

Jasmine Ball  
Nick S. Kaluk, III  
Elie J. Worenklein  
**DEBEVOISE & PLIMPTON LLP**  
919 Third Avenue  
New York, NY 10022  
Telephone: (212) 909-6000  
Facsimile: (212) 909-6836

*Proposed Counsel to the Debtor and Debtor  
in Possession*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re:

PHILIPPINE AIRLINES, INC.,<sup>1</sup>

Debtor.

Chapter 11

Case No. 21-\_\_\_\_ (\_\_\_\_)

**DEBTOR'S MOTION FOR ENTRY OF AN ORDER CONFIRMING  
(I) AUTHORITY TO OPERATE ITS BUSINESS IN THE ORDINARY  
COURSE AND (II) IMPLEMENTATION OF THE AUTOMATIC STAY**

Philippine Airlines, Inc., the above-captioned debtor and debtor in possession (the “**Debtor**” or “**PAL**,” and collectively with the Debtor’s non-debtor affiliates, the “**Airline**”), hereby moves (the “**Motion**”) for entry of an order, substantially in the form attached hereto as **Exhibit A** (the “**Proposed Order**”), granting the relief described below. In support of the Motion, the Debtor relies upon and incorporates by reference the *Declaration of Nilo Thaddeus Rodriguez in Support of First Day Motions and Applications* (the “**First Day Declaration**”), which was filed with the Court on the Petition Date (as defined herein). In further support of the Motion, the Debtor, by and through its undersigned proposed counsel, respectfully represents:

<sup>1</sup> The Debtor in this chapter 11 case, along with its registration number in the Philippines, is Philippine Airlines, Inc. Philippine Securities and Exchange Commission Registration No. PW 37. The Debtor’s corporate headquarters is located at PNB Financial Center, President Diosdado Macapagal Avenue, CCP Complex, Pasay City 1300, Metro Manila, Philippines.



### **Jurisdiction and Venue**

1. The United States Bankruptcy Court for the Southern District of New York (the “**Court**”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, dated January 31, 2012. The Debtor confirms its consent, pursuant to Rule 7008 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), to the entry of a final order by the Court in connection with this motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

2. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The bases for the relief requested herein are sections 105(a), 362, 365(e)(1), 525 and 541(c) of the United States Code (the “**Bankruptcy Code**”).

### **Background**

4. On September 3, 2021 (the “**Petition Date**”), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtor is authorized to continue to operate its business and manage its properties as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. As of the date hereof, no trustee, examiner or statutory committee has been appointed in this chapter 11 case (the “**Chapter 11 Case**”).

5. The Debtor and its affiliates are the largest airline group in the Philippines and the Debtor is the national flag carrier of the Philippines. Its principal activity is to provide air transportation for passengers and cargo within and outside the Philippines. The Debtor is among the oldest airlines in the Asia Pacific region, having been founded in February 1941. With

approximately 4,500 employees and over \$3 billion in annual gross revenue prior to the COVID-19 pandemic, the Debtor is the leading airline in the Philippines airline market.

6. Before taking account of the impact of temporary suspensions during the global pandemic, the Debtor provided international flight service to 18 countries around the world. In 2019, the last full year prior to the pandemic, the Debtor's revenues from international operations constituted approximately 78% of the Debtor's total revenues. The Debtor's international operations are critical elements of the overall success of the Debtor's business.

7. Additional information regarding the events leading up to the Petition Date is set forth in the First Day Declaration and is incorporated herein by reference.

#### **Relief Requested**

8. By this Motion, the Debtor seeks entry of the Proposed Order pursuant to section 105(a) of the Bankruptcy Code confirming the application and enforcement of the following key protections provided by the Bankruptcy Code: (a) the Debtor's authority to continue to operate its business postpetition, pursuant to sections 363, 1107, and 1108 of the Bankruptcy Code; (b) the automatic stay provisions of section 362 of the Bankruptcy Code; (c) the anti-*ipso facto* provisions of section 365 of the Bankruptcy Code; (d) the anti-discrimination provisions of section 525 of the Bankruptcy Code; and (e) the anti-transfer provisions of section 541 of the Bankruptcy Code.

#### **Basis for Relief**

9. As described in more detail in the First Day Declaration, the Debtor operates as part of an international airline corporate group, with operations in at least 18 countries. The global nature of the Debtor's business means that the Debtor has obligations to foreign customers, employees, independent contractors, vendors, service providers, utility companies, taxing

authorities, and other entities. Many of these foreign creditors and contract counterparties do not transact business on a regular basis with companies that have filed for chapter 11 protection, and, therefore, may be unfamiliar with the scope of a debtor in possession's authority to continue to operate its business. These foreign creditors may also be unfamiliar with the operation of the automatic stay and other provisions of the Bankruptcy Code. It is for this reason that the Debtor seeks a specific order from the Court that the Debtor may use in communication with such foreign parties. Such an order is particularly appropriate in this Chapter 11 Case where the Debtor's business is global, with operations in many foreign jurisdictions with different legal systems. It is out of a desire to eliminate uncertainty that the Debtor seeks the relief requested herein.

10. Further, the Debtor intends to commence an ancillary proceeding in a Philippine court and seek formal recognition of this Chapter 11 Case and certain orders of this Court. Accordingly, having these protections of the Bankruptcy Code set forth in an order of this Court would facilitate the ability of the Philippine court to recognize such protections.

**A. The Debtor is Authorized to Operate its Business**

11. Section 1108 of the Bankruptcy Code automatically authorizes a trustee to operate the business and manage the properties of the estate in the ordinary course of business. *See* 11 U.S.C. § 1108. Section 1107(a) provides that, with certain exceptions not relevant here, a debtor in possession has all of the rights, powers, and duties of a trustee in a case under chapter 11. *See* 11 U.S.C. § 1107(a). Accordingly, the Debtor is authorized under the Bankruptcy Code to operate its business and manage its properties in the ordinary course of business without court approval. The Debtor would nevertheless greatly benefit from an affirmation of the Court by way of granting the Proposed Order as a means of informing certain parties with whom they do

business, particularly those located abroad, of the scope and nature of its authority to continue operations in the ordinary course. Having these Bankruptcy Code provisions restated by the Court will allow the debtor to more effectively communicate its rights and authority during this Chapter 11 Case to foreign creditors and counterparties that may be otherwise unfamiliar with the scope of the statutes.

**B. The Debtor will Benefit from an Order Explicitly Confirming these Statutory Protections**

12. The filing of this Chapter 11 Case automatically triggers certain provisions of the Bankruptcy Code that provide the Debtor with essential protections through the duration of the Chapter 11 Case and which further allows the Debtor to operate in the ordinary course. Specifically, the Debtor's filing triggered the automatic stay under section 362 of the Bankruptcy Code, which enjoins all persons and all governmental units from, among other things: (a) commencing or continuing a judicial, administrative or other proceeding against the Debtor that was or could have been commenced before this Chapter 11 Case was filed or recovering upon a claim against the Debtor that arose before the commencement of this Chapter 11 Case and (b) taking any action to collect, assess or recover a claim against the Debtor that arose before the commencement of this Chapter 11 Case. *See* 11 U.S.C. § 362.

13. In addition, section 365(e)(1) of the Bankruptcy Code prohibits all parties to executory contracts or unexpired leases, including charters, with the Debtor from, among other things, terminating or modifying such contract, lease, or any right or obligation under such contract or lease, at any time after the commencement of this Chapter 11 Case solely because of a provision in such contract or lease that is conditioned on: (a) the insolvency or financial condition of the Debtor at any time before the closing of this Chapter 11 Case, (b) the

commencement of this Chapter 11 Case or (c) the appointment of a trustee. *See* 11 U.S.C. § 365(e)(1).

14. Furthermore, section 525 of the Bankruptcy Code prohibits and enjoins governmental units, with certain limited exceptions not applicable to this Chapter 11 Case, from, among other things, denying, revoking, suspending or refusing to renew any license, permit, charter, franchise, or other similar grant to, condition such a grant on, or discriminate with respect to such a grant against, the Debtor solely because the Debtor: (a) is a debtor under the Bankruptcy Code, (b) may have been insolvent before the commencement of this Chapter 11 Case or (c) may be insolvent during the pendency of this Chapter 11 Case. *See* 11 U.S.C. § 525.

15. In addition, an interest of a debtor in property becomes property of the estate notwithstanding any provision in an agreement, transfer instrument, or applicable non-bankruptcy law that “restricts or conditions transfer of such interest by the debtor” or if it “is conditioned on the insolvency or financial condition of the debtor [or] on the commencement of a case under this title, . . . and that effects or gives an option to effect a forfeiture, modification, or termination of the debtor’s interest in property.” 11 U.S.C. §§ 541(c)(1)(A)-(B).

16. Notably, each of the injunctions contained in sections 362, 365, 525, and 541 of the Bankruptcy Code are unquestionably self-executing and, collectively, they constitute fundamental debtor protections which, in combination with other provisions of the Bankruptcy Code, provide the Debtor with the “breathing spell” that is essential to enable the Debtor’s smooth and orderly transition into chapter 11, as well as its successful reorganization. *See e.g., In re Soundview Elite, Ltd.*, 503 B.R. 571, 584 (Bankr. S.D.N.Y. 2014) (“U.S. law is clear that immediately upon the filing of the [d]ebtors’ chapter 11 petition, the U.S. automatic stay became effective, both in the U.S. and extraterritorially.”). “The general policy behind [the stay

provisions] is to grant complete, immediate, albeit temporary relief to the debtor from creditors, and also to prevent dissipation of the debtor's assets before orderly distribution to creditors can be effected.” *SEC v. Brennan*, 230 F.3d 65, 70 (2d Cir. 2000).

17. The protections in these provisions extend to protect a debtor’s property and contracts wherever they are located and by whomever held. *See SIPC v. Bernard L. Madoff Inv. Sec. LLC (In re Bernard L. Madoff Inv. Secs. LLC)*, 474 B.R. 76, 84 (S.D.N.Y. 2012) (upholding extraterritorial enforcement of the automatic stay and injunction barring foreign creditor’s lawsuit); *In re Arcapita Bank B.S.C. (c)*, 575 B.R. 229, 251 (Bankr. S.D.N.Y. 2017) (“[I]t is clear that congress intended to apply extraterritorially the provisions of the Bankruptcy Code that relate to property of the estate, such as section 542(b). The same is true for section 362. That section incorporates the definition of property of the estate provided in section 541, which includes property ‘wherever located.’”) (citation omitted); *Soundview Elite*, 503 B.R. at 584 (“U.S. law is clear that immediately upon the filing of the Debtors' chapter 11 petition, the U.S. automatic stay became effective, both in the U.S. and extraterritorially.”).

18. Accordingly, any actions by third parties to modify or terminate contracts or enforce their terms against the Debtor are prohibited absent Court approval, and third parties must therefore continue to perform under executory contracts until it is assumed or rejected. *See NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 531 (1984) (holding that while the debtor may enforce the terms of the contract against the creditor, the creditor is “precluded from . . . enforcing the contract terms” of an executory contract prior to the assumption by the debtor).

19. Notwithstanding the fundamental, self-executing, and global nature of these statutory authorizations and protections, it is likely that not all parties affected or potentially affected by the commencement of this Chapter 11 Case may be aware of the existence and

significance of such provisions. As previously stated and described in the First Day Declaration, many of the Debtor's creditors, vendors, and other contractual counterparties are not located in the United States and may be unfamiliar with the operation of the Bankruptcy Code. Similarly, the Debtor and its property are subject to the rules and regulations of numerous governmental authorities, including those in foreign jurisdictions that may not be familiar with United States bankruptcy law. Accordingly, explicitly restating these provisions in an order from this Court would improve the likelihood that all affected parties will comprehend the scope of the automatic stay provisions from the outset of when they are triggered. In addition, it will benefit the ancillary proceeding that will be commenced shortly in the Philippines.

**C. This Court Has Authority to Grant the Relief Requested Under Section 105(a)**

20. The Court has the authority to grant the requested relief pursuant to its equitable powers under section 105(a) of the Bankruptcy Code, especially in cases having international implications. Section 105(a) provides, in relevant part, that the Court “may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” 11 U.S.C. § 105(a). The purpose of section 105(a) is “to assure the bankruptcy courts’ power to take whatever action is appropriate or necessary in aid of the exercise of their jurisdiction.” 2 Collier on Bankruptcy ¶ 105.01 at 105-06 (15th ed. Rev. 2008). Such power conforms to the Court’s inherent equitable authority. *See, e.g., U.S. v. Energy Res. Co.*, 495 U.S. 545, 549 (1990). Granting the relief requested in this Motion is fully consistent with the terms of the Bankruptcy Code and is necessary to facilitate a smooth and orderly transition of the Debtor’s operations into chapter 11.

21. Relief similar to that requested herein has previously been granted by Courts in this and other Districts in large chapter 11 cases. *See, e.g., MatlinPatterson Global*



*Opportunities Partners II L.P.*, Case No. 21-11255 (DSJ) (Bankr. S.D.N.Y. July 8, 2021) (confirming enforcing the automatic stay); *In re LATAM Airlines Group S.A.*, Case No. 20-11254 (JLG) (Bankr. S.D.N.Y. May 28, 2020) (confirming the debtors' authority to continue operating their business in the ordinary course and enforcing the automatic stay); Grupo Aeroméxico, S.A.B. de C.V. et al., 20-11563 (SCC) (Bankr. July 1, 2020) (same); *In re Avianca Holdings S.A., et al.*, Case No. 20-11133 (MG) (Bankr. S.D.N.Y. May 12, 2020) (same); *In re Aegean Marine Petroleum Network, Inc.*, Case No. 18-13374 (MEW) (Bankr. S.D.N.Y. Nov. 16, 2018) (same); *In re Pacific Drilling S.A.*, Case No. 17-13193 (MEW) (Bankr. S.D.N.Y. Nov. 15, 2017) (same); *In re Republic Airways Holdings Inc. et al.*, Case No. 16-10429 (SHL) (Bankr. S.D.N.Y. Feb. 25, 2016) (same); *In re Global Maritime Invs. Cyprus Ltd., et al.*, Case No. 15-12552 (SMB) (Bankr. S.D.N.Y. Sept. 21, 2015) (same); *In re Nautilus Holdings Ltd., et al.*, Case No. 14-22885 (RDD) (Bankr. S.D.N.Y. June 25, 2014) (same); *In re Excel Maritime Carriers Ltd., et al.*, Case No. 13-23060 (RDD) (Bankr. S.D.N.Y. July 3, 2013) (same).<sup>2</sup>

22. For the avoidance of doubt, this Motion does not seek to expand the rights afforded to the Debtor under the Bankruptcy Code.

### **Notice**

23. Notice of this Motion has been provided to the following parties, or, in lieu thereof, their counsel (the "**Notice Parties**"): (a) the Office of the United States Trustee for the Southern District of New York; (b) the holders of the thirty largest unsecured claims against the Debtor; (c) the parties to the RSAs; (d) the DIP Lender; (e) the United States Attorney's Office for the Southern District of New York; (f) the Internal Revenue Service; (g) the Securities and Exchange Commission; (h) the Federal Aviation Administration; and (i) any party that has

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<sup>2</sup> Because of the voluminous nature of the orders cited herein, such orders have not been attached to this Motion. Copies of these orders are available upon request to the Debtor's proposed counsel.

requested service pursuant to Bankruptcy Rule 2002. A copy of this Motion and any order approving it will also be made available on the Debtor's Case Information Website located at [www.kccllc.net/PAL](http://www.kccllc.net/PAL). In light of the nature of the relief requested in this Motion, the Debtor respectfully submits that no further notice is necessary.

**No Prior Request**

24. No previous request for the relief sought herein has been made by the Debtor to this or any other Court.

*[Remainder of Page Intentionally Left Blank]*

WHEREFORE, the Debtor respectfully requests that the Court enter the Proposed Order granting the relief requested herein and such other and further relief as the Court deems just and proper.

Dated: September 3, 2021  
New York, New York

DEBEVOISE & PLIMPTON LLP

By: /s/ Jasmine Ball

Jasmine Ball  
Nick S. Kaluk, III  
Elie J. Worenklein  
919 Third Avenue  
New York, NY 10022  
Telephone: (212) 909-6000  
Facsimile: (212) 909-6836  
Email: jball@debevoise.com  
nskaluk@debevoise.com  
eworenklein@debevoise.com

*Proposed Counsel to the Debtor and Debtor  
in Possession*

**Exhibit A**

**Proposed Order**

**UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

In re:

PHILIPPINE AIRLINES, INC.<sup>1</sup>

Debtor.

Chapter 11

Case No. 21-\_\_\_\_ (\_\_\_\_)

**ORDER CONFIRMING  
(I) AUTHORITY TO OPERATE ITS BUSINESS IN THE ORDINARY  
COURSE AND (II) IMPLEMENTATION OF THE AUTOMATIC STAY**

Upon the motion (the “**Motion**”)<sup>2</sup> of Philippine Airlines, Inc., the above-captioned debtor and debtor in possession (the “**Debtor**”), for entry of an order (this “**Order**”) confirming the Debtor’s authority to continue to operate its business in the ordinary course and enforcing and restating the automatic stay, anti-*ipso facto* and anti-discrimination provisions under sections 362, 365(e)(1), 525 and 541(c) of title 11 of the United States Code, 11 U.S.C. § 101 *et seq.* (the “**Bankruptcy Code**”); and the Court having jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334; and venue being proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409; and this matter being a core proceeding pursuant to 28 U.S.C. § 157(b); and this Court having found that proper and adequate notice of the Motion and the relief requested therein has been provided in accordance with the Bankruptcy Rules and the Local Rules of the Southern District of New York, and that, except as otherwise ordered herein, no other or further notice is necessary; and any objections (if any) to the Motion having been withdrawn or overruled on the merits; and a hearing having been held to consider the relief

<sup>1</sup> The Debtor in this chapter 11 case, along with its registration number in the Philippines, is Philippine Airlines, Inc., Philippine Securities and Exchange Commission Registration No. PW 37. The Debtor’s corporate headquarters is located at PNB Financial Center, President Diosdado Macapagal Avenue, CCP Complex, Pasay City 1300, Metro Manila, Philippines.

<sup>2</sup> Capitalized terms not otherwise defined herein are to be given the meanings ascribed to them in the Motion.

requested in the Motion and upon the record of the hearing and all of the proceedings had before the Court; and the Court having found and determined that the relief sought in the Motion is in the best interests of the Debtor, its estate, its creditors and all other parties-in-interest; and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor,

**IT IS HEREBY ORDERED THAT:**

1. The Motion is GRANTED as set forth herein.
2. Pursuant to sections 363, 1107, and 1108 of the Bankruptcy Code, the Debtor is authorized to continue operating its business in the ordinary course after the Petition Date.
3. Pursuant to section 362 of the Bankruptcy Code, all persons (including individuals, partnerships, corporations, and all those acting for or on their behalf) and all foreign or domestic governmental or quasi-governmental units, including any state, locality, or territory thereof (and all those acting for or on their behalf), regardless of whether or not they have received a copy of the order, are stayed, restrained, and enjoined from:
  - a. commencing or continuing any judicial, administrative or other action or proceeding against the Debtor, including the issuance or employment of process that was or could have been initiated before the Debtor's Chapter 11 Case commenced;
  - b. enforcing, against the Debtor or its estate, a judgment obtained before the commencement of this Chapter 11 Case;
  - c. collecting, assessing or recovering a claim against the Debtor that arose before the commencement of this Chapter 11 Case;
  - d. taking any action to obtain possession of property of the estate or of property from the estate or to exercise control over property of the Debtor's estate;
  - e. taking any action to create, perfect or enforce any lien against property of the Debtor's estate;

- f. taking any action to create, perfect or enforce any lien against property of the Debtor, to the extent that such lien secures a claim that arose before the commencement of this Chapter 11 Case;
- g. offsetting any debt owing to the Debtor that arose before the commencement of this Chapter 11 Case against any claim against the Debtor; and
- h. commencing or continuing a proceeding before the United States Tax Court concerning the Debtor's tax liability for a taxable period the Court may determine.

4. All persons and all foreign and domestic governmental units, and all those acting on their behalf, including sheriffs, marshals, constables, and other or similar law enforcement officers and officials, regardless of whether they have received this order, are stayed, restrained, and enjoined from in any way seizing, attaching, foreclosing upon, levying against or in any other way interfering with any and all property of the Debtor or the Debtor's estate, wherever located.

5. Pursuant to section 365(e)(1) of the Bankruptcy Code, all persons (including individuals, partnerships, corporations, and all those acting for or on their behalf) and all foreign or domestic governmental or quasi-governmental units including any state, locality or territory thereof (and all those acting for or on their behalf) are prohibited from modifying or terminating any executory contract or unexpired lease, or any right or obligation under such contract or lease, at any time after the commencement of this Chapter 11 Case solely because of a provision in such contract or lease that is conditioned on:

- a. the insolvency or financial condition of the debtor at any time before the closing of this Chapter 11 Case;
- b. the commencement of this Chapter 11 Case; or
- c. the appointment of a trustee in this Chapter 11 Case.

6. This order shall not affect: (a) the substantive rights of any party or the availability of any of the exceptions contained in sections 362(b) and 365(e)(1) of the Bankruptcy Code or (b) the right of any party-in-interest to seek relief from the automatic stay in accordance with section 362(d) of the Bankruptcy Code or with respect to an executory contract or unexpired lease under section 365 of the Bankruptcy Code. This Order merely confirms without enlarging certain protections of the Bankruptcy Code.

7. Pursuant to section 525 of the Bankruptcy Code, all foreign or domestic governmental or quasi-governmental units including any state, locality, or territory thereof (and all those acting for or on their behalf) are prohibited and enjoined from: (a) denying, revoking, suspending or refusing to renew any license, permit, charter, franchise or other similar grant to, (b) placing conditions upon such a grant to or (c) discriminating against the Debtor (or another person with whom the Debtor has been associated) solely because the Debtor is a debtor under the Bankruptcy Code, or may have been insolvent before or during this Chapter 11 Case.

8. Pursuant to section 541 of the Bankruptcy Code, all of the Debtor's interests in property, wherever located and by whomever held, are property of the Debtor's estate notwithstanding any agreement, transfer agreement, or applicable law that restricts or conditions transfer of the such interests by the Debtor, or that is conditioned on the insolvency or financial condition of the Debtor or on the commencement of this Chapter 11 Case, or that effects or gives an option to effect a forfeiture, modification, or termination of any of the Debtor's interest in property.

9. Notwithstanding anything to the contrary contained herein, this Order shall not be construed as enjoining or staying any act that is not stayed, or that is subject to an exception from the automatic stay, pursuant to the terms of section 362 of the Bankruptcy Code.



10. The contents of the Motion and the notice procedures set forth therein are good and sufficient notice and satisfy the Bankruptcy Rules and the Local Bankruptcy Rules for the Southern District of New York (the “**Local Rules**”), and no other or further notice of the Motion or the entry of this Order shall be required.

11. Any Bankruptcy Rule (including Bankruptcy Rule 6004(h)) or Local Rule that might otherwise delay the effectiveness of this Order is hereby waived, and the terms and conditions of this Order shall be effective immediately and enforceable upon its entry.

12. The Debtor is authorized to take all such actions as are necessary or appropriate to implement the terms of this Order.

13. On request of a party in interest, and after notice and a hearing, this Court may grant relief from the restraints imposed herein in the event that it is necessary, appropriate and warranted so to terminate, annul, modify or condition the relief granted herein.

14. This Court shall retain exclusive jurisdiction to hear all matters arising from or related to the Motion or the interpretation, implementation, or enforcement of this Order.

Dated: \_\_\_\_\_, 2021  
New York, New York

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THE HONORABLE [●]  
UNITED STATES BANKRUPTCY JUDGE