to such Transaction to perform any absolute or contingent obligation to make a payment or delivery in respect of such Transaction, to receive a payment or delivery in respect of such Transaction or to comply with any other material provision of this Agreement relating to such Transaction; or
- (2) for such party or any Credit Support Provider of such party (which will be the Affected Party) to perform any absolute or contingent obligation to make a payment or delivery which such party or Credit Support Provider has under any Credit Support Document relating to such Transaction, to receive a payment or delivery under such Credit Support Document or to comply with any other material provision of such Credit Support Document;

(ii) **Force Majeure Event.** After giving effect to any applicable provision, disruption fallback or remedy specified in, or pursuant to, the relevant Confirmation or elsewhere in this Agreement, by reason of force majeure or act of state occurring after a Transaction is entered into, on any day:—

- (1) the Office through which such party (which will be the Affected Party) makes and receives payments or deliveries with respect to such Transaction is prevented from performing any absolute or contingent obligation to make a payment or delivery in respect of such Transaction, from receiving a payment or delivery in respect of such Transaction or from complying with any other material provision of this Agreement relating to such Transaction (or would be so prevented if such payment, delivery or compliance were required on that day), or it becomes impossible or
-

impracticable for such Office so to perform, receive or comply (or it would be impossible or impracticable for such Office so to perform, receive or comply if such payment, delivery or compliance were required on that day); or

(2) such party or any Credit Support Provider of such party (which will be the Affected Party) is prevented from performing any absolute or contingent obligation to make a payment or delivery which such party or Credit Support Provider has under any Credit Support Document relating to such Transaction, from receiving a payment or delivery under such Credit Support Document or from complying with any other material provision of such Credit Support Document (or would be so prevented if such payment, delivery or compliance were required on that day), or it becomes impossible or impracticable for such party or Credit Support Provider so to perform, receive or comply (or it would be impossible or impracticable for such party or Credit Support Provider so to perform, receive or comply if such payment, delivery or compliance were required on that day),

so long as the force majeure or act of state is beyond the control of such Office, such party or such Credit Support Provider, as appropriate, and such Office, party or Credit Support Provider could not, after using all reasonable efforts (which will not require such party or Credit Support Provider to incur a loss, other than immaterial, incidental expenses), overcome such prevention, impossibility or impracticability;

(iii) **Tax Event.** Due to (1) any action taken by a taxing authority, or brought in a court of competent jurisdiction, after a Transaction is entered into (regardless of whether such action is taken or brought with respect to a party to this Agreement) or (2) a Change in Tax Law, the party (which will be the Affected Party) will, or there is a substantial likelihood that it will, on the next succeeding Scheduled Settlement Date (A) be required to pay to the other party an additional amount in respect of an Indemnifiable Tax under Section 2(d)(i)(4) (except in respect of interest under Section 9(h)) or (B) receive a payment from which an amount is required to be deducted or withheld for or on account of a Tax (except in respect of interest under Section 9(h)) and no additional amount is required to be paid in respect of such Tax under Section 2(d)(i)(4) (other than by reason of Section 2(d)(i)(4) (A) or (B));

(iv) **Tax Event Upon Merger.** The party (the “Burdened Party”) on the next succeeding Scheduled Settlement Date will either (1) be required to pay an additional amount in respect of an Indemnifiable Tax under Section 2(d)(i)(4) (except in respect of interest under Section 9(h)) or (2) receive a payment from which an amount has been deducted or withheld for or on account of any Tax in respect of which the other party is not required to pay an additional amount (other than by reason of Section 2(d)(i)(4)(A) or (B)), in either case as a result of a party consolidating or amalgamating with, or merging with or into, or transferring all or substantially all its assets (or any substantial part of the assets comprising the business conducted by it as of the date of this Master Agreement) to, or reorganizing, reincorporating or reconstituting into or as, another entity (which will be the Affected Party) where such action does not constitute a Merger Without Assumption;

(v) **Credit Event Upon Merger.** If “Credit Event Upon Merger” is specified in the Schedule as applying to the party, a Designated Event (as defined below) occurs with respect to such party, any Credit Support Provider of such party or any applicable Specified Entity of such party (in each case, “X”) and such Designated Event does not constitute a Merger Without Assumption, and the creditworthiness of X or, if applicable, the successor, surviving or transferee entity of X, after taking into account any applicable Credit Support Document, is materially weaker immediately after the occurrence of such Designated Event than that of X immediately prior to the occurrence of such Designated Event (and, in any such event, such party or its successor, surviving or transferee entity, as appropriate, will be the Affected Party). A “Designated Event” with respect to X means that:—

(1) X consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets (or any substantial part of the assets comprising the business conducted by X as of the

---

entity;

(2) any person, related group of persons or entity acquires directly or indirectly the beneficial ownership of (A) equity securities having the power to elect a majority of the board of directors (or its equivalent) of X or (B) any other ownership interest enabling it to exercise control of X; or

(3) X effects any substantial change in its capital structure by means of the issuance, incurrence or guarantee of debt or the issuance of (A) preferred stock or other securities convertible into or exchangeable for debt or preferred stock or (B) in the case of entities other than corporations, any other form of ownership interest; or

(vi) **Additional Termination Event.** If any “Additional Termination Event” is specified in the Schedule or any Confirmation as applying, the occurrence of such event (and, in such event, the Affected Party or Affected Parties will be as specified for such Additional Termination Event in the Schedule or such Confirmation).

(c) **Hierarchy of Events.**

(i) An event or circumstance that constitutes or gives rise to an Illegality or a Force Majeure Event will not, for so long as that is the case, also constitute or give rise to an Event of Default under Section 5(a)(i), 5(a)(ii)(1) or 5(a)(iii)(1) insofar as such event or circumstance relates to the failure to make any payment or delivery or a failure to comply with any other material provision of this Agreement or a Credit Support Document, as the case may be.

(ii) Except in circumstances contemplated by clause (i) above, if an event or circumstance which would otherwise constitute or give rise to an Illegality or a Force Majeure Event also constitutes an Event of Default or any other Termination Event, it will be treated as an Event of Default or such other Termination Event, as the case may be, and will not constitute or give rise to an Illegality or a Force Majeure Event.

(iii) If an event or circumstance which would otherwise constitute or give rise to a Force Majeure Event also constitutes an Illegality, it will be treated as an Illegality, except as described in clause (ii) above, and not a Force Majeure Event.

(d) **Deferral of Payments and Deliveries During Waiting Period.** If an Illegality or a Force Majeure Event has occurred and is continuing with respect to a Transaction, each payment or delivery which would otherwise be required to be made under that Transaction will be deferred to, and will not be due until:—

(i) the first Local Business Day or, in the case of a delivery, the first Local Delivery Day (or the first day that would have been a Local Business Day or Local Delivery Day, as appropriate, but for the occurrence of the event or circumstance constituting or giving rise to that Illegality or Force Majeure Event) following the end of any applicable Waiting Period in respect of that Illegality or Force Majeure Event, as the case may be; or

(ii) if earlier, the date on which the event or circumstance constituting or giving rise to that Illegality or Force Majeure Event ceases to exist or, if such date is not a Local Business Day or, in the case of a delivery, a Local Delivery Day, the first following day that is a Local Business Day or Local Delivery Day, as appropriate.

(e) **Inability of Head or Home Office to Perform Obligations of Branch.** If (i) an Illegality or a Force Majeure Event occurs under Section 5 (b)(i)(1) or 5(b)(ii)(1) and the relevant Office is not the Affected Party’s head or home office, (ii) Section 10(a) applies, (iii) the other party seeks performance of the relevant obligation or

---

or home office fails so to perform or comply due to the occurrence of an event or circumstance which would, if that head or home office were the Office through which the Affected Party makes and receives payments and deliveries with respect to the relevant Transaction, constitute or give rise to an Illegality or a Force Majeure Event, and such failure would otherwise constitute an Event of Default under Section 5(a)(i) or 5(a)(iii)(1) with respect to such party then, for so long as the relevant event or circumstance continues to exist with respect to both the Office referred to in Section 5(b)(i)(1) or 5(b)(ii)(1), as the case may be, and the Affected Party's head or home office, such failure will not constitute an Event of Default under Section 5(a)(i) or 5(a)(iii)(1).

## **6. Early Termination; Close-Out Netting**

(a) **Right to Terminate Following Event of Default.** If at any time an Event of Default with respect to a party (the "Defaulting Party") has occurred and is then continuing, the other party (the "Non-defaulting Party") may, by not more than 20 days notice to the Defaulting Party specifying the relevant Event of Default, designate a day not earlier than the day such notice is effective as an Early Termination Date in respect of all outstanding Transactions. If, however, "Automatic Early Termination" is specified in the Schedule as applying to a party, then an Early Termination Date in respect of all outstanding Transactions will occur immediately upon the occurrence with respect to such party of an Event of Default specified in Section 5(a)(vii)(1), (3), (5), (6) or, to the extent analogous thereto, (8), and as of the time immediately preceding the institution of the relevant proceeding or the presentation of the relevant petition upon the occurrence with respect to such party of an Event of Default specified in Section 5(a)(vii)(4) or, to the extent analogous thereto, (8).

(b) **Right to Terminate Following Termination Event.**

(i) **Notice.** If a Termination Event other than a Force Majeure Event occurs, an Affected Party will, promptly upon becoming aware of it, notify the other party, specifying the nature of that Termination Event and each Affected Transaction, and will also give the other party such other information about that Termination Event as the other party may reasonably require. If a Force Majeure Event occurs, each party will, promptly upon becoming aware of it, use all reasonable efforts to notify the other party, specifying the nature of that Force Majeure Event, and will also give the other party such other information about that Force Majeure Event as the other party may reasonably require.

(ii) **Transfer to Avoid Termination Event.** If a Tax Event occurs and there is only one Affected Party, or if a Tax Event Upon Merger occurs and the Burdened Party is the Affected Party, the Affected Party will, as a condition to its right to designate an Early Termination Date under Section 6(b)(iv), use all reasonable efforts (which will not require such party to incur a loss, other than immaterial, incidental expenses) to transfer within 20 days after it gives notice under Section 6(b)(i) all its rights and obligations under this Agreement in respect of the Affected Transactions to another of its Offices or Affiliates so that such Termination Event ceases to exist.

If the Affected Party is not able to make such a transfer it will give notice to the other party to that effect within such 20 day period, whereupon the other party may effect such a transfer within 30 days after the notice is given under Section 6(b)(i).

Any such transfer by a party under this Section 6(b)(ii) will be subject to and conditional upon the prior written consent of the other party, which consent will not be withheld if such other party's policies in effect at such time would permit it to enter into transactions with the transferee on the terms proposed.

(iii) **Two Affected Parties.** If a Tax Event occurs and there are two Affected Parties, each party will use all reasonable efforts to reach agreement within 30 days after notice of such occurrence is given under Section 6(b)(i) to avoid that Termination Event.

---

(iv) **Right to Terminate.**

(1) If:—

(A) a transfer under Section 6(b)(ii) or an agreement under Section 6(b)(iii), as the case may be, has not been effected with respect to all Affected Transactions within 30 days after an Affected Party gives notice under Section 6(b)(i); or

(B) a Credit Event Upon Merger or an Additional Termination Event occurs, or a Tax Event Upon Merger occurs and the Burdened Party is not the Affected Party,

the Burdened Party in the case of a Tax Event Upon Merger, any Affected Party in the case of a Tax Event or an Additional Termination Event if there are two Affected Parties, or the Non-affected Party in the case of a Credit Event Upon Merger or an Additional Termination Event if there is only one Affected Party may, if the relevant Termination Event is then continuing, by not more than 20 days notice to the other party, designate a day not earlier than the day such notice is effective as an Early Termination Date in respect of all Affected Transactions.

(2) If at any time an Illegality or a Force Majeure Event has occurred and is then continuing and any applicable Waiting Period has expired:—

(A) Subject to clause (B) below, either party may, by not more than 20 days notice to the other party, designate (I) a day not earlier than the day on which such notice becomes effective as an Early Termination Date in respect of all Affected Transactions or (II) by specifying in that notice the Affected Transactions in respect of which it is designating the relevant day as an Early Termination Date, a day not earlier than two Local Business Days following the day on which such notice becomes effective as an Early Termination Date in respect of less than all Affected Transactions. Upon receipt of a notice designating an Early Termination Date in respect of less than all Affected Transactions, the other party may, by notice to the designating party, if such notice is effective on or before the day so designated, designate that same day as an Early Termination Date in respect of any or all other Affected Transactions.

(B) An Affected Party (if the Illegality or Force Majeure Event relates to performance by such party or any Credit Support Provider of such party of an obligation to make any payment or delivery under, or to compliance with any other material provision of, the relevant Credit Support Document) will only have the right to designate an Early Termination Date under Section 6(b)(iv)(2)(A) as a result of an Illegality under Section 5(b)(i)(2) or a Force Majeure Event under Section 5(b)(ii)(2) following the prior designation by the other party of an Early Termination Date, pursuant to Section

6(b)(iv)(2)(A), in respect of less than all Affected Transactions. (c) **Effect of**

**Designation.**

(i) If notice designating an Early Termination Date is given under Section 6(a) or 6(b), the Early Termination Date will occur on the date so designated, whether or not the relevant Event of Default or Termination Event is then continuing.

(ii) Upon the occurrence or effective designation of an Early Termination Date, no further payments or deliveries under Section 2(a)(i) or 9(h)(i) in respect of the Terminated Transactions will be required to be made, but without prejudice to the other provisions of this Agreement. The amount, if any, payable in respect of an Early Termination Date will be determined pursuant to Sections 6(e) and 9(h)(ii).

---

(d) **Calculations; Payment Date.**

(i) **Statement.** On or as soon as reasonably practicable following the occurrence of an Early Termination Date, each party will make the calculations on its part, if any, contemplated by Section 6(e) and will provide to the other party a statement (1) showing, in reasonable detail, such calculations (including any quotations, market data or information from internal sources used in making such calculations), (2) specifying (except where there are two Affected Parties) any Early Termination Amount payable and (3) giving details of the relevant account to which any amount payable to it is to be paid. In the absence of written confirmation from the source of a quotation or market data obtained in determining a Close-out Amount, the records of the party obtaining such quotation or market data will be conclusive evidence of the existence and accuracy of such quotation or market data.

(ii) **Payment Date.** An Early Termination Amount due in respect of any Early Termination Date will, together with any amount of interest payable pursuant to Section 9(h)(ii)(2), be payable (1) on the day on which notice of the amount payable is effective in the case of an Early Termination Date which is designated or occurs as a result of an Event of Default and (2) on the day which is two Local Business Days after the day on which notice of the amount payable is effective (or, if there are two Affected Parties, after the day on which the statement provided pursuant to clause (i) above by the second party to provide such a statement is effective) in the case of an Early Termination Date which is designated as a result of a Termination Event.

(e) **Payments on Early Termination.** If an Early Termination Date occurs, the amount, if any, payable in respect of that Early Termination Date (the "Early Termination Amount") will be determined pursuant to this Section 6(e) and will be subject to Section 6(f).

(i) **Events of Default.** If the Early Termination Date results from an Event of Default, the Early Termination Amount will be an amount equal to (1) the sum of (A) the Termination Currency Equivalent of the Close-out Amount or Close-out Amounts (whether positive or negative) determined by the Non-defaulting Party for each Terminated Transaction or group of Terminated Transactions, as the case may be, and (B) the Termination Currency Equivalent of the Unpaid Amounts owing to the Non-defaulting Party less (2) the Termination Currency Equivalent of the Unpaid Amounts owing to the Defaulting Party. If the Early Termination Amount is a positive number, the Defaulting Party will pay it to the Non-defaulting Party; if it is a negative number, the Non-defaulting Party will pay the absolute value of the Early Termination Amount to the Defaulting Party.

(ii) **Termination Events.** If the Early Termination Date results from a Termination Event:—

(1) **One Affected Party.** Subject to clause (3) below, if there is one Affected Party, the Early Termination Amount will be determined in accordance with Section 6(e)(i), except that references to the Defaulting Party and to the Non-defaulting Party will be deemed to be references to the Affected Party and to the Non-affected Party, respectively.

(2) **Two Affected Parties.** Subject to clause (3) below, if there are two Affected Parties, each party will determine an amount equal to the Termination Currency Equivalent of the sum of the Close-out Amount or Close-out Amounts (whether positive or negative) for each Terminated Transaction or group of Terminated Transactions, as the case may be, and the Early Termination Amount will be an amount equal to (A) the sum of (I) one-half of the difference between the higher amount so determined (by party 'X') and the lower amount so determined (by party "Y") and (II) the Termination Currency Equivalent of the Unpaid Amounts owing to X less (B) the Termination Currency Equivalent of the Unpaid Amounts owing to Y. If the Early Termination Amount is a positive number, Y will pay it to X; if it is a negative number, X will pay the absolute value of the Early Termination Amount to Y.

---

(3) *Mid-Market Events.* If that Termination Event is an Illegality or a Force Majeure Event, then the Early Termination Amount will be determined in accordance with clause (1) or (2) above, as appropriate, except that, for the purpose of determining a Close-out Amount or Close-out Amounts, the Determining Party will:—

(A) if obtaining quotations from one or more third parties (or from any of the Determining Party's Affiliates), ask each third party or Affiliate (I) not to take account of the current creditworthiness of the Determining Party or any existing Credit Support Document and (II) to provide mid-market quotations; and

(B) in any other case, use mid-market values without regard to the creditworthiness of the Determining Party.

(iii) *Adjustment for Bankruptcy.* In circumstances where an Early Termination Date occurs because Automatic Early Termination applies in respect of a party, the Early Termination Amount will be subject to such adjustments as are appropriate and permitted by applicable law to reflect any payments or deliveries made by one party to the other under this Agreement (and retained by such other party) during the period from the relevant Early Termination Date to the date for payment determined under Section 6(d)(ii).

(iv) *Adjustment for Illegality or Force Majeure Event.* The failure by a party or any Credit Support Provider of such party to pay, when due, any Early Termination Amount will not constitute an Event of Default under Section 5(a)(i) or 5(a)(iii)(1) if such failure is due to the occurrence of an event or circumstance which would, if it occurred with respect to payment, delivery or compliance related to a Transaction, constitute or give rise to an Illegality or a Force Majeure Event. Such amount will (1) accrue interest and otherwise be treated as an Unpaid Amount owing to the other party if subsequently an Early Termination Date results from an Event of Default, a Credit Event Upon Merger or an Additional Termination Event in respect of which all outstanding Transactions are Affected Transactions and (2) otherwise accrue interest in accordance with Section 9(h)(ii)(2).

(v) *Pre-Estimate.* The parties agree that an amount recoverable under this Section 6(e) is a reasonable pre-estimate of loss and not a penalty. Such amount is payable for the loss of bargain and the loss of protection against future risks, and, except as otherwise provided in this Agreement, neither party will be entitled to recover any additional damages as a consequence of the termination of the Terminated Transactions.

(f) *Set-Off.* Any Early Termination Amount payable to one party (the "Payee") by the other party (the "Payer"), in circumstances where there is a Defaulting Party or where there is one Affected Party in the case where either a Credit Event Upon Merger has occurred or any other Termination Event in respect of which all outstanding Transactions are Affected Transactions has occurred, will, at the option of the Non-defaulting Party or the Non-affected Party, as the case may be ("X") (and without prior notice to the Defaulting Party or the Affected Party, as the case may be), be reduced by its set-off against any other amounts ("Other Amounts") payable by the Payee to the Payer (whether or not arising under this Agreement, matured or contingent and irrespective of the currency, place of payment or place of booking of the obligation). To the extent that any Other Amounts are so set off, those Other Amounts will be discharged promptly and in all respects. X will give notice to the other party of any set-off effected under this Section 6(f).

For this purpose, either the Early Termination Amount or the Other Amounts (or the relevant portion of such amounts) may be converted by X into the currency in which the other is denominated at the rate of exchange at which such party would be able, in good faith and using commercially reasonable procedures, to purchase the relevant amount of such currency.

---

If an obligation is unascertained, X may in good faith estimate that obligation and set off in respect of the estimate, subject to the relevant party accounting to the other when the obligation is ascertained.

Nothing in this Section 6(f) will be effective to create a charge or other security interest. This Section 6(f) will be without prejudice and in addition to any right of set-off, offset, combination of accounts, lien, right of retention or withholding or similar right or requirement to which any party is at any time otherwise entitled or subject (whether by operation of law, contract or otherwise).

## **7. Transfer**

Subject to Section 6(b)(ii) and to the extent permitted by applicable law, neither this Agreement nor any interest or obligation in or under this Agreement may be transferred (whether by way of security or otherwise) by either party without the prior written consent of the other party, except that:—

- (a) a party may make such a transfer of this Agreement pursuant to a consolidation or amalgamation with, or merger with or into, or transfer of all or substantially all its assets to, another entity (but without prejudice to any other right or remedy under this Agreement); and
- (b) a party may make such a transfer of all or any part of its interest in any Early Termination Amount payable to it by a Defaulting Party, together with any amounts payable on or with respect to that interest and any other rights associated with that interest pursuant to Sections 8, 9 (h) and 11.

Any purported transfer that is not in compliance with this Section 7 will be void.

## **8. Contractual Currency**

(a) **Payment in the Contractual Currency.** Each payment under this Agreement will be made in the relevant currency specified in this Agreement for that payment (the “Contractual Currency”). To the extent permitted by applicable law, any obligation to make payments under this Agreement in the Contractual Currency will not be discharged or satisfied by any tender in any currency other than the Contractual Currency, except to the extent such tender results in the actual receipt by the party to which payment is owed, acting in good faith and using commercially reasonable procedures in converting the currency so tendered into the Contractual Currency, of the full amount in the Contractual Currency of all amounts payable in respect of this Agreement. If for any reason the amount in the Contractual Currency so received falls short of the amount in the Contractual Currency payable in respect of this Agreement, the party required to make the payment will, to the extent permitted by applicable law, immediately pay such additional amount in the Contractual Currency as may be necessary to compensate for the shortfall. If for any reason the amount in the Contractual Currency so received exceeds the amount in the Contractual Currency payable in respect of this Agreement, the party receiving the payment will refund promptly the amount of such excess.

(b) **Judgments.** To the extent permitted by applicable law, if any judgment or order expressed in a currency other than the Contractual Currency is rendered (i) for the payment of any amount owing in respect of this Agreement, (ii) for the payment of any amount relating to any early termination in respect of this Agreement or (iii) in respect of a judgment or order of another court for the payment of any amount described in clause (i) or (ii) above, the party seeking recovery, after recovery in full of the aggregate amount to which such party is entitled pursuant to the judgment or order, will be entitled to receive immediately from the other party the amount of any shortfall of the Contractual Currency received by such party as a consequence of sums paid in such other currency and will refund promptly to the other party any excess of the Contractual Currency received by such party as a consequence of sums paid in such other currency if such shortfall or such excess arises or results from any variation between the rate of exchange at which the Contractual Currency is converted into the currency of the judgment or order for the purpose of such judgment or order and the rate of exchange at which such party is able, acting in good faith and using

---

commercially reasonable procedures in converting the currency received into the Contractual Currency, to purchase the Contractual Currency with the amount of the currency of the judgment or order actually received by such party.

(c) **Separate Indemnities.** To the extent permitted by applicable law, the indemnities in this Section 8 constitute separate and independent obligations from the other obligations in this Agreement, will be enforceable as separate and independent causes of action, will apply notwithstanding any indulgence granted by the party to which any payment is owed and will not be affected by judgment being obtained or claim or proof being made for any other sums payable in respect of this Agreement.

(d) **Evidence of Loss.** For the purpose of this Section 8, it will be sufficient for a party to demonstrate that it would have suffered a loss had an actual exchange or purchase been made.

## 9. Miscellaneous

(a) **Entire Agreement.** This Agreement constitutes the entire agreement and understanding of the parties with respect to its subject matter. Each of the parties acknowledges that in entering into this Agreement it has not relied on any oral or written representation, warranty or other assurance (except as provided for or referred to in this Agreement) and waives all rights and remedies which might otherwise be available to it in respect thereof, except that nothing in this Agreement will limit or exclude any liability of a party for fraud.

(b) **Amendments.** An amendment, modification or waiver in respect of this Agreement will only be effective if in writing (including a writing evidenced by a facsimile transmission) and executed by each of the parties or confirmed by an exchange of telexes or by an exchange of electronic messages on an electronic messaging system.

(c) **Survival of Obligations.** Without prejudice to Sections 2(a)(iii) and 6(c)(ii), the obligations of the parties under this Agreement will survive the termination of any Transaction.

(d) **Remedies Cumulative.** Except as provided in this Agreement, the rights, powers, remedies and privileges provided in this Agreement are cumulative and not exclusive of any rights, powers, remedies and privileges provided by law.

(e) **Counterparts and Confirmations.**

(i) This Agreement (and each amendment, modification and waiver in respect of it) may be executed and delivered in counterparts (including by facsimile transmission and by electronic messaging system), each of which will be deemed an original.

(ii) The parties intend that they are legally bound by the terms of each Transaction from the moment they agree to those terms (whether orally or otherwise). A Confirmation will be entered into as soon as practicable and may be executed and delivered in counterparts (including by facsimile transmission) or be created by an exchange of telexes, by an exchange of electronic messages on an electronic messaging system or by an exchange of e-mails, which in each case will be sufficient for all purposes to evidence a binding supplement to this Agreement. The parties will specify therein or through another effective means that any such counterpart, telex, electronic message or e-mail constitutes a Confirmation.

(f) **No Waiver of Rights.** A failure or delay in exercising any right, power or privilege in respect of this Agreement will not be presumed to operate as a waiver, and a single or partial exercise of any right, power or privilege will not be presumed to preclude any subsequent or further exercise, of that right, power or privilege or the exercise of any other right, power or privilege.

(g) **Headings.** The headings used in this Agreement are for convenience of reference only and are not to affect the construction of or to be taken into consideration in interpreting this Agreement.

---

(h) **Interest and Compensation.**

(i) **Prior to Early Termination.** Prior to the occurrence or effective designation of an Early Termination Date in respect of the relevant Transaction:—

(1) **Interest on Defaulted Payments.** If a party defaults in the performance of any payment obligation, it will, to the extent permitted by applicable law and subject to Section 6(c), pay interest (before as well as after judgment) on the overdue amount to the other party on demand in the same currency as the overdue amount, for the period from (and including) the original due date for payment to (but excluding) the date of actual payment (and excluding any period in respect of which interest or compensation in respect of the overdue amount is due pursuant to clause (3)(B) or (C) below), at the Default Rate.

(2) **Compensation for Defaulted Deliveries.** If a party defaults in the performance of any obligation required to be settled by delivery, it will on demand (A) compensate the other party to the extent provided for in the relevant Confirmation or elsewhere in this Agreement and (B) unless otherwise provided in the relevant Confirmation or elsewhere in this Agreement, to the extent permitted by applicable law and subject to Section 6(c), pay to the other party interest (before as well as after judgment) on an amount equal to the fair market value of that which was required to be delivered in the same currency as that amount, for the period from (and including) the originally scheduled date for delivery to (but excluding) the date of actual delivery (and excluding any period in respect of which interest or compensation in respect of that amount is due pursuant to clause (4) below), at the Default Rate. The fair market value of any obligation referred to above will be determined as of the originally scheduled date for delivery, in good faith and using commercially reasonable procedures, by the party that was entitled to take delivery.

(3) **Interest on Deferred Payments.** If:—

(A) a party does not pay any amount that, but for Section 2(a)(iii), would have been payable, it will, to the extent permitted by applicable law and subject to Section 6(c) and clauses (B) and (C) below, pay interest (before as well as after judgment) on that amount to the other party on demand (after such amount becomes payable) in the same currency as that amount, for the period from (and including) the date the amount would, but for Section 2(a)(iii), have been payable to (but excluding) the date the amount actually becomes payable, at the Applicable Deferral Rate;

(B) a payment is deferred pursuant to Section 5(d), the party which would otherwise have been required to make that payment will, to the extent permitted by applicable law, subject to Section 6(c) and for so long as no Event of Default or Potential Event of Default with respect to that party has occurred and is continuing, pay interest (before as well as after judgment) on the amount of the deferred payment to the other party on demand (after such amount becomes payable) in the same currency as the deferred payment, for the period from (and including) the date the amount would, but for Section 5(d), have been payable to (but excluding) the earlier of the date the payment is no longer deferred pursuant to Section 5(d) and the date during the deferral period upon which an Event of Default or Potential Event of Default with respect to that party occurs, at the Applicable Deferral Rate; or

(C) a party fails to make any payment due to the occurrence of an Illegality or a Force Majeure Event (after giving effect to any deferral period contemplated by clause (B) above), it will, to the extent permitted by applicable law, subject to Section 6(c) and for so long as the event or circumstance giving rise to that Illegality or Force Majeure Event



continues and no Event of Default or Potential Event of Default with respect to that party has occurred and is continuing, pay interest (before as well as after judgment) on the overdue amount to the other party on demand in the same currency as the overdue amount, for the period from (and including) the date the party fails to make the payment due to the occurrence of the relevant Illegality or Force Majeure Event (or, if later, the date the payment is no longer deferred pursuant to Section 5(d)) to (but excluding) the earlier of the date the event or circumstance giving rise to that Illegality or Force Majeure Event ceases to exist and the date during the period upon which an Event of Default or Potential Event of Default with respect to that party occurs (and excluding any period in respect of which interest or compensation in respect of the overdue amount is due pursuant to clause (B) above), at the Applicable Deferral Rate.

(4) **Compensation for Deferred Deliveries.** If:—

(A) a party does not perform any obligation that, but for Section 2(a)(iii), would have been required to be settled by delivery;

(B) a delivery is deferred pursuant to Section 5(d); or

(C) a party fails to make a delivery due to the occurrence of an Illegality or a Force Majeure Event at a time when any applicable Waiting Period has expired,

the party required (or that would otherwise have been required) to make the delivery will, to the extent permitted by applicable law and subject to Section 6(c), compensate and pay interest to the other party on demand (after, in the case of clauses (A) and (B) above, such delivery is required) if and to the extent provided for in the relevant Confirmation or elsewhere in this Agreement.

(ii) **Early Termination.** Upon the occurrence or effective designation of an Early Termination Date in respect of a Transaction:—

(1) **Unpaid Amounts.** For the purpose of determining an Unpaid Amount in respect of the relevant Transaction, and to the extent permitted by applicable law, interest will accrue on the amount of any payment obligation or the amount equal to the fair market value of any obligation required to be settled by delivery included in such determination in the same currency as that amount, for the period from (and including) the date the relevant obligation was (or would have been but for Section 2(a)(iii) or 5(d)) required to have been performed to (but excluding) the relevant Early Termination Date, at the Applicable Close-out Rate.

(2) **Interest on Early Termination Amounts.** If an Early Termination Amount is due in respect of such Early Termination Date, that amount will, to the extent permitted by applicable law, be paid together with interest (before as well as after judgment) on that amount in the Termination Currency, for the period from (and including) such Early Termination Date to (but excluding) the date the amount is paid, at the Applicable Close-out Rate.

(iii) **Interest Calculation.** Any interest pursuant to this Section 9(h) will be calculated on the basis of daily compounding and the actual number of days elapsed.

---

## 10. Offices; Multibranch Parties

(a) If Section 10(a) is specified in the Schedule as applying, each party that enters into a Transaction through an Office other than its head or home office represents to and agrees with the other party that, notwithstanding the place of booking or its jurisdiction of incorporation or organization, its obligations are the same in terms of recourse against it as if it had entered into the Transaction through its head or home office, except that a party will not have recourse to the head or home office of the other party in respect of any payment or delivery deferred pursuant to Section 5(d) for so long as the payment or delivery is so deferred. This representation and agreement will be deemed to be repeated by each party on each date on which the parties enter into a Transaction.

(b) If a party is specified as a Multibranch Party in the Schedule, such party may, subject to clause (c) below, enter into a Transaction through, book a Transaction in and make and receive payments and deliveries with respect to a Transaction through any Office listed in respect of that party in the Schedule (but not any other Office unless otherwise agreed by the parties in writing).

(c) The Office through which a party enters into a Transaction will be the Office specified for that party in the relevant Confirmation or as otherwise agreed by the parties in writing, and, if an Office for that party is not specified in the Confirmation or otherwise agreed by the parties in writing, its head or home office. Unless the parties otherwise agree in writing, the Office through which a party enters into a Transaction will also be the Office in which it books the Transaction and the Office through which it makes and receives payments and deliveries with respect to the Transaction. Subject to Section 6(b)(ii), neither party may change the Office in which it books the Transaction or the Office through which it makes and receives payments or deliveries with respect to a Transaction without the prior written consent of the other party.

## 11. Expenses

A Defaulting Party will on demand indemnify and hold harmless the other party for and against all reasonable out-of-pocket expenses, including legal fees, execution fees and Stamp Tax, incurred by such other party by reason of the enforcement and protection of its rights under this Agreement or any Credit Support Document to which the Defaulting Party is a party or by reason of the early termination of any Transaction, including, but not limited to, costs of collection.

## 12. Notices

(a) **Effectiveness.** Any notice or other communication in respect of this Agreement may be given in any manner described below (except that a notice or other communication under Section 5 or 6 may not be given by electronic messaging system or e-mail) to the address or number or in accordance with the electronic messaging system or e-mail details provided (see the Schedule) and will be deemed effective as indicated:—

- (i) if in writing and delivered in person or by courier, on the date it is delivered; (ii) if sent by telex, on the date the recipient's answerback is received;
  - (iii) if sent by facsimile transmission, on the date it is received by a responsible employee of the recipient in legible form (it being agreed that the burden of proving receipt will be on the sender and will not be met by a transmission report generated by the sender's facsimile machine);
  - (iv) if sent by certified or registered mail (airmail, if overseas) or the equivalent (return receipt requested), on the date it is delivered or its delivery is attempted;
  - (v) if sent by electronic messaging system, on the date it is received; or
-

(vi) if sent by e-mail, on the date it is delivered,

unless the date of that delivery (or attempted delivery) or that receipt, as applicable, is not a Local Business Day or that communication is delivered (or attempted) or received, as applicable, after the close of business on a Local Business Day, in which case that communication will be deemed given and effective on the first following day that is a Local Business Day.

(b) **Change of Details.** Either party may by notice to the other change the address, telex or facsimile number or electronic messaging system or e-mail details at which notices or other communications are to be given to it.

### 13. Governing Law and Jurisdiction

(a) **Governing Law.** This Agreement will be governed by and construed in accordance with the law specified in the Schedule.

(b) **Jurisdiction.** With respect to any suit, action or proceedings relating to any dispute arising out of or in connection with this Agreement (“Proceedings”), each party irrevocably:—

(i) submits:—

(1) if this Agreement is expressed to be governed by English law, to (A) the non-exclusive jurisdiction of the English courts if the Proceedings do not involve a Convention Court and (B) the exclusive jurisdiction of the English courts if the Proceedings do involve a Convention Court; or

(2) if this Agreement is expressed to be governed by the laws of the State of New York, to the non-exclusive jurisdiction of the courts of the State of New York and the United States District Court located in the Borough of Manhattan in New York City;

(ii) waives any objection which it may have at any time to the laying of venue of any Proceedings brought in any such court, waives any claim that such Proceedings have been brought in an inconvenient forum and further waives the right to object, with respect to such Proceedings, that such court does not have any jurisdiction over such party; and

(iii) agrees, to the extent permitted by applicable law, that the bringing of Proceedings in any one or more jurisdictions will not preclude the bringing of Proceedings in any other jurisdiction.

(c) **Service of Process.** Each party irrevocably appoints the Process Agent, if any, specified opposite its name in the Schedule to receive, for it and on its behalf, service of process in any Proceedings. If for any reason any party’s Process Agent is unable to act as such, such party will promptly notify the other party and within 30 days appoint a substitute process agent acceptable to the other party. The parties irrevocably consent to service of process given in the manner provided for notices in Section 12(a)(i), 12(a)(iii) or 12(a)(iv). Nothing in this Agreement will affect the right of either party to serve process in any other manner permitted by applicable law.

(d) **Waiver of Immunities.** Each party irrevocably waives, to the extent permitted by applicable law, with respect to itself and its revenues and assets (irrespective of their use or intended use), all immunity on the grounds of sovereignty or other similar grounds from (i) suit, (ii) jurisdiction of any court, (iii) relief by way of injunction or order for specific performance or recovery of property, (iv) attachment of its assets (whether before or after judgment) and (v) execution or enforcement of any judgment to which it or its revenues or assets might otherwise be entitled in any Proceedings in the courts of any jurisdiction and irrevocably agrees, to the extent permitted by applicable law, that it will not claim any such immunity in any Proceedings.

---

## 14. Definitions

As used in this Agreement:—

“**Additional Representation**” has the meaning specified in Section 3. “**Additional Termination Event**” has the meaning specified in Section 5(b). “**Affected Party**” has the meaning specified in Section 5(b).

“**Affected Transactions**” means (a) with respect to any Termination Event consisting of an Illegality, Force Majeure Event, Tax Event or Tax Event Upon Merger, all Transactions affected by the occurrence of such Termination Event (which, in the case of an Illegality under Section 5(b)(i)(2) or a Force Majeure Event under Section 5(b)(ii)(2), means all Transactions unless the relevant Credit Support Document references only certain Transactions, in which case those Transactions and, if the relevant Credit Support Document constitutes a Confirmation for a Transaction, that Transaction) and (b) with respect to any other Termination Event, all Transactions.

“**Affiliate**” means, subject to the Schedule, in relation to any person, any entity controlled, directly or indirectly, by the person, any entity that controls, directly or indirectly, the person or any entity directly or indirectly under common control with the person. For this purpose, “control” of any entity or person means ownership of a majority of the voting power of the entity or person.

“**Agreement**” has the meaning specified in Section 1(c).

“**Applicable Close-out Rate**” means:—

(a) in respect of the determination of an Unpaid Amount:—

(i) in respect of obligations payable or deliverable (or which would have been but for Section 2(a)(iii)) by a Defaulting Party, the Default Rate;

(ii) in respect of obligations payable or deliverable (or which would have been but for Section 2(a)(iii)) by a Non-defaulting Party, the Non-default Rate;

(iii) in respect of obligations deferred pursuant to Section 5(d), if there is no Defaulting Party and for so long as the deferral period continues, the Applicable Deferral Rate; and

(iv) in all other cases following the occurrence of a Termination Event (except where interest accrues pursuant to clause (iii) above), the Applicable Deferral Rate; and

(b) in respect of an Early Termination Amount:—

(i) for the period from (and including) the relevant Early Termination Date to (but excluding) the date (determined in accordance with Section 6(d)(ii)) on which that amount is payable:—

(1) if the Early Termination Amount is payable by a Defaulting Party, the Default Rate;

(2) if the Early Termination Amount is payable by a Non-defaulting Party, the Non-default Rate; and

(3) in all other cases, the Applicable Deferral Rate; and

---

(ii) for the period from (and including) the date (determined in accordance with Section 6(d)(ii)) on which that amount is payable to (but excluding) the date of actual payment:—

- (1) if a party fails to pay the Early Termination Amount due to the occurrence of an event or circumstance which would, if it occurred with respect to a payment or delivery under a Transaction, constitute or give rise to an Illegality or a Force Majeure Event, and for so long as the Early Termination Amount remains unpaid due to the continuing existence of such event or circumstance, the Applicable Deferral Rate;
- (2) if the Early Termination Amount is payable by a Defaulting Party (but excluding any period in respect of which clause (1) above applies), the Default Rate;
- (3) if the Early Termination Amount is payable by a Non-defaulting Party (but excluding any period in respect of which clause (1) above applies), the Non-default Rate; and
- (4) in all other cases, the Termination Rate.

**“Applicable Deferral Rate”** means:—

(a) for the purpose of Section 9(h)(i)(3)(A), the rate certified by the relevant payer to be a rate offered to the payer by a major bank in a relevant interbank market for overnight deposits in the applicable currency, such bank to be selected in good faith by the payer for the purpose of obtaining a representative rate that will reasonably reflect conditions prevailing at the time in that relevant market;

(b) for purposes of Section 9(h)(i)(3)(B) and clause (a)(iii) of the definition of Applicable Close-out Rate, the rate certified by the relevant payer to be a rate offered to prime banks by a major bank in a relevant interbank market for overnight deposits in the applicable currency, such bank to be selected in good faith by the payer after consultation with the other party, if practicable, for the purpose of obtaining a representative rate that will reasonably reflect conditions prevailing at the time in that relevant market; and

(c) for purposes of Section 9(h)(i)(3)(C) and clauses (a)(iv), (b)(i)(3) and (b)(ii)(1) of the definition of Applicable Close-out Rate, a rate equal to the arithmetic mean of the rate determined pursuant to clause (a) above and a rate per annum equal to the cost (without proof or evidence of any actual cost) to the relevant payee (as certified by it) if it were to fund or of funding the relevant amount.

**“Automatic Early Termination”** has the meaning specified in Section 6(a).

**“Burdened Party”** has the meaning specified in Section 5(b)(iv).

**“Change in Tax Law”** means the enactment, promulgation, execution or ratification of, or any change in or amendment to, any law (or in the application or official interpretation of any law) that occurs after the parties enter into the relevant Transaction.

**“Close-out Amount”** means, with respect to each Terminated Transaction or each group of Terminated Transactions and a Determining Party, the amount of the losses or costs of the Determining Party that are or would be incurred under then prevailing circumstances (expressed as a positive number) or gains of the Determining Party that are or would be realized under then prevailing circumstances (expressed as a negative number) in replacing, or in providing for the Determining Party the economic equivalent of, (a) the material terms of that Terminated Transaction or group of Terminated Transactions, including the payments and deliveries by the parties under Section 2(a)(i) in respect of that Terminated Transaction or group of Terminated Transactions that would, but for the occurrence of the relevant Early Termination Date, have been required after that date (assuming satisfaction of the conditions precedent in

---

Section 2(a)(iii)) and (b) the option rights of the parties in respect of that Terminated Transaction or group of Terminated Transactions.

Any Close-out Amount will be determined by the Determining Party (or its agent), which will act in good faith and use commercially reasonable procedures in order to produce a commercially reasonable result. The Determining Party may determine a Close-out Amount for any group of Terminated Transactions or any individual Terminated Transaction but, in the aggregate, for not less than all Terminated Transactions. Each Close-out Amount will be determined as of the Early Termination Date or, if that would not be commercially reasonable, as of the date or dates following the Early Termination Date as would be commercially reasonable.

Unpaid Amounts in respect of a Terminated Transaction or group of Terminated Transactions and legal fees and out-of-pocket expenses referred to in Section 11 are to be excluded in all determinations of Close-out Amounts.

In determining a Close-out Amount, the Determining Party may consider any relevant information, including, without limitation, one or more of the following types of information:—

- (i) quotations (either firm or indicative) for replacement transactions supplied by one or more third parties that may take into account the creditworthiness of the Determining Party at the time the quotation is provided and the terms of any relevant documentation, including credit support documentation, between the Determining Party and the third party providing the quotation;
- (ii) information consisting of relevant market data in the relevant market supplied by one or more third parties including, without limitation, relevant rates, prices, yields, yield curves, volatilities, spreads, correlations or other relevant market data in the relevant market; or
- (iii) information of the types described in clause (i) or (ii) above from internal sources (including any of the Determining Party's Affiliates) if that information is of the same type used by the Determining Party in the regular course of its business for the valuation of similar transactions.

The Determining Party will consider, taking into account the standards and procedures described in this definition, quotations pursuant to clause (i) above or relevant market data pursuant to clause (ii) above unless the Determining Party reasonably believes in good faith that such quotations or relevant market data are not readily available or would produce a result that would not satisfy those standards. When considering information described in clause (i), (ii) or (iii) above, the Determining Party may include costs of funding, to the extent costs of funding are not and would not be a component of the other information being utilized. Third parties supplying quotations pursuant to clause (i) above or market data pursuant to clause (ii) above may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors, brokers and other sources of market information.

Without duplication of amounts calculated based on information described in clause (i), (ii) or (iii) above, or other relevant information, and when it is commercially reasonable to do so, the Determining Party may in addition consider in calculating a Close-out Amount any loss or cost incurred in connection with its terminating, liquidating or re-establishing any hedge related to a Terminated Transaction or group of Terminated Transactions (or any gain resulting from any of them).

Commercially reasonable procedures used in determining a Close-out Amount may include the following:—

- (1) application to relevant market data from third parties pursuant to clause (ii) above or information from internal sources pursuant to clause (iii) above of pricing or other valuation models that are, at the time of the determination of the Close-out Amount, used by the Determining Party in the regular course of its business in pricing or valuing transactions between the Determining Party and unrelated third parties that are similar to the Terminated Transaction or group of Terminated Transactions; and
-

(2) application of different valuation methods to Terminated Transactions or groups of Terminated Transactions depending on the type, complexity, size or number of the Terminated Transactions or group of Terminated Transactions.

**“Confirmation”** has the meaning specified in the preamble.

**“consent”** includes a consent, approval, action, authorization, exemption, notice, filing, registration or exchange control consent.

**“Contractual Currency”** has the meaning specified in Section 8(a).

**“Convention Court”** means any court which is bound to apply to the Proceedings either Article 17 of the 1968 Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters or Article 17 of the 1988 Lugano Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters.

**“Credit Event Upon Merger”** has the meaning specified in Section 5(b).

**“Credit Support Document”** means any agreement or instrument that is specified as such in this Agreement.

**“Credit Support Provider”** has the meaning specified in the Schedule.

**“Cross-Default”** means the event specified in Section 5(a)(vi).

**“Default Rate”** means a rate per annum equal to the cost (without proof or evidence of any actual cost) to the relevant payee (as certified by it) if it were to fund or of funding the relevant amount plus 1% per annum.

**“Defaulting Party”** has the meaning specified in Section 6(a). **“Designated Event”** has the meaning specified in Section 5(b)(v). **“Determining Party”** means the party determining a Close-out Amount. **“Early Termination Amount”** has the meaning specified in Section 6(e).

**“Early Termination Date”** means the date determined in accordance with Section 6(a) or 6(b)(iv).

**“electronic messages”** does not include e-mails but does include documents expressed in markup languages, and **“electronic messaging system”** will be construed accordingly.

**“English law”** means the law of England and Wales, and **“English”** will be construed accordingly. **“Event of Default”** has the meaning specified in Section 5(a) and, if applicable, in the Schedule. **“Force Majeure Event”** has the meaning specified in Section 5(b).

**“General Business Day”** means a day on which commercial banks are open for general business (including dealings in foreign exchange and foreign currency deposits).

**“Illegality”** has the meaning specified in Section 5(b).

---

**“Indemnifiable Tax”** means any Tax other than a Tax that would not be imposed in respect of a payment under this Agreement but for a present or former connection between the jurisdiction of the government or taxation authority imposing such Tax and the recipient of such payment or a person related to such recipient (including, without limitation, a connection arising from such recipient or related person being or having been a citizen or resident of such jurisdiction, or being or having been organized, present or engaged in a trade or business in such jurisdiction, or having or having had a permanent establishment or fixed place of business in such jurisdiction, but excluding a connection arising solely from such recipient or related person having executed, delivered, performed its obligations or received a payment under, or enforced, this Agreement or a Credit Support Document).

**“law”** includes any treaty, law, rule or regulation (as modified, in the case of tax matters, by the practice of any relevant governmental revenue authority), and **“unlawful”** will be construed accordingly.

**“Local Business Day”** means (a) in relation to any obligation under Section 2(a)(i), a General Business Day in the place or places specified in the relevant Confirmation and a day on which a relevant settlement system is open or operating as specified in the relevant Confirmation or, if a place or a settlement system is not so specified, as otherwise agreed by the parties in writing or determined pursuant to provisions contained, or incorporated by reference, in this Agreement, (b) for the purpose of determining when a Waiting Period expires, a General Business Day in the place where the event or circumstance that constitutes or gives rise to the Illegality or Force Majeure Event, as the case may be, occurs, (c) in relation to any other payment, a General Business Day in the place where the relevant account is located and, if different, in the principal financial center, if any, of the currency of such payment and, if that currency does not have a single recognized principal financial center, a day on which the settlement system necessary to accomplish such payment is open, (d) in relation to any notice or other communication, including notice contemplated under Section 5(a)(i), a General Business Day (or a day that would have been a General Business Day but for the occurrence of an event or circumstance which would, if it occurred with respect to payment, delivery or compliance related to a Transaction, constitute or give rise to an Illegality or a Force Majeure Event) in the place specified in the address for notice provided by the recipient and, in the case of a notice contemplated by Section 2(b), in the place where the relevant new account is to be located and (e) in relation to Section 5(a)(v)(2), a General Business Day in the relevant locations for performance with respect to such Specified Transaction.

**“Local Delivery Day”** means, for purposes of Sections 5(a)(i) and 5(d), a day on which settlement systems necessary to accomplish the relevant delivery are generally open for business so that the delivery is capable of being accomplished in accordance with customary market practice, in the place specified in the relevant Confirmation or, if not so specified, in a location as determined in accordance with customary market practice for the relevant delivery.

**“Master Agreement”** has the meaning specified in the preamble.

**“Merger Without Assumption”** means the event specified in Section 5(a)(viii). **“Multiple Transaction Payment Netting”** has the meaning specified in Section 2(c). **“Non-affected Party”** means, so long as there is only one Affected Party, the other party.

**“Non-default Rate”** means the rate certified by the Non-defaulting Party to be a rate offered to the Non-defaulting Party by a major bank in a relevant interbank market for overnight deposits in the applicable currency, such bank to be selected in good faith by the Non-defaulting Party for the purpose of obtaining a representative rate that will reasonably reflect conditions prevailing at the time in that relevant market.

**“Non-defaulting Party”** has the meaning specified in Section 6(a).

**“Office”** means a branch or office of a party, which may be such party’s head or home office.

**“Other Amounts”** has the meaning specified in Section 6(f).

---

“**Payee**” has the meaning specified in Section 6(f).

“**Payer**” has the meaning specified in Section 6(f).

“**Potential Event of Default**” means any event which, with the giving of notice or the lapse of time or both, would constitute an Event of Default.

“**Proceedings**” has the meaning specified in Section 13(b).

“**Process Agent**” has the meaning specified in the Schedule.

“**rate of exchange**” includes, without limitation, any premiums and costs of exchange payable in connection with the purchase of or conversion into the Contractual Currency.

“**Relevant Jurisdiction**” means, with respect to a party, the jurisdictions (a) in which the party is incorporated, organized, managed and controlled or considered to have its seat, (b) where an Office through which the party is acting for purposes of this Agreement is located, (c) in which the party executes this Agreement and (d) in relation to any payment, from or through which such payment is made.

“**Schedule**” has the meaning specified in the preamble.

“**Scheduled Settlement Date**” means a date on which a payment or delivery is to be made under Section 2(a)(i) with respect to a Transaction.

“**Specified Entity**” has the meaning specified in the Schedule.

“**Specified Indebtedness**” means, subject to the Schedule, any obligation (whether present or future, contingent or otherwise, as principal or surety or otherwise) in respect of borrowed money.

“**Specified Transaction**” means, subject to the Schedule, (a) any transaction (including an agreement with respect to any such transaction) now existing or hereafter entered into between one party to this Agreement (or any Credit Support Provider of such party or any applicable Specified Entity of such party) and the other party to this Agreement (or any Credit Support Provider of such other party or any applicable Specified Entity of such other party) which is not a Transaction under this Agreement but (i) which is a rate swap transaction, swap option, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap, equity or equity index option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, credit protection transaction, credit swap, credit default swap, credit default option, total return swap, credit spread transaction, repurchase transaction, reverse repurchase transaction, buy/sell-back transaction, securities lending transaction, weather index transaction or forward purchase or sale of a security, commodity or other financial instrument or interest (including any option with respect to any of these transactions) or (ii) which is a type of transaction that is similar to any transaction referred to in clause (i) above that is currently, or in the future becomes, recurrently entered into in the financial markets (including terms and conditions incorporated by reference in such agreement) and which is a forward, swap, future, option or other derivative on one or more rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, economic indices or measures of economic risk or value, or other benchmarks against which payments or deliveries are to be made, (b) any combination of these transactions and (c) any other transaction identified as a Specified Transaction in this Agreement or the relevant confirmation.

“**Stamp Tax**” means any stamp, registration, documentation or similar tax.

“**Stamp Tax Jurisdiction**” has the meaning specified in Section 4(e).

---

“**Tax**” means any present or future tax, levy, impost, duty, charge, assessment or fee of any nature (including interest, penalties and additions thereto) that is imposed by any government or other taxing authority in respect of any payment under this Agreement other than a stamp, registration, documentation or similar tax.

“**Tax Event**” has the meaning specified in Section 5(b).

“**Tax Event Upon Merger**” has the meaning specified in Section 5(b).

“**Terminated Transactions**” means, with respect to any Early Termination Date, (a) if resulting from an Illegality or a Force Majeure Event, all Affected Transactions specified in the notice given pursuant to Section 6(b)(iv), (b) if resulting from any other Termination Event, all Affected Transactions and (c) if resulting from an Event of Default, all Transactions in effect either immediately before the effectiveness of the notice designating that Early Termination Date or, if Automatic Early Termination applies, immediately before that Early Termination Date.

“**Termination Currency**” means (a) if a Termination Currency is specified in the Schedule and that currency is freely available, that currency, and (b) otherwise, euro if this Agreement is expressed to be governed by English law or United States Dollars if this Agreement is expressed to be governed by the laws of the State of New York.

“**Termination Currency Equivalent**” means, in respect of any amount denominated in the Termination Currency, such Termination Currency amount and, in respect of any amount denominated in a currency other than the Termination Currency (the “Other Currency”), the amount in the Termination Currency determined by the party making the relevant determination as being required to purchase such amount of such Other Currency as at the relevant Early Termination Date, or, if the relevant Close-out Amount is determined as of a later date, that later date, with the Termination Currency at the rate equal to the spot exchange rate of the foreign exchange agent (selected as provided below) for the purchase of such Other Currency with the Termination Currency at or about 11:00 a.m. (in the city in which such foreign exchange agent is located) on such date as would be customary for the determination of such a rate for the purchase of such Other Currency for value on the relevant Early Termination Date or that later date. The foreign exchange agent will, if only one party is obliged to make a determination under Section 6(e), be selected in good faith by that party and otherwise will be agreed by the parties.

“**Termination Event**” means an Illegality, a Force Majeure Event, a Tax Event, a Tax Event Upon Merger or, if specified to be applicable, a Credit Event Upon Merger or an Additional Termination Event.

“**Termination Rate**” means a rate per annum equal to the arithmetic mean of the cost (without proof or evidence of any actual cost) to each party (as certified by such party) if it were to fund or of funding such amounts.

“**Threshold Amount**” means the amount, if any, specified as such in the Schedule.

“**Transaction**” has the meaning specified in the preamble.

“**Unpaid Amounts**” owing to any party means, with respect to an Early Termination Date, the aggregate of (a) in respect of all Terminated Transactions, the amounts that became payable (or that would have become payable but for Section 2(a)(iii) or due but for Section 5(d)) to such party under Section 2(a)(i) or 2(d)(i)(4) on or prior to such Early Termination Date and which remain unpaid as at such Early Termination Date, (b) in respect of each Terminated Transaction, for each obligation under Section 2(a)(i) which was (or would have been but for Section 2(a)(iii) or 5(d)) required to be settled by delivery to such party on or prior to such Early Termination Date and which has not been so settled as at such Early Termination Date, an amount equal to the fair market value of that which was (or would have been) required to be delivered and (c) if the Early Termination Date results from an Event of Default, a Credit Event Upon Merger or an Additional Termination Event in respect of which all outstanding Transactions are Affected Transactions, any Early Termination Amount due prior to such Early Termination Date and which remains unpaid as of such Early Termination Date, in each case together with any amount of interest accrued or other

---

compensation in respect of that obligation or deferred obligation, as the case may be, pursuant to Section 9(h)(ii)(1) or (2), as appropriate. The fair market value of any obligation referred to in clause (b) above will be determined as of the originally scheduled date for delivery, in good faith and using commercially reasonable procedures, by the party obliged to make the determination under Section 6(e) or, if each party is so obliged, it will be the average of the Termination Currency Equivalents of the fair market values so determined by both parties.

“*Waiting Period*” means:—

(a) in respect of an event or circumstance under Section 5(b)(i), other than in the case of Section 5(b)(i)(2) where the relevant payment, delivery or compliance is actually required on the relevant day (in which case no Waiting Period will apply), a period of three Local Business Days (or days that would have been Local Business Days but for the occurrence of that event or circumstance) following the occurrence of that event or circumstance; and

(b) in respect of an event or circumstance under Section 5(b)(ii), other than in the case of Section 5(b)(ii)(2) where the relevant payment, delivery or compliance is actually required on the relevant day (in which case no Waiting Period will apply), a period of eight Local Business Days (or days that would have been Local Business Days but for the occurrence of that event or circumstance) following the occurrence of that event or circumstance.

IN WITNESS WHEREOF the parties have executed this document on the respective dates specified below with effect from the date specified on the first page of this document.

MUFG Bank Ltd

AeroCentury Corp

By:

By:

Its:

Its:

---

# ISDA<sup>®</sup>

International Swaps and Derivatives Association, Inc.

## SCHEDULE to the 2002 Master Agreement

dated as of March 12, 2019 between  
MUFG BANK, LTD ("Party A")

and

AEROCENTURY CORP. ("Party B")

### **PART 1: Termination Provisions**

- (a) **"Specified Entity"** means in relation to Party A for the purpose of Sections 5(a)(v), 5(a)(vi), 5(a)(vii) and 5(b)(v):

None;

**"Specified Entity"** means in relation to Party B for the purpose of Sections 5(a)(v), 5(a)(vi), 5(a)(vii) and 5(b)(v):

Any Affiliate

- (b) **"Specified Transaction"** will have the meaning specified in Section 14 of this Agreement.

- (c) The **"Cross-Default"** provisions of Section 5(a)(vi) will apply to Party A and will apply to Party B

The following proviso will be inserted at the end of Section 5(a)(vi) of this Agreement after "period"

“; provided, however, that notwithstanding the foregoing, a Cross Default shall not occur under either (1) or (2) above if (aa) the default, event of default or condition referred to in (1) or the default referred to in (2) arises out of a failure to pay caused by an error or omission of an administrative or operational nature, (bb) funds were available to such party to enable it to make the relevant payment when due, and (cc) such relevant payment

---

is made within three Local Business Days following receipt of written notice from an interested party of such failure to pay”

**"Specified Indebtedness"** means any obligation (whether present or future, contingent or otherwise, as principal or surety or otherwise) in respect of borrowed money (other than indebtedness in respect of deposits received in the ordinary course of business),

**"Threshold Amount"** means with respect to Party A, an amount equal to three percent (3%) of the shareholders' equity on a consolidated basis as specified in the latest publicly available audited annual financial statements of such party and with respect to Party B, the lower of USD 1,000,000 (or its equivalent in any other currency or currencies) and 2% of shareholders' equity on a consolidated basis as specified in the latest publicly available audited annual financial statements of such party.

(d) The **"Credit Event Upon Merger"** provisions of Section 5(b)(v) will apply to Party A and will apply to Party B .

(e) The **"Automatic Early Termination"** provision of Section 6(a) will not apply to Party A or to Party B.

(f) **"Termination Currency"** means United States Dollars.

(g) **Additional Termination Event** will apply. It shall constitute an Additional Termination Event hereunder, with respect to which Party B shall be the Affected Party, if at any time:

(i) the Credit Agreement shall for any reason, cease to be in full force and effect. For the purpose of the foregoing Termination Event, all Transactions shall be Affected Transactions and Party B shall be the sole Affected Party.

(ii) the obligations of Party B with respect to Transactions hereunder are not secured equally and ratably and on a pari passu basis with the obligations of Party B under the Credit Agreement. For the purpose of the foregoing Termination Event, all Transactions shall be Affected Transactions and Party B shall be the sole Affected Party.

(iii) Party A or an Affiliate of Party A ceases to hold any of the loans or commitments under the Credit Agreement acquired by it as initial lender or by joinder or all such loans have been repaid and all such commitments reduced to zero. For the purpose of the foregoing Termination Event, all Transactions shall be Affected Transactions and Party B shall be the sole Affected Party.

(iv) ; or the Credit Agreement is amended or otherwise modified in a manner that would have an adverse effect on the rights of Party A thereunder.

As used herein, "Credit Agreement" means the Third Amended and Restated Loan and Security Agreement dated as of February 19, 2019 among AeroCentury Corp as Borrower, the lenders named therein and MUFG Union Bank N.A. as Lender and Administrative Agent, as amended or replaced from time to time

---

**PART 2: Tax Representations**

- (a) ***Payer Tax Representations.*** For the purpose of Section 3(e) of this Agreement, Party A and Party B will make the following representation:-

It is not required by any applicable law, as modified by the practice of any relevant governmental revenue authority, of any Relevant Jurisdiction to make any deduction or withholding for or on account of any Tax from any payment (other than interest under Section 9(h) of this Agreement) to be made by it to the other party under this Agreement. In making this representation, it may rely on (i) the accuracy of any representations made by the other party pursuant to Section 3(f) of this Agreement, (ii) the satisfaction of the agreement contained in Section 4(a)(i) or 4(a)(iii) of this Agreement and the accuracy and effectiveness of any document provided by the other party pursuant to Section 4(a)(i) or 4(a)(iii) of this Agreement and (iii) the satisfaction of the agreement of the other party contained in Section 4(d) of this Agreement, except that it will not be a breach of this representation where reliance is placed on clause (ii) above and the other party does not deliver a form or document under Section 4(a)(iii) by reason of material prejudice to its legal or commercial position.

- (b) ***Payee Tax Representations.*** For the purpose of Section 3(f) of this Agreement, Party A and Party B will make the following representations specified below, if any:-

(i) For the purpose of Section 3(f) of this Agreement, **Party A** represents that:

- (1) Party A is a Japanese banking organization, organized under the laws of Japan;
- (2) Each payment received or to be received by Party A in connection with this Agreement will be effectively connected with the conduct of a trade or business by it in the United States; and
- (3) It is a “foreign person” as that term is used in section 1.6041-4(a)(4) of the U.S. Treasury Regulations.

(ii) For the purpose of Section 3(f) of this Agreement, **Party B** represents that:

- (1) Party B is a corporation for U.S. federal income tax purposes and is organized under the laws of the State of Delaware.
  - (2) It is a “U.S. person” (as that term is used in section 1.1441-4(a)(3)(ii) of United States Treasury Regulations) for U.S. federal income tax purposes and an exempt recipient under Treasury Regulation Section 1.6049-4(c)(1)(ii).
-

**PART 3: Agreement to Deliver Documents**

For the purpose of Section 4(a)(i) and (ii) of this Agreement, each party agrees to deliver the following documents:

(a) Tax forms, documents or certificates to be delivered are:

Party A	For Transactions entered into through Party A's New York office, a complete, accurate and executed United States Internal Revenue Service Form W-8ECI, or any successor of such form.	(i) Upon execution and delivery of this Agreement, (ii) promptly upon reasonable demand by Party B, and (iii) promptly upon learning that any such tax form previously provided by Party A has become obsolete or incorrect.
Party B	A correct and complete U.S. Internal Revenue Service Forms W-9, signed in original.	(i) Upon execution and delivery of this Agreement, (ii) promptly upon reasonable demand by Party B, and (iii) promptly upon learning that any such tax form previously provided by Party B has become obsolete or incorrect.

(b) Other documents to be delivered are:-

<b>Party required to deliver document</b>	<b>Form/Document/Certificate</b>	<b>Date by which to be delivered</b>	<b>Covered by Section 3(d) Representation</b>
Party A	Annual Report of Mitsubishi UFJ Financial Group containing audited, consolidated financial statements certified by independent certified public accountants and prepared in accordance with generally accepted accounting principles in the country in which such party is organized	Upon request, to the extent not already provided by Party A at its website <a href="http://www.mufg.jp/english/">http://www.mufg.jp/english/</a>	Yes

Party required to deliver document	Form/Document/Certificate	Date by which to be delivered	Covered by Section 3(d) Representation
Party B	Annual Report of Party B containing audited, consolidated financial statements certified by independent certified public accountants and prepared in accordance with generally accepted accounting principles in the country in which such party and is organized	Upon request, to the extent not already provided by Party A at its website  <a href="http://www.aerocentury.com/">http://www.aerocentury.com/</a>	Yes
Party B	Quarterly Financial Statements of Party B containing unaudited, consolidated financial statements of such party's first three fiscal quarter prepared in accordance with generally accepted accounting principles in the country in which such party is organized	Upon request, to the extent not already provided by Party A at its website  <a href="http://www.aerocentury.com/">http://www.aerocentury.com/</a>	Yes
Party B	Certified copies of all corporate, partnership or membership authorizations, as the case may be, and any other documents with respect to the execution, delivery and performance of this Agreement and any Credit Support Document	Upon execution and delivery of this Agreement	Yes
Party A and Party B	Certificate of authority executed by a duly authorized officer of the party certifying the name, authority and specimen signatures of individuals executing this Agreement on its behalf.	Upon execution and delivery of this Agreement and thereafter upon request of the other party	Yes

**PART 4: Miscellaneous**

- (a) **Address for Notices.** For the purpose of Section 12(a) of this Agreement:- Address for notices or communications to Party A:

With respect to a Transaction, to the address specified in the relevant Confirmation. With respect to any notice for purposes of Section 5 or Section 6 to:

MUFG BANK, LTD.  
1251 Avenue of the Americas  
New York, New York 10020-1104

Attn: Managing Director  
Planning  
Global Markets Division for the Americas

Email: \_\_\_\_\_  
Telephone No: (212) 782-XXXX

Address for notice or communications to Party B:

1440 Chapin Avenue, Suite 310  
Burlingame, CA 94010  
Attn: Chief Financial Officer

Email: toni.perazzo@aerocentury.com  
Telephone: 650-XXX-XXXX  
Fax: 650-XXX-XXXX

- (b) **Process Agent.** For the purpose of Section 13(c):

Party A appoints as its Process Agent: Not applicable.

Each Party B appoints as its Process Agent: Not applicable.

- (c) **Offices.** The provisions of Section 10(a) will apply to this Agreement.

- (d) **Multibranch Party.** For the purpose of Section 10(b) of this Agreement:-

Party A is not a Multibranch Party and shall act only through its New York Office. Party B is not a Multibranch Party.

- (e) **Calculation Agent.** The Calculation Agent is Party A. If an Event of Default occurs with respect to Party A, for so long as such event shall be continuing with respect to Party A, Party B may designate a reputable third party bank or financial institution or dealer to act as the Calculation Agent. If a calculation, determination, or adjustment is disputed by the party which is not the Calculation Agent, the parties shall first endeavor to resolve such
-

reasonable time, the parties shall mutually agree on a reputable third party bank or financial institution or dealer to act as Calculation Agent with respect to the issue in dispute.

(f) **Credit Support Document.** Details of any Credit Support Document: Not Applicable. (g) **Credit Support Provider.** Credit Support Provider means in relation to Party A:

Not applicable. Credit Support

Provider means in relation to Party B: Not applicable

(h) **Governing Law; Jurisdiction.** This Agreement and any and all controversies arising out of or in relation to this Agreement shall be governed by and construed in accordance with the laws of the State of New York (without reference to its conflict of laws doctrine).

Section 13 is amended by (i) deleting in Section 13(b)(i)(2) the word “non-exclusive” and replacing it with “exclusive” and (ii) deleting Section 13(b)(iii) in its entirety.

(i) **Netting of Payments.** “Multiple Transaction Payment Netting” will not apply. FX Transactions and Currency Option Transactions, however, shall be settled in accordance with Part 6(c) of this Schedule.

(j) **"Affiliate"** will have the meaning specified in Section 14 of this Agreement.

(k) **Absence of Litigation.** For the purpose of Section 3(c):- "Specified Entity" means in relation to Party A, none;

"Specified Entity" means in relation to Party B, any Affiliate of Party B. (l) **No Agency.** The provisions of Section 3(g) will apply to this Agreement.

(m) **Additional Representation** will apply. For the purpose of Section 3 of this Agreement, each of the following will constitute an Additional Representation:-

**Relationship Between Parties.** Each party will be deemed to represent to the other party on the date on which it enters into a Transaction that (absent a written agreement between the parties that expressly imposes affirmative obligations to the contrary for that Transaction):-

(A) **Security and Source of Payment of Obligations.** The obligations of Party B to make payments to Party A under this Agreement (including any payments upon Early Termination pursuant to Section 6(e) of this Agreement) constitute Obligations under the Credit Agreement.

(B) **Non-Reliance.** It is acting for its own account, and it has made its own independent decisions to enter into that Transaction and as to whether that Transaction is appropriate or proper for it based upon its own judgment and upon advice from such advisors as it has deemed necessary. It is not relying on any communication (written or oral) of the other party as investment advice or as a recommendation to enter into that Transaction, it being understood that information and explanations related to the terms and conditions of a Transaction

---

Transaction. No communication (written or oral) received from the other party will be deemed to be an assurance or guarantee as to the expected results of that Transaction.

- (C) **Assessment and Understanding.** It is capable of assessing the merits of and understanding (on its own behalf or through independent professional advice), and understands and accepts, the terms, conditions and risks of that Transaction. It is also capable of assuming, and assumes, the risks of that Transaction.
- (D) **Status of Parties.** The other party is not acting as a fiduciary for or an advisor to it in respect of that Transaction.
- (E) **Eligible Contract Participant.** Each party will be deemed to represent to the other party on each date on which a Transaction is entered into that it is an “eligible contract participant” and that each guarantor of its Swap Obligations (as defined below), if any, is an “eligible contract participant,” as such term is defined in the U.S. Commodity Exchange Act, as amended. For purposes of this provision, “**Swap Obligation**” means an obligation incurred with respect to a transaction that is a “swap” as defined in the Section 1a(47) of the Commodity Exchange Act and CFTC Regulation 1.3(xxx).
- (n) **Recording of Conversations.** Each party to this Agreement acknowledges and agrees to the recording of conversations between trading and marketing personnel of the parties to this Agreement whether by one or other or both of the parties or their agents.
- (o) **No Plan Assets.** Party B represents and warrants to Party A (which representation and warranty will be deemed to be repeated by Party B at all times until the termination of this Agreement and will be deemed a representation and agreement for all purposes of this Agreement, including without limitation Sections 3, 4, 5(a)(ii) and 5(a)(iv)) that the assets of Party B do not and will not constitute the assets of an employee benefit plan subject to Title I of the Employee Retirement Income Security Act of 1974, as amended or a “Plan” within the meaning of Section 4975(e)(i) of the Internal Revenue Code of 1986. (included).

#### **PART 5: Other Provisions**

- (a) **Financial Statements.** Section 3(d) is hereby amended by adding in the third line thereof after the word “respect” and before the period:  
  
“or, in the case of financial statements, a fair presentation of the financial condition of the relevant party”.
  - (b) **Transfer.** Section 7 is hereby amended by adding ““(which consent shall be deemed given in the event that such transfer is required due to any applicable governmental or regulatory requirement and shall not otherwise be unreasonably withheld)” after “prior written consent”.
  - (c) **Set-off.** Section 6(f) applies to Party A and Party B.
  - (d) **Waiver of Right to Trial by Jury.** EACH PARTY HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHTS TO TRIAL BY JURY WITH RESPECT TO ANY LEGAL
-

PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, ANY CREDIT SUPPORT DOCUMENT OR ANY TRANSACTION CONTEMPLATED HEREBY.

- (e) 2002 Master Agreement Protocol. Annexes 1 to 18 and Section 6 of the ISDA 2002 Master Agreement Protocol as published by the International Swaps and Derivatives Association, Inc. on July 15, 2003 are incorporated into and apply to this Agreement. References in those definitions and provisions to any ISDA Master Agreement will be deemed to be references to this Master Agreement.
- (f) **Consent to Disclosure.** (i) Party B consents to Party A effecting such disclosure as Party A may deem necessary to enable Party A to transfer Party B's records and information to process and execute Party B's instructions, to any of its Affiliates. For the avoidance of doubt, Party B's consent to disclosure includes the right on the part of Party A to allow access to any intended recipient of Party B's information, to the records of Party A by any means.
- (g) **Withholding Tax imposed on payments to non-US counterparties under the United States Foreign Account Tax Compliance Act.** "Tax" as used in Part 2(a) of this Schedule (Payer Tax Representation) and "Indemnifiable Tax" as defined in Section 14 of this Agreement shall not include any U.S. federal withholding tax imposed or collected pursuant to Sections 1471 through 1474 of the U.S. Internal Revenue Code of 1986, as amended (the "Code"), any current or future regulations or official interpretations thereof, any agreement entered into pursuant to Section 1471(b) of the Code, or any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement entered into in connection with the implementation of such Sections of the Code (a "FATCA Withholding Tax"). For the avoidance of doubt, a FATCA Withholding Tax is a Tax the deduction or withholding of which is required by applicable law for the purposes of Section 2(d) of this Agreement.
- (h) **Change of Account.** The following proviso is inserted at the end of Section 2(b) after "change":
- "; provided that if such new account shall not be in the same jurisdiction having the power to tax as the original account, the party not changing its account shall not be obliged to pay any greater amounts and shall not receive less as a result of such change than would have been the case if such change had not taken place."
- (i) **USA PATRIOT Act Notice.** Party A hereby notifies Party B that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "Act"), it is required to obtain, verify and record information that identifies Party B, which information includes the name and address of Party B and other information that will allow Party A to identify Party B in accordance with the Act.
- (j) **Special Entity.** Party B is not a "Special Entity" as such term is defined in the U.S. Commodity Exchange Act and the rules and regulations promulgated thereunder.
-

**PART 6: Additional Terms for Foreign Exchange and Foreign Exchange Option Transactions**

- (a) ***Incorporation of Definitions.*** The 1998 FX and Currency Option Definitions (the "FX Definitions"), published by the International Swaps and Derivatives Association, Inc., the Emerging Markets Traders Association and The Foreign Exchange Committee, are hereby incorporated by reference with respect to FX Transactions (as defined in the FX Definitions) and Currency Option Transactions (as defined in the FX Definitions). Terms defined in the FX Definitions shall have the same meanings in this Part 6.
- (b) ***Scope.*** Unless otherwise agreed in writing by the parties, each FX Transaction and Currency Option Transaction entered into between the parties before, on or after the date of this Agreement shall be a Transaction under this Agreement and shall be part of, subject to and governed by this Agreement. FX Transactions and Currency Option Transactions shall be part of, subject to and governed by this Agreement even if the Confirmation in respect thereof does not state that such FX Transaction or Currency Option Transaction is subject to or governed by this Agreement or does not otherwise reference this Agreement.
- (c) ***Premium Netting.*** If, on any date, and unless otherwise mutually agreed by the parties, Premiums would otherwise be payable hereunder in the same Currency between the same respective offices of the parties, then, on such date, each party's obligation to make payment of such Premiums will be automatically satisfied and discharged and, if the aggregate Premiums that would otherwise have been payable by such office of one party exceeds the aggregate Premiums that would otherwise have been payable by such office of the other party, replaced by an obligation upon the party by whom the larger aggregate Premiums would have been payable to pay the other party the excess of the larger aggregate Premiums over the smaller aggregate Premiums, and if the aggregate Premiums are equal, no payment shall be made.
- (d) ***Payment Instructions.*** All payments to be made hereunder in respect of FX and Currency Option Transactions shall be made in accordance with standing payment instructions provided by the parties from time to time in writing (or as otherwise specified in a Confirmation).
- (e) ***Notice of Exercise.*** Article 3, Section 3.5(g) of the FX Definitions is amended by the deletion of the word "facsimile," in the fourth line thereof.
- (f) ***Terms Relating to Premium.*** Article 3, Section 3.4 of the FX Definitions is hereby amended by the addition of the following as a new paragraph (c) of the FX Definitions.

“(c) **Premium: Failure to Pay on Premium Payment Date.** If any Premium is not received on the Premium Payment Date, the Seller may elect: (i) to accept a late payment of such Premium; (ii) to give written notice of such non-payment and, if such payment shall not be received within one (1) Local Business Day of such notice, treat the related Currency Option as void; or (iii) to give written notice of such non-payment and, if such payment shall not be received within one (2) Local Business Days of such notice, treat such non-payment as an Event of Default under Section 5(a)(i). If the Seller elects to act under either clause (i) or (ii) of the preceding sentence, the Buyer shall pay all out-of-pocket costs and actual damages incurred in connection with such unpaid or late Premium or void Currency Option, including, without limitation, interest on such Premium in the same currency as such Premium at the then prevailing market rate and any other costs or expenses incurred by the Seller in covering its obligations (including, without limitation, a delta hedge) with respect to such Currency Option.”

---

(g) **Netting, Offset and Discharge with Respect to FX Transactions and Currency Option Transactions.**

The following shall be added to Section 2 of this Agreement solely with respect to Currency Option Transactions:

- (i) **Premium Netting.** Except for Premium netting in respect of (i) the same Transaction, (ii) the same currency or (iii) a pair of Transactions entered into on the same day, there shall be no Premium netting.
- (ii) **Payment Netting.**
  - (A) If on any date, more than one delivery of a particular Currency under Currency Obligations is to be made between a pair of Offices, then each Party shall aggregate the amounts of such Currency deliverable by it and only the difference between these aggregate amounts shall be delivered by the Party owing the larger aggregate amount to the other Party, and, if the aggregate amounts are equal, no delivery of the Currency shall be made.
  - (B) The provisions of this Part 6(c) (ii) shall not apply if a Closeout or Early Termination Date, as applicable, has occurred, or a voluntary or involuntary Insolvency Proceeding has occurred, without being dismissed in relation to either Party.
  - (C) The provisions of this Part 6(c) (ii) shall apply notwithstanding that either Party may fail to record the new Currency Obligation in its books.
  - (D) The provisions of this Part 6(c) (ii) are subject to any cutoff date and cutoff time agreed upon between the applicable Offices of the Parties.
- (iii) **Payments on Early Termination.** In addition to the obligation under Section 6(d)(i)(1) of this Agreement, the Non-defaulting Party shall also deliver additional back-up information relating to such determination reasonably requested by the other party (including without limitation written computations, price sources and times of quotations).

(h) **Definitions.** Section 14 is hereby amended as follows:

**“Currency Obligation”.** “Currency Obligation” means the undertaking of a party hereunder to deliver an amount of currency, including a netted Currency Obligation, and including any Currency Obligation previously entered into between the parties.

The definition of **“Terminated Transactions”** shall be deemed to include Currency Obligations.

**IN WITNESS WHEREOF**, the parties have executed this Schedule by their duly authorized officers as of the date hereof.

---

MUFG BANK, LTD.

By:

Its:

AEROCENTURY CORP.

By:

Its:

---

14 March, 2019  
AEROCENTURY CORP.

The purpose of this document is to set forth the terms and conditions of the Swap Transaction entered into between AEROCENTURY CORP. (the "Counterparty") and MUFG Bank, Ltd. ("MUFG" or "MUFG Bank") on the Trade Date specified below (the "Swap Transaction").

This document constitutes a "Confirmation" as referred to in the ISDA Master Agreement specified below.

The definitions and provisions contained in the 2006 ISDA Definitions, as published by the International Swaps and Derivatives Association, Inc., are incorporated into this Confirmation. In the event of any inconsistency between those definitions and provisions and this Confirmation, this Confirmation will govern.

1. This Confirmation supplements, forms a part of, and is subject to, the ISDA Master Agreement dated as of 12 March, 2019, as amended and supplemented from time to time (the "Agreement") between AEROCENTURY CORP. and MUFG Bank, Ltd. All provisions contained in the Agreement shall govern this Confirmation except as expressly modified below.

2. The terms of the particular Swap Transaction to which this Confirmation relates are as follows:

Trade Date: 14 March, 2019

Effective Date: 29 March, 2019

Termination Date: 19 February, 2023, subject to adjustment in accordance with the Modified

Following Business Day Convention.

Notional Amount: USD 30,000,000.00

Fixed Amounts:

Fixed Rate Payer: The Counterparty

Fixed Rate Payer Payment Dates: The last calendar day of February and the 29th calendar day of March, April, May, June, July, August, September, October, November, December and January in each year from and including 29 April, 2019 up to and including the Termination Date, subject to adjustment in accordance with the Modified Following Business Day Convention.

Fixed Rate and  
Fixed Rate Day  
Count Fraction: 2.478000% per annum on Actual/360

Business Day for Fixed Amount Payments: A day, other than Saturday or Sunday, on which banks and foreign exchange markets are open for business in NEW YORK and LONDON.

Rounding Convention: All payments to be rounded to the nearest Cent (with one half of a Cent being rounded up)

Floating Amounts:

Floating Rate Payer: MUFG

Floating Rate Payer Payment Dates: The last calendar day of February and the 29th calendar day of March, April, May, June, July, August, September, October, November, December and January in each year from and including 29 April, 2019 up to and including the Termination Date, subject to adjustment in accordance with the Modified Following Business Day Convention.

Floating Rate Option: USD-LIBOR-BBA, provided however, the following change is made to the definitions of "USD-LIBOR-BBA" and "USD-LIBOR-Reference Banks" as it appears in the 2006 ISDA Definitions: the term "two London Banking Days preceding that Reset Date" shall be replaced with "two New York and London Banking Days preceding that Reset Date"

**Designated Maturity:** 1 Month

**Spread:** None

**Floating Rate Day**

**Count Fraction:** Actual/360

**Reset Dates:** First day of each Calculation Period

**Compounding:** Not applicable

**Business Day for Floating Amount Payments:** A day, other than Saturday or Sunday, on which banks and foreign exchange markets are open for business in NEW YORK and LONDON.

**Rounding Convention:** All payments to be rounded to the nearest Cent (with one half of a Cent being rounded up)

**Calculation Agent:** MUFG

### 3. Account Details:

#### Payments to the Counterparty:

**For payments in USD:** Any payments due to yourselves in relation to this Swap Transaction, will be made in accordance with your Standard Settlement Instructions, where these are held by MUFG. If these are not currently held by MUFG or are not relevant to this Swap Transaction, please advise under separate cover.

#### Payments to MUFG:

**For payments in USD:** Account of MUFG Bank, Ltd., New York Branch  
FEDWIRE, ABA \*\*\*\*\*, A/C \*\*\*\*\*

### 4. Offices:

The Office of the Counterparty for the Swap Transaction is WILMINGTON.

The Office of MUFG for the Swap Transaction is New York Branch.

**Address:** Harborside 3  
210 Hudson Street, Suite 500  
Jersey City, NJ 07311  
Attention: Treasury & Derivative Operations Department

**SWIFT:** BOTKUS33

### 5. Non-Reliance:

Each party represents and warrants to the other party that, in connection with this Transaction, (i) it has and will continue to consult with its own legal, regulatory, tax, business, investment, financial and accounting advisors to the extent it deems necessary, and it has and will continue to make its own investment, hedging and trading decisions (including, without limitation, decisions regarding the appropriateness and/or suitability of this Transaction) based upon its own independent judgment and upon any advice or recommendation from such advisors as it deems necessary, and not in reliance upon the other party hereto or any of its Affiliates or any of their respective officers, directors or employees, or any view expressed by any of them, (ii) it has evaluated and it fully understands all the terms, conditions and risks of this Transaction, and it is willing to assume (financially and otherwise) all such risks, (iii) it has and will continue to act as principal and not agent of any person, and the other party hereto and its Affiliates have not and will not be acting as a fiduciary or financial investment, commodity trading or other advisor to it, (iv) it is entering into this Transaction in connection with its line of business, and (v) Eligible Contract Participant. It is an eligible contract participant within the meaning of the U.S. Commodity Exchange Act, as amended.

### 6. Other Provisions:

You are kindly requested to check the details with your records for correctness and send a signed copy via email to Documentation Section at the email address provided in the body of the email you've received from us for this document. If you are not a "swap dealer", "major swap participant" or "financial entity", each as defined in the Commodity Exchange Act, as amended, and we do not receive the signed copy within two business days of this date, then it shall be deemed that you have accepted the details given herein. If you are a "swap dealer", "major swap

participant" or "financial entity" and we do not receive the signed copy within one business day of this date, then it shall be deemed that you have accepted the details given herein.

This Confirmation may be executed in one or more counterparts, either in original, telecopy or other electronic form, all of which together shall constitute one and the same agreement. This Confirmation shall be governed by the laws of the State of New York without regard to conflicts of law principles.

Please confirm that the foregoing correctly sets forth the terms of our agreement by executing the copy this Confirmation enclosed for that purpose and returning it to us.

This transmission is the only written documentation in respect of this Swap Transaction and accordingly no hard copy Confirmation will be followed.

DDDDD

Very truly yours, MUFG Bank, Ltd.

By

Title:

Name:

Accepted and confirmed as of the date first written:

AEROCENTURY CORP.

By  
Title:

Name:

---

14 March, 2019  
AEROCENTURY CORP.

The purpose of this document is to set forth the terms and conditions of the Swap Transaction entered into between AEROCENTURY CORP. (the "Counterparty") and MUFG Bank, Ltd. ("MUFG" or "MUFG Bank") on the Trade Date specified below (the "Swap Transaction").

This document constitutes a "Confirmation" as referred to in the ISDA Master Agreement specified below.

The definitions and provisions contained in the 2006 ISDA Definitions, as published by the International Swaps and Derivatives Association, Inc., are incorporated into this Confirmation. In the event of any inconsistency between those definitions and provisions and this Confirmation, this Confirmation will govern.

1. This Confirmation supplements, forms a part of, and is subject to, the ISDA Master Agreement dated as of 12 March, 2019, as amended and supplemented from time to time (the "Agreement") between AEROCENTURY CORP. and MUFG Bank, Ltd. All provisions contained in the Agreement shall govern this Confirmation except as expressly modified below.

2. The terms of the particular Swap Transaction to which this Confirmation relates are as follows:

Trade Date: 14

March, 2019

Effective Date: 14 March, 2019

Termination Date: 19 February, 2023, subject to adjustment in accordance with the Modified Following Business Day Convention.

Notional Amount: USD 20,000,000.00

Fixed Amounts:

Fixed Rate Payer: The Counterparty

Fixed Rate Payer Payment Dates: 14 April, 14 May, 14 June, 14 July, 14 August, 14 September, 14 October, 14 November, 14 December, 14 January, 14 February and 14 March in each year from and including 14 April, 2019 up to and including the Termination Date, subject to adjustment in accordance with the Modified Following Business Day Convention.

Fixed Rate and  
Fixed Rate Day  
Count Fraction: 2.479000% per annum on Actual/360

Business Day for Fixed Amount Payments: A day, other than Saturday or Sunday, on which banks and foreign exchange markets are open for business in NEW YORK and LONDON.

Rounding Convention: All payments to be rounded to the nearest Cent (with one half of a Cent being rounded up)

Floating Amounts:

Floating Rate Payer: MUFG

Floating Rate Payer Payment Dates: 14 April, 14 May, 14 June, 14 July, 14 August, 14 September, 14 October, 14 November, 14 December, 14 January, 14 February, 14 March in each year from and including 14 April, 2019 up to and including the Termination Date, subject to adjustment in accordance with the Modified Following Business Day Convention.

Floating Rate Option: USD-LIBOR-BBA, provided however, the following change is made to the definitions of "USD-LIBOR-BBA" and "USD-LIBOR-Reference Banks" as it appears in the 2006 ISDA Definitions: the term "two London Banking Days preceding that Reset Date" shall be replaced with "two New York and London Banking Days preceding that Reset Date"

**Designated Maturity:** 1 Month

**Spread:** None

**Floating Rate Day Count Fraction:** Actual/360

**Reset Dates:** First day of each Calculation Period

**Compounding:** Not applicable

**Business Day for Floating Amount Payments:** A day, other than Saturday or Sunday, on which banks and foreign exchange markets are open for business in NEW YORK and LONDON.

**Rounding Convention:** All payments to be rounded to the nearest Cent (with one half of a Cent being rounded up)

**Calculation Agent:** MUFG

### 3. Account Details:

#### Payments to the Counterparty:

**For payments in USD:** Any payments due to yourselves in relation to this Swap Transaction, will be made in accordance with your Standard Settlement Instructions, where these are held by MUFG. If these are not currently held by MUFG or are not relevant to this Swap Transaction, please advise under separate cover.

#### Payments to MUFG:

**For payments in USD:** Account of MUFG Bank, Ltd., New York Branch FEDWIRE, ABA \*\*\*\*\*, A/C \*\*\*\*\*

### 4. Offices:

The Office of the Counterparty for the Swap Transaction is WILMINGTON.

The Office of MUFG for the Swap Transaction is New York Branch. Address: Harborside  
3

210 Hudson Street, Suite 500  
Jersey City, NJ 07311  
Attention: Treasury & Derivative Operations Department

**SWIFT:** BOTKUS33

### 5. Non-Reliance:

Each party represents and warrants to the other party that, in connection with this Transaction, (i) it has and will continue to consult with its own legal, regulatory, tax, business, investment, financial and accounting advisors to the extent it deems necessary, and it has and will continue to make its own investment, hedging and trading decisions (including, without limitation, decisions regarding the appropriateness and/or suitability of this Transaction) based upon its own independent judgment and upon any advice or recommendation from such advisors as it deems necessary, and not in reliance upon the other party hereto or any of its Affiliates or any of their respective officers, directors or employees, or any view expressed by any of them, (ii) it has evaluated and it fully understands all the terms, conditions and risks of this Transaction, and it is willing to assume (financially and otherwise) all such risks, (iii) it has and will continue to act as principal and not agent of any person, and the other party hereto and its Affiliates have not and will not be acting as a fiduciary or financial investment, commodity trading or other advisor to it, (iv) it is entering into this Transaction in connection with its line of business, and (v) Eligible Contract Participant. It is an eligible contract participant within the meaning of the U.S. Commodity Exchange Act, as amended.

### 6. Other Provisions:

You are kindly requested to check the details with your records for correctness and send a signed copy via email to Documentation Section at the email address provided in the body of the email you've received from us for this document. If you are not a "swap dealer", "major swap participant" or "financial entity", each as defined in the Commodity Exchange Act, as amended, and we do not receive the signed copy within two business days of this date, then it shall be deemed that you have accepted the details given herein. If you are a "swap dealer", "major swap participant" or "financial entity" and we do not receive the signed copy within one business day of this date, then it shall be deemed that you have accepted the details given herein.

This Confirmation may be executed in one or more counterparts, either in original, telecopy or other electronic form, all of which together shall constitute one and the same agreement. This Confirmation shall be governed by the laws of the State of New York without regard to conflicts of law principles.

Please confirm that the foregoing correctly sets forth the terms of our agreement by executing the copy this Confirmation enclosed for that purpose and returning it to us.

This transmission is the only written documentation in respect of this Swap Transaction and accordingly no hard copy Confirmation will be followed.

DDDDD

Very truly yours,  
MUFG Bank, Ltd.

By

Name:  
Title:

Accepted and confirmed as of the date first written:

AEROCENTURY CORP.

By  
Name:  
Title:

[\(Back To Top\)](#)

## Section 4: EX-21.1 (LIST OF ACY SUBSIDIARIES)

EHXIBIT 21.1

### Subsidiaries

ACY E-175 LLC, a Delaware limited liability company

ACY SN 15129 LLC, a Delaware limited liability company

ACY SN 19002 Limited, an English limited liability company

ACY SN 19003 Limited, an English limited liability company

JetFleet Holding Corp., a California corporation

JetFleet Management Corp., a California corporation

1314401 Alberta Inc., d/b/a JetFleet Canada, an Alberta, Canada corporation

[\(Back To Top\)](#)

## Section 5: EX-31.1 (MAGNUSSON SEC 302 CERT)

Exhibit 31.1

I, Michael G. Magnusson, certify that:

1. I have reviewed this annual report on Form 10-K of AeroCentury Corp.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the small business issuer and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

March 18, 2019

By: /s/ Michael G. Magnusson

Name: Michael G. Magnusson

Title: President & Chief Executive Officer

[\(Back To Top\)](#)

## **Section 6: EX-31.2 (PERAZZO SEC 302 CERT)**

Exhibit 31.2

### CERTIFICATION

I, Toni M. Perazzo, certify that:

1. I have reviewed this annual report on Form 10-K of AeroCentury Corp.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect

to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a- 15(e) and 15d- 15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a- 15(f) and 15d- 15(f)) for the small business issuer and have:

- (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
- (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
- (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
- (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

- (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
- (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

March 18, 2019

By: /s/ Toni M. Perazzo

Name: Toni M. Perazzo

Title: Sr. V.P. Finance & Chief Financial Officer

[\(Back To Top\)](#)

## Section 7: EX-32.1 (MGM 906 CERT)

Exhibit 32.1

### CERTIFICATION

In connection with this annual report of AeroCentury Corp. (the "Company") on Form 10-K for the period ended December 31, 2018, as filed with the Securities and Exchange Commission (the "Report"), I, Michael G. Magnusson, Chief Executive Officer of the Company, hereby certify as of the date hereof, solely for purposes of Title 18, Chapter 63, Section 1350 of the United States Code, that to the best of my knowledge:

- (1) the Report fully complies with the requirements of Section 13(a) or 15(d), as applicable, of the Securities Exchange Act of 1934, and
- (2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company at the dates and for the periods indicated.

This Certification has not been, and shall not be deemed, "filed" with the Securities and Exchange Commission.

March 18, 2019

By: /s/ Michael G. Magnusson

Name: Michael G. Magnusson

Title: President and Chief Executive Officer

[\(Back To Top\)](#)

## Section 8: EX-32.2 (TMP 906 CERT)

Exhibit 32.2

### CERTIFICATION

In connection with this annual report of AeroCentury Corp. (the “Company”) on Form 10-K for the period ended December 31, 2018, as filed with the Securities and Exchange Commission (the “Report”), I, Toni M. Perazzo, Chief Financial Officer of the Company, hereby certify as of the date hereof, solely for purposes of Title 18, Chapter 63, Section 1350 of the United States Code, that to the best of my knowledge:

- (1) the Report fully complies with the requirements of Section 13(a) or 15(d), as applicable, of the Securities Exchange Act of 1934, and
- (2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company at the dates and for the periods indicated.

This Certification has not been, and shall not be deemed, “filed” with the Securities and Exchange Commission.

March 18, 2019

By: /s/ Toni M. Perazzo

Name: Toni M. Perazzo

Title: Sr. Vice President -

Finance and Chief Financial Officer

[\(Back To Top\)](#)