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

In re:

PHILIPPINE AIRLINES, INC.,¹

Debtor.

Chapter 11

Case No. 21-11569 (SCC)

**DEBTOR'S MOTION FOR ENTRY OF INTERIM AND
FINAL ORDERS PURSUANT TO 11 U.S.C. §§ 105, 361, 362, 363, AND 364
(A) AUTHORIZING THE DEBTOR TO OBTAIN POSTPETITION FINANCING;
(B) GRANTING LIENS AND SUPERPRIORITY ADMINISTRATIVE EXPENSE
CLAIMS; (C) GRANTING ADEQUATE PROTECTION TO THE BRIDGE LENDER;
(D) MODIFYING THE AUTOMATIC STAY; (E) SCHEDULING A FINAL HEARING;
AND (F) GRANTING RELATED RELIEF**

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**”),² hereby moves (the “**Motion**”) for entry of interim and final orders, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B** (the “**Interim Order**” and the “**Final Order**,” respectively, and collectively, the “**DIP Orders**”), granting the relief described below. In

¹ 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.

² Capitalized terms not otherwise defined herein shall have the meaning(s) ascribed to such terms in the DIP Credit Agreement (as defined below).



support of the Motion, the Debtor relies upon and incorporates by reference the *Declaration of Nilo Thaddeus Rodriguez, Chief Financial Officer of the Debtor, in Support of the Chapter 11 Petition and First Day Pleadings* (the “**First Day Declaration**”) and the *Declaration of Douglas Walker in Support of Debtor’s Motion for Entry of Interim and Final Orders Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, and 364 (A) Authorizing the Debtor to Obtain Postpetition Financing; (B) Granting Liens and Superpriority Administrative Expense Claims; (C) Granting Adequate Protection to the Bridge Lender; (D) Modifying the Automatic Stay; (E) Scheduling a Final Hearing; and (F) Granting Related Relief* (the “**Walker Declaration**”), which were 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:

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, 361, 362, 363(b), 363(e), 364(c)(1), 364(c)(2), 364(c)(3), 364(d), and 364(e) of title 11 of the United States Code

(the “**Bankruptcy Code**”), Bankruptcy Rules 2002, 4001, 6003, 6004, and 9014, and Rule 4001-2 of the Local Bankruptcy Rules for the Southern District of New York (the “**Local Rules**”).

Preliminary Statement

4. By this Motion, the Debtor seeks approval to obtain debtor-in-possession financing (the “**DIP Facility**”) provided by certain of its direct and indirect equity holders in the aggregate principal amount of \$505 million (the “**DIP Commitments**,” and the loans made thereunder, the “**DIP Loans**”). The DIP Facility consists of (a) a first lien secured Tranche A multi-draw term loan facility (the “**Tranche A DIP Facility**”) in an aggregate principal amount of \$250 million (each individual loan made thereunder, a “**Tranche A DIP Loan**,” collectively the loans made thereunder, the “**Tranche A DIP Loans**,” and, together with related obligations incurred under the Tranche A DIP Facility, the “**Tranche A DIP Obligations**”), \$20 million of which will be available in a single draw upon entry of the Interim Order and the remainder of which will be available in a single draw upon entry of the Final Order, from Buona Sorte Holdings, Inc. (the “**Initial Tranche A DIP Lender**,” and together with all successors and permitted assigns, the “**Tranche A DIP Lenders**”); and (b) a second lien secured Tranche B multi-draw term loan facility (the “**Tranche B DIP Facility**” and, together with the Tranche A DIP Facility, the “**DIP Facility**”) in an aggregate principal amount of \$255 million (each individual loan made thereunder, a “**Tranche B DIP Loan**,” collectively the loans made thereunder, the “**Tranche B DIP Loans**,” and, together with related obligations incurred under the Tranche B DIP Facility, the “**Tranche B DIP Obligations**”; the Tranche B DIP Loans, collectively with the Tranche A DIP Loans, are the “**DIP Loans**”) which shall be available in no more than two draws upon entry of the Final Order, from PAL Holdings Inc. (the “**Initial Tranche B DIP Lender**,” and together with all successors and permitted assigns, the “**Tranche**

B DIP Lenders"; the Initial Tranche A DIP Lender and the Initial Tranche B DIP Lender are, together, the "**Initial DIP Lenders**"; the Tranche A DIP Lenders and the Tranche B DIP Lenders are, together, the "**DIP Lenders**"), in each case subject to the satisfaction of the conditions precedent set forth in the Debtor-In-Possession Credit Agreement attached as **Annex A** to **Exhibit A** without exhibits or schedules (the "**DIP Credit Agreement**"); for which Buona Sorte Holdings, Inc. shall serve as administrative and collateral agent (in such capacities, together with its successors in such capacities, the "**DIP Agent**," and the DIP Agent, together with the DIP Lenders, are the "**DIP Secured Parties**" and each is a "**DIP Secured Party**").

5. The Initial Tranche A DIP Lender directly owns approximately 60% of the equity of non-Debtor Trustmark Holdings Corporation, which in turn directly owns approximately 76.9% of the equity of the Initial Tranche B DIP Lender, which in turn directly owns approximately 98.57% of the equity of the Debtor. The Initial Tranche A DIP Lender, as described further below, provided certain secured term loans under Bridge Loan Facilities (as defined below) to the Debtor in the months prior to the Petition Date. In exchange for the additional liquidity afforded by the DIP Facility and the agreement of the Initial Tranche A DIP Lender to accept repayment of its DIP Loans in long-term unsecured exit financing instead of cash in connection with an Acceptable Plan (as defined below), the Debtor has agreed to repay and refinance all \$100 million in principal of such prepetition loans and accrued interest thereon, plus all fees, costs, and other charges due and payable under the Bridge Loan Facilities (the "**Bridge Loan Obligations**"), as part of the DIP Facility upon final approval. The collateral securing the Bridge Loan Facilities, which absent such repayment and refinancing would remain encumbered, will serve as part of the collateral for the DIP Facility. Without the support provided by its shareholder pursuant to the Bridge Loan Facilities, the Debtor would not have

been able to continue its operations in the challenging environment created by the COVID-19 pandemic or negotiate Restructuring Support Agreements with almost all of the Debtor's lenders, lessors, original equipment manufacturers and maintenance, repair and overhaul providers, as well as almost all holders of the Debtor's unsecured debt.

6. Subject to the terms and conditions of the DIP Credit Agreement, at the Debtor's option, the Tranche A DIP Loans are convertible into unsecured exit financing, and the Tranche B DIP Loans are convertible into equity in the reorganized Debtor (together, the "**Conversion Features**"), in each case in connection with the consummation of an Acceptable Plan. The Conversion Features preserve the Debtor's liquidity options, lower the barriers to exiting chapter 11, and were key components in reaching agreement among those stakeholders that signed on to the Restructuring Support Agreements and agreed to receive distributions of common equity in the reorganized Debtor in exchange for certain of their prepetition claims.

7. The commitment to provide the DIP Facility was obtained from the DIP Lenders following a robust competitive marketing process as described in detail in the Walker Declaration. During the competitive bidding process, the Debtor engaged with representatives of approximately 115 potential funding sources to confirm whether there was, in fact, any market interest in providing postpetition financing on better terms. After allowing approximately 18 potential sources of capital to access information about the Debtor in virtual data rooms established and managed by Seabury, the Debtor and its advisors concluded that the DIP Facility affords the Debtor with the greatest certainty of execution available under the circumstances, and provides the best opportunity for the Debtor to successfully reorganize in this Chapter 11 Case. The DIP Facility is critical to enabling the Debtor to fund its operations during the course of the

Chapter 11 Case as it pursues consummation of a plan of reorganization and preserves and maximizes the value of the Debtor's estate for the benefit of all parties in interest.

8. For these reasons, and for the reasons set forth below, in the First Day Declaration, and in the Walker Declaration, the Debtor believes that entering into the DIP Facility is a sound exercise of the Debtor's business judgment and consistent with its fiduciary duties. Accordingly, the Debtor respectfully requests that the Court enter the proposed DIP Orders.

Relief Requested

9. By this motion, the Debtor seeks entry of the Interim Order, substantially in the form attached hereto as **Exhibit A**, and a Final Order substantially in the form attached hereto as **Exhibit B**, granting the following relief:

- (a) authorizing the Debtor to the DIP Facility on the terms and conditions set forth in the DIP Credit Agreement;
- (b) authorizing the Debtor, subject to satisfaction (or waiver) of all applicable terms and conditions precedent under the DIP Loan Documents (as defined below) in accordance therewith:
 - A. upon entry of the Interim Order, to incur DIP Loans in an aggregate principal amount not to exceed \$20 million, comprised of a single borrowing of Tranche A DIP Loans (the "**Interim Commitments**");
 - B. upon entry of the Final Order, to incur DIP Loans in an aggregate principal amount not to exceed \$505 million (inclusive of the Interim Commitments and the repayment in full and refinancing of the Bridge Loan Obligations).
- (c) authorizing the Debtor, to (i) enter into, execute, and deliver the DIP Credit Agreement and any additional documentation governing the DIP Facility consistent with the terms of (or as may be required by) the DIP Credit Agreement (the DIP Credit Agreement, collectively with the Interim Order, the Collateral Documents, the Approved Budget, and any other document delivered to any DIP Secured Party in connection with any of the foregoing, in each case, as the same may be amended, restated, or otherwise modified from time to time in accordance with the terms of the DIP Orders and the DIP Credit Agreement, are referred to herein as the "**DIP Loan Documents**"), in

each case, to which it is a party; and (ii) to perform such other and further acts as may be necessary or appropriate in connection therewith, or otherwise required under the DIP Loan Documents;

- (d) authorizing the Debtor to use the proceeds of the DIP Loans (collectively, the “**DIP Loan Proceeds**”) as permitted in the DIP Loan Documents and in accordance with the DIP Orders and the Approved Budget, including, upon entry of the Final Order, to repay and refinance in full in cash all outstanding obligations under the Bridge Loan Facilities;
- (e) granting valid, binding, continuing, enforceable, and automatically perfected (i) security interests in and liens on all of the Collateral (as defined in the DIP Credit Agreement, and referred to herein as the “**DIP Collateral**”) to the DIP Agent for the benefit of the DIP Secured Parties, and (ii) granting superpriority administrative expense status to all principal, interest, costs, expenses, fees, and other charges at any time payable by the Debtor to the DIP Secured Parties in connection with the DIP Loan Documents, all reimbursement obligations, and all other indebtedness and obligations contemplated under any of the DIP Loan Documents (all of the foregoing being collectively called the “**DIP Obligations**”), in each case subject to the Carve Out and, in the case of the Tranche B DIP Obligations, the Bridge Loan Obligations, and the Adequate Protection Superpriority Claims;
- (f) authorizing the Debtor to pay the principal, interest, fees, expenses, disbursements, and other amounts payable under the DIP Loan Documents as and when such amounts become due and payable without other or further notice or order;
- (g) authorizing the Debtor to use, on the terms described in the DIP Orders, the Bridge Loan Collateral (as defined below) and providing adequate protection to the Bridge Lender for any diminution in value of its interests in the Bridge Loan Collateral;
- (h) vacating and modifying the automatic stay imposed under section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms of the DIP Orders and the other DIP Loan Documents;
- (i) subject to entry of the Final Order, waiving the Debtor’s ability to surcharge against any DIP Collateral pursuant to section 506(c) of the Bankruptcy Code and any right of the Debtor under the “equities of the case” exception in section 552(b) of the Bankruptcy Code;
- (j) scheduling a final hearing (the “**Final Hearing**”) to consider entry of the Final Order, and in connection therewith, giving and prescribing the manner of notice of the Final Hearing on the Motion;
- (k) waiving any applicable stay with respect to the effectiveness and enforceability of the DIP Orders (including under Bankruptcy Rule 6004); and

- (1) granting the Debtor such other and further relief as is just and proper.

Concise Summary of Terms of the DIP Facility

10. Under the disclosure requirements of Bankruptcy Rules 4001(b), (c), and (d) and Local Rule 4001-2, the following table concisely summarizes the significant terms of the DIP Facility and the proposed DIP Orders:³

Bankruptcy Code/Local Rule	Summary of Material Terms
Borrower: Bankruptcy Rule 4001(c)(1)(B)	Philippine Airlines, Inc. <i>DIP Credit Agreement, preamble.</i>
DIP Lenders: Bankruptcy Rule 4001(c)(1)(B)	Buona Sorte Holdings, Inc., an indirect common equityholder of the Debtor, as Initial Tranche A DIP Lender; and PAL Holdings Inc., the direct majority common equityholder of the Debtor, as Initial Tranche B DIP Lender. <i>DIP Credit Agreement, preamble.</i>
DIP Agent Bankruptcy Rule 4001(c)(1)(B)	Buona Sorte Holdings, Inc. <i>DIP Credit Agreement, preamble.</i>
DIP Facility and Roll Up Bankruptcy Rule 4001(c)(1)(B) ; Local Rule 4001- 2(a)(1) and (7)	The DIP Facility consists of secured multi-draw term loans in an aggregate principal amount of no more than \$505 million comprised of (a) the Tranche A DIP Facility in an aggregate principal amount of up to \$250 million and (b) the Tranche B DIP Facility in an aggregate principal amount of up to \$255 million. Upon entry of the Final DIP Order by the Bankruptcy Court, and subject to the “challenge” rights of certain third parties as provided for in the Final Order, the Bridge Loan Obligations shall be deemed automatically, immediately, and irrevocably to have been repaid in full and refinanced by Borrowings of Tranche A DIP Loans borrowed hereunder on a dollar for dollar basis. <i>DIP Credit Agreement, Sections 1.1, 1.3(f); Interim Order, preamble, ¶ 1; Final Order, preamble, ¶ 1.</i>

³ This summary, including the defined terms it uses (whether or not defined within the summary), is qualified in its entirety by the provisions of the DIP Loan Documents and the DIP Orders, as applicable. To the extent that there are any conflicts between this summary, on the one hand, and any DIP Loan Document or the DIP Orders, as applicable, on the other, the terms of such DIP Loan Document or the DIP Orders, as applicable, shall govern.

Bankruptcy Code/Local Rule	Summary of Material Terms
Term Bankruptcy Rule 4001(b)(1)(B)(iii), 4001(c)(1)(B); Local Rule 4001- 2(a)(2)	<p>The Maturity Date of the DIP Facility is the earliest of (x) the date that is 63 months after the Petition Date, (y) entry by the Court of an order dismissing the Chapter 11 Case or converting the Chapter 11 Case to a case under chapter 7 of the Bankruptcy Code, or (z) the effective date of a chapter 11 plan in the Chapter 11 Case if the conversion election pursuant to Section 1.8 of the Credit Agreement is not made.</p> <p><i>DIP Credit Agreement, definition of “Maturity Date.”</i></p>
Interest Rates; Amortization Bankruptcy Rule 4001(c)(1)(B); Local Rule 4001- 2(a)(3)	<p>Each Loan shall bear interest on the outstanding principal amount thereof from the date when made at a rate per annum equal to 9.50%. Accrued interest on the Loans shall be payable, at the sole option of the Borrower, in cash or in kind, or in a combination of cash and in kind, in arrears, on each Interest Payment Date.</p> <p><i>DIP Credit Agreement, Section 1.3(a).</i></p> <p>On a quarterly basis, commencing with the 28th full month after the Petition Date, the Debtor shall repay 11.1% of the outstanding principal amount of the Loans outstanding on such date.</p> <p><i>DIP Credit Agreement, Section 1.5(a).</i></p>
Expenses and Fees Bankruptcy Rule 4001(c)(1)(B); Local Rule 4001- 2(a)(3) and (16)	<p><u>Upfront Fee:</u> 1.00% of the DIP Loans actually lent, which may be effected as original issue discount at the option of the DIP Lenders.</p> <p><i>DIP Credit Agreement, Section 1.3(b)-(c).</i></p> <p><u>Expense Reimbursement:</u> Subject to the procedures for reimbursement described in the DIP Orders, the Debtor shall reimburse the DIP Secured Parties for their reasonable and documented out-of-pocket fees, costs, and expenses, whether accrued on, prior to, or after the Closing Date, in connection with (a) the preparation, negotiation, execution, and administration of the DIP Loan Documents and any other document prepared in connection therewith or the consummation and administration of any transaction contemplated therein, including any amendment or waiver of the DIP Loan Documents, (b) the funding of the DIP Loans, (c) the creation, perfection, or protection of the DIP Liens (including all search, filing and recording fees), (d) internal audit reviews and field examinations, (e) the enforcement or preservation of any right or remedy under any DIP Loan Document, any DIP Obligation, or with respect to the DIP Collateral, (f) the commencement, defense, conduct of, intervention in, or the taking of any other action (including preparation for and/or response to any subpoena or request for document production relating thereto) with respect to, any proceeding related to the Debtor, any DIP Loan Document or DIP Obligation, (g) the review of pleadings and other filings made with the Bankruptcy Court, (h) attendance at hearings in respect of the Chapter 11 Case, (i) any refinancing or restructuring of the DIP Loans in the nature of a “work-out,” and (j) defending and prosecuting any actions or proceedings arising out of or relating to the DIP Obligations or any transactions related to arising in connection with the DIP Loan Documents; <i>provided</i> that, in the case of each of the foregoing clauses (a)-(j), Attorney Costs shall be limited to one law firm on behalf of all DIP Secured Parties and, to the extent necessary, one local counsel in</p>

Bankruptcy Code/Local Rule	Summary of Material Terms
	<p>each relevant jurisdiction (and in the case of an actual or perceived conflict of interest, one additional law firm on behalf of the affected DIP Secured Party).</p> <p><i>DIP Credit Agreement, Section 9.4(a); Interim Order ¶ 17; Final Order ¶ 17.</i></p>
<p>Conditions to Borrowing Bankruptcy Rule 4001(c)(1)(B); Local Rule 4001-2(a)(2)</p>	<p>Among other customary conditions to borrowing, the Debtor</p> <p>(a) must deliver to the DIP Lenders 13-week cash flow projections, in form and substance acceptable to the Required Lenders (the “Approved Budget”), which are attached to the Interim Order as Annex B; and</p> <p>(b) must deliver to the DIP Lenders and DIP Agent restructuring support agreements, reasonably satisfactory in form and substance to the DIP Lenders, executed by creditors that hold at least two-thirds in amount and one-half in number of general unsecured claims owed by the Debtor and that are entitled to vote to accept or reject the Proposed Plan, which shall remain in full force and effect and shall not have been terminated by any of the parties thereto.</p> <p><i>DIP Credit Agreement, Section 2.1(c), (h).</i></p>
<p>Use of DIP Loan Proceeds Bankruptcy Rule 4001(b)(1)(B)(ii); Local Rule 4001-2(a)(2) and (9)</p>	<p>The proceeds of the DIP Loans shall be used solely (a) to repay in full and refinance the Bridge Loan Obligations, (b) to pay reasonable fees, costs, and expenses of the DIP Lenders as contemplated by the DIP Loan Documents, (c) to provide working capital and for other general corporate purposes of the Debtor and, to the extent approved by the Bankruptcy Court, its non-debtor affiliates, and (d) to pay administration costs of the Chapter 11 Case. For the avoidance of doubt, no DIP Loan Proceeds may be used to make any payment in settlement or satisfaction of any prepetition claim (other than the Bridge Loan Obligations) or administrative claim (other than the DIP Obligations or the Adequate Protection Superpriority Claim), unless such payment is (x) in compliance with the Approved Budget or (y) separately approved or authorized by the Court upon notice to the DIP Agent.</p> <p>Neither the Carve Out nor any DIP Loan Proceeds or DIP Collateral shall be used to, among other things (any of the following each a “Prohibited Purpose”): (a) object to, seek subordination of, or contest the validity, extent, perfection, priority, or enforceability of the DIP Facility or the amount due thereunder and the superpriority claims granted thereby, the DIP Liens, the Bridge Loan Facilities or the amount due thereunder, or the Bridge Loan Liens; (b) investigate, initiate, assert, or prosecute any claim, defense, demand, or cause of action against the DIP Agent, the DIP Lenders, or the Bridge Lender, or any of their respective officers, directors, employees, agents, attorneys, representatives, subsidiaries, affiliates, or shareholders, under or relating to the DIP Facility, including, in each case, any action, suit or other proceeding for breach of contract or tort or pursuant to sections 105, 506, 510, 544, 547, 548, 549, 550, 552, or 553 of the Bankruptcy Code, or under any other applicable law (state, federal, or foreign), or otherwise; (c) prevent, hinder, or delay, whether directly or indirectly, any DIP Secured Party’s or the Bridge Lender’s</p>

Bankruptcy Code/Local Rule	Summary of Material Terms
	<p>assertion or enforcement of its liens and security interests, or its efforts to realize upon any DIP Collateral or Bridge Loan Collateral or the claims authorized or granted under the DIP Loan Documents or the Bridge Loan Documents, as applicable, or exercise any other rights and remedies under the DIP Loan Documents or Bridge Loan Documents, as applicable, or applicable law; (d) seek to modify any of the rights granted under the Interim Order to any DIP Secured Party or the Bridge Lender; (e) assert any defense, counterclaim, or offset to the Interim Order, any DIP Obligations, or any Bridge Loan Obligations; or (f) object to, contest, delay, prevent, or interfere in any way with the exercise of rights or remedies by any DIP Secured Party with respect to any DIP Collateral, after the occurrence and during the continuance of an Event of Default (as defined in the DIP Credit Agreement); <i>provided however</i>, that the Carve Out and such DIP Loan and DIP Collateral proceeds may be to pay the allowed fees and expenses, in an amount not to exceed \$100,000 in the aggregate (the “Investigation Budget Amount”), incurred solely by a Creditors’ Committee (if appointed), in investigating (but not prosecuting or challenging) the validity, enforceability, perfection, priority, or extent of the Bridge Loan Liens within 60 calendar days following the selection of counsel to a Creditors’ Committee, unless otherwise extended by the Court.</p> <p><i>DIP Credit Agreement, Section 4.4; Interim Order ¶¶ 1(d) and 13; Final Order ¶¶ 1(d) and 13.</i></p>
<p>Events of Default Bankruptcy Rule 4001(c)(1)(B); Local Rule 4001-2(a)(10)</p>	<p>Usual and customary events of defaults for facilities of this type and purpose, including failure to meet any of the Milestones, the termination of any Restructuring Support Agreements that, combined, cause the remaining Restructuring Support Agreements in full force and effect to represent creditors holding fewer than two-thirds in amount and one-half in number of general unsecured claims owed by the Debtor and that are entitled to vote to accept or reject the Acceptable Plan, nonpayment of obligations, defaults under covenants, breaches of representations and warranties, invalidity of liens or collateral documents, and the occurrence of certain adverse actions or consequences in the Chapter 11 Case.</p> <p><i>DIP Credit Agreement, Section 7.1.</i></p>
<p>Waiver/Modification of the Automatic Stay Bankruptcy Rule 4001(c)(1)(B)(iv)</p>	<p>The DIP Facility provides that, upon the occurrence of an Event of Default and after five business days from a Notice of Default, the DIP Agent may proceed against and realize upon the DIP Collateral notwithstanding the automatic stay set forth in section 362 of the Bankruptcy Court.</p> <p><i>Interim Order ¶ 20; Final Order ¶ 20.</i></p>
<p>Carve Out Bankruptcy Rule 4001(c)(1)(B); Local Rule 4001-2(a)(5)</p>	<p>The DIP Orders provide a “Carve Out” of certain statutory fees, allowed professional fees of the Debtor and any statutory creditors’ committee, including a Post-Carve-Out Trigger Notice Cap, all as detailed in the DIP Orders.</p> <p><i>Interim Order ¶ 12; Final Order ¶ 12.</i></p>

Bankruptcy Code/Local Rule	Summary of Material Terms
506(c) Waiver Bankruptcy Rule 4001(c)(1)(B)(x); Local Rule 4001-2(a)(3)	<p>Subject to and effective upon entry of the Final Order, except to the extent of the Carve Out, no costs or expenses of administration shall be imposed upon any DIP Secured Party or on any DIP Collateral pursuant to section 506(c) of the Bankruptcy Code or otherwise without the prior written consent of such DIP Secured Party, and no such consent shall be implied from any action, inaction, or acquiescence by any DIP Secured Party.</p> <p><i>DIP Credit Agreement, Section 6.5; Interim Order ¶ 11; Final Order ¶ 11.</i></p>
Section 552(b) Bankruptcy Rule 4001(c)(1)(B); Local Rule 4001-2(a)(3)	<p>The Bridge Lender shall be entitled to all of the rights and benefits of Section 552(b) of the Bankruptcy Code and, subject to entry of the Final Order, the “equities of the case” exception under Section 552(b) of the Bankruptcy Code shall not apply to the Bridge Lender with respect to proceeds, product, offspring, or profits of any of the Bridge Loan Collateral.</p> <p><i>Interim Order ¶ 29; Final Order ¶ 27 ¶.</i></p>
Milestones Bankruptcy Rule 4001(c)(1)(B); Local Rule 4001- 2(a)(10)	<ul style="list-style-type: none"> • No later than 20 days after the Petition Date, the Debtor shall have filed a motion seeking entry of (A) the DIP Orders and (B) one or more final orders (collectively, the “RSA Assumption Order”) authorizing the Debtor to assume all executed Restructuring Support Agreements. • No later than 60 days after the Petition Date, the Final Order and the RSA Assumption Order shall have been entered by the Bankruptcy Court. • No later than 60 days after the Petition Date, the Debtor shall have filed a plan of reorganization materially consistent with the Restructuring Support Agreements (an “Acceptable Plan”), a related disclosure statement (the “Disclosure Statement”), and a motion for a hearing on the Acceptable Plan and the Disclosure Statement. • No later than 120 days after the Petition Date, solicitation on the Acceptable Plan shall have been completed. • No later than 150 days after the Petition Date, the Bankruptcy Court shall have entered a final order confirming the Acceptable Plan and a final order approving the Disclosure Statement, in each case in form and substance acceptable to the Lenders. • No later than 180 days after the Petition Date, the effective date of the confirmed Acceptable Plan shall have occurred. <p><i>DIP Credit Agreement, Section 4.6(a).</i></p>
Stipulations to Prepetition Liens and Claims; Challenge Period Bankruptcy Rule 4001(c)(1)(B)(iii); Local Rule 4001-2(a)(4) and Local Rule 4001-2(a)(10)	<p>The Debtor’s stipulations regarding the DIP Secured Parties and Bridge Loan Obligations, including the validity, perfection and priority of the Bridge Lender’s liens securing the same are irrevocably binding on the Debtor. All creditors and parties in interest and all of their successors in interest and assigns, including a Creditors’ Committee (if appointed) shall be bound by the Debtor’s stipulations unless such third parties that have</p>

Bankruptcy Code/Local Rule	Summary of Material Terms
	<p>sought and obtained standing and the requisite authority to commence such a challenge by the earlier of by the earlier of (A) the date of entry of a confirmation order and (B) the later of (1) for any creditors' committee, 60 days from the date of formation, or (2) 75 days following the entry of the Interim Order for any other party in interest.</p> <p><i>Interim Order ¶ 14; Final Order ¶ 14.</i></p>
<p>Waiver/Modification of Applicability of Nonbankruptcy Law Relating to Perfection or Enforceability of Liens Bankruptcy Rule 4001(c)(1)(B)(vii); Local Rule 4001-2(a)(4) and Local Rule 4001-2(a)(10)</p>	<p>The DIP Liens and Adequate Protection Liens are effective, valid, binding, enforceable, and duly perfected upon entry of the Interim Order. None of the DIP Secured Parties or the Bridge Lender shall be required to file any UCC-1 financing statement, mortgage, deed of trust, assignment, pledge, security deed, notice of lien, or any similar document or instrument in any jurisdiction or take any other action (including taking possession of any of the DIP Collateral) in order to validate the perfection of any DIP Liens or the Adequate Protection Liens, but all of such filings and other actions are hereby authorized by the Court. If the DIP Agent or Bridge Lender, in its discretion, chooses to file or record any such mortgage, deed of trust, assignment, pledge, security deed, notice of lien, or UCC-1 financing statement, or take any other action in any jurisdiction to evidence the perfection of any part of the DIP Liens or the Adequate Protection Liens, as applicable, the Debtor and its respective officers are authorized and directed to use commercially reasonable efforts to execute, file, and record any documents or instruments as the DIP Agent or the Bridge Lender, as applicable, may reasonably request, and all such documents and instruments shall be deemed to have been filed or recorded at the time and on the date of entry of the Interim Order. The DIP Agent or Bridge Lender may, in its reasonable discretion, file a certified copy of the Interim Order in any filing office in any jurisdiction in which the Debtor is organized or has or maintains any DIP Collateral or an office, and each filing office is directed to accept such certified copy of the Interim Order for filing and recording. The DIP Agent, the DIP Lenders, or the Bridge Lender may require the Debtor to enter into non-U.S. security documentation with respect to such DIP Collateral located in non-U.S. jurisdictions, and the Debtor and its respective officers are authorized and directed to use commercial reasonable efforts to execute, file, and record any documents or instruments as the DIP Agent, the DIP Lenders, or the Bridge Lender may reasonably request, and all such documents and instruments shall be deemed to have been filed or recorded at the time and on the date of entry of the Interim Order.</p> <p><i>Interim Order ¶ 16; Final Order ¶ 16.</i></p>
<p>Repayment Features Local Rule 4001-2(a)(13)</p>	<p>Voluntary Prepayments:</p> <p>The Debtor shall not have the right to voluntarily prepay any amount of the Loans, except in connection with an Acceptable Plan.</p> <p><i>DIP Credit Agreement, Section 1.6.</i></p> <p>Mandatory Prepayments:</p> <p>Within 15 Business Days after any insurance proceeds with respect to a Total Loss of any Pledged Aircraft or Pledged Engine are recovered, the Debtor shall segregate such proceeds in a cash collateral account subject</p>

Bankruptcy Code/Local Rule	Summary of Material Terms
	<p>to the DIP Liens with such proceeds to be used solely as agreed to by the Lenders; <i>provided</i> that no such segregation of proceeds shall be required to be made with respect to any Pledged Engine if the Debtor provisions a replacement thereof in accordance with the DIP Credit Agreement on or before the date on which such segregation of proceeds is otherwise required to be made.</p> <p><i>DIP Credit Agreement, Section 1.7.</i></p>
<p>Tranche A Conversion Option Local Rule 4001-2(a)(3)</p>	<p>The Debtor, in its sole discretion, may elect (the “Tranche A Conversion Election”), pursuant to, and on the effective date of, the Acceptable Plan, to provide notice to the Lenders that all Tranche A DIP Liens shall be released and the Tranche A DIP Loans shall be unsecured as of such date; <i>provided</i> that such Tranche A Conversion Election shall only be effective upon the effectiveness of the Tranche B Conversion (as defined below). Following the occurrence of such Tranche A Conversion Election, the Tranche A DIP Loans shall continue to be governed in all respects by the terms of the DIP Credit Agreement and the other DIP Loan Documents (except for the Collateral Documents and any provisions in any other Loan Document relating to the DIP Collateral and the Tranche A DIP Liens, which shall be of no further force and effect).</p> <p><i>DIP Credit Agreement, Section 1.8.</i></p>
<p>Tranche B Conversion Option Local Rule 4001-2(a)(3)</p>	<p>The Debtor, in its sole discretion, in full and final satisfaction, settlement, release, and discharge of, and in exchange for, the Tranche B DIP Loans and all accrued and unpaid interest thereon, may elect (the “Tranche B Conversion Election”), pursuant to, and on the effective date of, the Acceptable Plan, to provide notice to the Lenders that all Tranche B DIP Liens shall be released and the Tranche B Term Loans (and all accrued and unpaid interest, fees, costs and expenses thereon (other than professional and other advisory fees, costs and expenses, which must be paid in cash)) shall be converted into 79.5% of the common stock of reorganized Debtor (collectively, the “Conversion Shares” and such issuance, the “Tranche B Conversion”) on such date; <i>provided</i> that:</p> <p>(a) the exercise of the Tranche B Conversion Election is subject to:</p> <p>(i) the prior approval of applicable antitrust and other Governmental Authorities;</p> <p>(ii) if necessary, the expiration or termination of the waiting period under the Hart-Scott-Rodino Act or acts of similar import under Philippine law;</p> <p>(iii) the receipt of all corporate approvals required for the issuance of the Conversion Shares; and</p> <p>(iv) the exercise or waiver of any and all preemptive rights provided in the Debtor’s corporate bylaws or elsewhere; and</p> <p>(b) in no event shall the Tranche B Conversion result in the acquisition by any Tranche B Lender of common stock in such amounts that would violate any legal requirement that subjects foreign ownership of</p>

Bankruptcy Code/Local Rule	Summary of Material Terms
	<p>reorganized PAL or any of its subsidiaries to foreign investment restrictions or the antitrust laws of any jurisdiction; <i>provided</i> that arrangements made by the Tranche B Lenders to transfer any Conversion Shares to Philippine nationals concurrently with the subscription of the Conversion Shares shall be considered for purposes of determining whether the foreign ownership limitations would be violated.</p> <p><i>DIP Credit Agreement, Section 1.9.</i></p>
<p>Liens and Priorities Bankruptcy Rule 4001(c)(1)(B)(i); Local Rule 4001- 2(a)(4)</p>	<ul style="list-style-type: none"> • <u>Tranche A DIP Liens.</u> (i) First priority liens pursuant to section 364(c)(2) of the Bankruptcy Code on all DIP Collateral that was not encumbered by Bridge Loan Liens or Permitted Senior Liens (as defined below), and (ii) to the extent any DIP Collateral is subject to any (x) Bridge Loan Liens, (y) Prior Liens, or (z) liens perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code (the foregoing clauses (y) and (z) being referred to collectively as the “Permitted Senior Liens”), senior liens, pursuant to section 364(d) of the Bankruptcy Code, on such DIP Collateral subject and subordinate only to Permitted Senior Liens (clauses (i) and (ii) together, the “Tranche A DIP Liens”). • <u>Tranche B DIP Liens.</u> Pursuant to section 364(c)(3) of the Bankruptcy Code, junior liens on all of the DIP Collateral subject and subordinate to any Permitted Senior Liens, the Tranche A DIP Liens, the Bridge Loan Liens, and the Adequate Protection Liens. • <u>Liens Senior to Certain Other Liens.</u> The DIP Liens shall be effective immediately upon the entry of the Interim Order and shall not at any time be (i) subject or subordinate to (A) any lien or security interest that is avoided and preserved for the benefit of the Debtor or the Debtor’s estate under section 551 of the Bankruptcy Code, (B) except to the extent the DIP Loan Documents expressly allow a postpetition lien to have priority over the DIP Liens, any postpetition liens granted by the Debtor to other persons or entities or otherwise arising after the Petition Date, including any liens or security interests granted in favor of any federal, state, municipal, or other governmental unit, commission, board, or court for any liability of the Debtor, or (C) any intercompany or affiliate liens or security interests against the Debtor; (ii) subordinated to or made <i>pari passu</i> with any other lien or security interest on the DIP Collateral under section 363 or 364 of the Bankruptcy Code; or (iii) subject to sections 510(c), 549, or 550 of the Bankruptcy Code. In no event shall any person or entity who pays (or, through the extension of credit to the Debtor, causes to be paid) any of the DIP Obligations be subrogated, in whole or in part, to any rights, remedies, claims, privileges, liens, or priorities granted to or in favor of, or conferred upon, any DIP Secured Party by the terms of any DIP Loan Documents or the Interim Order unless such person or entity contemporaneously causes payment in full of all of the DIP Obligations. <p><i>Interim Order ¶ 3; Final Order ¶ 3.</i></p>

Bankruptcy Code/Local Rule	Summary of Material Terms
<p>Adequate Protection</p> <p>Bankruptcy Rules 4001(c)(1)(b)(i) and 4001(c)(1)(b)(ii)</p>	<p>The Bridge Lender will receive, subject in each case terms and priorities laid out in the DIP Orders, the following as adequate protection: (a) the Adequate Protection Liens, which are junior to Permitted Senior Liens, the Tranche A DIP Liens, and the Bridge Loan Liens and senior to the Tranche B DIP Liens, (b) the Adequate Protection Superpriority Claims, which are junior to the Carve Out, the DIP Superpriority Claims arising under the Tranche A DIP Facility, and the Bridge Loan Obligations and senior to the DIP Superpriority Claims arising under the Tranche B DIP Facility, and (c) the Adequate Protection Payments, consisting of periodic cash interest and reasonable, out-of-pocket fees and expenses.</p> <p><i>Interim Order ¶¶ 5-7; Final Order ¶¶ 5-7.</i></p>
<p>Indemnification</p> <p>Bankruptcy Rule 4001(c)(1)(B)(ix); Local Rule 4001-2(a)(3)</p>	<p>The Debtor shall indemnify, defend, and save and hold harmless the DIP Agent and each DIP Lender and each of their Related Persons and their respective officers, directors, employees, agents and advisors (each, in its capacity as such, an “Indemnitee”) from and against, and shall pay on demand, any and all claims, damages, losses, liabilities and expenses (including Attorney Costs) that may be incurred by or asserted or awarded against any Indemnitee, in each case arising out of or in connection with or by reason of (including in connection with any investigation, litigation or proceeding or preparation of a defense in connection therewith) the DIP Credit Agreement, the other DIP Loan Documents, the transactions contemplated hereby or thereby or the actual or proposed use of the proceeds of the DIP Loans, except to the extent such claim, damage, loss, liability, or expense is found in a final, non-appealable judgment by a court of competent jurisdiction (or a settlement tantamount thereto) to have resulted from such Indemnitee’s bad faith, gross negligence or willful misconduct; <i>provided</i> that any such Attorney Costs shall be limited to one law firm on behalf of all DIP Secured Parties and, to the extent necessary, one local counsel in each relevant jurisdiction (and in the case of an actual or perceived conflict of interest, one additional law firm on behalf of the affected DIP Secured Party).</p> <p><i>DIP Credit Agreement, Section 9.4(c); Interim Order ¶ 1(b); Final Order ¶ 1(b).</i></p>

Background

11. On September 3, 2021 (the “**Petition Date**”), the Debtor commenced with this Court a voluntary case under the Bankruptcy Code. The Debtor is authorized to operate its business and manage its properties as debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request has been made for the appointment of a trustee or examiner in this Chapter 11 Case.

12. Additional information about the Debtor's business and the events leading up to the Petition Date can be found in the First Day Declaration.

A. The Debtor's Prepetition Capital Structure

13. As described in the First Day Declaration, to support its operations and obligations, the Debtor has a complex capital structure, which includes a series of aircraft specific financings, unsecured bank loans, receivables securitizations, and promissory notes.

14. In connection with these obligations and its other operations, as of December 31, 2020, the Debtor's overall assets and liabilities were approximately \$4,727,685,000 and \$6,136,090,000 respectively, cash and cash equivalents of approximately \$43,069,000.

15. As of December 31, 2020, the Debtor had over \$4 billion of outstanding financial debt obligations, of which approximately \$735 million was secured by certain assets of the Debtor.

16. Pursuant to those certain Loan Agreements, dated as of February 10, 2021 (the "**First Bridge Loan Agreement**"), May 27, 2021 (the "**Second Bridge Loan Agreement**"), and August 19, 2021 (the "**Third Bridge Loan Agreement**") respectively (each as amended, restated, or otherwise modified from time to time, the "**Bridge Loan Agreements**," and collectively with any other agreements and documents executed or delivered in connection therewith, each as may be amended, restated, or otherwise modified from time to time, the "**Bridge Loan Documents**"), between the Debtor and Buona Sorte Holdings, Inc., a corporation duly organized and existing under the laws of the Republic of the Philippines, as lender thereunder (the "**Bridge Lender**"), the Bridge Lender provided certain term loans to the Debtor (the "**Bridge Loans**").

17. Pursuant to the Bridge Loan Agreements, the Bridge Lender provided credit facilities (the "**Bridge Loan Facilities**") to the Debtor in an aggregate principal amount of

\$100 million, comprised of (a) \$60 million pursuant to the First Bridge Loan Agreement, (b) \$25 million pursuant to the Second Bridge Loan Agreement, and (c) \$15 million pursuant to the Third Bridge Loan Agreement. The Bridge Loan Facilities provided the Debtor with the necessary liquidity and runway to prepare for an organized bankruptcy filing and negotiate Restructuring Support Agreements with numerous lenders and lessors regarding the Debtor's go-forward aircraft leases, long-term loans, and optimized fleet leasing strategy in accordance with the Debtor's revised business plan.

18. As more fully set forth in the Bridge Loan Documents, prior to the Petition Date, the Debtor granted to the Bridge Lender a first priority security interest in and a continuing lien on (the "**Bridge Loan Liens**") each of the Aircraft, Engines, and Spare Engines (each as defined in the Bridge Loan Agreements, collectively, the "**Bridge Loan Collateral**"), subject only to any Permitted Liens (as defined in the Bridge Loan Agreements, and as used herein, the "**Bridge Loan Permitted Liens**"). The Bridge Loan Collateral includes all of the DIP Collateral, except the Mabuhay Miles frequent flyer program.

19. Other than the consensual priming of the Bridge Loans by the Tranche A DIP Facility, the Debtor does not seek to prime any valid, perfected, and unavoidable liens that were in existence immediately prior to the Petition Date or that are perfected as permitted by Section 546(b) of the Bankruptcy Code.

B. The Debtor's Immediate Liquidity Needs

20. In conjunction with the Debtor's other advisors, Seabury International Corporate Finance LLC and Seabury Securities LLC (together, "**Seabury**") assisted the Debtor's management in determining the Debtor's postpetition cash requirements for its business. As part of an evaluation of the Debtor's liquidity position, Seabury assisted in the development of rolling 13-week cash forecast (updated weekly), as well as a full set of long-term forecasts of the

Debtor's future profitability, cash flows, and balance sheets. These forecasts take into account anticipated cash receipts and disbursements during the projected period and consider the effects of the chapter 11 filing, including incremental administrative costs of a complex chapter 11 filing with a large number of stakeholders, required operational payments, and cost-saving initiatives already undertaken and contemplated to be undertaken by the Debtor. They also take into account the unprecedented adverse market conditions facing the airline industry during and as a result of the ongoing global COVID-19 pandemic, and the impact of those macroeconomic conditions on the Debtor's current and future business. Walker Declaration ¶ 8.

21. Based on Seabury's review and evaluation of the Debtor's financial forecasts and the Approved Budget, the Debtor requires an immediate capital infusion in the form of the DIP Facility in order to operate its business postpetition and to preserve the Debtor's estate as a going concern. The impact of the COVID-19 pandemic has created extreme pressure on the Debtor's operations and liquidity. As the Debtor's financial forecasts and the Approved Budget reveal, the Debtor is unable to generate sufficient levels of operating cash flow in the ordinary course of business to cover its operating and capital costs and the projected costs of this Chapter 11 Case. The Debtor needs the DIP Facility to refinance the Bridge Loan Facilities, fund working capital, capital expenditures, payroll obligations, pay suppliers, cover overhead costs, and make any other payments that are essential for the continued management, operation, and preservation of the Debtor's business. The ability to make these payments when due is essential to the continued operation of the Debtor's business during the pendency of this Chapter 11 Case. *Id.* ¶¶ 10-11.

22. If the Debtor cannot quickly access the proposed interim draw pursuant to the DIP Facility of \$20 million, based on the Debtor's financial forecasts, the Debtor will not be able to continue to operate its business beyond the third full week in September. Likewise, if the Debtor

does not have access to the full DIP Facility of \$505 million later in the Chapter 11 Case, it would not be able to continue operating in the ordinary course more than a few weeks after the interim funding—and it would lose the ability both to seize opportunities to scale the business back to more normalized levels and to weather any further deterioration in its business due to the ever-evolving pandemic, potential material increases in fuel prices, or any of a number of other volatile macroeconomic factors beyond the Debtor's control. This would negatively impact the Debtor's revenue, jeopardize the Debtor's stakeholders' confidence in the Debtor's business, and harm the value of the Debtor's estate to the detriment of all stakeholders. Based on the Debtor's financial forecasts, the liquidity provided by the DIP Facility will allow the Debtor to implement its business plan and weather industry headwinds related to macroeconomic uncertainty associated with the global COVID-19 pandemic and the current challenges facing the aviation industry. *Id.* ¶ 14.

C. The Debtor's Efforts to Obtain Financing

23. As early as August 2020, the DIP Lenders had indicated a willingness to finance the Debtor's restructuring on what appeared to be extremely favorable terms, particularly with respect to interest rate and the option to convert (at the Debtor's discretion) the financing to long-term debt and equity—rather than repay in cash—upon emergence from chapter 11. Nonetheless, Seabury engaged in discussions over a period of six to eight weeks with representatives of approximately 115 potential funding sources to confirm whether there was, in fact, any market interest in providing postpetition financing on better terms. Over the course of this DIP marketing, approximately 18 parties accessed information about the Debtor through virtual data rooms established and managed by Seabury. Ultimately, none of the parties contacted by Seabury (or, to my knowledge, any other party) were willing to provide such financing on equivalent or more favorable terms; some were unresponsive or did not want to

invest capital in an airline during a global pandemic, others would have required economic terms less favorable to the Debtor, and none were willing to provide the Debtor with a conversion option into the proposed mix of equity and long-term unsecured debt. *Id.* ¶ 19.

24. In particular, while certain alternative financing sources had interest in providing Tranche B DIP Loans, not one was interested in funding Tranche A DIP Loans subject to an option for the Debtor to convert any portion of those loans to long-term unsecured debt at the end of the Chapter 11 Case. And from the outset, the DIP Lenders made clear that they would only extend the Tranche A DIP Loans if they were lenders for both tranches of the DIP Loans. Accordingly, the favorable terms of both the Tranche A DIP Loans and Tranche B DIP Loans provided under the DIP Facility are only available from the DIP Lenders. *Id.* ¶ 20.

25. In the months since this marketing effort concluded, Seabury has remained in touch with the most interested prospective investors, and it remains the case today that none would be prepared to invest on terms as attractive to the Debtor as those proposed under the DIP Facility. *Id.* ¶ 21.

Basis for Relief

A. The Debtor Should Be Authorized to Obtain Postpetition Financing Through the DIP Loan Documents

(i) Entry into the DIP Facility Is an Exercise of the Debtor's Sound Business Judgement

26. Courts grant a debtor considerable deference in exercising its sound business judgment in obtaining postpetition credit so long as the agreement to obtain such credit is consistent with the provisions of, and policies underlying, the Bankruptcy Code. *See, e.g., In re Barbara K. Enters., Inc.*, No. 08-11474, 2008 WL 2439649, at *14 (Bankr. S.D.N.Y. June 16, 2008) (“The Court is aware that its normal function in reviewing requests for postpetition financing is to defer to a debtor's own business judgment so long as a request for financing does

not ‘leverage the bankruptcy process’ and unfairly cede control of the reorganization to one party in interest.”); *In re Ames Dep’t Stores, Inc.*, 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990) (“[C]ases consistently reflect that the court’s discretion under section 364 is to be utilized on grounds that permit reasonable business judgment to be exercised so long as the financing agreement does not contain terms that leverage the bankruptcy process and powers or its purpose is not so much to benefit the estate as it is to benefit a party-in-interest.”). To determine whether a debtor has met the business judgment standard, a court need only “examine whether a reasonable business person would make a similar decision under similar circumstances.” *In re Exide Techs.*, 340 B.R. 222, 239 (Bankr. D. Del. 2006); *see also In re Curlew Valley Assocs.*, 14 B.R. 506, 513–14 (Bankr. D. Utah 1981) (noting that courts should not second guess a debtor’s business decision when that decision involves “a business judgment made in good faith, upon a reasonable basis, and within the scope of [the debtor’s] authority under the [Bankruptcy] Code”).

27. Further, in considering whether the terms of postpetition financing are fair and reasonable, courts consider the terms in light of the relative circumstances of both the debtor and the potential lender. *In re Farmland Indus., Inc.*, 294 B.R. 855, 886 (Bankr. W.D. Mo. 2003) (finding financing terms, many of which favored the DIP lenders, reasonable when “taken in context, and considering the relative circumstances of the parties”); *see also Unsecured Creditors’ Comm. Mobil Oil Corp. v. First Nat’l Bank & Tr. Co. (In re Ellingsen MacLean Oil Co., Inc.)*, 65 B.R. 358, 365 n.7 (W.D. Mich. 1986) (recognizing a debtor may have to enter into a “hard” bargain to acquire funds for its reorganization).

28. In addition, in determining whether the Debtor has exercised sound business judgment in deciding to enter into the DIP Loan Documents, the Court may appropriately take into consideration non-economic benefits to the Debtor offered by a proposed postpetition

facility. For example, in *In re ION Media Networks, Inc.*, No. 09-13125 (JMP), 2009 WL 2902568, at *4 (Bankr. S.D.N.Y. July 6, 2009), the Bankruptcy Court for the Southern District of New York observed that:

Although all parties, including the Debtors and the Committee, are naturally motivated to obtain financing on the best possible terms, a business decision to obtain credit from a particular lender is almost never based purely on economic terms. Relevant features of the financing must be evaluated, including non-economic elements such as the timing and certainty of closing, the impact on creditor constituencies and the likelihood of a successful reorganization. This is particularly true in a bankruptcy setting where cooperation and establishing alliances with creditor groups can be a vital part of building support for a restructuring that ultimately may lead to a confirmable reorganization plan. That which helps to foster consensus may be preferable to a notionally better transaction that carries the risk of promoting unwanted conflict.

Id.

29. Courts emphasize that the business judgment rule is not an onerous standard and may be satisfied “as long as the proposed action *appears* to enhance the debtor’s estate.” *Crystalin, LLC v. Selma Props., Inc. (In re Crystalin, LLC)*, 293 B.R. 455, 463–64 (B.A.P. 8th Cir. 2003) (quoting *Four B. Corp. v. Food Barn Stores, Inc. (In re Food Barn Stores, Inc.)*, 107 F.3d 558, 566 n.16 (8th Cir. 1997) (emphasis in original, internal alterations, and quotations omitted)). Courts require only that the debtor “show that a sound business purpose justifies such actions.” *Dai-Ichi Kangyo Bank, Ltd. v. Montgomery Ward Holding Corp. (In re Montgomery Ward Holding Corp.)*, 242 B.R. 147, 153 (D. Del. 1999) (citations omitted); *see also In re Phx. Steel Corp.*, 82 B.R. 334, 335–36 (Bankr. D. Del. 1987).

30. The DIP Facility is critical to the Debtor’s ability to fund operations and pay the administrative costs of this Chapter 11 Case, provides the Debtor with sufficient liquidity to operate its business without presenting significant execution or funding risk, and would ensure

that the Debtor's projected cash balance remains robust in downside scenarios. Walker Declaration ¶¶ 8, 15, 31. The DIP Facility will allow the Debtor to fund its business in the ordinary course, which will ensure continued, uninterrupted operations, preserving the value of the estate for the benefit of all stakeholders. *Id.* ¶¶ 13-14. The DIP Facility is also an integral and required part of the Restructuring Support Agreements and the plan of reorganization contemplated therein, which offer the Debtor the fastest and best chance at a successful reorganization, and contains Conversion Features that, if elected, would enhance the value of the reorganized Debtor by converting secured, short-term debt into unsecured, long-term debt and common equity. Accordingly, the Court should authorize the Debtor's incurrence of the DIP Facility and entry into the DIP Loan Documents as it is a reasonable exercise of the Debtor's business judgment.

(ii) The Debtor Meets the Conditions Necessary Under Sections 364(c) and 364(d) to Obtain Postpetition Financing on a Secured and Superpriority Basis

31. The Debtor proposes to obtain financing under the DIP Facility by providing the DIP Secured Parties superpriority claims and liens pursuant to sections 364(c) and 364(d) of the Bankruptcy Code. Specifically, the Debtor proposes to provide to the Tranche A DIP Lenders with first liens on unencumbered DIP Collateral, senior liens on any encumbered DIP Collateral (subject only to the Carve Out and Permitted Senior Liens), and administrative expense claims in the Chapter 11 Case with priority over all other such claims (subject only to the Carve Out). Additionally, the Debtor proposes to provide to the Tranche B DIP Lenders with junior liens on the DIP Collateral (subject only to the Carve Out, Permitted Senior Liens, the Tranche A DIP Liens, the Bridge Loan Liens, and the Adequate Protection Liens) and administrative expense claims in the Chapter 11 Case with priority over all other claims (subject only to the Carve Out,

the Tranche A DIP Loans, the Bridge Loan Obligations, and the Adequate Protection Superpriority Claims).

32. The Debtor meets the requirements for relief under sections 364(c) and 364(d) of the Bankruptcy Code, which permits a debtor, with Court authorization, to obtain postpetition financing and, in return, to grant superpriority administrative status and liens on its property. Specifically, section 364(c) of the Bankruptcy Code, in relevant part, provides as follows:

If the trustee [or debtor-in-possession] is unable to obtain unsecured credit allowable under section 503(b)(1) of this title as an administrative expense, the court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt—

- (1) with priority over any or all administrative expenses of the kind specified in section 503(b) or 507(b) of this title;
- (2) secured by a lien on property of the estate that is not otherwise subject to a lien; or
- (3) secured by a junior lien on property of the estate that is subject to a lien.

11 U.S.C. § 364(c). In evaluating proposed postpetition financing under section 364(c) of the Bankruptcy Code, courts perform a qualitative analysis and consider whether (a) unencumbered credit or alternative financing without superpriority status is available to the debtor, (b) the credit transactions are necessary to preserve assets of the estate, and (c) the terms of the credit agreement are fair, reasonable, and adequate, given the circumstances of the debtor-borrower and the proposed lender. *See, e.g., In re Los Angeles Dodgers LLC*, 457 B.R. 308, 312 (Bankr. D. Del. 2011); *In re Aqua Assoc.*, 123 B.R. 192, 195–99 (Bankr. E.D. Pa. 1991); *In re St. Mary Hosp.*, 86 B.R. 393, 401–02 (Bankr. E.D. Pa. 1988); *In re Crouse Group, Inc.*, 71 B.R. 544, 549–51 (Bankr. E.D. Pa. 1987); *see also Bland v. Farmworker Creditors*, 308 B.R. 109, 113–14 (S.D. Ga. 2003); *In re Ames Dep’t Stores, Inc.*, 115 B.R. at 37–40.

33. Further, section 364(d) of the Bankruptcy Code provides that a debtor may obtain credit secured by a senior or equal lien on property of the estate already subject to a lien, after

notice and a hearing, where the debtor is “unable to obtain credit otherwise” and “there is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted.” 11 U.S.C. § 364(d)(1). Consent by the secured creditors to priming obviates the need to show adequate protection. *See, Anchor Savs. Bank FSB v. Sky Valley Inc.*, 99 B.R. at 122 (“[B]y tacitly consenting to the superpriority lien, those [undersecured] creditors relieved the debtor of having to demonstrate that they were adequately protected.”). Accordingly, the Debtor may incur “priming” liens under the DIP Facility because (a) the Bridge Lender supports the priming, or (b) the Bridge Lender’s interests in collateral are adequately protected. For the reasons set forth below, the Debtor submits that it has met the standards for obtaining the proposed DIP Facility.

(A) *The Debtor is Unable to Obtain Financing on More Favorable Terms Than the DIP Facility*

34. A debtor need only demonstrate “by a good faith effort that credit was not available without” the protections afforded to potential lenders by sections 364(c) and 364(d) of the Bankruptcy Code. *In re Snowshoe Co., Inc.*, 789 F.2d 1085, 1088 (4th Cir. 1986) (“The statute imposes no duty to seek credit from every possible lender before concluding that such credit is unavailable”); *Pearl-Phil GMT (Far E.) Ltd. v. Caldor Corp.*, 266 B.R. 575, 584 (S.D.N.Y. 2001) (superpriority administrative expenses authorized where debtor could not obtain credit as an administrative expense); *In re Ames Dep’t Stores, Inc.*, 115 B.R. at 40 (approving financing facility and holding that debtor made reasonable efforts to satisfy the standards of section 364(c), to obtain less onerous terms where debtor approached four lending institutions, was rejected by two and selected the least onerous financing option from the remaining two lenders); *see also In re Plabell Rubber Prods., Inc.*, 137 B.R. 897, 900 (Bankr. N.D. Ohio 1992).

35. Moreover, in circumstances where only a few lenders likely can or will extend the necessary credit to a debtor on an unsecured or administrative priority basis, “it would be unrealistic and unnecessary to require [the debtor] to conduct such an exhaustive search for financing.” *Sky Valley, Inc.*, 100 B.R. 107, 113 (Bankr. N.D. Ga. 1988), *aff’d sub nom. Anchor Sav. Bank FSB v. Sky Valley, Inc.*, 99 B.R. 117, 120 n.4 (N.D. Ga. 1989); *see also In re Snowshoe Co.*, 789 F.2d at 1088 (demonstrating that credit was unavailable absent the senior lien by establishment of unsuccessful contact with other financial institutions in the geographic area); *In re Stanley Hotel, Inc.*, 15 B.R. 660, 663 (D. Colo. 1981) (court’s finding that two national banks refused to grant unsecured loans was sufficient to support conclusion that the requirements of section 364 of the Bankruptcy Code were met); *In re Ames Dep’t Stores, Inc.*, 115 B.R. at 37–39 (debtor must show that it made reasonable efforts to seek other sources of financing under section 364(a) and (b) of the Bankruptcy Code).

36. As described more fully above and in the Walker Declaration, the Debtor extensively canvassed the market for financing and engaged in extensive and good faith negotiations with the DIP Lenders to obtain the best financing terms available. Walker Declaration ¶ 19. However, due to the uncertainties related to the chapter 11 process, especially with the uncertainties created by the COVID-19 pandemic, no lender was willing to provide postpetition financing to meet the Debtor’s immediate cash needs in the timing required on an unsecured basis or otherwise on terms better than those under the DIP Loan Documents. Further, the DIP Facility does not prime any valid, enforceable, and nonavoidable liens other than the consensual priming of the Bridge Loan Liens by the Tranche A DIP Facility (but not the Tranche B DIP Facility) pending entry of the Final Order.

37. Here, because the Bridge Lender has consented to having its Bridge Loan Liens in the Bridge Loan Collateral primed by the Tranche A DIP Liens in the DIP Collateral (which, for the avoidance of doubt, includes all of the Bridge Loan Collateral as well as the Debtor's frequent flyer program, Mabuhay Miles), the Debtor is seeking to grant liens under section 364(c)(2) of the Bankruptcy Code "on property of the estate that is not otherwise subject to a lien" and under section 364(d) of the Bankruptcy Code "on property of the estate already subject to a lien." 11 U.S.C. § 364(c)(2) and 364(d). Moreover, the Debtor proposes to provide adequate protection to the Bridge Lender to protect it against any postpetition diminution in value of its interests in the Bridge Loan Collateral through Adequate Protection Liens (subject to the Carve Out, the Permitted Senior Liens, the Tranche A DIP Liens, and the Bridge Loan Liens), Adequate Protection Superpriority Claims (subject to the Carve Out, the DIP Superpriority Claims arising under the Tranche A DIP Facility (but not those arising under the Tranche B DIP Facility), and the Bridge Loan Obligations), and adequate protection payments consisting of cash interest payments on the Bridge Loans at the non-default rate and the reasonable and documented out-of-pocket fees, costs, and expenses incurred by the Bridge Lender, owed by the Debtor pursuant to the Bridge Loan Documents (whether incurred before or after the Petition Date). Therefore, the Debtor submits that the requirements of section 364 of the Bankruptcy Code have been satisfied.

(B) *The DIP Facility Is Necessary to Preserve the Debtor's Estate*

38. The Debtor, as debtor in possession, has a fiduciary duty to protect and maximize their estate's assets. *See In re Mushroom Transp. Co.*, 382 F.3d 325, 339 (3d Cir. 2004). The Debtor's quick access to postpetition financing is essential to its ability to effectively carry out that duty. As set forth in the Approved Budget, beginning the last week of August 2021, the Debtor had approximately \$21.8 million of cash on hand. The Debtor needs an immediate

capital infusion to operate its business postpetition and to fund this Chapter 11 Case. The Debtor forecasts that it will be unable to generate sufficient levels of operating cash flows in the ordinary course of business to cover either its operating costs going forward or the projected restructuring costs of the Chapter 11 Case without the DIP Facility. Walker Declaration ¶ 15. The liquidity to be provided by the DIP Facility will enable the Debtor to fund its operations during the course of the Chapter 11 Case as it pursues restructuring alternatives and to preserve and maximize the value of its estate for the benefit of all parties in interest. *Id.* ¶ 13.

(C) *The Terms of the DIP Facility Are Fair, Reasonable, and Adequate Under the Circumstances*

39. In considering whether the terms of postpetition financing are fair and reasonable, courts consider the terms in light of the relative circumstances of both the debtor and the potential lender. *See In re Farmland Indus., Inc.*, 294 B.R. 855, 886 (Bankr. W.D. Mo. 2003); *see also Unsecured Creditors' Comm. Mobil Oil Corp. v. First Nat'l Bank & Trust Co. (In re Ellingsen MacLean Oil Co.)*, 65 B.R. 358, 365 (W.D. Mich. 1986) (a debtor may have to enter into hard bargains to acquire funds). The appropriateness of a proposed financing facility should also be considered in light of current market conditions, where COVID-19 has continued to suppress available sources of capital for the Debtor. *See* Aug. 4, 2020 Hr'g Tr. 47:19–20, *In re Fieldwood Energy LLC*, No. 20-33948 (MI) (Bankr. S.D. Tex. Aug. 4, 2020) (“[T]his is the first post-COVID loan where I’ve seen competitive bidding for it.”); *see also* Feb. 27 Hr'g Tr. 740:4–6, *In re Lyondell Chem. Co.*, No. 09-10023 (REG) (Bankr. S.D.N.Y. Feb. 27, 2009) [ECF No. 3740] (“[B]y reason of present market conditions, as disappointing as the [debtor-in-possession financing] pricing terms are, I find the provisions [of the financing] reasonable here and now.”). When judged from the foregoing perspective, the terms and conditions of the DIP Facility are fair, within the range of reasonableness, and appropriate under the circumstances.

40. Interest and Fees. Under the DIP Loan Documents, the Debtor has agreed, subject to Court approval, to pay interest and certain fees to the DIP Lenders. Specifically, the Debtor has agreed to pay (a) 9.50% per annum in interest on the outstanding principal amount of the DIP Loans, payable with respect to the Tranche B DIP Loans, at the option of the Debtor, in cash or in kind, and (b) a nonrefundable upfront fee equal to 1.00% of the DIP Loans actually lent, which may be effected as original issue discount at the option of the DIP Lenders. As set forth in the Walker Declaration, the Debtor believes that the interest rate and fees to be paid under the DIP Facility are appropriate, particularly in light of the circumstances of this Chapter 11 Case. Walker Declaration ¶ 31. All of the terms of the DIP Facility were extensively negotiated by the Debtor and its advisors to ensure that the terms were as favorable to the Debtor as possible under the circumstances, *id.* ¶¶ 22-26, and the Debtor believes that such terms represent fair consideration for the critical financing being provided by the DIP Lenders.

41. Carve Out. The DIP Credit Agreement and the DIP Orders subject the security interests and administrative expense claims under the DIP Facility to the Carve Out. Carve outs for professional fees have been found to be reasonable and necessary to ensure that a debtor's estate and any official committee appointed can reimburse their professionals in certain circumstances during an event of default under the terms of the debtor's postpetition financing. *See In re Ames Dep't Stores, Inc.*, 115 B.R. at 38 (observing that courts insist on carve-outs for professionals representing parties-in-interest because "[a]bsent such protection, the collective rights and expectations of all parties-in-interest are sorely prejudiced"). Additionally, the Carve Out protects against administrative insolvency during the course of this Chapter 11 Case by ensuring that, notwithstanding the grant of superpriority claims and liens under the DIP Facility, assets remain for the payment of the fees of the Office of the United States Trustee for the

Southern District of New York (the “**U.S. Trustee**”) and professional fees of the Debtor and any official committee.

42. Bridge Loan Repayment with DIP Loan Proceeds. The DIP Facility contemplates the automatic repayment in full and refinancing of the Bridge Loan Obligations upon entry of the Final Order. The effective roll up of the Bridge Loan Obligations into the DIP Facility was a material component of the DIP Facility required by the DIP Lenders as a condition to their commitment to provide postpetition financing. Walker Declaration ¶ 33. The Bridge Loan Obligations were incurred prepetition in contemplation of a bankruptcy filing and, without the support provided by its shareholder pursuant to the Bridge Loan Facilities, the Debtor would not have been able to continue its operations in the challenging environment created by the COVID-19 pandemic or negotiate the Restructuring Support Agreements that are essential to the success of this Chapter 11 Case. *Id.* ¶¶ 10, 33. Importantly, the roll up is supported by more than a class-carrying supermajority of the creditors in the only class entitled to vote under the plan of reorganization contemplated in the Restructuring Support Agreements; all other classes of creditors are unimpaired under that plan and therefore not prejudiced by the repayment of the Bridge Loan Obligations with DIP Loan Proceeds. Moreover, it is likely that the value of the collateral securing the Bridge Loan Facilities exceeds the amount of the Bridge Loan Obligations to be rolled up, meaning that creditors are unlikely to be entitled to recover from such assets even without if the Bridge Loan Obligations remain outstanding as prepetition debt.

43. Roll-ups of prepetition obligations are a frequent feature in complex chapter 11 cases and courts in this and other jurisdictions have approved them in multiple recent cases. *See, e.g., In re Avianca Holdings S.A.*, No. 20-11133 (MG) (Bankr. S.D.N.Y. Oct. 5, 2020) [ECF No. 1031] (approving \$1.9 billion DIP facility with roll up of \$606 million of prepetition debt); *In re*

Synergy Pharmaceuticals Inc., No. 18-14010 (JLG) [ECF No. 454] (Bankr. S.D.N.Y. Feb. 26, 2019) (approving \$159 million DIP facility with roll up of \$114 million of prepetition debt); *In re Aegean Marine Petroleum Network Inc.*, No. 18-13374 (MEW) (Bankr. S.D.N.Y. Jan. 15, 2019) [ECF No. 290] (approving \$75 million DIP term loan facility, \$160 million US DIP revolving credit facility, and \$300 million global DIP revolving credit facility, with roll up of entire amount of prepetition secured obligations).⁴ Further, the roll-up of the Bridge Loan Obligations remains subject to customary challenge provisions and the Final Order preserves the Bankruptcy Court's power to exercise any appropriate remedy in connection with a successful challenge. Final DIP Order ¶ 14.

44. Conversion Features. The Conversion Features offers substantial additional value to the Debtor by fixing at the start of this Chapter 11 Case a basis other than repayment in cash for satisfaction of up to \$505 million of superpriority claims. This substantially increases the odds of a successful reorganization as a going concern, as it provides a potential pathway to emergence from chapter 11 without having to raise substantial new money exit financing. Walker Declaration ¶¶ 28-29. Moreover, the Debtor's option to convert the DIP Loans into post-reorganization unsecured debt and equity was a required component of the Restructuring Support Agreements. Finally, and significantly, any decision to exercise the Conversion Features is solely in the discretion of the Debtor and will be subject to further review and approval by the Court and interested parties—including a creditors' committee, if appointed—during the plan confirmation process.

⁴ Because of the voluminous nature of the order cited herein, such orders have not been attached to this motion. Copies of these orders are available upon request of the Debtor's proposed counsel.

45. Although not common, equity conversion features like the Tranche B Conversion are not without precedent. *See, e.g., In re Grupo Aeromexico, S.A.B. de C.V.*, No. 20-11563 (SCC) (Bankr. S.D.N.Y. Oct. 13, 2020) [ECF No. 527]; *In re American Commercial Lines Inc.*, No. 20-30982 (MI) (Bankr. S.D. Tex. Mar. 5, 2020) [ECF No. 202]; *In re PES Holdings, LLC*, No. 18-10122 (KG) (Bankr. D. Del. Feb. 27, 2018) [ECF No. 218]; *In re Fieldwood Energy LLC*, No. 18-30648 (DJR) (Bankr. S.D. Tex. Mar. 13, 2018) [ECF No. 201]. Given the circumstances, the Debtor believes that the Conversion Features provide a significant benefit to the Debtor's estate and its reorganization efforts.

B. The DIP Agent and the DIP Lenders Should Be Afforded Good Faith Protection Under Section 364(e) of the Bankruptcy Code

46. Section 364(e) of the Bankruptcy Code protects a good faith lender's right to collect on loans extended to a debtor, and its right in any lien securing those loans, even if the authority of the debtor to obtain such loans or grant such liens is later reversed or modified on appeal. 11 U.S.C. § 364(e). Section 364(e) of the Bankruptcy Code provides as follows:

The reversal or modification on appeal of an authorization under this section [364 of the Bankruptcy Code] to obtain credit or incur debt, or of a grant under this section of a priority or a lien, does not affect the validity of any debt so incurred, or any priority or lien so granted, to an entity that extended such credit in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and the incurring of such debt, or the granting of such priority or lien, were stayed pending appeal.

Id.

47. The DIP Facility is the result of (a) the Debtor's reasonable and informed determination that the DIP Lenders offered the most favorable terms on which to obtain vital postpetition financing and (b) extensive arm's length, good faith negotiations between the Debtor and the DIP Lenders, resulting, among other things, in a substantially more debtor-friendly equity conversion mechanism for the Tranche B DIP Loans. Walker Declaration ¶¶ 22-26. The

Debtor submits that the terms and conditions of the DIP Facility are reasonable and appropriate under the circumstances, and the proceeds of the DIP Facility will be used only for purposes that are permissible under the Bankruptcy Code. Further, no consideration is being provided to the DIP Agent, the DIP Lenders, or any other party to the DIP Loan Documents other than as described herein. Accordingly, the Court should find that the obligations arising under the DIP Facility and other financial accommodations made to the Debtor have been extended by the DIP Agent and the DIP Lenders in “good faith” within the meaning of section 364(e) of the Bankruptcy Code and, therefore, the DIP Agent and the DIP Lenders are entitled to all the protections afforded thereby.

C. The Bridge Lender is Adequately Protected

48. Under section 361 of the Bankruptcy Code, the Debtor may provide adequate protection by making a cash payment or periodic cash payments “to such entity, to the extent that . . . any grant of a lien under section 364 of this title results in a decrease in the value of such entity’s interest in such property.” 11 U.S.C. § 361(1). Adequate protection may also be provided by providing to such entity an additional or replacement lien to the extent that such stay, use, sale, lease or grant results in a decrease in the value of such entity’s interest in such property. 11 U.S.C. § 361(2).

49. The DIP facility contemplates provisions for adequate protection for the Bridge Lender, including (i) the grant of adequate protection liens to the extent of any diminution in the Bridge Loan Collateral that would be junior to Permitted Senior Liens, the Tranche A DIP Liens, and the Bridge Loan Liens but senior to the Tranche B DIP Liens, (ii) the grant of superpriority claims that would be junior to the Carve Out, the Tranche A DIP Obligations, and the Bridge Loan Obligations but senior to the Tranche B DIP Obligations, and (iii) periodic cash payments of interest at the non-default rate (with the Bridge Lender reserving the right to

assert the right to interest at the default rate) and reasonable professional fees and expenses. Such adequate protection is consistent with section 361 of the Bankruptcy Code and should be approved.

D. The Automatic Stay Should Be Modified on a Limited Basis

50. The proposed DIP Orders provide that the automatic stay provisions of section 362 of the Bankruptcy Code will be modified to permit (a) the Debtor to grant the liens and claims provided for under the DIP Facility, (b) the Debtor to incur the liabilities and obligations contemplated in the DIP Loan Documents, (c) the Debtor to pay all amounts required in accordance with the DIP Loan Documents and the proposed adequate protection for the Bridge Lender, (d) the DIP Secured Parties and the Bridge Lender, subject to certain limitations, to exercise remedies upon the occurrence and during the continuation of an event of default under the DIP Loan Documents or the Bridge Loan Documents, and (e) the DIP Secured Parties and the Bridge Lender to implement all of the terms, rights, benefits, privileges, remedies, and provisions of the DIP Orders, the DIP Loan Documents, or the Bridge Loan Documents, as applicable, including allowing the DIP Lenders and the Bridge Lender to file any financing statements, security agreements, notices of liens, and other similar instruments and documents in order to validate and perfect the liens and security interests granted to them under the DIP Orders.

51. A stay modification of this kind is a customary and standard feature of debtor-in-possession financing arrangements, and, in the Debtor's business judgment, is reasonable and fair under the circumstances of the Chapter 11 Case. *See, e.g., In re Barneys New York, Inc.*, No. 19-36300 (CMG) (Bankr. S.D.N.Y. Sept. 5, 2019) [ECF No. 222]; *In re Windstream Holdings, Inc.*, No. 19-22312 (RDD) (Bankr. S.D.N.Y. Apr. 22, 2019) [ECF No. 376]; *In re Aegean Marine Petroleum Network, Inc.*, No. 18-13374 (MEW) (Bankr. S.D.N.Y. Jan. 15, 2019) [ECF

No. 290]; *In re Cenveo, Inc.*, No. 18-22178 (RDD) (Bankr. S.D.N.Y. Mar. 8, 2018) [ECF No. 188]; *In re BCBG Max Azria Global Holdings, LLC*, No. 17-10466 (SCC) (Bankr. S.D.N.Y. Mar. 28, 2017) [ECF No. 228]; *In re Avaya, Inc.*, No. 17-10089 (SMB) (Bankr. S.D.N.Y. Mar. 10, 2017) [ECF No. 230]; *In re Dacco Transmission Parts (NY), Inc.*, No. 16-13245 (MKV) (Bankr. S.D.N.Y. Dec. 23, 2016) [ECF No. 148].

E. Failure to Obtain Access to the DIP Facility Would Cause Immediate and Irreparable Harm

52. Bankruptcy Rules 4001(b) and 4001(c) provide that a final hearing on a motion to obtain credit pursuant to section 364 of the Bankruptcy Code may not be commenced earlier than 14 days after the service of such motion. Upon request, however, the Court may conduct a preliminary, expedited hearing on the motion and authorize the obtaining of credit to the extent necessary to avoid immediate and irreparable harm to a debtor's estate.

53. The Debtor requests that the Court hold and conduct a hearing to consider entry of the Interim Order authorizing the Debtor to immediately withdraw and borrow certain of the funds under the DIP Facility. The Debtor is at risk of suffering immediate and irreparable harm if the Interim Order approving the DIP Facility is not entered sooner than 14 days after service of this Motion and if the Debtor is not permitted to access the DIP Facility. The Debtor requires access to the DIP Facility prior to the Final Hearing and entry of the Interim Order in order to continue operating, to pay its administrative expenses, and to implement the relief granted in relation to the Debtor's other "first day" motions. This relief is necessary for the Debtor to preserve and maximize value and, therefore, to avoid immediate and irreparable harm and prejudice to the Debtor's estate and all parties in interest.

Request for Final Hearing

54. Pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2), the Debtor requests that the Court set a date for the Final Hearing and fix the time and date prior to the Final Hearing for parties to file objections to this Motion.

Reservation of Rights

55. Except as expressly set forth to the contrary in the DIP Orders, nothing contained herein or any actions taken pursuant to such relief requested is intended or shall be construed as: (a) an admission as to the amount of, basis for, or validity of any claim against a Debtor entity under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtor's or any other party in interest's right to dispute any claim on any grounds; (c) a promise or requirement to pay any claim; (d) an implication or admission that any particular claim is of a type specified or defined in this motion or any order granting the relief requested by this motion or a finding that any particular claim is an administrative expense claim or other priority claim; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtor's estates; (g) a waiver or limitation of the Debtor's, or any other party in interest's, rights under the Bankruptcy Code or any other applicable law; or (h) a concession by the Debtor that any liens (contractual, common law, statutory, or otherwise) that may be satisfied pursuant to the relief requested in this motion are valid, and the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens. If the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended and should not be construed as an admission as to the validity of any

particular claim or a waiver of the Debtor's or any other party in interest's rights to subsequently dispute such claim.

**Compliance With Bankruptcy Rule 6004(a) and Waiver of Stay Under
Bankruptcy Rule 6004(h)**

56. To implement successfully the relief sought herein, the Debtor requests that the Court find that notice of the Motion is adequate under Bankruptcy Rule 6004(a) under the circumstances. The Debtor also requests that, to the extent applicable to the relief requested in this Motion, the Court waive the stay imposed by Bankruptcy Rule 6004(h), which provides that “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6004(h). As described above, the relief that the Debtor seeks in this Motion is necessary for the Debtor to operate its business without interruption and to preserve value for its estate. Accordingly, the Debtor respectfully submits that ample cause exists to justify the finding that the notice requirements under Bankruptcy Rule 6004(a) have been satisfied and to grant a waiver of the 14-day stay imposed by Bankruptcy Rule 6004(h), as the exigent nature of the relief sought herein justifies immediate relief.

Notice

57. 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 30 largest unsecured claims against the Debtor; (c) the parties to the RSAs; (d) the United States Attorney's Office for the Southern District of New York; (e) the Internal Revenue Service; (f) the Securities and Exchange Commission; (g) the Federal Aviation Administration; (h) the Initial DIP Lenders; and (i) any party that has 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. 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

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

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WHEREFORE, the Debtor respectfully requests that the Court enter the proposed DIP Orders 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

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*Proposed Counsel to the Debtor and Debtor
in Possession*

Exhibit A

Proposed Interim Order

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

In re:

PHILIPPINE AIRLINES, INC.,¹

Debtor.

Chapter 11

Case No. 21-11569 (SCC)

**INTERIM ORDER (A) AUTHORIZING THE DEBTOR TO OBTAIN POSTPETITION
FINANCING; (B) GRANTING LIENS AND SUPERPRIORITY ADMINISTRATIVE
EXPENSE CLAIMS; (C) GRANTING ADEQUATE PROTECTION TO THE BRIDGE
LENDER; (D) MODIFYING THE AUTOMATIC STAY; (E) SCHEDULING FINAL
HEARING PURSUANT TO BANKRUPTCY RULE 4001(C); AND (F) GRANTING
RELATED RELIEF**

This matter is before the Court on the motion (the “**Motion**”)² of Philippine Airlines Inc., the debtor in possession in these proceedings (the “**Debtor**”), requesting entry of an interim order (this “**Interim Order**”) and a Final Order (as defined below) pursuant to sections 105, 361, 362, 363(b), 363(e), 364(c)(1), 364(c)(2), 364(c)(3), 364(d), and 364(e) of title 11 of the United States Code (the “**Bankruptcy Code**”) and Rules 2002, 4001, 6003, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Rule 4001-2 of the Local Bankruptcy Rules for the Southern District of New York (the “**Local Rules**”):

(1) authorizing the Debtor, on the terms set forth in the DIP Loan Documents (as defined below), to obtain postpetition financing, consisting of the DIP Facility (as defined below) in an aggregate principal amount of up to \$505 million (the “**DIP Commitments**”) comprising (a) a first lien secured Tranche A multi-draw term loan

¹ 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.

² Capitalized terms used but not defined herein shall have the meanings ascribed to them in the DIP Credit Agreement (as defined herein) attached to this Interim Order as **Annex A** or, if not defined in the DIP Credit Agreement, in the Motion.

facility (the “**Tranche A DIP Facility**”) in an aggregate principal amount of \$250 million (each individual loan made thereunder, a “**Tranche A DIP Loan**,” collectively the loans made thereunder, the “**Tranche A DIP Loans**,” and, together with related obligations incurred under the Tranche A DIP Facility, the “**Tranche A DIP Obligations**”), \$20 million of which will be available in a single draw upon entry of this Interim Order and the remainder of which will be available in a single draw upon entry of the Final Order, from Buona Sorte Holdings, Inc. (the “**Initial Tranche A DIP Lender**,” and together with all successors and permitted assigns, the “**Tranche A DIP Lenders**”); and (b) a second lien secured Tranche B multi-draw term loan facility (the “**Tranche B DIP Facility**” and, together with the Tranche A DIP Facility, the “**DIP Facility**”) in an aggregate principal amount of \$255 million (each individual loan made thereunder, a “**Tranche B DIP Loan**,” collectively the loans made thereunder, the “**Tranche B DIP Loans**,” and, together with related obligations incurred under the Tranche B DIP Facility, the “**Tranche B DIP Obligations**”; the Tranche B DIP Loans, collectively with the Tranche A DIP Loans, are the “**DIP Loans**”), which shall be available in no more than two draws upon entry of a final order granting the relief sought in the Motion in form and substance reasonably acceptable to the DIP Lenders (the “**Final Order**”), from PAL Holdings Inc. (the “**Initial Tranche B DIP Lender**,” and together with all successors and permitted assigns, the “**Tranche B DIP Lenders**”; the Initial Tranche A DIP Lender and the Initial Tranche B DIP Lender are, together, the “**Initial DIP Lenders**” and, together with all successors and permitted assigns, the “**DIP Lenders**”);³ in each case

³ For the avoidance of doubt, (a) nothing herein shall preclude the ability of the DIP Lenders to, in accordance with the applicable DIP Loan Documents, offer a portion of the DIP Commitments and DIP Loans to third-

subject to the satisfaction of the conditions precedent set forth in the DIP Credit Agreement; for which Buona Sorte Holdings, Inc. shall serve as administrative and collateral agent (in such capacities, together with its successors in such capacities, the “**DIP Agent**,” and the DIP Agent, together with the DIP Lenders, are the “**DIP Secured Parties**” and each is a “**DIP Secured Party**”);

(2) authorizing the Debtor to execute and deliver additional documentation consistent with the terms of (or as may be required by) the DIP Credit Agreement substantially in the form attached hereto as **Annex A** without exhibits or schedules (as such agreement may be amended, in accordance with its terms and this Interim Order, and including the exhibits and schedules thereto, the “**DIP Credit Agreement**”) and the other DIP Loan Documents, and to perform such other and further acts as may be necessary or appropriate in connection therewith, or otherwise required under the DIP Loan Documents;

(3) authorizing the Debtor to use proceeds of the DIP Loans (the “**DIP Loan Proceeds**”) as permitted in the DIP Loan Documents and in accordance with this Interim Order and the Approved Budget (as defined herein), including, upon entry of the Final Order, to pay in full and refinance all Bridge Loan Obligations (as defined below);

(4) granting valid, binding, continuing, enforceable, and automatically perfected (a) security interests in and liens on all of the Collateral (as defined in the DIP Credit Agreement, and referred to herein as the “**DIP Collateral**”) to the DIP Agent for the

party capital providers and other financial institutions or other entities, it being understood that no such assignment or transfer shall become effective with respect to any portion of the DIP Commitments until the Closing Date (as defined in the DIP Credit Agreement); and (b) thereafter, assignments and participations of DIP Loans and DIP Commitments shall be in accordance with the DIP Loan Documents.

benefit of the DIP Secured Parties, and (b) granting superpriority administrative expense status to the DIP Obligations (as defined below), in each case subject to the Carve Out (as defined below) and, in the case of the Tranche B DIP Obligations, the Bridge Loan Obligations and the Adequate Protection Superpriority Claims;

(5) authorizing the Debtor to pay the principal, interest, fees, expenses, disbursements, and other amounts payable under the DIP Loan Documents as and when such amounts become due and payable without other or further notice or order;

(6) authorizing the Debtor to use, on the terms described herein, the Bridge Loan Collateral (as defined herein) and providing adequate protection to the Bridge Lender for any diminution in value of its interests in the Bridge Loan Collateral;

(7) vacating and modifying the automatic stay imposed under section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of this Interim Order and the other DIP Loan Documents;

(8) subject to entry of the Final Order, waiving the Debtor's ability to surcharge against any DIP Collateral pursuant to section 506(c) of the Bankruptcy Code and any right of the Debtor under the "equities of the case" exception in section 552(b) of the Bankruptcy Code;

(9) scheduling a final hearing to consider entry of the Final Order, and in connection therewith, giving and prescribing the manner of notice of the Final Hearing (as defined below) on the Motion;

(10) waiving any applicable stay with respect to the effectiveness and enforceability of this Interim Order (including under Bankruptcy Rule 6004); and

(11) granting the Debtor such other and further relief as is just and proper.

Upon consideration of (a) the Motion and the exhibits attached thereto, (b) the evidentiary record made at the interim hearing, which was held on [●], pursuant to Bankruptcy Rule 4001(c)(2) (the “**Interim Hearing**”), (c) the First Day Declaration and the Walker Declaration, (d) the arguments and statements of counsel at the Interim Hearing, and (e) all matters brought to the Court’s attention at the Interim Hearing, and the Court having found and determined that the relief sought in the Motion is necessary to avoid immediate and irreparable harm to the Debtor and its estate as contemplated by Bankruptcy Rule 6003, and is in the best interests of the Debtor, its estate, creditors, stakeholders, and all other parties-in-interest, and essential for the continued operation of the Debtor’s business and the preservation of the value of the Debtor’s assets 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 consideration, and good and sufficient cause appearing therefor:

THE COURT HEREBY FINDS AND DETERMINES:⁴

A. Petition Date. On September 3, 2021 (the “**Petition Date**”), the Debtor filed with the Court a voluntary petition for relief under chapter 11 of the Bankruptcy Code and is continuing to operate its business as a debtor-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in this case.

B. Jurisdiction; Core Proceeding. This Court has jurisdiction over this Chapter 11 Case, the Motion, this Interim Order, and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157(b) and 1334. This is a “core” proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

⁴ To the extent any findings of fact constitute conclusions of law, they are adopted as such, and vice versa.

C. Immediate Need for Postpetition Financing. An immediate and ongoing need exists for the Debtor to obtain the DIP Loans in order to permit, among other things, the Debtor to meet its obligations arising during the Debtor's Chapter 11 Case, including the administration of the Debtor's Chapter 11 Case, so as to maximize the value of its business and assets as debtor in possession under chapter 11 of the Bankruptcy Code. The Debtor does not have sufficient available sources of working capital to operate its business without access to the DIP Facility, and its existing liquidity is deteriorating at a rate that requires immediate access to the DIP Loan Proceeds, and warrants expedited consideration of the Motion and entry of this Interim Order. The Debtor's ability to preserve and maintain its assets, to pay employees, and to otherwise fund operations and an orderly reorganization process, is essential to the Debtor's viability and preservation of the going-concern value of its business and the value of its assets. Without access to the DIP Facility, the Debtor's estate would suffer immediate and irreparable harm.

D. Proposed DIP Facility. The Debtor has requested that the DIP Lenders establish the DIP Facility pursuant to which the Debtor may obtain DIP Loans from time to time in accordance with the DIP Loan Documents, with all DIP Loans to be secured by DIP Liens upon the DIP Collateral as described below, and all DIP Loans and obligations of the Debtor contemplated by the DIP Loan Documents to be granted superpriority administrative expense claims, as and to the extent set forth in the DIP Loan Documents. The DIP Lenders are willing to establish the DIP Facility upon the terms and conditions set forth in the DIP Loan Documents.

E. No Credit Available on More Favorable Terms. Despite diligent efforts and a sufficient marketing process, the Debtor has been unable to obtain postpetition financing on terms more favorable than those offered by the DIP Lenders under the DIP Loan Documents. The Debtor is unable to obtain adequate unsecured credit under section 503(b)(1) of the

Bankruptcy Code. The Debtor also is unable to obtain secured credit allowable under section 364 of the Bankruptcy Code without granting the DIP Liens and the DIP Superpriority Claims (each, as defined below) under sections 364(c) and 364(d) of the Bankruptcy Code on the terms and conditions set forth in this Interim Order and the DIP Loan Documents. Further, the DIP Facility provides additional benefits to the Debtor, including the Tranche A DIP Lenders' agreement to grant the Debtor the option to convert the Tranche A DIP Obligations (other than payment of professional fees and expenses) to unsecured loans and the Tranche B DIP Lenders' agreement to grant the Debtor the option to convert the Tranche B DIP Obligations (other than payment of professional fees and expenses) to 79.5% of the common equity of the reorganized Debtor, in each case on the terms set forth in the DIP Loan Documents and pursuant to an Acceptable Plan.

F. Approved Budget. The Debtor has delivered to the DIP Agent a 13-week cash flow forecast of receipts and disbursements for the period from the Closing Date (as defined in the DIP Credit Agreement), attached to this Interim Order as **Annex B** (the "**Approved Budget**"), which Approved Budget is reasonably acceptable to the DIP Lenders in accordance with the DIP Loan Documents. The DIP Secured Parties are relying upon the Approved Budget in entering into the DIP Loan Documents.

G. Certain Conditions to DIP Facility. The DIP Lenders' willingness to make the DIP Loans is conditioned upon, among other things, (a) the Debtor obtaining Court approval to enter into the DIP Loan Documents and to incur all of its obligations thereunder, and to confer upon the DIP Secured Parties all rights, powers, and remedies thereunder and (b) the DIP Secured Parties being granted, as security for the prompt payment of the obligations under the

DIP Facility and all other DIP Obligations, perfected security interests in and liens upon the DIP Collateral, and that such perfected security interests and liens have the priorities set forth herein.

H. Interim Hearing. Pursuant to Bankruptcy Rule 4001(c)(2), the Debtor has requested in the Motion that the Court hold the Interim Hearing to authorize the Debtor to enter into the DIP Loan Documents during the period (the “**Interim Period**”) from the date of entry of this Interim Order through the earliest of (a) the date of the entry of the Final Order following the final hearing on the Motion scheduled pursuant to paragraph 26 of this Interim Order (the “**Final Hearing**”), (b) the Termination Declaration Date (as defined below), or (c) the Maturity Date (as defined in the DIP Credit Agreement).

I. Service of Motion and Notice of Interim Hearing. The affidavit and declaration of service on file with the Court (ECF No. [●]) demonstrate that the Debtor has served copies of the Motion (together with the copies of the proposed DIP Credit Agreement and Approved Budget annexed hereto as Annexes A & B, respectively), and notice of the Interim Hearing by electronic mail, telecopy transmission, hand delivery, overnight courier, or first class United States mail upon (a) the United States Trustee, U.S. Federal Office Building, 201 Varick Street, Room 1006, New York, NY 10014 (Attn: Susan A. Arbeit); (b) counsel to any official committee of unsecured creditors (the “**Creditors’ Committee**”); (c) holders of the 30 largest unsecured claims against the Debtor; (d) the parties to the RSAs; (e) the Debtor’s existing lienholders; (f) the Internal Revenue Service; (g) the United States Attorney’s Office for the Southern District of New York; (h) the Federal Aviation Administration; (i) the Initial DIP Lenders and their counsel, White & Case LLP, 1221 Avenue of the Americas, New York, NY 10020 (Attn: Andrew Zatz and Todd Wolynski); and (j) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Court finds that the foregoing notice of the Motion, as

it relates to this Interim Order and the Interim Hearing, is appropriate, due, and sufficient for all purposes under the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules, including sections 102(1) and 364 of the Bankruptcy Code and Bankruptcy Rule 4001(c), and that no further notice of the relief sought at the Interim Hearing and the relief granted herein is necessary or required.

J. Debtor's Stipulations. After consultation with its attorneys and financial advisors, and without prejudice to the rights of parties in interest as set forth in paragraph 14 herein, the Debtor, on its behalf and on behalf of its estate, admits, stipulates, acknowledges, and agrees as follows (subparagraphs J(a) through J(e) below are referred to herein, collectively, as the “**Debtor's Stipulations**”):

(a) *Bridge Loan Facilities.* Pursuant to those certain Loan Agreements, dated as of February 10, 2021 (the “**First Bridge Loan Agreement**”), May 27, 2021 (the “**Second Bridge Loan Agreement**”), and August 19, 2021 (the “**Third Bridge Loan Agreement**”) respectively (each as amended, restated, or otherwise modified from time to time, the “**Bridge Loan Agreements**,” and collectively with any other agreements and documents executed or delivered in connection therewith, each as may be amended, restated, or otherwise modified from time to time, the “**Bridge Loan Documents**”), between the Debtor and Buona Sorte Holdings, Inc., a corporation duly organized and existing under the laws of the Republic of the Philippines, as lender thereunder (the “**Bridge Lender**”), the Bridge Lender provided certain term loans to the Debtor (the “**Bridge Loans**” and, collectively with all accrued and unpaid interest thereon, all other Secured Obligations (as defined in the Bridge Loan Agreements), and all fees, costs, and

other charges due and payable under the Bridge Loan Documents, the “**Bridge Loan Obligations**”).

(b) *Bridge Loans.* Pursuant to the Bridge Loan Agreements, the Bridge Lender provided credit facilities (the “**Bridge Loan Facilities**”) to the Debtor in an aggregate principal amount of \$100 million, comprised of (i) \$60 million pursuant to the First Bridge Loan Agreement, (ii) \$25 million pursuant to the Second Bridge Loan Agreement, and (iii) \$15 million pursuant to the Third Bridge Loan Agreement. The Bridge Loan Facilities provided the Debtor with the necessary liquidity and runway to prepare for an organized bankruptcy filing and negotiate Restructuring Support Agreements with numerous lenders and lessors regarding the Debtor’s go-forward aircraft leases, long-term loans, and optimized fleet leasing strategy in accordance with the Debtor’s revised business plan.

(c) *Bridge Loan Liens and Bridge Loan Collateral.* As more fully set forth in the Bridge Loan Documents, prior to the Petition Date, the Debtor granted to the Bridge Lender a first priority security interest in and a continuing lien on (the “**Bridge Loan Liens**”) each of the Aircraft, Engines, and Spare Engines (each as defined in the Bridge Loan Agreements, collectively, the “**Bridge Loan Collateral**”), subject only to any Permitted Liens (as defined in the Bridge Loan Agreements, and as used herein, the “**Bridge Loan Permitted Liens**”).

(d) *Validity, Perfection, and Priority of Bridge Loan Obligations and Bridge Loan Liens.* The Debtor acknowledges and agrees that, as of the Petition Date, (i) the Bridge Loan Liens on the Bridge Loan Collateral were valid, binding, enforceable, non-avoidable, and properly perfected and were granted to, or for the benefit of, the Bridge

Lender for fair consideration and reasonably equivalent value; (ii) the Bridge Loan Liens were senior in priority over any and all other liens on the Bridge Loan Collateral, subject only to Bridge Loan Permitted Liens and liens senior by operation of law (solely to the extent any such liens were valid, properly perfected, non-avoidable, and senior in priority to the Bridge Loan Liens as of the Petition Date, the “**Prior Liens**”); (iii) the Bridge Loan Obligations constitute legal, valid, binding, and non-avoidable obligations of the Debtor enforceable in accordance with the terms of the applicable Bridge Loan Documents; (iv) no offsets, challenges, objections, defenses, claims, or counterclaims of any kind or nature to any of the Bridge Loan Liens or Bridge Loan Obligations exist, and no portion of the Bridge Loan Liens or Bridge Loan Obligations are subject to any challenge or defense, including avoidance, disallowance, disgorgement, recharacterization, or subordination (equitable or otherwise) pursuant to the Bankruptcy Code or applicable non-bankruptcy law; (v) the Debtor and its estate have no claims, objections, challenges, causes of action, and/or choses in action, including avoidance actions under Chapter 5 of the Bankruptcy Code or applicable state law equivalents or actions for recovery or disgorgement, against the Bridge Lender, or any of its respective affiliates, agents, attorneys, advisors, professionals, officers, directors, or employees arising out of, based upon, or related to the Bridge Loan Facilities; (vi) the Debtor has waived, discharged, and released any right to challenge any of the Bridge Loan Obligations, the priority of the Debtor’s obligations thereunder, or the validity, extent, and priority of the Bridge Loan Liens; and (vii) the Bridge Loan Obligations constitute allowed, secured claims within the meaning of sections 502 and 506 of the Bankruptcy Code.

(e) *Non-Controlling Party.* The Bridge Lender shall not be deemed to be in control of the operations of the Debtor or to be acting as a “responsible person” or “owner or operator” with respect to the operation or management of the Debtor.

K. Prior Liens. Nothing herein shall constitute a finding or ruling by this Court that any alleged Prior Lien is valid, senior, enforceable, prior, perfected, or non-avoidable. Moreover, nothing shall prejudice the rights of any party in interest, including the Debtor, the DIP Agent, the Bridge Lender, or a Committee (if appointed), to challenge the validity, priority, enforceability, seniority, avoidability, perfection, or extent of any alleged Prior Lien. The right of a seller of goods to reclaim such goods under section 546(c) of the Bankruptcy Code is not a Prior Lien; rather, any such alleged claim arising or asserted as a right of reclamation (whether asserted under section 546(c) of the Bankruptcy Code or otherwise) shall have the same rights and priority with respect to the DIP Liens (as defined below) as such claim had with the Bridge Loan Liens.

L. Finding of Good Cause. Good cause has been shown for the entry of this Interim Order and authorization for: (a) the DIP Lenders to provide the Debtor with the DIP Loans and (b) the Debtor to accept, incur, and undertake the DIP Obligations pursuant to the DIP Loan Documents as hereinafter provided during the Interim Period. The Debtor’s need for financing of the type afforded by the DIP Loan Documents is critical. Entry of this Interim Order will preserve the value of the assets of the Debtor’s estate and is in the best interests of the Debtor, its creditors and its estate. The terms of the DIP Facility are fair and reasonable, including the interest rates and fees owed thereunder, reflect the Debtor’s exercise of prudent business judgment consistent with its fiduciary duties, and are supported by reasonably equivalent value and fair consideration.

M. Finding of Good Faith. Based upon the record presented at the Interim Hearing, the DIP Facility has been negotiated in good faith and at arm's length between the Debtor, on the one hand, and the DIP Secured Parties, on the other. All of the DIP Obligations, including all DIP Loans made pursuant to the DIP Loan Documents and all other liabilities and obligations of the Debtor under this Interim Order, owing to the DIP Secured Parties shall be deemed to have been extended by the DIP Secured Parties in "good faith," as such term is used in section 364(e) of the Bankruptcy Code, and in express reliance upon the protections offered by section 364(e) of the Bankruptcy Code. The DIP Secured Parties shall be entitled to the full protection of section 364(e) of the Bankruptcy Code in the event that this Interim Order or any provision hereof is vacated, reversed, or modified, on appeal or otherwise.

N. No Liability to Third Parties. Subject to entry of the Final Order, the Debtor stipulates and the Court finds that in making decisions to advance loans to the Debtor, in administering any DIP Loans, in accepting the Approved Budget, or in taking any other actions permitted by this Interim Order or the DIP Loan Documents in their respective capacities as DIP Lenders or DIP Agent, none of the DIP Secured Parties shall be deemed to be in control of the operations of the Debtor or to be acting as a "responsible person" or "owner or operator" with respect to the operation or management of the Debtor.

O. Immediate Entry. The Debtor has requested immediate entry of this Interim Order pursuant to Bankruptcy Rule 4001(c)(2) and the Local Rules. Absent the immediate grant by the Court of the interim relief sought by the Motion, the Debtor's estate will be immediately and irreparably harmed pending the Final Hearing. The consummation of the DIP Facility in accordance with the terms of this Interim Order and the other DIP Loan Documents, is in the best interest of the Debtor's estate, and is consistent with the Debtor's exercise of its fiduciary duties.

Under the circumstances, the notice given by the Debtor of the Motion and Interim Hearing constitutes due and sufficient notice thereof and complies with Bankruptcy Rule 4001(c) and the Local Rules. No Further notice of the relief sought at the Interim Hearing is necessary or required.

P. No Claims or Causes of Action. Subject to entry of the Final Order, there exist no claims or causes of action against any of the DIP Agent, the other DIP Secured Parties or the Bridge Lender with respect to, in connection with, related to, or arising from the DIP Loan Documents; or the DIP Facility that may be asserted by the DIP Secured Parties, the Debtor, the Bridge Lender or any other person or entity.

Q. Adequate Protection. The Bridge Lender is entitled to receive adequate protection to the extent of any diminution in value of its interests in the Bridge Loan Collateral as set forth in this Interim Order.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDICATED, AND DECREED as follows:

1. Grant of Motion; Authorization of Interim Financing; Use of Proceeds.

(a) The Motion is hereby granted as and to the extent provided herein, and the Court hereby authorizes and approves the Debtor's execution and delivery of the DIP Loan Documents, and the Debtor's execution and delivery of all instruments, security agreements, assignments, pledges, mortgages, reaffirmations, and other documents referred to therein or reasonably requested by the DIP Secured Parties to give effect to the terms thereof and as will be drafted and executed as contemplated therein, in each case, in final form and substance consistent with this Interim Order and otherwise reasonably acceptable to the DIP Secured Parties (collectively, this Interim Order, the DIP Credit Agreement, the Collateral Documents, the Approved Budget, and any other document delivered to any DIP Secured Party in connection

with any of the foregoing, in each case, as the same may be amended, restated, or otherwise modified from time to time in accordance with the terms of this Interim Order and the DIP Credit Agreement, are referred to herein as the “**DIP Loan Documents**”).

(b) The Debtor is hereby authorized to borrow under the DIP Loan Documents and this Interim Order up to an interim aggregate principal amount of \$20 million during the Interim Period, subject to any conditions and limitations on availability in the DIP Loan Documents, plus all interest, fees, and other charges payable in connection with the DIP Loans as provided in the DIP Credit Agreement and other DIP Loan Documents; to incur any and all liabilities and obligations under the DIP Loan Documents; to pay all principal, interest, fees, expenses, and other obligations provided for under the Approved Budget and the other DIP Loan Documents, including the obligations under the DIP Loan Documents to indemnify the Indemnitees (as defined in the DIP Credit Agreement); and to, upon entry of the Final Order, pay in full and refinance all Bridge Loan Obligations with the proceeds of Tranche A DIP Loans.

(c) No DIP Secured Party shall have any obligation or responsibility to monitor the use of the DIP Loans, and each DIP Secured Party may rely upon the Debtor’s representations that the amount of the DIP Loans requested at any time, and the use thereof, are in accordance with the requirements of this Interim Order, the Approved Budget, the DIP Loan Documents, the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules.

(d) The Debtor may obtain and use the DIP Loan Proceeds during the Interim Period only as permitted under the DIP Loan Documents. For the avoidance of doubt, no DIP Loan Proceeds may be used to make any payment in settlement or satisfaction of any prepetition claim (other than the Bridge Loan Obligations) or administrative claim (other than the DIP Obligations or the Adequate Protection Superpriority Claims (as defined below)), unless such

payment is (x) in compliance with the Approved Budget or (y) separately approved or authorized by the Court upon notice to the DIP Agent.

2. Entry into, Execution, Delivery, and Performance of DIP Loan Documents. The Debtor is hereby authorized (a) to enter into the DIP Credit Agreement and the other DIP Loan Documents, (b) to incur and perform the DIP Obligations arising from and after the date of this Interim Order under the DIP Facility, (c) to repay amounts borrowed, together with interest, and (d) to pay all fees, costs, and expenses contemplated therein, as well as any other outstanding DIP Obligations to the DIP Secured Parties, in each case in accordance with and subject to the terms and conditions set forth in this Interim Order, the other DIP Loan Documents, and such additional documents, instruments, and agreements as may reasonably be required by the DIP Secured Parties to implement the terms or effectuate the purpose of and transactions contemplated by the DIP Loan Documents, the terms of which are incorporated by reference. The DIP Loan Documents may be executed and delivered on behalf of the Debtor by any officer, director, or agent of the Debtor, who by signing shall be deemed to represent himself or herself to be duly authorized and empowered to execute such DIP Loan Documents for and on behalf of the Debtor; the DIP Secured Parties shall be authorized to rely upon any such person's execution and delivery of any of the DIP Loan Documents as having done so with all requisite power and authority to do so; and the execution and delivery of any of the DIP Loan Documents by any such person on behalf of the Debtor shall be conclusively presumed to have been duly authorized by all necessary corporate action of the Debtor. Upon execution and delivery thereof, each of the DIP Loan Documents shall constitute valid and binding obligations of the Debtor, enforceable against the Debtor in accordance with its terms for all purposes during its Chapter 11 Case, any subsequently converted case of the Debtor under chapter 7 of the Bankruptcy Code (a

“**Successor Case**”), and after the dismissal of any Chapter 11 Case. Subject to the provisions of paragraph 14, no obligation, payment, or transfer under the DIP Loan Documents or this Interim Order (including in connection with any adequate protection provided to the Bridge Lender) shall be stayed, restrained, voidable, avoidable, or recoverable under the Bankruptcy Code or under any applicable non-bankruptcy law (including under sections 502(d), 544, 547, 548, 549, or 550 of the Bankruptcy Code or under any applicable Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act, Uniform Voidable Transactions Act, or similar statute or common law), or subject to any defense, reduction, setoff, recoupment, or counterclaim.

3. **DIP Liens.** As security for the Debtor’s payment and performance under the DIP Loan Documents, all principal, interest, costs, expenses, fees, and other charges at any time payable by the Debtor to the DIP Secured Parties in connection with the DIP Loan Documents, all reimbursement obligations, and all other indebtedness and obligations contemplated under any of the DIP Loan Documents (all of the foregoing being collectively called the “**DIP Obligations**”), the DIP Agent, for itself and for the benefit of the DIP Lenders, is hereby granted the following valid, binding, enforceable, non-avoidable, and automatically and properly perfected security interests in and liens upon all of the DIP Collateral (collectively, the “**DIP Liens**”) in the priorities set forth in subparagraphs (a) and (b) below, each of which shall be subject to the Carve Out:

(a) **Tranche A DIP Liens.** (i) First priority liens pursuant to section 364(c)(2) of the Bankruptcy Code on all DIP Collateral that was not encumbered by Bridge Loan Liens or Permitted Senior Liens (as defined below), and (ii) to the extent any DIP Collateral is subject to any (x) Bridge Loan Liens, (y) Prior Liens, or (z) liens perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code (the foregoing clauses (y) and (z) being

referred to collectively as the “**Permitted Senior Liens**”), senior liens, pursuant to section 364(d) of the Bankruptcy Code, on such DIP Collateral subject and subordinate only to Permitted Senior Liens (clauses (i) and (ii) together, the “**Tranche A DIP Liens**”).

(b) Tranche B DIP Liens. Pursuant to section 364(c)(3) of the Bankruptcy Code, junior liens on all of the DIP Collateral subject and subordinate to any Permitted Senior Liens, the Tranche A DIP Liens, and the Bridge Loan Liens (the “**Tranche B DIP Liens**”).

(c) Liens Senior to Certain Other Liens. The DIP Liens shall be effective immediately upon the entry of this Interim Order and shall not at any time be (i) subject or subordinate to (A) any lien or security interest that is avoided and preserved for the benefit of the Debtor or the Debtor’s estate under section 551 of the Bankruptcy Code, (B) except to the extent the DIP Loan Documents expressly allow a postpetition lien to have priority over the DIP Liens, any postpetition liens granted by the Debtor to other persons or entities or otherwise arising after the Petition Date, including any liens or security interests granted in favor of any federal, state, municipal, or other governmental unit, commission, board, or court for any liability of the Debtor, or (C) any intercompany or affiliate liens or security interests against the Debtor; (ii) subordinated to or made *pari passu* with any other lien or security interest on the DIP Collateral under section 363 or 364 of the Bankruptcy Code; or (iii) subject to sections 510(c), 549, or 550 of the Bankruptcy Code. In no event shall any person or entity who pays (or, through the extension of credit to the Debtor, causes to be paid) any of the DIP Obligations be subrogated, in whole or in part, to any rights, remedies, claims, privileges, liens, or priorities granted to or in favor of, or conferred upon, any DIP Secured Party by the terms of any DIP Loan Documents or this Interim Order unless such person or entity contemporaneously causes payment in full of all of the DIP Obligations.

(d) Right to Challenging Competing Liens. The DIP Agent (at the direction of the DIP Lenders in accordance with the terms of the DIP Credit Agreement) shall have the right to challenge the validity, priority, perfection, extent, or amount of any lien or security interest filed against the Debtor that relates to DIP Collateral that purports to be senior to any DIP Lien, including any lien or security interest that, if found to be valid, enforceable, non-revocable, and perfected, would constitute a Prior Lien.

(e) Solely for the purposes of this Interim Order, notwithstanding anything to the contrary herein or in the DIP Loan Documents, DIP Collateral shall not include any of the Debtor's (i) leasehold interests in equipment (aircraft, engines, flight simulators, or other equipment) leases or the equipment leased thereunder or (ii) equipment subject to financing arrangements (whether through secured loans, finance leases, or otherwise) and interests in the underlying financing agreements, in each case to the extent that the relevant lease or financing agreement prohibits or conditions the grant of a lien or the assignment of the lease or other financing agreement upon the consent of a non-debtor counterparty to the extent such consent (A) is not actually obtained (after the use of commercially reasonable efforts to obtain such consent) and (B) is required under applicable law to grant the applicable security interest.

4. Superpriority Claims.

(a) Allowed Claims. All DIP Obligations shall at all times constitute superpriority administrative expense claims against the Debtor (the "**DIP Superpriority Claims**") that will, in accordance with section 364(c)(1) of the Bankruptcy Code, have priority over any and all administrative expenses of and unsecured claims against the Debtor now existing or hereafter arising, of any kind or nature whatsoever, including all administrative expenses of the kind specified in, or arising or ordered under, sections 105, 326, 328, 503(b),

506(c) (subject to entry of the Final Order), 507(a), 507(b), 546(c), 726, and 1114 of the Bankruptcy Code (including those resulting from the conversion of the Chapter 11 Case pursuant to section 1112 of the Bankruptcy Code), subject only to the Carve Out and, with respect to the DIP Superpriority Claims arising under the Tranche B Facility, the Bridge Loan Obligations and the Adequate Protection Superpriority Claims. The DIP Superpriority Claims shall survive any conversion of the Chapter 11 Case to a case under chapter 7 of the Bankruptcy Code or the dismissal of the Chapter 11 Case. Subject only to the Carve Out, and, with respect to the DIP Superpriority Claims arising under the Tranche B Facility, the Bridge Loan Obligations and the Adequate Protection Superpriority Claims, the DIP Superpriority Claims shall be payable from and have recourse to all pre- and postpetition property of the Debtor and its estate (excluding Avoidance Actions but, upon entry of the Final Order, including Avoidance Proceeds (as such terms are defined below)).

(b) Proceeds of Avoidance Actions. Subject to entry of the Final Order, the DIP Superpriority Claims shall have recourse to all proceeds (the “**Avoidance Proceeds**”) of all of the Debtor’s claims and causes of action pursuant to sections 502(d), 544, 545, 547, 548, 549, 551, 553(b), 732(2), or 742(2) of the Bankruptcy Code (the “**Avoidance Actions**”), including all of the Debtor’s claims and causes of actions pursuant to section 549 of the Bankruptcy Code to recover any postpetition transfer of DIP Collateral or postpetition transfer of DIP Loan Proceeds.

5. Adequate Protection Liens.

(a) Pursuant to Sections 361 and 363(e) of the Bankruptcy Code, as adequate protection to the Bridge Lender for any diminution in value of its interests in the Bridge Loan Collateral, the Bridge Lender is hereby granted continuing valid, binding, enforceable, and perfected postpetition security interests in and liens on the DIP Collateral (the “**Adequate**

Protection Liens”), subject to the Carve Out, the Permitted Senior Liens, the Tranche A DIP Liens, and the Bridge Loan Liens.

(b) The Adequate Protection Liens shall be effective immediately upon the entry of this Interim Order and shall not at any time be (i) subject or subordinate to (A) any lien or security interest that is avoided and preserved for the benefit of the Debtor or the Debtor’s estate under section 551 of the Bankruptcy Code, (B) except to the extent of the DIP Liens and that the DIP Loan Documents expressly allow a postpetition lien to have priority over the DIP Liens, any postpetition liens granted by the Debtor to other persons or entities or otherwise arising after the Petition Date, including any liens or security interests granted in favor of any federal, state, municipal, or other governmental unit, commission, board, or court for any liability of the Debtor, (C) any intercompany or affiliate liens or security interests against the Debtor, or (D) the Tranche B DIP Liens; (ii) subordinated to or made *pari passu* with any other lien or security interest on the DIP Collateral under section 363 or 364 of the Bankruptcy Code except as set forth herein; or (iii) subject to sections 510(c), 549, or 550 of the Bankruptcy Code. In no event shall any person or entity who pays (or, through the extension of credit to the Debtor, causes to be paid) any of the Bridge Loan Obligations be subrogated, in whole or in part, to any rights, remedies, claims, privileges, liens, or priorities granted to or in favor of, or conferred upon, the Bridge Lender by this Interim Order unless such person or entity contemporaneously causes payment in full of all of the Bridge Loan Obligations.

6. Adequate Protection Superpriority Claims. As further adequate protection to the Bridge Lender for any diminution in value of its interests in the Bridge Loan Collateral, the Bridge Lender is hereby granted an allowed superpriority administrative expense claim against the Debtor (the “**Adequate Protection Superpriority Claims**”) that will, to the extent provided

by section 507(b) of the Bankruptcy Code, have priority over any and all administrative expenses of and unsecured claims against the Debtor now existing or hereafter arising, of any kind or nature whatsoever, including all administrative expenses of the kind specified in, or arising or ordered under, sections 105, 326, 328, 503(b), 506(c) (subject to entry of the Final Order), 507(a), 507(b) 546(c), 726, and 1114 of the Bankruptcy Code (including those resulting from the conversion of the Chapter 11 Case pursuant to section 1112 of the Bankruptcy Code), subject only to the Carve Out, the DIP Superpriority Claims arising under the Tranche A DIP Facility (but not those arising under the Tranche B DIP Facility), and the Bridge Loan Obligations. The Adequate Protection Superpriority Claims shall survive any conversion of the Chapter 11 Case to a case under chapter 7 of the Bankruptcy Code or the dismissal of the Chapter 11 Case. Subject only to the Carve Out and the DIP Superpriority Claims arising under the Tranche A DIP Facility (but not those arising under the Tranche B DIP Facility), and the Bridge Loan Obligations, the Adequate Protection Superpriority Claims shall be payable from and have recourse to all pre- and postpetition property of the Debtor and its estate (excluding Avoidance Actions but, upon entry of the Final Order, including Avoidance Proceeds).

7. Adequate Protection Payments. The Debtor is authorized and directed to provide further adequate protection to the Bridge Lender in the form of payment in cash of (a) accrued interest on the Bridge Loans at the non-default rate due under the Bridge Loan Documents (with the Bridge Lender's right to pursue payment of interest at the default rate preserved); (b) promptly upon entry of this Interim Order, the reasonable and documented out-of-pocket fees, costs, and expenses incurred by the Bridge Lender, owed by the Debtor pursuant to the Bridge Loan Documents and arising prior to the Petition Date, including reasonable and documented out-of-pocket fees and expenses of White & Case LLP; and (c) in accordance with the

procedures set forth in paragraph 17 hereof, the reasonable and documented out-of-pocket fees, costs, and expenses incurred by the Bridge Lender due pursuant to the Bridge Loan Documents, owed by the Debtor pursuant to the Bridge Loan Documents, and arising on or after the Petition Date, including reasonable and documented out-of-pocket fees and expenses of White & Case LLP.

8. Repayment of DIP Obligations. The DIP Obligations shall be due and payable, and shall be paid, as and when provided in the DIP Loan Documents and as provided herein, without defense, offset, or counterclaim. Without limiting the generality of the foregoing, in no event shall the Debtor be authorized to offset or recoup any amounts owed, or allegedly owed, by any DIP Secured Party to the Debtor or any of its respective subsidiaries or affiliates against any of the DIP Obligations without the prior written consent of the DIP Secured Parties, if any, that would be adversely affected by any such offset or recoupment, and no such consent shall be implied from any action, inaction or acquiescence by any DIP Secured Party.

9. Payments Free and Clear. All payments or proceeds remitted to the Bridge Lender as adequate protection or the DIP Agent by or on behalf of the Debtor pursuant to the DIP Loan Documents, the provisions of this Interim Order, or any subsequent order of this Court, shall be received free and clear of any claim, charge, assessment, or other liability, including any such claim or charge arising out of or based on, directly or indirectly, section 506(c) (subject to entry of the Final Order) or the “equities of the case” exception of section 552(b) of the Bankruptcy Code (subject to entry of the Final Order).

10. Fees and Expenses of Estate Professionals. Subject to paragraphs 12 and 13 below, the Debtor is authorized to use proceeds of DIP Loans to pay such compensation and expense reimbursement (collectively, “**Professional Fees**”) of professional persons (including

attorneys, financial advisors, accountants, investment bankers, appraisers, and consultants, in each case to the extent such professional person's retention is subject to court approval) retained pursuant to section 327, 330, 331, or 1103 of the Bankruptcy Code, as applicable, by the Debtor (such retained professionals, the "**Debtor's Professionals**") or a Creditors' Committee, (such retained professionals, the "**Committee Professionals**" and, collectively with the Debtor's Professionals, the "**Professionals**"), to the extent that such compensation and expense reimbursement is authorized and approved by the Court at any time.

11. Section 506(c) Claims. Subject to entry of the Final Order, except to the extent of the Carve Out, no costs or expenses of administration shall be imposed upon any DIP Secured Party or on any DIP Collateral pursuant to section 506(c) of the Bankruptcy Code or otherwise without the prior written consent of such DIP Secured Party, and no such consent shall be implied from any action, inaction, or acquiescence by any DIP Secured Party. Further, the Debtor waives, and shall not assert in this Chapter 11 Case or any Successor Case, any surcharge claim under sections 105(a) and/or 506(c) of the Bankruptcy Code or otherwise with respect to (i) the DIP Obligations or the DIP Liens or (ii) subject to entry of the Final Order, the Bridge Loan Obligations or the Bridge Loan Liens.

12. Carve Out.

(a) Notwithstanding anything to the contrary in this Interim Order, any other DIP Loan Document, or any other order of this Court to the contrary, the rights and claims of the DIP Lenders, including the DIP Liens and DIP Superpriority Claims, shall be subject and subordinate in all respects to the payment of the Carve Out. As used in this Interim Order, "**Carve Out**" means the sum of (i) all fees required to be paid to the Clerk of the Court and to the United States Trustee under sections 156(c) and 1930(a) of title 28 of the United States Code

plus interest, if any, as set forth in section 3717 of title 31 of the United States Code (without regard to the notice set forth in (iii) below); (ii) all reasonable fees and expenses up to \$150,000 incurred by a trustee under section 726(b) of the Bankruptcy Code (without regard to the notice set forth in (iii) below); (iii) to the extent allowed at any time, whether allowed by the Court prior to or after delivery of a Carve Out Trigger Notice (as defined below), whether by interim order, procedural order, or otherwise, all unpaid fees and expenses (including any restructuring, sale, success, or other transaction fee of any investment bankers or financial advisors) accrued or incurred by the Professionals (such fees and expenses, the **“Allowed Professional Fees”**) at any time before or on the first business day following the day on which a Carve Out Trigger Notice is delivered by the DIP Agent in accordance with this paragraph 12 (such date of delivery, the **“Termination Declaration Date”**); and (iv) Allowed Professional Fees incurred after the first business day following the Termination Declaration Date, to the extent allowed at any time, whether by interim order, procedural order, or otherwise, in an aggregate amount not to exceed \$2,000,000 less the amount of any prepetition retainers received by the Professionals and not applied to the fees, disbursements, costs, and expenses set forth in clause (iii) above (the amount set forth in this clause (iv), the **“Post-Carve Out Trigger Notice Cap”**). For purposes of the foregoing, **“Carve Out Trigger Notice”** shall mean a written notice delivered by email (or other electronic means) by the DIP Agent (at the direction of the Tranche A DIP Lenders until such time as the Tranche A DIP Obligations have been satisfied in full, and then at the direction of the Tranche B DIP Lenders) to the Debtor, its lead restructuring counsel, the U.S. Trustee, and counsel to any Creditors’ Committee, which notice may be delivered following the occurrence and during the continuation of an Event of Default, stating that the Post-Carve Out Trigger Notice Cap has been invoked.

(b) On the Termination Declaration Date, the Carve Out Trigger Notice shall constitute a demand to the Debtor to utilize all cash on hand as of such date to fund a reserve in an amount equal to the then-unpaid amounts of the Allowed Professional Fees within one business day of the Termination Declaration Date; *provided* that in the event that a Termination Declaration Date occurs, each Professional shall have two business days to deliver to the Debtor such Professional's good faith estimate of the Allowed Professional Fees incurred through the Termination Declaration Date, and the Debtor shall fund into the Carve Out Account (as defined below) such amounts within one business day of receipt of such estimates. The Debtor shall deposit and hold such amounts (the "**Pre-Carve Out Trigger Notice Reserve**") in the Carve Out Account in trust to pay such then-unpaid Allowed Professional Fees prior to any and all other Allowed Professional Fees. On the Termination Declaration Date, the Carve Out Trigger Notice shall also constitute a demand to the Debtor to utilize all cash on hand as of such date and any available cash thereafter held by the Debtor, after funding the Pre-Carve Out Trigger Notice Reserve, to fund a reserve in an amount equal to the Post-Carve Out Trigger Notice Cap. The Debtor shall deposit and hold such amounts (the "**Post-Carve Out Trigger Notice Reserve**") and, together with the Pre-Carve Out Trigger Notice Reserve, the "**Carve Out Reserves**") in a segregated account (the "**Carve Out Account**") at an institution reasonably designated by the DIP Agent (at the direction of the Tranche A DIP Lenders until such time as the Tranche A DIP Obligations have been satisfied in full, and then the Tranche B DIP Lenders) in trust to pay such Allowed Professional Fees benefiting from the Post-Carve Out Trigger Notice Cap prior to any and all other Allowed Professional Fees. All funds in the Pre-Carve Out Trigger Notice Reserve shall be used first to pay the obligations set forth in clauses (i) through (iii) of the definition of Carve Out set forth above (the "**Pre-Carve Out Amounts**") until paid in full, and then, to the

extent the Pre-Carve Out Trigger Notice Reserve has not been reduced to zero, to repay the DIP Obligations, unless the DIP Obligations have been indefeasibly paid in full and all DIP Commitments have been terminated, in which case such remaining funds shall be retained by the Debtor. All funds in the Post-Carve Out Trigger Notice Reserve shall be used first to pay the obligations set forth in clause (iv) of the definition of Carve Out set forth above (the “**Post-Carve Out Amounts**”) until paid in full, and then, to the extent the Post-Carve Out Trigger Notice Reserve has not been reduced to zero, to repay the DIP Obligations, unless the DIP Obligations have been indefeasibly paid in full and all DIP Commitments have been terminated, in which case such remaining funds shall be retained by the Debtor.

(c) Notwithstanding anything to the contrary in this Interim Order or the other DIP Loan Documents, following delivery of a Carve Out Trigger Notice, none of the DIP Secured Parties shall be permitted to sweep or foreclose on cash (including cash received as a result of the sale or other disposition of any assets) of the Debtor in the Carve Out Account, but shall have a security interest in any residual interest in the Carve Out Reserves, with any excess paid to the DIP Agent for application to the DIP Obligations in accordance with the DIP Loan Documents and this paragraph 12. Further, notwithstanding anything to the contrary in this Interim Order or the other DIP Loan Documents, (i) disbursements by the Debtor from the Carve Out Account shall not constitute DIP Loans or increase or reduce the DIP Obligations, (ii) the failure of the Carve Out Reserves to satisfy in full the Allowed Professional Fees shall not affect the priority of the Carve Out, (iii) in no way shall the Approved Budget, Carve Out, Post-Carve Out Trigger Notice Cap, Carve Out Reserves, or any of the foregoing be construed as a cap or limitation on the amount of the Allowed Professional Fees due and payable by the Debtor, and (iv) the Carve Out as provided for and capped by this Interim Order shall be senior to and have

priority over all liens securing the DIP Obligations and the DIP Superpriority Claims. Notwithstanding the foregoing, subject to the terms of any applicable retention orders entered by the Court, the DIP Secured Parties reserve all of their rights to challenge or otherwise object to any of the fees or expenses sought to be approved by any of the Professionals.

(d) Any payment or reimbursement made prior to the Termination Declaration Date in respect of any Allowed Professional Fees shall not reduce the Carve Out. Any payment or reimbursement made on or after the Termination Declaration Date in respect of any Allowed Professional Fees shall permanently reduce the Carve Out on a dollar-for-dollar basis.

(e) None of the DIP Secured Parties shall be responsible for the payment or reimbursement of any fees or disbursements of any Professional incurred in connection with the Chapter 11 Case or any Successor Case. Nothing in this Interim Order or otherwise shall be construed to obligate the DIP Secured Parties, in any way, to pay compensation to, or to reimburse expenses of, any Professional or to guarantee that the Debtor has sufficient funds to pay such compensation or reimbursement.

13. DIP Proceeds Restrictions. Neither the Carve Out nor any DIP Loan Proceeds or DIP Collateral shall be used to, among other things (any of the following each a “**Prohibited Purpose**”): (a) object to, seek subordination of, or contest the validity, extent, perfection, priority, or enforceability of the DIP Facility or the amount due thereunder and the superpriority claims granted thereby, the DIP Liens, the Bridge Loan Facilities or the amount due thereunder, or the Bridge Loan Liens; (b) investigate, initiate, assert, or prosecute any claim, defense, demand, or cause of action against the DIP Agent, the DIP Lenders, or the Bridge Lender, or any of their respective officers, directors, employees, agents, attorneys, representatives, subsidiaries, affiliates, or shareholders, under or relating to the DIP Facility, including, in each case, any

action, suit or other proceeding for breach of contract or tort or pursuant to sections 105, 506, 510, 544, 547, 548, 549, 550, 552, or 553 of the Bankruptcy Code, or under any other applicable law (state, federal, or foreign), or otherwise; (c) prevent, hinder, or delay, whether directly or indirectly, any DIP Secured Party's or the Bridge Lender's assertion or enforcement of its liens and security interests, or its efforts to realize upon any DIP Collateral or Bridge Loan Collateral or the claims authorized or granted under the DIP Loan Documents or the Bridge Loan Documents, as applicable, or exercise any other rights and remedies under the DIP Loan Documents or Bridge Loan Documents, as applicable, or applicable law; (d) seek to modify any of the rights granted under this Interim Order to any DIP Secured Party or the Bridge Lender; (e) assert any defense, counterclaim, or offset to this Interim Order, any DIP Obligations, or any Bridge Loan Obligations; or (f) object to, contest, delay, prevent, or interfere in any way with the exercise of rights or remedies by any DIP Secured Party with respect to any DIP Collateral, after the occurrence and during the continuance of an Event of Default (as defined in the DIP Credit Agreement); *provided, however*, that the Carve Out and such DIP Loan and DIP Collateral proceeds may be to pay the allowed fees and expenses, in an amount not to exceed \$100,000 in the aggregate (the "**Investigation Budget Amount**"), incurred solely by a Creditors' Committee (if appointed), in investigating (but not prosecuting or challenging) the validity, enforceability, perfection, priority, or extent of the Bridge Loan Liens within 60 calendar days following the date of entry of the Final Order, unless otherwise extended by the Court.

14. Effect of Stipulations on Third Parties.

(a) Generally. The Debtor's Stipulations are and shall be irrevocably binding on the Debtor. All creditors and parties in interest and all of their successors in interest and assigns, including a Creditors' Committee (if appointed), shall also be bound by the Debtor's

Stipulations unless, and solely to the extent that, any creditor, a party in interest or Creditors' Committee, in each case that has sought and obtained standing and the requisite authority to commence a Challenge (as defined below) (other than the Debtor, as to which any Challenge is irrevocably waived and relinquished) (i) has timely filed the pleadings, and timely commenced the proceeding required under the Bankruptcy Code and Bankruptcy Rules, including as required pursuant to Part VII of the Bankruptcy Rules (in each case subject to the limitation set forth in this paragraph 14), challenging any of the Debtor's Stipulations (each such proceeding or pleading commencing a proceeding or other contested matter, a "**Challenge**") by the earlier of (A) the date of entry of an order confirming a plan for the Debtor and (B) the later of (1) for a Creditors' Committee (if appointed), 60 days from the entry of the Final Order, or (2) 75 days following the entry of the Final Order for any other party in interest with requisite standing (the earlier to occur of (A) and (B), the "**Challenge Deadline**"), as such applicable date may be extended in writing from time to time in the sole discretion of the Bridge Lender, or by this Court for good cause shown pursuant to an application filed by a party in interest prior to the expiration of the Challenge Deadline, and (ii) this Court enters judgment in favor of the plaintiff or movant in any such timely commenced Challenge proceeding and any such judgment has become a final judgment that is not subject to any further review or appeal.

(b) Binding Effect. To the extent no Challenge proceeding is timely commenced by the Challenge Deadline, or to the extent such proceeding does not result in a final and non-appealable judgment of this Court that is inconsistent with the Debtor's Stipulations, then, without further notice, motion, or application to, order of, or hearing before, this Court, the Debtor's Stipulations shall, pursuant to this Interim Order, become binding, conclusive, and final on any person, entity, or party in interest in this Chapter 11 Case, and their respective successors

and assigns, and in any Successor Case for all purposes, and shall not be subject to challenge or objection by any party in interest, including a trustee, responsible individual, examiner with expanded powers, or other representatives of the Debtor's estate. Notwithstanding anything to the contrary herein, if any such proceeding is timely commenced, the Debtor's Stipulations shall nonetheless remain binding on all other parties in interest and preclusive as provided in subparagraph (a) above except to the extent that any of the Debtor's Stipulations is expressly the subject of a timely filed Challenge, which Challenge is successful as set forth in a final judgment as provided in subparagraph (a) above. To the extent any such Challenge proceeding is timely commenced, as adequate protection, the Bridge Lender shall be entitled to payment of the reasonable related costs and expenses, including reasonable and documented attorneys' fees of one law firm and, to the extent necessary, one local counsel in each relevant jurisdiction, incurred in defending itself in any such proceeding. Upon a successful Challenge brought pursuant to this paragraph 14, the Court may fashion any appropriate remedy.

15. Reservation of Rights.

(a) Protection from Subsequent Financing Order. Prior to the payment in full of all DIP Obligations and Bridge Loan Obligations and the termination of funding commitments under the DIP Facility in accordance with the terms of the DIP Loan Documents and the Bridge Loan Facilities in accordance with the terms of the Bridge Loan Documents, there shall not be entered in this Chapter 11 Case or in any Successor Case any order other than with the consent of the Bridge Lender, the DIP Agent, and the requisite DIP Lenders (as provided for in the DIP Loan Documents) that authorizes the obtaining of credit or the incurrence of indebtedness by the Debtor (or any trustee or examiner) that is: (i) secured by a security interest, mortgage, or other lien on all or any part of the DIP Collateral that is equal or senior to the DIP Liens or the

Adequate Protection Liens or (ii) entitled to claims with payment priority that is equal or senior to the DIP Superpriority Claims or the Adequate Protection Superpriority Claims; *provided, however*, that nothing herein shall prevent the entry of an order that specifically provides for, as a condition to the granting of the benefits of clauses (i) and (ii) above, (1) the payment in full of all of the DIP Obligations and the Bridge Loan Obligations and (2) the termination of any funding commitments under the DIP Loan Documents and the Bridge Loan Documents.

(b) Rights Upon Dismissal, Conversion, or Consolidation. The dismissal, conversion, or substantive consolidation of the Chapter 11 Case shall not affect the rights or remedies of any DIP Secured Party or the Bridge Lender under the DIP Loan Documents or this Interim Order, and all of the respective rights and remedies hereunder and thereunder of each DIP Secured Party and the Bridge Lender shall remain in full force and effect as if such Chapter 11 Case had not been dismissed, converted, or substantively consolidated.

(c) Survival of Interim Order. This Interim Order, and any actions taken pursuant hereto, shall survive the entry of and shall not be modified, superseded, impaired, discharged, or in any way altered, without the consent of the DIP Secured Parties, by any order that may be entered: (i) confirming any plan of reorganization or liquidation in the Debtor's Chapter 11 Case; (ii) converting the Debtor's Chapter 11 Case to a case under chapter 7 of the Bankruptcy Code; (iii) dismissing the Debtor's Chapter 11 Case or any Successor Case; or (iv) pursuant to which the Court abstains from hearing the Chapter 11 Case or any Successor Case. The terms and provisions of this Interim Order, including the claims, liens, security interests, and other protections granted to the DIP Secured Parties and the Bridge Lender pursuant to this Interim Order or the other DIP Loan Documents, shall continue in full force and effect notwithstanding the entry of any such order, and such rights, claims and liens shall maintain their

priority as provided by this Interim Order and the other DIP Loan Documents to the maximum extent permitted by law until all of the DIP Obligations are indefeasibly paid in full in accordance with the DIP Loan Documents.

(d) No Discharge. None of the DIP Obligations shall be discharged by the entry of any order confirming a plan of reorganization or liquidation in this Chapter 11 Case unless such obligations have been indefeasibly paid in full in accordance with the DIP Loan Documents on or before the effective date of such plan, or each of the DIP Secured Parties has otherwise agreed in writing, and, pursuant to section 1141(d)(4) of the Bankruptcy Code, the Debtor has waived such discharge.

(e) Credit Bid Protection. The DIP Secured Parties shall have, subject to section 363(k) of the Bankruptcy Code, the unqualified right to credit bid up to the full amount of the DIP Obligations and the DIP Superpriority Claims, without the need for further Court order authorizing the same, in connection with any sale of any of the DIP Collateral, whether such sale is effectuated through section 363 or 1129 of the Bankruptcy Code, by a chapter 7 trustee under section 725 of the Bankruptcy Code, or otherwise. The Debtor shall not object to or support any objection to any DIP Secured Party credit bidding up to the full amount of its outstanding DIP Obligations in accordance with the applicable DIP Loan Documents in any sale of any DIP Collateral, whether such sale is effectuated through section 363 or 1129 of the Bankruptcy Code, by a chapter 7 trustee under section 725 of the Bankruptcy Code, or otherwise.

(f) No Marshaling. Subject to entry of the Final Order, in no event shall any DIP Secured Party be subject to the equitable doctrine of “marshaling” or any similar doctrine with respect to any DIP Collateral.

(g) No Requirement to File Claim for DIP Obligations. Notwithstanding anything to the contrary contained in any prior or subsequent order of the Court, including any order establishing a deadline for the filing of proofs of claim or requests for payment of administrative expenses under section 503(b) of the Bankruptcy Code, no DIP Secured Party or Bridge Lender shall be required to file any proof of claim or request for payment of administrative expenses with respect to any of the DIP Obligations or the Bridge Loan Obligations, all of which shall be due and payable in accordance with the DIP Loan Documents and the Bridge Loan Documents applicable thereto without the necessity of filing any such proof of claim or request for payment of administrative expenses; and the failure to file any such proof of claim or request for payment of administrative expenses shall not affect the validity, priority, or enforceability of any of the DIP Loan Documents or the Bridge Loan Documents or of any DIP Obligations or Bridge Loan Obligations arising at any time thereunder, or prejudice or otherwise adversely affect any DIP Secured Party or any Bridge Lender's rights, remedies, powers, or privileges under any of the DIP Loan Documents, the Bridge Loan Documents, this Interim Order, or applicable law.

16. Automatic Perfection of Liens. The DIP Liens and Adequate Protection Liens are effective, valid, binding, enforceable, and duly perfected upon entry of this Interim Order. None of the DIP Secured Parties or the Bridge Lender shall be required to file any UCC-1 financing statement, mortgage, deed of trust, assignment, pledge, security deed, notice of lien, or any similar document or instrument in any jurisdiction or take any other action (including taking possession of any of the DIP Collateral) in order to validate the perfection of any DIP Liens or the Adequate Protection Liens, but all of such filings and other actions are hereby authorized by the Court. If the DIP Agent or Bridge Lender, in its discretion, chooses to file or record any such

mortgage, deed of trust, assignment, pledge, security deed, notice of lien, or UCC-1 financing statement, or take any other action in any jurisdiction to evidence the perfection of any part of the DIP Liens or the Adequate Protection Liens, as applicable, the Debtor and its respective officers are authorized and directed to use commercially reasonable efforts to execute, file, and record any documents or instruments as the DIP Agent or the Bridge Lender, as applicable, may reasonably request, and all such documents and instruments shall be deemed to have been filed or recorded at the time and on the date of entry of this Interim Order. The DIP Agent or Bridge Lender may, in its reasonable discretion, file a certified copy of this Interim Order in any filing office in any jurisdiction in which the Debtor is organized or has or maintains any DIP Collateral or an office, and each filing office is directed to accept such certified copy of this Interim Order for filing and recording. The DIP Agent, the DIP Lenders, or the Bridge Lender may require the Debtor to enter into non-U.S. security documentation with respect to such DIP Collateral located in non-U.S. jurisdictions, and the Debtor and its respective officers are authorized and directed to use commercial reasonable efforts to execute, file, and record any documents or instruments as the DIP Agent, the DIP Lenders, or the Bridge Lender may reasonably request, and all such documents and instruments shall be deemed to have been filed or recorded at the time and on the date of entry of this Interim Order.

17. Reimbursement of Fees, Costs, and Expenses of DIP Secured Parties and the Bridge Lender. The Debtor shall reimburse the DIP Secured Parties for their reasonable and documented out-of-pocket fees, costs, and expenses, whether accrued on, prior to, or after the Closing Date, in connection with (a) the preparation, negotiation, execution, and administration of the DIP Loan Documents and any other document prepared in connection therewith or the consummation and administration of any transaction contemplated therein, including any

amendment or waiver of the DIP Loan Documents, (b) the funding of the DIP Loans, (c) the creation, perfection, or protection of the DIP Liens (including all search, filing and recording fees), (d) internal audit reviews and field examinations, (e) the enforcement or preservation of any right or remedy under any DIP Loan Document, any DIP Obligation, or with respect to the DIP Collateral, (f) the commencement, defense, conduct of, intervention in, or the taking of any other action (including preparation for and/or response to any subpoena or request for document production relating thereto) with respect to, any proceeding related to the Debtor, any DIP Loan Document or DIP Obligation, (g) the review of pleadings and other filings made with the Bankruptcy Court, (h) attendance at hearings in respect of the Chapter 11 Case, (i) any refinancing or restructuring of the DIP Loans in the nature of a “work-out,” and (j) defending and prosecuting any actions or proceedings arising out of or relating to the DIP Obligations or any transactions related to arising in connection with the DIP Loan Documents; *provided* that, in the case of each of the foregoing clauses (a)-(j), such fees, costs, and expenses of counsel shall be limited to one law firm on behalf of all DIP Secured Parties and, to the extent necessary, one local counsel in each relevant jurisdiction (and in the case of an actual or perceived conflict of interest, one additional law firm on behalf of the affected DIP Secured Party). Each professional (including, pursuant to paragraph 7, those retained by the Bridge Lender) or party shall provide copies of applicable invoices (which invoices may be redacted or summarized for protection of an applicable privilege or the work product doctrine) (the fees thereunder, the “**Invoiced Fees**”) to lead restructuring counsel to the Debtor, counsel to any Creditors’ Committee, and the U.S. Trustee, which invoices shall, for any law firm or other counsel, include (i) a general, brief description of the nature of the matters for which services were performed, (ii) a list of the relevant attorneys and total hours billed by each for the relevant period, and (iii) such other detail

regarding the Invoiced Fees as the U.S. Trustee may reasonably request to be provided on a confidential basis. Any objections raised by the Debtor, the U.S. Trustee, or the Creditors' Committee challenging any portion of the Invoiced Fees (such portion, the "**Disputed Invoiced Fees**") must be in writing and state with particularity the grounds therefor and must be submitted to the applicable professional or party within ten business days of receipt (the "**Review Period**") and, if after the Review Period an objection remains unresolved, such objection will be subject to resolution by the Court. After the Review Period, the undisputed portion of Invoiced Fees will be paid promptly by the Debtor, without the necessity of filing formal fee applications, regardless of whether such amounts arose or were incurred before or after the Petition Date. Notwithstanding the foregoing, the Debtor is authorized to pay any such costs, fees, and expenses required as a condition precedent to the obligations of the DIP Lenders pursuant to the DIP Credit Agreement without the need to provide notice to any other party or otherwise comply with the procedures set forth in this paragraph 17 and without any further application to or order of this Court. The Debtor shall pay any Disputed Invoiced Fees promptly upon resolution of the objection, including to the extent resolved through approval by the Court, to the extent of such approval. In no event shall any invoice or other statement submitted by any DIP Secured Party or the Bridge Lender to the Debtor, the Creditors' Committee, the U.S. Trustee, or any other interested person (or any of their respective Professionals) with respect to fees or expenses incurred by any professional retained by such DIP Secured Party or the Bridge Lender operate to waive the attorney/client privilege, the work-product doctrine, or any other evidentiary privilege or protection recognized under applicable law.

18. Amendments and Waivers. The Debtor and the DIP Secured Parties are hereby authorized to enter into, in accordance with the terms of the applicable DIP Loan

Documents and without further order of the Court, any amendments to, modifications of, or waivers with respect to any of such DIP Loan Documents (and the payment of any fees, expenses, or other amounts payable in connection therewith) on the following conditions: (a) the amendment, modification, or waiver must not constitute a material change to the terms of such DIP Loan Document; and (b) copies of the amendment, modification, or waiver must be served upon counsel for any Creditors' Committee and the U.S. Trustee. Any amendment, modification, or waiver that constitutes a material change, to be effective, must be approved by the Court. For purposes hereof, a "material change" shall mean a change to a DIP Loan Document that operates to shorten the term of the DIP Facility or the maturity of the DIP Obligations, to increase the aggregate amount of the DIP Commitments, to increase the rate of interest other than as currently provided in or contemplated by such DIP Loan Documents, to add specific Events of Default, or to enlarge the nature and extent of remedies available to the DIP Agent following the occurrence of an Event of Default. Without limiting the generality of the foregoing, no amendment of a DIP Loan Document that postpones or extends any date or deadline therein or herein (including the expiration of the term of a DIP Facility), nor any waiver of an Event of Default, shall constitute a "material change" and any such amendment may be effectuated by the Debtor and the DIP Secured Parties without the need for further approval of the Court.

19. Events of Default; Remedies.

(a) Notice of Default. Upon the occurrence of an Event of Default under (and as defined in) any DIP Loan Document and during the continuance thereof: (i) the DIP Lenders may declare, on a pro rata basis, all or any portion of the DIP Facility to be suspended or terminated, whereupon such DIP Facility shall forthwith be suspended or terminated; (ii) the

Debtor shall have no right to request any extension of credit under the DIP Facility or to use DIP Loan Proceeds or any DIP Collateral or proceeds of DIP Collateral other than towards the satisfaction of the Bridge Loan Obligations, the DIP Obligations, and the Carve Out, as provided herein, and (iii) subject to the terms of the DIP Credit Agreement, the DIP Agent may in its discretion serve upon counsel for the Debtor, counsel for any Creditors' Committee, and the U.S. Trustee a written notice (a "**Default Notice**") setting forth the Events of Default, in which event (unless the Court determines that no Event of Default exists or continues to exist, after notice and a hearing) effective five business days after the Default Notice is filed (the "**Remedies Notice Period**"), the DIP Agent and the Bridge Lender shall be deemed to have received complete relief from the automatic stay imposed by section 362(a) of the Bankruptcy Code (and any other stay then in effect) and shall be authorized, without further notice to the Debtor or any other interested party or any further order of this Court, to (A) declare all or any portion of the unpaid principal amount of all outstanding DIP Loans or Bridge Loans, as applicable, all interest accrued and unpaid thereon, and all other amounts owing or payable under any of the DIP Loan Documents or Bridge Loan Documents, as applicable, to be immediately due and payable, (B) demand payment and enforce collection of all DIP Obligations, and (C) otherwise exercise all rights and remedies available to them under the DIP Loan Documents or the Bridge Loan Documents, as applicable. During the Remedies Notice Period, the Debtor and any Creditors' Committee shall be entitled to seek an emergency hearing with the Court (such hearing, a "**Remedies Hearing**"). In any Remedies Hearing, subject to entry of the Final Order, the Debtor shall waive its right to and shall not be entitled to seek relief, including under section 105 of the Bankruptcy Code, to the extent that such relief would impair or restrict the rights and remedies of the DIP Agent or the Bridge Lenders as set forth in this Interim Order or in any of the other

DIP Loan Documents or Bridge Loan Documents, as applicable, and the only issue that may be raised by the Debtor is whether, in fact, an Event of Default has occurred. Prior to the adjudication of the Remedies Hearing, the Debtor may use the proceeds of the DIP Facility (to the extent drawn prior to the occurrence of an Event of Default) solely to fund essential operations in accordance with past practice, the DIP Loan Documents, and the Approved Budget. Upon the effectiveness of any relief from the automatic stay granted or deemed to have been granted pursuant to this paragraph 19(a), each of the DIP Agent and Bridge Lender may, in its discretion, take all actions and exercise all other rights and remedies under this Interim Order, the other DIP Loan Documents, the Bridge Loan Documents, and applicable law that may be necessary or deemed appropriate to collect any of the DIP Obligations or Bridge Loan Obligations, as applicable, and otherwise enforce any of the provisions of this Interim Order. The DIP Agent's or Bridge Lender's delay or failure to exercise rights and remedies under any DIP Loan Documents, this Interim Order, the Bridge Loan Documents, or applicable law shall not constitute a waiver of any of its rights and remedies hereunder, thereunder, or otherwise, unless any such waiver is pursuant to a written instrument executed by the DIP Agent or Bridge Lender, as applicable.

(b) Rights Cumulative. The rights, remedies, powers, and privileges conferred upon any DIP Secured Party and the Bridge Lender pursuant to this Interim Order shall be in addition to and cumulative with those contained in the other applicable DIP Loan Documents and Bridge Loan Documents and created under applicable law.

20. Modification of Automatic Stay. The automatic stay provisions of section 362 of the Bankruptcy Code are hereby modified to the extent necessary to implement the provisions of this Interim Order and the DIP Loan Documents, thereby permitting the DIP Agent, as and to the

extent provided herein, to receive proceeds of the DIP Collateral for application to the DIP Obligations, to file or record any UCC-1 financing statements, mortgages, deeds of trust, assignments, pledges, security deeds, or other instruments and documents evidencing or validating the perfection of any DIP Liens, and to enforce any DIP Liens; and the Bridge Lender, as and to the extent provided herein, to receive adequate protection.

21. Effect of Appeal. Consistent with section 364(e) of the Bankruptcy Code, if any or all of the provisions of this Interim Order are hereafter modified or reversed, such modification or reversal on appeal shall not affect the validity of any debt so incurred, or any liens or priorities granted by the Debtor to any DIP Secured Party, prior to the effective date of such modification or reversal, whether or not any such entity knew of the appeal, unless the authorization and incurring of such debt, or the granting of such lien or priority, were stayed pending appeal.

22. Service of Interim Order. Promptly after the entry of this Interim Order, the Debtor shall serve copies of this Interim Order (which shall constitute adequate notice of the Final Hearing) to the parties having been given notice of the Interim Hearing.

23. No Deemed Control; Exculpation.

(a) Subject to entry of the Final Order, in determining to make any DIP Loans under the DIP Loan Documents, or in exercising any rights or remedies as and when permitted pursuant to this Interim Order or the other DIP Loan Documents, no DIP Secured Party shall be deemed to be in control of the Debtor or its operations with respect to the operation or management of such Debtor, nor shall the DIP Secured Parties (in their respective capacities as such) owe any fiduciary duty to the Debtor, its creditors, shareholders, or estate.

(b) None of the DIP Loan Documents or any other document related to the DIP Facility shall in any way be construed or interpreted to impose or allow the imposition upon any DIP Secured Party any liability for any claims arising from the prepetition (subject to paragraph 14) or postpetition activities of the Debtor in the operation of its business or in connection with its restructuring efforts. So long as a DIP Secured Party complies with its obligations under the applicable DIP Loan Documents and applicable law: (i) such DIP Secured Party shall not, in any way or manner, be liable or responsible for (A) the safekeeping of the DIP Collateral, (B) any loss or damage thereto occurring or arising in any manner or fashion from any cause, (C) any diminution in the value thereof, or (D) any act or default of any carrier, servicer, bailee, custodian, forwarding agency, or other person or entity; and (ii) all risk of loss, damage, or destruction of the DIP Collateral shall be borne by the Debtor.

24. Binding Effect; Successors and Assigns. The provisions of this Interim Order shall be binding upon all parties in interest in this Chapter 11 Case, including the Debtor, the DIP Secured Parties, and its and their respective successors and assigns (including any chapter 11 or chapter 7 trustee hereafter appointed for the estate of the Debtor, any examiner appointed pursuant to section 1104 of the Bankruptcy Code, any Creditors' Committee, or any other fiduciary appointed as a legal representative of the Debtor or with respect to any property of the estate of the Debtor), and shall inure to the benefit of the Debtor, the DIP Secured Parties, and its and their respective successors and assigns. In no event shall any DIP Secured Party have any obligation to make DIP Loans to, or permit the use of the DIP Collateral by, any chapter 7 trustee, chapter 11 trustee, or similar responsible person appointed or elected for the estate of the Debtor.

25. Objections Overruled. Any and all objections to the relief requested in the Motion, to the extent that such objections are to entry of this Interim Order and that have not otherwise been withdrawn, waived, or resolved by consent at or before the Interim Hearing, and all reservations of rights included therein, are hereby OVERRULED and DENIED.

26. Final Hearing. The Final Hearing shall be held on [●] at [●] [a.m.][p.m.] (Prevailing Eastern Time). If any or all of the provisions of this Interim Order are modified, vacated, or stayed by the Final Order, then any DIP Obligations incurred prior to the effective date of such modification, vacatur, or stay shall be governed in all respects by the provisions of this Interim Order, and the DIP Secured Parties shall be entitled to the protections afforded under section 364(e) of the Bankruptcy Code and to all the rights, remedies, privileges, and benefits, including, the DIP Liens and DIP Superpriority Claims granted herein and pursuant to the DIP Loan Documents, with respect to all such DIP Obligations.

27. Objection Deadline. If any party in interest objects to any of the provisions of this Interim Order, such party may assert such objection at the Final Hearing through a written statement setting forth the basis for such objection that is filed with the Court on or before [●], 2021 at 4:00 p.m. (Prevailing Eastern Time) and concurrently is served upon and actually received by (a) proposed counsel to the Debtor, Debevoise & Plimpton LLP, 919 Third Avenue, New York, NY 10022 (Attn: Jasmine Ball, Nick S. Kaluk, III, and Elie Worenklein), and Norton Rose Fulbright LLP, 1301 Sixth Avenue, New York, NY 10019 (Attn: David Rosenzweig and Keith Sandilands); (b) United States Trustee, U.S. Federal Office Building, 201 Varick Street, Room 1006, New York, NY 10014 (Attn: Susan A. Arbeit); (c) counsel to the DIP Lenders, White & Case LLP, 1221 Avenue of the Americas, New York, NY 10020 (Attn: Andrew Zatz and Todd Wolynski); and (d) counsel to any Creditors' Committee

appointed in this Chapter 11 Case. If an objecting party fails to appear at the Final Hearing and assert the basis for such objection before the Court, such objection shall be deemed to have been waived and abandoned by such objecting party.

28. Conditions Precedent. No DIP Lender shall have any obligation to make any DIP Loans, or otherwise fulfil any obligation of such DIP Lender set forth in the DIP Loan Documents, unless the conditions precedent to making such extensions of credit or fulfilling any such obligation under the DIP Loan Documents have been satisfied in full or waived in accordance with the DIP Loan Documents.

29. Section 552(b). The Bridge Lender shall be entitled to all of the rights and benefits of Section 552(b) of the Bankruptcy Code and, subject to entry of the Final Order, the “equities of the case” exception under Section 552(b) of the Bankruptcy Code shall not apply to the Bridge Lender with respect to proceeds, product, offspring, or profits of any of the Bridge Loan Collateral.

30. Effectiveness; Enforceability. This Interim Order shall constitute findings of fact and conclusions of law and shall take effect and be fully enforceable *nunc pro tunc* to the Petition Date immediately upon entry hereof. Notwithstanding Bankruptcy Rules 4001(a)(3), 6004(h), 6006(d), 7062, or 9014 of the Bankruptcy Rules or any other Bankruptcy Rule, or Rule 62(a) of the Federal Rules of Civil Procedure, this Interim Order shall be valid, take full effect, and be enforceable immediately upon entry hereof; there shall be no stay of execution or effectiveness of this Interim Order; and any stay of the effectiveness of this Interim Order that might otherwise apply is hereby waived for cause shown.

31. Inconsistencies. To the extent that any provision in the other DIP Loan Documents are inconsistent with any of the provisions of this Interim Order, the provisions of this Interim Order shall govern and control.

32. Headings. Section headings used herein are for convenience only and are not to affect the construction of or to be taken into consideration in interpreting this Interim Order.

Dated: _____, 2021
New York, New York

THE HONORABLE SHELLEY C. CHAPMAN
UNITED STATES BANKRUPTCY JUDGE

Annex A

DIP Credit Agreement

DEBTOR-IN-POSSESSION CREDIT AGREEMENT

Dated as of

[●], 2021,

by and among

PHILIPPINES AIRLINES, INC.,

as the Borrower and Debtor-in-Possession,

BUONA SORTE HOLDINGS, INC.,

as the Agent,

and

THE OTHER PERSONS PARTY HERETO,

as the Lenders

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DEBTOR-IN-POSSESSION CREDIT AGREEMENT

This **DEBTOR-IN-POSSESSION CREDIT AGREEMENT** (as amended, restated, replaced, supplemented, or otherwise modified from time to time, this “Agreement”) is entered into as of [●], 2021, by and among **PHILIPPINE AIRLINES, INC.**, a Philippine corporation and a debtor and debtor-in-possession (“PAL,” the “Borrower” or “Debtor”), **BUONA SORTE HOLDINGS, INC.**, as agent for the Lenders (solely in such capacity, together with its successors and assigns in such capacity, the “Agent”) and the other Persons from time to time party hereto, as lenders (collectively, the “Lenders” and each a “Lender”).

WITNESSETH:

WHEREAS, on September 3, 2021 (the “Petition Date”), the Borrower filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code, which case is being administered as Bankruptcy Case No. 21-11569 (the “Chapter 11 Case”) before the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”);

WHEREAS, the Borrower has requested that the Lenders make available for the purposes specified in this Agreement the credit facilities set forth herein; and

WHEREAS, the Lenders are willing to make available to the Borrower such credit facilities on the terms and under the conditions set forth herein.

NOW, THEREFORE, in consideration of the covenants, agreements, representations and warranties set forth in this Agreement, the parties hereto hereby covenant, agree, represent, and warrant as follows:

ARTICLE I THE CREDIT

1.1. Amounts and Terms of Commitments.

(a) Subject to the terms and conditions of this Agreement and in the DIP Order, each Tranche A Lender severally and not jointly agrees to make available to the Borrower a multi-draw term loan facility in an amount not to exceed the amount set forth opposite such Lender’s name in Schedule 1.1 under the heading “Tranche A Term Loan Commitments” (such amount being referred to herein as such Lender’s “Tranche A Term Loan Commitment,” and such amounts collectively the “Tranche A Term Loan Commitments”); provided that, notwithstanding anything to the contrary herein, (x) during the Initial Commitment Period only one Borrowing of the Tranche A Term Loan Commitments shall be available to the Borrower, and the amount of such Borrowing shall not exceed \$20 million, and (y) upon and after the entry of the Final DIP Order one further Borrowing of the Tranche A Loan Commitments shall be available to the Borrower (in addition to the automatic repayment and refinancing of the Bridge Loan Obligations upon entry of the Final DIP Order in accordance with Section 1.3(f)), and such Borrowing shall not exceed the remaining amount of the Tranche A Term Loan Commitments.

(b) Subject to the terms and conditions of this Agreement and the DIP Order, each Tranche B Lender severally and not jointly agrees to make available to the Borrower a

multi-draw term loan facility in an amount not to exceed the amount set forth opposite such Lender's name in Schedule 1.1 under the heading "Tranche B Term Loan Commitments" (such amount being referred to herein as such Lender's "Tranche B Term Loan Commitment") and such amounts collectively the "Tranche B Term Loan Commitments"; provided that, notwithstanding anything to the contrary herein, upon and after the entry of the Final DIP Order, the Tranche B Loan Commitments shall be available to the Borrower in no more than two Borrowings. The Tranche B Term Loans shall only be available after, or simultaneously with, the Borrowing of all of the Tranche A Term Loan Commitments.

(c) Amounts borrowed as Loans which are repaid or prepaid may not be reborrowed.

(d) The Term Loan Commitments shall be reduced (on a ratable basis) as provided in Section 7.2 hereof.

1.2. Evidence of Loans; Notes. The Loans made by each Lender with a Term Loan Commitment is evidenced by this Agreement and, if requested by such Lender, a Term Note (in a form reasonable acceptable to the Lenders) payable to such Lender in an amount equal to the unpaid principal balance of the Loans held by such Lender. The Agent, acting for this purpose as a non-fiduciary agent of the Borrower, shall maintain accounts or records of each credit extension hereunder, and each assignment and assumption of a Lender's rights and obligations hereunder that is delivered to the Agent, at the Agent's office in a register, which shall set forth the names and addresses of the Lenders, and the Term Loan Commitments of, and principal amounts (and stated interest) of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive absent manifest error, and the Borrower, and the Agent and the Lenders, shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary.

1.3. Interest, Fees, and Other Amounts.

(a) Each Loan shall bear interest on the outstanding principal amount thereof from the date when made at a rate per annum equal to 9.50%; provided that, notwithstanding the foregoing, if such interest rate exceeds the maximum interest rate allowed by applicable law, then the interest rate shall instead be the maximum interest rate allowed by applicable law. Accrued interest on the Loans shall be payable, at the sole option of the Borrower, in cash or in kind, or in a combination of cash and in kind, in arrears, on each Interest Payment Date. At least five Business Days prior to each Interest Payment Date (but not earlier than ten Business Days prior to such Interest Payment Date), the Borrower may furnish to the Agent written notice of its election to pay the accrued and unpaid interest on some or all of the Loans in kind, rather than in cash; provided that any accrued interest payable on the Interest Payment Date for September 2021 shall be paid in kind. If such notice is furnished by the Borrower to the Agent in compliance with the foregoing sentence, the Borrower shall pay the accrued and unpaid interest on the applicable Loans by adding such interest ratably to the principal amount of the applicable Loans. Following any increase in the principal amount of any Loans in accordance with this Section 1.3(a), such Loans shall bear interest on such increased principal amount from and after the applicable Interest Payment Date.

(b) On each date that Tranche A Lenders advance Tranche A Term Loans, the Borrower shall pay to the Tranche A Lenders, an upfront fee equal to 1.00% of the aggregate Tranche A Term Loan so advanced, which shall be paid from the proceeds of the Loans funded on such date, which upfront fee may, at the option of the Tranche A Lenders, be effected in the form of original issue discount with respect to the Tranche A Term Loans.

(c) On each date that Tranche B Lenders advance Tranche B Term Loans, the Borrower shall pay to the Tranche B Lenders, an upfront fee equal to 1.00% of the aggregate Tranche B Term Loan so advanced, which shall be paid from the proceeds of the Loans funded on such date, which upfront fee may, at the option of the Tranche B Lenders, be effected in the form of original issue discount with respect to the Tranche B Term Loans.

(d) All computations of fees, interest, and other amounts payable under this Agreement shall be made on the basis of a 365-day year and actual days elapsed. Interest, fees, and other amounts, as applicable, shall accrue during each period during which interest or such fees are computed from the first day thereof to the last day thereof.

(e) Automatically, without any action by the Lenders, while any Event of Default exists, the Borrower shall pay interest (after as well as before entry of judgment thereon to the extent permitted by law) on the Loans from and after the date of occurrence of such Event of Default, at a rate per annum which is determined by adding 2.00% per annum to the rate then in effect for such Loans. All such interest shall be payable in cash.

(f) Upon entry of the Final DIP Order by the Bankruptcy Court, without the need for delivery of a Notice of Borrowing, any Bridge Loan Obligations shall be deemed automatically, immediately, and irrevocably to have been repaid in full and refinanced by the Borrowings of Tranche A Term Loans on a dollar for dollar basis, and such Bridge Obligations shall be deemed to have been extinguished on such date, subject to the terms and conditions of the Final DIP Order.

(g) Once paid, the fees or any part thereof earned, due, and payable hereunder shall not be refundable under any circumstances (except as expressly provided herein, in the DIP Order or otherwise agreed). All fees earned, due, and payable hereunder shall be paid in U.S. Dollars in immediately available funds and shall be in addition to any reimbursement of the Lenders' reasonable and documented out-of-pocket expenses to the extent reimbursable hereunder.

1.4. Procedure for Borrowing.

(a) The Borrower shall request a Borrowing by written notice delivered to the Agent in the form of a Notice of Borrowing reasonably acceptable to the Agent, which notice must be received prior to 12:00 p.m. (Manila time) on the date which is three Business Days prior to the requested Borrowing date. The Borrower shall be limited to no more than one Borrowing during any two-week period, and no Borrowing shall be in an amount less than \$1,000,000. Such Notice of Borrowing shall specify:

(i) the amount of the Borrowing;

(ii) the portion of such Borrowing that consists of a Tranche A Term Loan and Tranche B Term Loan, respectively;

(iii) the requested Borrowing date, which shall be a Business Day; and

(iv) the account designated by the Borrower for disbursement of funds.

(b) Following receipt of a Notice of Borrowing and upon satisfaction of the applicable conditions set forth in Article II, each Lender shall, before 12:00 p.m. (Manila time) on the requested Borrowing date (or such other time mutually agreed to by the Lenders and the Borrower), make its ratable portion of the proposed Borrowing available to the account designated by the Borrower in the applicable Notice of Borrowing, in immediately available funds in Dollars.

1.5. Payments by the Borrower.

(a) The Borrower shall repay (x) the full amount of principal outstanding of the Loans, together with all accrued and unpaid interest thereon and all fees and expenses due and owing hereunder, on the earlier of (i) an Acceleration or (ii) the Maturity Date, and (y) prior to such date, in consecutive quarterly installments on the last Business Day of each three-month period, commencing with the 28th full month after the Petition Date, an amount equal to 11.1% of the Loans outstanding on such date. For the avoidance of doubt, the first quarterly installment hereunder shall be due on [●]¹.

(b) All payments (including prepayments) made by or on behalf of the Borrower on account of principal, interest, fees, and other amounts required hereunder shall be made without set-off, recoupment, or counterclaim of any kind, and shall, except as otherwise expressly provided herein, be made to the Agent (for the ratable account of the Persons entitled thereto) at the address for payment (or account information) specified in the signature page hereof in relation to the Agent (or such other address (or account information) as the Agent may from time to time specify in accordance with Section 9.2), and shall be made in Dollars and in immediately available funds, no later than 12:00 p.m. (Manila time) on the date due. All payments received by the Agent after 12:00 p.m. on the date due may be deemed received on the next succeeding Business Day, and any applicable interest or fees shall continue to accrue. The Agent shall promptly distribute to each applicable Lender its pro rata share of such payment in like funds as received by wire transfer to the account designated by each such Lender to the Agent in writing.

(c) If any payment hereunder shall be stated to be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day, and such extension of time shall in such case be included in the computation of interest or fees, as the case may be.

¹ To be last Business Day of 28th full month after the Petition Date.

(d) Each payment (excluding scheduled interest and amortization payments, which shall be paid as specified herein) made in respect of the Obligations shall be applied in the following order of priority:

(i) first, to any fees or expenses due and owing to the Agent or the Lenders hereunder, until all such fees and expenses have been paid in full;

(ii) second, to accrued and unpaid interest on the Tranche A Term Loans, until all such accrued and unpaid interest has been paid in full;

(iii) third, to the then outstanding principal of the Tranche A Term Loans, until all such outstanding principal has been paid in full;

(iv) fourth, to accrued and unpaid interest on the Tranche B Term Loans, until all such accrued and unpaid interest has been paid in full; and

(v) last, to the then outstanding principal of the Tranche B Term Loans, until all such outstanding principal has been paid in full.

1.6. Optional Prepayments. The Borrower shall not have the right to voluntarily prepay any amount of the Loans, except in connection with an Acceptable Plan.

1.7. Total Loss. Within 15 Business Days after any Insurance proceeds with respect to a Total Loss of any Pledged Aircraft or Pledged Engine are recovered, the Borrower shall segregate such proceeds in a cash collateral account subject to the DIP Liens with such proceeds to be used solely as agreed to by the Lenders; provided that no such segregation of proceeds shall be required to be made with respect to any Pledged Engine if the Borrower provisions a replacement thereof in accordance with Section 4 of Part F of Annex A attached hereto on or before the date on which such segregation of proceeds is otherwise required to be made. Insurance proceeds recovered other than with respect to a Total Loss of any Pledged Aircraft or Pledged Engine shall be retained by the Borrower.

1.8. Conversion of Tranche A Term Loans. The Borrower, in its sole discretion, may elect (the "Tranche A Conversion Election"), pursuant to, and on the effective date of, the Acceptable Plan, to provide notice to the Lenders that all Tranche A DIP Liens shall be released and the Tranche A Term Loans shall be unsecured as of such date; provided that such Tranche A Conversion Election shall only be effective upon the effectiveness of the Tranche B Conversion and the payment in cash of the Agent and Tranche A Lenders' professional and other advisory fees, costs, and expenses contemplated by Section 9.4(a). Following the occurrence of such Tranche A Conversion Election, the Tranche A Term Loans shall continue to be governed in all respects by the terms of this Agreement and the other Loan Documents (except for the Collateral Documents and any provisions herein or in any other Loan Document relating to the Collateral and the Tranche A DIP Liens, which shall be of no further force and effect).

1.9. Conversion of Tranche B Term Loans. The Borrower, in its sole discretion, in full and final satisfaction, settlement, release, and discharge of, and in exchange for, the Tranche B Term Loans and all accrued and unpaid interest thereon, may elect (the "Tranche B Conversion Election"), pursuant to, and on the effective date of, the Acceptable Plan, to provide

notice to the Lenders that all Tranche B DIP Liens shall be released and the Tranche B Term Loans (and all accrued and unpaid interest, fees, costs, and expenses thereon (other than professional and other advisory fees, costs, and expenses contemplated by Section 9.4(a), which must be paid in cash)) shall be converted into 79.5% of the common stock of the reorganized Borrower (collectively, the “Conversion Shares” and such issuance, the “Tranche B Conversion”) on such date; provided that:

- (a) the exercise of the Tranche B Conversion Election is subject to:
 - (i) the prior approval of applicable antitrust and other Governmental Authorities;
 - (ii) if necessary, the expiration or termination of the waiting period under the Hart-Scott-Rodino Act or acts of similar import under Philippine law, in each case to the extent applicable;
 - (iii) the receipt of all corporate approvals required for the issuance of the Conversion Shares; and
 - (iv) the exercise or waiver of any and all preemptive rights provided in the Borrower’s corporate bylaws or elsewhere; and

(b) in no event shall the Tranche B Conversion result in the acquisition by any Tranche B Lender of common stock in such amounts that would violate any legal requirement that subjects foreign ownership of reorganized PAL or any of its subsidiaries to foreign investment restrictions or the antitrust laws of any jurisdiction; provided that arrangements made by the Tranche B Lenders to transfer any Conversion Shares to Philippine nationals concurrently with the subscription of the Conversion Shares shall be considered for purposes of determining whether the foreign ownership limitations would be violated.

1.10. Termination Date. The Term Loan Commitments shall automatically be reduced to zero and terminate upon the earliest of (A) an Acceleration, (B) the Maturity Date; or (C) the termination of the Term Loan Commitments in accordance with Section 7.2(a) hereof.

ARTICLE II CONDITIONS PRECEDENT

2.1. Conditions to Effectiveness of Credit Agreement. The effectiveness of this Agreement is subject to satisfaction or waiver by the Lenders of the following conditions:

(a) Credit Agreement. The Lenders and the Agent shall have received a counterpart of this Agreement executed by the Borrower.

(b) Collateral Matters. Subject to Section 4.9, the Agent and the Lenders, shall have (i) received fully executed copies of each Collateral Document, (ii) valid and perfected Liens on the Collateral and each UCC and any other financing statement and each document required by any Collateral Document or any applicable Requirements of Law to be filed, registered, or recorded in order to create in favor of the Agent for the benefit of the

Lenders, a valid and perfected Lien on the Collateral required to be delivered pursuant to each Collateral Document, shall be in proper form for filing, registration, or recording, and (iii) received a copy of the certificate evidencing the insurance required to be maintained pursuant to Part E of Annex A attached hereto in form and substance satisfactory to the Agent and the Lenders.

(c) Approved Budget. The Lenders shall have received 13-week cash flow projections, in form and substance acceptable to the Required Lenders (the “Approved Budget”) on or prior to the Closing Date.

(d) DIP Order. The Interim DIP Order shall have been entered by the Bankruptcy Court, shall be in full force and effect, and shall not have been reversed, modified, amended, stayed, or vacated.

(e) Payment of Fees and Expenses. The Borrower shall have reimbursed the Agent and the Lenders for fees, costs, and expenses due and owing pursuant to Section 9.4 (in each case, to the extent invoiced at least one Business Day in advance).

(f) Litigation. Other than the Chapter 11 Cases, there shall be no order or injunction or pending litigation that is not stayed in which there is a reasonable possibility of a decision that would have a Material Adverse Effect and no pending litigation seeking to enjoin the transactions contemplated hereby.

(g) Secretary’s Certificate. The Agent shall have received a customary secretary’s certificate for the Borrower attaching (i) the Borrower’s articles of incorporation or organization or other similar document, certified by the applicable government authority, (ii) the Borrower’s bylaws or operating agreement, (iii) the resolutions of the Borrower’s board of directors or other appropriate governing body approving and authorizing the execution, delivery, and performance the Loan Documents, and (iv) incumbency specimens.

(h) Restructuring Support Agreements. The Lenders and the Agent shall have received restructuring support agreements, reasonably satisfactory in form and substance to the Lenders (the “Restructuring Support Agreements”), executed by creditors that hold at least two-thirds in amount and one-half in number of general unsecured claims owed by the Borrower and that are entitled to vote to accept or reject the Acceptable Plan, which shall remain in full force and effect and shall not have been terminated by any of the parties thereto.

(i) Other Information. (i) The Agent and the Lenders shall have received all documentation and other information about the Borrower that they reasonably determine is required by regulatory authorities under applicable “know your customer” and anti-money laundering laws, including the Patriot Act, and (ii) the Agent and the Lenders shall have received and be satisfied with such other information (financial or otherwise) with respect to the Borrower or the Chapter 11 Case reasonably requested by the Agent or the Lenders, as applicable.

(j) Representations and Warranties. All representations and warranties by the Borrower contained herein or in any other Loan Document shall be true and correct in all material respects (without duplication of any materiality qualifier contained therein) as of such date, except to the extent that such representation or warranty expressly relates to an earlier date

(in which event such representation or warranty shall be true and correct in all material respects (without duplication of any materiality qualifier contained therein) as of such earlier date).

(k) No Default. No Default or Event of Default shall have occurred or shall be continuing or would result after giving effect to this Agreement and the other Loan Documents.

(l) UCC and Lien Searches. The Agent shall have received appropriate UCC and mortgage search results, or their local equivalents, for the Borrower in its jurisdiction of organization and any other jurisdiction reasonably requested by the Lenders.

2.2. Conditions to Each Borrowing. The obligation of each Lender to advance any Loan hereunder is subject to satisfaction or waiver by the Lenders of the following conditions, each as of the date of such Borrowing:

(a) Borrowing Notice. The Agent shall have received a Notice of Borrowing in accordance with Section 1.4(a).

(b) DIP Order; RSA Assumption Order. (x) With respect to any Borrowing during the Initial Commitment Period, the Interim DIP Order shall have been entered by the Bankruptcy Court, shall be in full force and effect, and shall not have been reversed, modified, amended, stayed, or vacated, (y) with respect to any Borrowing following the expiration of the Initial Commitment Period, the Final DIP Order shall have been entered by the Bankruptcy Court, shall be in full force and effect, and shall not have been reversed, modified, amended, stayed, or vacated, and (z) with respect to any Borrowing following entry of the RSA Assumption Order by the Bankruptcy Court, the RSA Assumption Order shall be in full force and effect, and shall not have been reversed, modified, amended, stayed, or vacated.

(c) Representations and Warranties. All representations and warranties by the Borrower contained herein or in any other Loan Document shall be true and correct in all material respects (without duplication of any materiality qualifier contained therein) as of the date of such Borrowing, except to the extent that such representation or warranty expressly relates to an earlier date (in which event such representation or warranty shall be true and correct in all material respects (without duplication of any materiality qualifier contained therein) as of such earlier date).

(d) No Default. No Default or Event of Default shall have occurred or shall be continuing or would result after giving effect to any Loans.

The request by the Borrower and acceptance by the Borrower of the proceeds of any Loan shall be deemed to constitute, as of the date thereof and the date of such Borrowing, a representation and warranty by the Borrower that the conditions in this Section 2.2 have been satisfied.

ARTICLE III
REPRESENTATIONS AND WARRANTIES

The Borrower represents and warrants to the Agent and each Lender that the following are, and after giving effect to the funding of any Loan will be, true, correct, and complete:

3.1. Corporate Existence and Power. The Borrower:

(a) is duly organized, validly existing, and in good standing under the laws of the jurisdiction of its incorporation, organization, or formation, as applicable;

(b) has the power and authority and all governmental licenses, authorizations, Permits, consents, and approvals to own its assets, carry on its business and, subject to the entry of the DIP Order, to execute, deliver, and perform its obligations under the Loan Documents to which it is a party;

(c) is duly qualified and licensed and in good standing, under the laws of each jurisdiction where its ownership, lease, or operation of Property or the conduct of its business requires such qualification or license; and

(d) is in compliance with all Requirements of Law, except to the extent that the failure to comply therewith would not, in the aggregate, reasonably be expected to have a Material Adverse Effect.

3.2. Corporate Authorization; No Contravention. Subject to the entry of the DIP Order, the execution, delivery, and performance by the Borrower of this Agreement and each other Loan Document shall have been duly authorized by all necessary action, and do not and will not:

(a) contravene the terms of any of the Borrower's Organization Documents;

(b) other than as a result of the commencement of the Chapter 11 Case, conflict with or result in any breach or contravention of, or result in the creation of any Lien under, any document evidencing any contractual obligation to which the Borrower is a party or any order, injunction, writ, or decree of any Governmental Authority to which the Borrower or its Property is subject; or

(c) violate any Requirement of Law binding on the Borrower or its Property, except to the extent that any such violation would not, in the aggregate, reasonably be expected to have a Material Adverse Effect.

3.3. Governmental Authorization; Consents. Subject to the entry of the DIP Order, no material approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with the execution, delivery or performance by, or enforcement against, the Borrower of this Agreement or any other Loan Document except (a) recordings and filings in connection with

the Liens granted to the Agent under the Collateral Documents and (b) those obtained or made on or prior to the date hereof.

3.4. Binding Effect. Subject to the entry of the DIP Order, this Agreement and each other Loan Document shall constitute the legal, valid, and binding obligations of the Borrower, enforceable against the Borrower in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws affecting the enforcement of creditors' rights generally and by general equitable principles (whether enforcement is sought by proceedings in equity or at law).

3.5. Litigation. Except for audits conducted by taxing authorities and any related actions, suits, proceedings, claims, or disputes, or claims and disputes arising in connection with the Chapter 11 Case, there are no actions, suits, proceedings, claims, or disputes pending, or to the best knowledge of the Borrower, threatened or contemplated, at law, in equity, in arbitration or before any Governmental Authority, against the Borrower or any of its Properties which purport to affect or pertain to this Agreement, any other Loan Document, or any of the transactions contemplated hereby or thereby.

3.6. Margin Regulations. The Borrower is not engaged in the business of purchasing or selling Margin Stock or extending credit for the purpose of purchasing or carrying Margin Stock.

3.7. Regulated Entities. None of the Borrower, any Person controlling the Borrower, or any controlled subsidiary of the Borrower, is (a) an "investment company" within the meaning of the Investment Company Act of 1940 or (b) subject to regulation under the Federal Power Act, the Interstate Commerce Act, any state public utilities code, or any other federal or state statute, rule, or regulation limiting its ability to incur indebtedness or perform its Obligations under the Loan Documents.

3.8. Ownership and Possession of Property. The Borrower (a) has good and valid title to the Collateral as is necessary or used in the ordinary conduct of its business, (b) is in possession of the Pledged Aircraft and Pledged Engines, and (c) represents and warrants that Schedule 3.8 sets forth the (i) owner of each Pledged Aircraft and Pledged Engine, (ii) manufacturer, model, and serial number of each Pledged Aircraft and Pledged Engine, (iii) state of registration and registration number (if applicable) of each Pledged Aircraft and Pledged Engine, (iv) the habitual base of each Pledged Aircraft and Pledged Engine, (v) any lease agreements to which each Pledged Aircraft and Pledged Engine is subject, (vi) the Pledged Aircraft to which each Pledged Aircraft Engine relates (such Pledged Aircraft in context of each such Pledged Aircraft Engine, the "Related Pledged Aircraft", and each such Pledged Aircraft Engine in context of such Pledged Aircraft, the "Related Pledged Aircraft Engines") and if not currently installed on the Related Pledged Aircraft, the location of such Pledged Aircraft Engine or, if applicable, the Host Aircraft on to which such Pledged Aircraft Engine is installed, and (vii) the Host Aircraft or the Pledged Aircraft, as applicable, on to which each Pledged Spare Engine is installed or if not installed, the location of such Pledged Spare Engine.

3.9. Full Disclosure. None of the representations or warranties made by the Borrower in the Loan Documents as of the date such representations and warranties are made or deemed

made, and none of the statements contained in each exhibit, report, statement, or certificate furnished by or on behalf of the Borrower in connection with the Loan Documents (including the offering and disclosure materials, if any, delivered by or on behalf of the Borrower to the Agent or the Lenders prior to the date hereof), contains any untrue statement of a material fact or omits any material fact required to be stated therein or necessary to make the statements made therein, in light of the circumstances under which they are made, not misleading as of the time when made or delivered; provided that with respect to any projections, the Borrower represents only that such projections were prepared in good faith based upon estimates, information, and assumptions believed to be reasonable.

3.10. Sanctions, Foreign Assets Control Regulations, and Anti-Money Laundering. To the extent applicable, the Borrower and each controlled subsidiary of the Borrower is in compliance in all material respects with all economic sanctions laws, executive orders and implementing regulations of the United States, including but not limited to those promulgated by the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC"), as well as sanctions measures, laws, and regulations of the United Nations Security Council, the European Union or any member state thereof, and the United Kingdom, and any other relevant jurisdiction ("Sanctions"), and all applicable anti-money laundering and counter-terrorism financing laws, including the U.S. Money Laundering Control Act, the Bank Secrecy Act and all regulations issued pursuant to it, and any other similar laws to which the Borrower and any of its controlled subsidiaries may be subject. None of the Borrower or any of its controlled subsidiaries, or (to the Borrower's knowledge) any of their respective directors, officers, employees, or agents is organized, resident, or located in a country or territory that is itself the target of comprehensive or country-wide sanctions at any relevant time (currently Cuba, Iran, Syria, North Korea, and the Crimea region), or is otherwise the subject or target of any Sanctions or is owned or controlled by one or more Person that are the subject or target of any Sanctions, including but not limited to (a) a Person designated by the U.S. government on the list of the Specially Designated Nationals and Blocked Persons (the "SDN List") with which a U.S. Person cannot deal with or otherwise engage in business transactions, (b) a Person who is otherwise the target of U.S. economic sanctions laws such that a U.S. Person cannot deal or otherwise engage in business transactions with such Person, or (c) a Person controlled by (including by virtue of such person being a director or owning voting shares or interests), or who acts, directly or indirectly, for or on behalf of, any person or entity on the SDN List or a foreign government that is the target of U.S. economic sanctions prohibitions such that the entry into, or performance under, this Agreement or any other Loan Document would be prohibited under U.S. law. No part of the proceeds will be used directly or indirectly for the purpose of financing, or with respect to, any activities or business of or with any country or person that is the subject or target of Sanctions.

3.11. Foreign Assets Control Regulations. The Borrower and each of its controlled subsidiaries are in compliance with the Trading with the Enemy Act, and each of the foreign assets control regulations of the United States Treasury Department and any other enabling legislation or executive order relating thereto. No part of the proceeds of any Loan will be used directly or indirectly for any payments to any government official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain, or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977.

ARTICLE IV
AFFIRMATIVE COVENANTS

The Borrower covenants and agrees that, so long as any Lender shall have any Term Loan Commitment hereunder, or any Loan shall remain unpaid, unsatisfied or outstanding:

4.1. Notices; Other Information.

(a) The Borrower shall notify promptly the Agent and each Lender following (and in no event later than three Business Days after a Responsible Officer becomes aware thereof) the occurrence or existence of any Default, Event of Default, Total Loss, or Material Adverse Effect.

(b) The Borrower shall promptly forward or make available to the Agent and the Lenders any such business, financial, corporate affairs and other information regarding the Borrower, its subsidiaries, and the Collateral as the Agent or any Lender may from time to time reasonably request. For the avoidance of doubt, each Lender may share any such information, on a confidential basis, with any of such Lender's affiliates, employees, and financing sources.

4.2. Financial Reporting Requirements.

(a) As soon as available, but in any event not later than the 90th day following the end of each fiscal year of the Borrower ending on or after December 31, 2021, the Borrower shall deliver to the each Lender a copy of the audited consolidated balance sheet of the Borrower and its consolidated subsidiaries as at the end of such year and the related consolidated statements of operations, changes in common stockholders' equity and cash flows for such year, setting forth in each case, in comparative form the figures for and as of the end of the previous year.

(b) As soon as available, but in any event not later than the 45th day following the end of each quarterly period in each fiscal year of the Borrower, the Borrower shall deliver to each Lender a copy of the unaudited consolidated balance sheet of the Borrower and its consolidated subsidiaries as at the end of such quarter and the related unaudited consolidated statements of operations and cash flows of the Borrower and its consolidated subsidiaries for such quarter and the portion of the fiscal year through the end of such quarter, setting forth in each case, in comparative form the figures for and as of the corresponding periods of the previous year.

(c) As soon as available, but in any event not later than the 45th day following the end of each fiscal month (other than March, June, September, and December) of the Borrower, deliver to each Lender a copy of the unaudited consolidated balance sheet of the Borrower and its consolidated Subsidiaries as at the end of such month and the related unaudited consolidated statements of operations and cash flows of the Borrower and its consolidated Subsidiaries for such month and the portion of the fiscal year through the end of such month, setting forth in each case, in comparative form the figures for and as of the corresponding periods of the previous year, in a form customarily prepared by the Borrower, excluding, for the avoidance of doubt, any footnotes thereto.

(d) The Borrower shall provide to the Lenders on a weekly basis (commencing on the first Friday after the Closing Date), a report of (i) the Borrower's cash position and (ii) a summary reconciliation of the actual use of proceeds of any previous Borrowing as compared to the anticipated use of proceeds of such Borrowings as set forth in the Approved Budget, in each case for the week period which ended on the immediately preceding Friday.

4.3. Compliance with Laws; Maintenance of Existence. The Borrower (a) shall comply with all Requirements of Law of any Governmental Authority having jurisdiction over it or its business, except where the failure to comply would not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect, (b) shall preserve, renew, and keep in full force and effect its organizational existence, and (c) shall take all reasonable action to maintain all necessary or desirable governmental licenses, authorizations, Permits, consents, and approvals to own its assets and carry on its business.

4.4. Use of Proceeds. Subject to the terms of the DIP Order, the proceeds of the Loans shall be used solely (a) to repay in full and refinance the Bridge Loan Obligations, (b) to pay reasonable fees, costs, and expenses of the Lenders as contemplated by the Loan Documents, (c) to provide working capital and for other general corporate purposes of the Borrower and, to the extent authorized by the Bankruptcy Court, its non-Debtor affiliates, and (d) to pay administration costs of the Chapter 11 Case.

4.5. Further Assurances. Without any further order of the Bankruptcy Court, promptly upon request by the Agent (and the Agent shall make such request upon the direction of the Lenders), the Borrower shall take such additional actions and execute such documents as the Agent or the Lenders may reasonably require from time to time in order (a) to carry out more effectively the purposes of this Agreement or any other Loan Document, (b) to subject to the Liens created by any of the Collateral Documents all of the Collateral, (c) to perfect and maintain the validity, effectiveness, and priority of any of the Collateral Documents and the Liens created thereby, and (d) to better assure, convey, grant, assign, transfer, preserve, protect, and confirm to the Agent and the Lenders the rights granted or now or hereafter intended to be granted to the Agent or the Lenders under any Loan Document.

4.6. Bankruptcy Matters.

(a) The Borrower shall cause to occur or comply, as applicable, with each of the following (collectively, the "Milestones"):

(i) no more than 20 days after the Petition Date, the Borrower shall have filed a motion seeking entry of (A) the DIP Order and (B) one or more final orders authorizing the Borrower to assume all executed Restructuring Support Agreements (collectively, the "RSA Assumption Order"), in each case, in form and substance acceptable to the Lenders;

(ii) no later than 60 days after the Petition Date, (A) the Final DIP Order, and (B) the RSA Assumption Order each shall have been entered by the Bankruptcy Court;

(iii) no later than 60 days after the Petition Date, the Borrower shall have filed a plan of reorganization materially consistent with the Restructuring Support Agreements (an “Acceptable Plan”), a related disclosure statement (the “Disclosure Statement”), and a motion for a hearing on the Acceptable Plan and the Disclosure Statement, in each case reasonably acceptable to the Lenders;

(iv) no later than 120 days after the Petition Date, solicitation on the Acceptable Plan shall have been completed;

(v) no later than 150 days after the Petition Date, the Bankruptcy Court shall have entered a final order confirming the Acceptable Plan (the “Confirmation Order”) and a final order approving the Disclosure Statement (the “Disclosure Statement Order”), in each case in form and substance acceptable to the Lenders; and

(vi) no later than 180 days after the Petition Date, the effective date of the confirmed Acceptable Plan shall have occurred.

(b) The Borrower shall comply with the DIP Order in all material respects.

(c) The Borrower shall comply with the terms of the Restructuring Support Agreements in all material respects.

(d) The Borrower shall deliver to the Agent and the Lenders (i) as soon as practicable in advance of filing with the Bankruptcy Court, the proposed DIP Order and pleadings proposed to be filed seeking approval of the Loans (which, in each case, must be in form and substance reasonably satisfactory to the Agent and the Lenders prior to being filed), any other material filings proposed to be filed in the Chapter 11 Case, any plan of reorganization or liquidation, and any disclosure statement related to such plan; and (ii) reasonable access to information (including historical information) and senior management personnel.

4.7. OFAC; Anti-Money Laundering. The Borrower shall comply with the laws, regulations, and executive orders referred to in Sections 3.8 and 3.9.

4.8. Undertakings with respect to Collateral. The Borrower shall maintain, use, and operate the Collateral in accordance with the terms of Annex A, and in all cases, in accordance with the applicable Collateral Documents.

4.9. Conditions Subsequent. The Borrower shall:

(a) within five days from the date of this Agreement, provide the Agent with a copy of the current certificate of registration in respect of each Pledged Aircraft;

(b) within 30 days from the date of this Agreement, provide the Agent with (i) a duly executed and notarized original of each Pledged Aircraft Mortgage Agreement and Pledged Engine Mortgage Agreement, (ii) a certified true copy of a new certificate of registration for each Pledged Aircraft issued by the Aviation Authority noting the applicable Pledged Aircraft Mortgage Agreement and the DPOA, and (iii) evidence that nameplates have been affixed in accordance with Part 2 of Annex A attached hereto;

(c) within 30 days from the date of this Agreement, provide the Lenders with evidence satisfactory to the Lenders (including a certificate or certificates of insurance with respect to the Insurances) that the Insurances are and will continue in full force for the balance of the policy year (subject in the case of War Risks policies to usual termination or cancellation rights); and

(d) within 30 days from the date of this Agreement, provide a certificate of good standing from the applicable government authority certified as of a recent date.

ARTICLE V NEGATIVE COVENANTS

The Borrower covenants and agrees that, so long as any Lender shall have any Term Loan Commitment hereunder, or any Loan shall remain unpaid, unsatisfied, or outstanding:

5.1. Limitation on Liens. Except as provided in the DIP Order then in effect, the Borrower shall not, directly or indirectly, make, create, incur, assume, or suffer to exist any Lien upon any of its property or assets, including the Collateral, other than Permitted Liens, without the prior written consent of the Required Lenders.

5.2. Margin Stock; Use of Proceeds. The Borrower shall not, and shall not suffer or permit any of its controlled subsidiaries to, use any portion of the Loan proceeds, directly or indirectly, to purchase or carry Margin Stock or repay or otherwise refinance indebtedness of the Borrower or others incurred to purchase or carry Margin Stock, or otherwise in any manner which is in contravention of any Requirement of Law or in violation of any Loan Document.

5.3. Bankruptcy Matters.

(a) The Borrower shall not directly or indirectly, seek, consent to, incur, assume, create, permit, or suffer to exist (i) any material modification or amendment or stay or vacation to the DIP Order, without the prior written consent of the Agent and the Lenders; (ii) any Bankruptcy Court order materially impacting this financing or the Collateral in the Chapter 11 Case that is not, in form and substance, reasonably satisfactory to the Agent and the Lenders; (iii) a claim for any administrative expense or unsecured claim which is *pari passu* with or senior to the Superpriority Claim of the Agent and the Lenders in respect of the Obligations, except for the Carve-Out; or (iv) any Lien on any Collateral having a priority equal or senior to the Liens in favor of the Agent and the Lenders in respect of the Obligations (subject to the Carve-Out and Permitted Liens).

(b) The Borrower shall not make any expenditure except of the type and for the purposes provided for in the Approved Budget.

(c) The Borrower shall not take any action reasonably expected to frustrate (A) the confirmation of the Acceptable Plan and/or (B) the effectiveness of the Acceptable Plan, in each case without the prior written consent of the Required Lenders.

5.4. General Negative Covenants. The Borrower hereby covenants and agrees that, on and after the effective date of this Agreement and until the date that the Commitments hereunder have terminated and the principal of and interest on each of the Loans and all fees, expenses, and other amounts payable under any Loan Document (other than contingent indemnification obligations for which no claim or demand has been made) have been satisfied in full, in each case except as contemplated by the Restructuring Support Agreements or the Acceptable Plan, without the prior written consent of the Required Lenders (which may be evidenced by an email from the Agent's counsel), the Borrower will not, and will not permit any of its controlled subsidiaries to:

(a) make a public announcement in respect of, enter into any agreement or letter of intent with respect to, attempt to consummate or support any third party's attempt to consummate any transaction or agreement that would adversely impact the Loans or consummation of the Acceptable Plan;

(b) create, assume, incur, or suffer to exist any indebtedness other than in the ordinary course of business;

(c) assume, assign, or reject pursuant to section 365 of the Bankruptcy Code any material contract;

(d) increase any termination or severance entitlement whatsoever or pay any termination or severance pay to executives of the Borrower, or any of such subsidiaries;

(e) change its name, its fiscal year, amalgamate, consolidate with or merge into, dispose of all or substantially all of its assets, or enter into any similar transaction with any other entity;

(f) engage in any business other than the businesses engaged in by the Borrower on the date hereof and those reasonably incidental thereto Lenders;

(g) other than of a type consistent with intercompany arrangements existing on the date hereof, enter into or permit to exist any transaction (including the purchase, sale, lease or exchange of any property or the rendering of any service) with any affiliate on terms that are less favorable to the Borrower or such subsidiary, as the case may be, than those that might be obtained at the time from Persons who are not such an affiliate;

(h) seek or consent to a sale of any of the Collateral;

(i) enter into after the date hereof or allow to exist any contractual obligations (other than this Agreement) that limit the ability the Borrower to create, incur, answer, or suffer to exist Liens on the Collateral in favor of the Lenders with respect to the Loans and the Obligations hereunder;

(j) (A) divide into two or more Persons pursuant to a "plan of division" or similar method, or (B) create, or reorganize into, one or more Persons, in each case, as contemplated under the laws of any jurisdiction; and

(k) file a plan of reorganization or any related documents, including a disclosure statement and any plan supplement.

ARTICLE VI
SUPERPRIORITY CLAIMS, COLLATERAL, ETC.

6.1. Grant of Security.

(a) To secure the prompt payment and performance of any and all Obligations in respect of the Tranche A Term Loans, the Borrower hereby pledges, assigns, and grants to the Agent, for the benefit of the Tranche A Lenders, pursuant to sections 364(c)(2), 364(c)(3) and 364(d) of the Bankruptcy Code, effective as of the date of entry of the Interim DIP Order, a valid and automatically perfected first priority Lien and security interest in the Collateral (the “Tranche A DIP Liens”). The Tranche A DIP Liens granted herein shall be junior and subordinate in all respects to, but only to, (i) the Carve-Out and (ii) any Permitted Liens.

(b) To secure the prompt payment and performance of any and all Obligations in respect of the Tranche B Term Loans, the Borrower hereby pledges, assigns, and grants to the Agent, for the benefit of the Tranche B Lenders, pursuant to sections 364(c)(2) and 364(c)(3) of the Bankruptcy Code, effective as of the date of entry of the Interim DIP Order, a valid and automatically perfected second priority Lien and security interest in the Collateral (the “Tranche B DIP Liens” and, together with the Tranche A DIP Liens, the “DIP Liens”). The Tranche B DIP Liens granted herein shall be junior and subordinate in all respects to, but only to, (a) the Carve-Out, (b) any Permitted Liens, (c) the Tranche A DIP Liens, and (d) the liens securing the Bridge Loan Obligations.

6.2. Administrative Priority. The Borrower agrees that all Obligations hereunder shall constitute an allowed Superpriority Claim against it, pursuant to section 364(c)(1) of the Bankruptcy Code; provided that such Superpriority Claims shall be junior and subordinate in all respects to, but only to, the Carve-Out, and, in the case of Superpriority Claims with respect to the Tranche B DIP Obligations, the Adequate Protection Superpriority Claims (as defined in the DIP Order).

6.3. No Filings Required. The DIP Liens shall be deemed valid and perfected and duly recorded by entry of the Final DIP Order. Except for the registrations set forth in Section 4.8 and, with respect to the Mabuhay Miles Pledge Agreement, a chattel mortgage registration with the Register of Deeds in Pasay City, Philippines, neither the Agent nor the Lenders shall be required to file any financing statements, mortgages, notices of Lien or similar instruments in any jurisdiction or filing office or to take any other action in order to validate or perfect the Liens granted by or pursuant to the Final DIP Order or this Agreement.

6.4. No Discharge; Survival of Claims. The Borrower agrees that the Obligations shall not be discharged by the entry of an order confirming a plan of reorganization or liquidation and hereby waives any such discharge, unless all Term Loan Commitments have been terminated and the Obligations (other than contingent indemnity or reimbursement Obligations for which no claim has been asserted) have been indefeasibly paid in full in cash, or otherwise satisfied pursuant to Sections 1.8 and 1.9 hereof on or before the effective date of such plan.

6.5. Prohibition on Surcharge; Etc. Subject to entry of the Final DIP Order, no Person shall be permitted to surcharge the Collateral under section 506(c) of the Bankruptcy Code, nor shall any costs or expenses whatsoever be imposed against the Collateral, except for the Carve-Out. Until the termination of this Agreement or the dismissal of the Chapter 11 Case, the Bankruptcy Court will retain jurisdiction over the Collateral for the purpose of enforcing this Article VI.

6.6. Marshalling Obligations. Subject to entry of the Final DIP Order, the Agent and the Lenders shall not be subject to the equitable doctrine of marshalling. The Agent and the Lenders shall be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code and, subject to entry of the Final DIP Order, the “equities of the case” exception under section 552(b) of the Bankruptcy Code shall not apply to the Agent or the Lenders with respect to the proceeds, products, offsprings or profits of any of the Collateral.

6.7. Subordination. Each Tranche B Lender agrees that, until the indefeasible payment in full in cash, or other treatment acceptable to the Tranche A Lenders, of all Obligations (other than contingent indemnity or reimbursement Obligations for which no claim has been asserted) owed to the Tranche A Lenders, and except as otherwise set forth in this Agreement:

(a) The Tranche B DIP Lien shall be subordinate to the Tranche A DIP Lien;

(b) It shall not, directly or indirectly, (i) exercise or seek to exercise (or support any other Person in doing the same) any rights or remedies solely with respect to any Collateral (including the exercise of any right of setoff or recoupment) or institute (or support any other Person in doing the same) any action or proceeding with respect to such rights or remedies; (ii) contest, protest, or object to (or support any other Person in doing the same) any foreclosure proceeding or action brought by the Agent, on behalf of the Tranche A Lenders, or any other exercise by the Agent, on behalf of the Tranche A Lenders, or the Tranche A Lenders of any rights and remedies relating to the Collateral; or (iii) object to, contest, or oppose (or support any other Person in doing the same) the forbearance by the Agent or the Tranche A Lenders from bringing or pursuing any foreclosure proceeding or action or any other exercise of any rights or remedies relating to Collateral;

(c) The Agent and the Tranche A Lenders shall have the exclusive right to enforce any and all rights, exercise remedies (including set-off and recoupment and the right to credit bid any amount of its debt) and make determinations regarding the release, management, enforcement, disposition, or restrictions with respect to the Collateral, in each case in the exercise of its sole and absolute discretion, without any consultation with, notice to or the consent of the Tranche B Lenders;

(d) It shall not take or receive, directly or indirectly, in cash or other property or by setoff, counterclaim or in any other manner (whether pursuant to any enforcement, collection, execution, levy or foreclosure proceeding or otherwise), any Collateral or any proceeds of Collateral, in each case in connection with the exercise of any right or remedy (including set off), if any, with respect to any Collateral (or in respect of any Collateral in the event of the occurrence of any bankruptcy proceeding with respect to the Borrower);

(e) In the event that it receives any payment or distribution in breach of this Agreement, such payment or distribution shall not be commingled with any asset of such Tranche B Lender and shall be held in trust by such Tranche B Lender for the benefit of, and shall be promptly paid over and delivered to, the Agent for application in accordance with this Agreement; and

(f) It shall not have the right to rehypothecate, use, borrow, lend, pledge, or sell the Collateral.

ARTICLE VII EVENTS OF DEFAULT

7.1. Events of Default. Any of the following shall constitute an “Event of Default”:

(a) Non-Payment. The Borrower fails to pay when and as required to be paid herein, any amount of any Loan within three Business Days from the date that such amount has become due;

(b) Representation or Warranty. Any representation, warranty or certification by or on behalf of the Borrower made or deemed made herein, in any other Loan Document, or which is contained in any certificate, document, or financial or other statement by any such Person, or their respective Responsible Officers, furnished at any time under this Agreement, or in or under any other Loan Document, shall prove to have been incorrect in any material respect (without duplication of other materiality qualifiers contained therein) on or as of the date made or deemed made.

(c) Covenant Default. The Borrower shall default in the observance or performance of any agreement contained in Section 4.6 or Article V of this Agreement.

(d) Other Covenant Defaults. The Borrower fails to perform or observe any term, covenant or agreement contained in this Agreement (other than as provided in paragraphs (a) through (c) of this Section 7.1) or any other Loan Document, and such default shall continue unremedied for a period of ten days after the earlier to occur of (x) the date upon which a Responsible Officer of the Borrower becomes aware of such default and (y) the date upon which written notice thereof is given to the Borrower by the Agent, at the direction of the Lenders;

(e) Bankruptcy Defaults. The occurrence of any of the following in the Chapter 11 Case:

(i) the failure to meet any of the Milestones;

(ii) any Restructuring Support Agreement is terminated or ceases to be in full force and effect and results, when combined with any other Restructuring Support Agreements that have otherwise ceased to be in full force and effect as of such termination, in Restructuring Support Agreements then in full force and effect failing to r creditors that hold at least two-thirds in amount and one-half in number of general unsecured claims owed by the Borrower and that are entitled to vote to accept or reject the Acceptable Plan;

(iii) other than in connection with the payment in full or other satisfaction or refinancing of the Obligations, the filing of any motion, taking of any action or the filing of any reorganization or liquidation plan or disclosure statement in the Chapter 11 Case by the Borrower (A) to obtain financing under section 364(c) or (d) of the Bankruptcy Code that is senior to or *pari passu* with the financing provided under this Agreement, (B) to grant any Lien upon or affecting any Collateral that is senior to or *pari passu* with the Liens granted under the Collateral Documents, (C) to obtain administrative expense priority that is senior to or *pari passu* with the Obligations, except as expressly permitted in the DIP Order, or (D) that is otherwise materially adverse to the rights and remedies granted to the Agent or the Lenders hereunder or under the DIP Order;

(iv) this Agreement, any of the other Loan Documents or the DIP Order for any reason ceases to be in full force and effect or is declared to be null and void by a court of competent jurisdiction, or the Borrower shall seek to, or shall support (in any such case by way of any motion or other pleading filed with the Bankruptcy Court or any other writing to another party-in-interest executed by or on behalf of the Borrower or such Person) any other Person's motion to, disallow in whole or in part the Agent's or the Lenders' claims in respect of the Obligations or to challenge the validity of any portion of the Loan Documents, the Loans or the Obligations, or enforceability of the same, or which seeks to void, limit, subordinate or otherwise adversely affect any payment pursuant to the Loan Documents or the DIP Orders;

(v) the filing by the Borrower of a motion or other pleading seeking entry of an order, or the Bankruptcy Court shall enter any order, revoking, reversing, staying, vacating, rescinding, or materially modifying, supplementing, or amending the DIP Order currently in effect, the Disclosure Statement Order, or the Confirmation Order, in each case without the prior written consent of the Required Lenders;

(vi) the Bankruptcy Court shall enter any order (which has not been reversed or vacated within five days) (A) appointing a chapter 11 trustee under section 1104 of the Bankruptcy Code in the Chapter 11 Case or (B) appointing an examiner with enlarged powers (powers beyond those set forth in section 1106(a)(3) and (4) of the Bankruptcy Code) under section 1106(b) of the Bankruptcy Code in the Chapter 11 Case or otherwise;

(vii) the filing by the Borrower or any controlled subsidiary thereof of a motion or other pleading seeking entry of an order dismissing the Chapter 11 Case or converting the Chapter 11 Case to a case under Chapter 7 of the Bankruptcy Code; or

(viii) an order is entered dismissing the Chapter 11 Case, or converting the Chapter 11 Case to a case under Chapter 7 of the Bankruptcy Code;

(ix) the entry of a final non-appealable order in the Chapter 11 Case (A) charging any of the Collateral under section 506(c) of the Bankruptcy Code against the Agent or the Lenders; or (B) avoiding, limiting, modifying, subordinating, or

recharacterizing any of the Obligations or requiring disgorgement by the Lenders of any amounts received in respect of the Obligations;

(x) payment by the Borrower of prepetition debt (other than as approved by the Bankruptcy Court and as otherwise contemplated by this Agreement, the DIP Order, the Restructuring Support Agreements, the Acceptable Plan, or with the prior written consent of the Required Lenders (which may be evidenced by an email from the Agent's counsel);

(xi) without the prior written consent of the Required Lenders, (A) if a plan of reorganization or liquidation is filed by the Borrower in the Chapter 11 Case, or an order shall be entered by the Bankruptcy Court confirming any plan in the Chapter 11 Case, that is not an Acceptable Plan, or (B) the Borrower withdraws any Acceptable Plan after having been filed in the Chapter 11 Case; or

(xii) any motion for any of the orders described in clauses (ii) through (xi) above shall be made by a Person other than the Borrower, the Agent, or any Lender, and such application is not being diligently contested by the Borrower in good faith.

(f) Collateral. Any material provision of any Collateral Document shall for any reason cease to be valid and binding on or enforceable against the Borrower or the Borrower shall so state in writing or shall bring an action to limit its obligations or liabilities thereunder; or any Collateral Document (together with the DIP Order) shall for any reason (other than pursuant to the terms thereof) cease to create a valid Lien on the Collateral purported to be covered thereby; or the Tranche A DIP Lien shall for any reason cease to be a perfected and first priority Lien, subject only to the Carve-Out and Permitted Liens; or the Tranche B DIP Lien shall for any reason cease to be a perfected and second priority Lien, subject only to the Carve-Out, Permitted Liens and the Tranche A DIP Lien.

7.2. Remedies. Except in the case of clause (a) below which shall require no prior written notice, on not less than five Business Days' prior written notice by the Agent to counsel for the Borrower, the Office of the United States Trustee and counsel to any official committee of unsecured creditors appointed in the Chapter 11 Case of the occurrence and continuance of an Event of Default and without any further order of the Bankruptcy Court, the Agent may, and at the direction of the Required Lenders shall:

(a) Declare, on a pro rata basis, all or any portion of the Term Loan Commitments to be suspended or terminated, whereupon such Term Loan Commitments shall forthwith be suspended or terminated;

(b) Declare all or any portion of the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Documents to be immediately due and payable (such event being referred to herein as an "Acceleration") without presentment, demand, protest or (except as provided above) other notice of any kind, all of which are hereby expressly waived by the Borrower;

(c) Exercise on behalf of itself and the Lenders all rights and remedies available to it and the Lenders under the Loan Documents, the DIP Order or applicable law, in each case, without further order of or application or motion to the Bankruptcy Court, and without restriction or restraint by any stay under sections 362 or 105 of the Bankruptcy Code.

The Borrower shall not seek to enjoin, hinder, delay or object to the Agent's exercise of rights and remedies in accordance with this Agreement, and at any proceeding with respect to the Agent's exercise of rights and remedies, the Borrower shall not be entitled to raise any substantive objections, other than to challenge the occurrence of the relevant Event of Default.

7.3. Rights Not Exclusive. The rights provided for in this Agreement are cumulative and are not exclusive of any other rights, powers, privileges or remedies provided by law or in equity, or under any other instrument, document or agreement now existing or hereafter arising.

ARTICLE VIII THE AGENT

8.1. Authorization and Action.

(a) Each Lender hereby irrevocably appoints Buona Sorte Holdings, Inc. to act as the Agent hereunder and under the other Loan Documents and authorizes the Agent to take such actions on its behalf and to exercise such powers as are delegated to the Agent by the terms hereof and thereof, together with such actions and powers as are reasonably incidental thereto.

(b) The provisions of this Article are solely for the benefit of the Agent and the Lenders, and neither the Borrower nor any other Person shall have rights as a third party beneficiary of any of such provisions.

8.2. The Agent Individually.

(a) Any Person serving as the Agent hereunder who is also a Lender shall have the same rights and powers in its capacity as a Lender and may exercise the same as though it were not the Agent. Each such Person and its affiliates may accept deposits from, lend money to, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Borrower or an affiliate thereof as if such Person were not the Agent hereunder and without any duty to account therefor to the Lenders.

(b) Each Lender acknowledges that the Agent and its affiliates are engaged in a wide range of financial activities and businesses and may engage in such activities with or on behalf of the Borrower or its affiliates. The Lenders acknowledge that, pursuant to such activities, the Agent or its affiliates may receive information regarding the Borrower or any of its affiliates (including information that may be subject to confidentiality obligations in favor of such Borrower or affiliate) and acknowledge that the Agent shall not be under any obligation to provide such information to them.

8.3. Duties of the Agents: Exculpatory Provisions.

(a) The Agent's duties hereunder and under the other Loan Documents are solely mechanical and administrative in nature, and the Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents. Without limiting the generality of the foregoing, the Agent:

(i) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(ii) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Agent is required to exercise upon the written direction of the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents); provided that the Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose it or any of its affiliates to liability or that is contrary to any Loan Documents or applicable law; and

(iii) except as expressly set forth herein and in the other Loan Documents, shall not have any duty to disclose or be liable for the failure to disclose, any information relating to the Borrower or any of their affiliates that is communicated to or obtained by the Agent or any of its affiliates in any capacity.

(b) The Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Agent shall believe in good faith shall be necessary, under the circumstances as provided in Section 9.1 or elsewhere herein) or (ii) in the absence of its own gross negligence or willful misconduct as determined by a court of competent jurisdiction in a final non-appealable judgment, in connection with its duties expressly set forth herein. The Agent shall not be deemed to have knowledge of any Default or the event or events that give or may give rise to any Default unless and until written notice describing such Default and such event or events is given to the Agent by the Borrower or any Lender.

8.4. Reliance by the Agent.

(a) The Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document, or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of any Loan that by its terms must be fulfilled to the satisfaction of a Lender, the Agent may presume that such condition is satisfactory to such Lender unless the Agent shall have received notice to the contrary from such Lender prior to the making of such Loan. The Agent may consult with legal counsel (who may be counsel for the Borrower), independent

accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants, or experts.

(b) The Agent shall be fully justified in failing or refusing to take any action under any Loan Document unless it shall first receive such advice or concurrence of the Required Lenders as it deems appropriate and, if it so requests, it shall first be indemnified to its satisfaction by the Lenders against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action. The Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement or any other Loan Document in accordance with a request or consent of the Required Lenders (or such greater number of the Lenders as may be expressly required hereby in any instance) and such request and any action taken or failure to act pursuant thereto shall be binding upon all the Lenders; provided that the Agent shall not be required to take any action that, in its opinion or in the opinion of its counsel, may expose the Agent to liability or that is contrary to any Loan Document or applicable law.

8.5. Delegation of Duties. The Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Documents by or through any one or more sub-agents appointed by the Agent. The Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Persons. Each such sub-agent and the Related Persons of the Agent and each such sub-agent shall be entitled to the benefits of all provisions of this Article VIII (among other relevant provisions of this Agreement) and (as though such sub- Agents were the Agent under the Loan Documents) as if set forth in full herein with respect thereto; provided that the Agent shall not be responsible for the negligence or misconduct of any sub-agents.

8.6. Resignation of the Agent. The Agent may at any time give notice of its resignation to the Lenders and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right to appoint a successor, which shall be a commercial bank or financial institution reasonably acceptable to the Required Lenders. If no such successor Agent shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after notice was given, then the Agent may (but shall not be obligated to) appoint a successor Agent meeting the qualifications set forth above. Whether or not a successor has been appointed, such resignation shall become effective in accordance with such notice on such effective date and (a) the retiring Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents and (b) all payments, communications and determinations provided to be made by, to or through the retiring Agent shall instead be made by or to each Lender directly, until such time as the Required Lenders appoint a successor Agent as provided above. Upon the acceptance of a successor's appointment as Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Agent, and the retiring Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents. The fees payable by the Borrower to a successor Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring Agent's resignation hereunder and under the other Loan Documents, the provisions of this Article shall continue in effect for the benefit of such retiring Agent, its sub-agents, and their respective Related Persons in respect of any actions taken or omitted to be taken by any of them

while the retiring Agent was acting as Agent under this Agreement. Upon resignation of the Agent, the fees paid to the Agent and the successor Agent shall be paid pro rata for the applicable years.

8.7. Non-Reliance on the Agent and Other Lenders.

(a) Each Lender confirms to the Agent, each other Lender and each of their respective Related Persons that it (i) possesses such knowledge and experience in financial and business matters that it is capable, without reliance on the Agent, any other Lender or any of their respective Related Persons, of evaluating the merits and risks (including tax, legal, regulatory, accounting and other financial matters) of entering into this Agreement, making Loans and other extensions of credit hereunder and under the other Loan Documents and in taking or not taking actions hereunder and thereunder, (ii) is financially able to bear such risk, and (iii) has determined that entering into this Agreement and making Loans and other extensions of credit hereunder and under the other Loan Documents is suitable and appropriate for it.

(b) Each Lender acknowledges that it is solely responsible for making its own independent appraisal and investigation of all risks arising under or in connection with this Agreement and the other Loan Documents and that it has, independently and without reliance upon the Agent or any other Lender or any of their respective Related Persons and based on such documents and information, as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon the Agent or any other Lender or any of their Related Persons and based on such documents and information as it shall from time to time deem appropriate, continue to be solely responsible for making its own independent appraisal and investigation of all risks arising under or in connection with this Agreement and the other Loan Documents, including:

- (i) the financial condition, status, and capitalization of the Borrower;
- (ii) the legality, validity, effectiveness, adequacy, or enforceability of this Agreement and each other Loan Documents and any other agreement, arrangement, or document entered into, made or executed in anticipation of, under, or in connection with any Loan Documents;
- (iii) determining compliance or non-compliance with any condition hereunder to the making of Loans; and
- (iv) the adequacy, accuracy, and/or completeness of any of the information delivered by the Agent, any other Lender or by any other Person under or in connection with this Agreement or any other Loan Documents, the transactions contemplated by this Agreement and the other Loan Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Loan Documents.

8.8. Indemnification. Each Lender severally agrees to indemnify and hold harmless the Agent (to the extent not promptly reimbursed by the Borrower) from and against such

Lender's ratable share of any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses, or disbursements of any kind or nature whatsoever that may be imposed on, incurred by, or asserted against the Agent in any way relating to or arising out of the Loan Documents or any action taken or omitted by the Agent under the Loan Documents (collectively, the "Indemnified Costs"); provided that no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses, or disbursements resulting from the Agent's gross negligence or willful misconduct as found in a final, non-appealable judgment by a court of competent jurisdiction; provided that, any act taken with the consent or in accordance with the directions of the Required Lenders (or such other number or percentage of the Lenders as shall be required by the Loan Documents) shall be deemed to not constitute gross negligence or willful misconduct for purposes of this Agreement. Without limitation of the foregoing, each Lender agrees to reimburse the Agent promptly upon demand for its ratable share of any costs and expenses (including reasonable fees and disbursements of counsel) payable by the Borrower hereunder, to the extent that the Agent is not promptly reimbursed for such costs and expenses by the Borrower. In the case of any investigation, litigation or proceeding giving rise to any Indemnified Costs, this Section 8.8 applies whether any such investigation, litigation or proceeding is brought by any Lender or any other Person and whether or not the Agent is a party to such investigation, litigation or proceeding. Without prejudice to the survival of any other agreement of any Lender hereunder, the agreement and obligations of each Lender contained in this Section 8.8 shall survive the payment in full of principal, interest and all other amounts payable hereunder and under the other Loan Documents.

ARTICLE IX MISCELLANEOUS

9.1. Amendments and Waivers.

(a) No amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent with respect to any departure by the Borrower therefrom, shall be effective unless the same shall be in writing and signed by the Agent, the Required Lenders and the Borrower, and then such waiver shall be effective only in the specific instance and for the specific purpose for which given; provided that no amendment or waiver shall:

(i) reduce or forgive the amount or extend the scheduled date of maturity of any Loan or reduce the stated rate of any interest or fee payable hereunder (other than as a result of any waiver of the applicability of any post-default increase in interest rate) or extend the scheduled date of any payment thereof or increase the amount or extend the expiration date of any Lender's Term Loan Commitment or change the currency in which any Loan is payable, in each case without the consent of each Lender directly and adversely affected thereby (it being understood that waivers or modifications of conditions precedent, covenants, Defaults or Events of Default shall not constitute an increase of the Term Loan Commitment of any Lender);

(ii) amend, modify, or waive any provision of this Section 9.1(a) or reduce the percentage specified in the definition of "Required Lenders" or consent to the assignment or transfer by the Borrower of any of its rights and obligations under this

Agreement and the other Loan Documents, in each case without the written consent of all the Lenders; or

(iii) release all or substantially all of the value of all or substantially all of the Collateral, in each case without the consent of all of the Lenders, except as expressly permitted hereby or by the DIP Order.

(b) No amendment, waiver, or consent to this Agreement or any other Loan Document shall become effective prior to delivery of a copy of such amendment, waiver, or consent to the Lenders.

(c) The parties hereto shall be permitted to amend this Agreement and the other Loan Documents without further approval or order of the Court to the extent provided in the DIP Order.

9.2. Notices.

(a) Addresses. All notices and other communications required or expressly authorized to be made by this Agreement shall be given in writing or by Electronic Transmission, unless otherwise expressly specified herein, and addressed to the address set forth on the applicable signature page hereto.

(b) Effectiveness. All communications described in clause (a) above and all other notices, demands, requests, and other communications made in connection with this Agreement shall be effective and be deemed to have been received (i) if delivered by hand, upon personal delivery, (ii) if delivered by overnight courier service, one Business Day after delivery to such courier service, (iii) if delivered by mail, three Business Days after deposit in the mail, (iv) if by facsimile transmission, upon sender's receipt of confirmation of successful transmission, and (v) if by electronic mail, upon successful delivery.

(c) Each Lender and the Agent shall notify the Borrower in writing of any changes in the address to which notices to such Lender or the Agent should be directed.

9.3. No Waiver; Cumulative Remedies. No failure to exercise and no delay in exercising, on the part of the Agent or any Lender, any right, remedy, power, or privilege hereunder, shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege. No course of dealing between the Borrower, the Agent, or any Lender shall be effective to amend, modify, or discharge any provision of this Agreement or any of the other Loan Documents.

9.4. Costs and Expenses; Yield Protection; Indemnity; Etc.

(a) Any action taken by the Borrower under or with respect to any Loan Document, even if required under any Loan Document or at the request of the Agent or the Lenders, shall be at the expense of the Borrower, and neither the Agent nor the Lenders shall be required under any Loan Document to reimburse the Borrower therefor. In addition, subject to the DIP Order, but regardless of whether or not the transactions contemplated hereby shall be

consummated, the Borrower agrees to pay or reimburse the Agent and the Lenders for their reasonable and documented out-of-pocket fees, costs and expenses, whether accrued on, prior to, or after the Closing Date, which shall be part of the Obligations, in connection with:

(i) the preparation, negotiation, and execution of the Interim DIP Order and the Final DIP Order;

(ii) the preparation, negotiation, execution, and administration of the Loan Documents and any other document prepared in connection therewith or the consummation and administration of any transaction contemplated therein, including any amendment, consent, waiver, assignment, restatement, or supplement thereto;

(iii) the funding of the Loans;

(iv) the creation, perfection, or protection of the DIP Liens (including all search, filing, and recording fees);

(v) internal audit reviews and field examinations;

(vi) the enforcement or preservation of any right or remedy under any Loan Document, any Obligation, or with respect to the Collateral;

(vii) the commencement, defense, conduct of, intervention in, or the taking of any other action (including preparation for and/or response to any subpoena or request for document production relating thereto) with respect to, any proceeding related to the Borrower, any Loan Document, or Obligation;

(viii) the review of pleadings and other filings made with the Bankruptcy Court;

(ix) the Chapter 11 Case, including, but not limited to, attendance at hearings in respect of the Chapter 11 Case;

(x) any refinancing or restructuring of the Loans in the nature of a “work-out”; and

(xi) defending and prosecuting any actions or proceedings arising out of or relating to the Obligations or any transactions related to arising in connection with the Loan Documents;

provided that, in the case of each of the foregoing clauses (i)-(xi), Attorney Costs shall be limited to one law firm on behalf of the Agent and the Lenders and, to the extent necessary, one local counsel in each relevant jurisdiction (and in the case of an actual or perceived conflict of interest, one additional law firm on behalf of the Agent or the affected Lender, as applicable).

(b) If, due to a change in law, there shall be any increase in the cost to any Lender of agreeing to make or of making, funding, or maintaining Loans, including costs in the nature of Taxes (other than Indemnified Taxes and Excluded Taxes), then the Borrower shall

from time to time, upon demand by such Lender, pay to the Agent for the account of such Lender additional amounts sufficient to compensate such Lender for such increased cost. A certificate as to the amount of such increased cost, submitted to the Borrower by such Lender, shall be conclusive and binding for all purposes, absent manifest error.

(c) The Borrower agrees to indemnify, defend, and save and hold harmless the Agent and each Lender and each of their Related Persons and their respective officers, directors, employees, agents, and advisors (each, in its capacity as such, an “Indemnitee”) from and against, and shall pay on demand, any and all claims, damages, losses, liabilities, and expenses (including Attorney Costs) that may be incurred by or asserted or awarded against any Indemnitee, in each case arising out of or in connection with or by reason of (including in connection with any investigation, litigation, or proceeding or preparation of a defense in connection therewith) this Agreement, the other Loan Documents, the transactions contemplated hereby or thereby or the actual or proposed use of the proceeds of the Loans, except to the extent such claim, damage, loss, liability, or expense is found in a final, non-appealable judgment by a court of competent jurisdiction (or a settlement tantamount thereto) to have resulted from such Indemnitee’s bad faith, gross negligence, or willful misconduct; provided that any such Attorney Costs shall be limited to one law firm on behalf of the Agent and the Lenders and, to the extent necessary, one local counsel in each relevant jurisdiction (and in the case of an actual or perceived conflict of interest, one additional law firm on behalf of the Agent or the affected Lender, as applicable). In the case of an investigation, litigation, or other proceeding to which the indemnity applies, such indemnity shall be effective whether or not such investigation, litigation, or proceeding is brought by the Borrower, its directors, shareholders, or creditors, whether or not any Indemnitee is otherwise a party thereto and whether or not the transactions contemplated hereby are consummated. The Borrower also agrees not to assert any claim against (in each case, in its capacity as such) any Agent, any Lender, or any of their respective Related Persons on any theory of liability, for special, indirect, consequential, or punitive damages arising out of or otherwise relating to this Agreement, the other Loan Documents, the transactions contemplated hereby, or thereby or the actual or proposed use of the proceeds of the Loans.

(d) The Borrower and the Agent shall be entitled to deduct and withhold any Taxes that are required to be deducted or withheld under applicable law from any amounts payable under any Loan Document. If any Taxes are required by applicable law to be deducted or withheld by the Borrower or the Agent from or in respect of any amount payable under any Loan Document to a Lender, (i) the Borrower or the Agent, as the case may be, shall make such deductions, (ii) the Borrower or the Agent, as the case may be, shall timely pay the full amount deducted to the relevant taxing authority or other authority in accordance with applicable Requirements of Law, and in the case of a payment by the Borrower, deliver to the Agent an original or certified copy of a receipt evidencing such payment, and (iii) if such Taxes are Indemnified Taxes, the amount payable by the Borrower shall be increased as necessary so that after such deductions have been made (including such deductions applicable to additional amounts payable under this Section), such Lender receives the amount it would have received had no such deductions been made. Each Lender shall deliver to the Agent and the Borrower, and the Agent shall deliver to the Borrower, on or before the date on which such Person becomes a party to this Agreement and from time to time thereafter, such properly completed and executed Tax forms or other Tax documentation reasonably requested by the Agent or the

Borrower as will permit payments under the Loan Documents to be made without withholding or at a reduced rate of withholding or as may be required by the Agent or the Borrower to comply with the requirements of any taxing authority with respect to the transactions contemplated hereby.

(e) If a Lender requests compensation for increased costs pursuant to clause (b) of this Section, the Borrower is required to indemnify an Indemnitee pursuant to clause (c) of this Section, or the Borrower is required to pay additional amounts to a Lender pursuant to clause (d) of this Section, then such Lender or Indemnitee shall, at the request of the Borrower, use reasonable efforts to mitigate the effects of the event giving rise to such request or payment.

(f) All the fees, costs, and expenses set forth in this Section 9.4 that have accrued on or prior to the Closing Date shall be paid by the Borrower on such date (and may be netted out of Loans incurred on such date). Any amounts payable pursuant to this Section 9.4 following the Closing Date shall be paid within three Business Days of receipt of an invoice relating thereto setting forth such expenses in reasonable detail, subject to the terms and conditions of the DIP Order.

9.5. Payments Set Aside. To the extent that any of the Agent or the Lenders receives a payment from the Borrower, from the proceeds of the Collateral, from the exercise of its rights of setoff, any enforcement action or otherwise, and such payment is subsequently, in whole or in part, invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver, or any other party, then to the extent of such recovery, the Obligation or part thereof originally intended to be satisfied, and all Liens, rights, and remedies therefor, shall be revived and continued in full force and effect as if such payment had not occurred.

9.6. Assignments. The Borrower may not assign or transfer any of its rights or obligations under this Agreement without the prior written consent of each Lender. The rights and obligations of each Lender under this Agreement (including all or a portion of its Term Loan Commitment(s) and the Loans at the time owing to it) shall be assignable by such Lender upon prior written notice to the Borrower; provided that (a) unless an Event of Default shall have occurred and be continuing, such assignment shall not be effective without the prior written consent of the Borrower (such consent not to be unreasonably withheld or delayed); provided that if the Borrower, within 5 Business Days of written request therefor, shall not have consented or notified the applicable Lender in writing that the Borrower will not consent, the Borrower shall be deemed to have consented to such assignment, (b) the parties to each assignment shall execute and deliver to the Agent an assignment and assumption agreement in such form approved by the Agent acting reasonably, and (c) if the assignee is not a Lender, then the assignee shall deliver to the Agent all documentation and other information about such assignee that the Agent reasonably determines is required by regulatory authorities under applicable “know your customer” and anti-money laundering laws, and following the receipt by the Agent of the foregoing, it shall record the assignment in the Register.

9.7. Binding Effect. Subject to Section 2.1 hereof, this Agreement shall become effective when it shall have been executed by the Borrower, the Agent and the Lenders. Thereafter, it shall be binding upon and inure to the benefit of the Borrower, the estate of the Borrower, any trustee, or successor in interest of the Borrower in any chapter 11 Case or any

subsequent case commenced under chapter 7 of the Bankruptcy Code or any other bankruptcy or insolvency laws, the Agent and each Lender and, in each case, their respective successors and permitted assigns.

9.8. Counterparts; Facsimile Signature. This Agreement may be executed in any number of counterparts and by different parties in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Signature pages may be detached from multiple separate counterparts and attached to a single counterpart. Delivery of an executed signature page of this Agreement by facsimile transmission or Electronic Transmission shall be as effective as delivery of a manually executed counterpart hereof.

9.9. Severability. The illegality or unenforceability of any provision of this Agreement or any instrument or agreement required hereunder shall not in any way affect or impair the legality or enforceability of the remaining provisions of this Agreement or any instrument or agreement required hereunder.

9.10. Captions. The captions and headings of this Agreement are for convenience of reference only and shall not affect the interpretation of this Agreement.

9.11. Independence of Provisions. The parties hereto acknowledge that this Agreement and the other Loan Documents may use several different limitations, tests, or measurements to regulate the same or similar matters, and that such limitations, tests, and measurements are cumulative and must each be performed, except as expressly stated to the contrary in this Agreement.

9.12. Interpretation. This Agreement is the result of good faith negotiations among the parties hereto and has been reviewed by counsel to the Borrower, the Agent, and each Lender. Accordingly, this Agreement and the other Loan Documents shall not be construed against the Borrower, the Agent, or the Lenders merely because of the Borrower's, the Agent's, or the Lenders' involvement in the preparation of such documents and agreements. Without limiting the generality of the foregoing, each of the parties hereto has had the advice of counsel with respect to Sections 9.14 and 9.15.

9.13. No Third Parties Benefited. This Agreement is made and entered into for the sole protection and legal benefit of the Borrower, the Agent and the Lenders and their successors and permitted assigns, and no other Person shall be a direct or indirect legal beneficiary of, or have any direct or indirect cause of action or claim in connection with, this Agreement or any of the other Loan Documents. The Lenders shall not have any obligation to any Person not a party to this Agreement or the other Loan Documents.

9.14. Governing Law and Jurisdiction.

(a) Governing Law. The laws of the State of New York shall govern all matters arising out of or in connection with this Agreement, including its validity, interpretation, construction, performance, and enforcement (including any claims sounding in contract or tort law arising out of the subject matter hereof and any determinations with respect to post-judgment interest), except to the extent that the application of the Bankruptcy Code is mandatory.

(b) Submission to Jurisdiction. Any legal action or proceeding with respect to any Loan Document over which the Bankruptcy Court does not have, or declines to exercise, jurisdiction shall be brought exclusively in the courts of the State of New York located in the City of New York, Borough of Manhattan, or of the United States of America for the Southern District of New York, and in appellate courts from any of the foregoing, and, by execution and delivery of this Agreement, each party hereto hereby accepts for itself and in respect of its Property, generally and unconditionally, the jurisdiction of the aforesaid courts. The parties hereto hereby irrevocably waive any objection, including any objection to the laying of venue or based on the grounds of forum non conveniens, that any of them may now or hereafter have to the bringing of any such action or proceeding in such jurisdictions.

(c) Service of Process. Each party hereto hereby irrevocably waives personal service of any and all legal process, summons, notices, and other documents and other service of process of any kind and consents to such service in any suit, action, or proceeding brought in the United States of America or the Philippines with respect to or otherwise arising out of or in connection with any Loan Document by any means permitted by applicable Requirements of Law, including by the mailing thereof (by registered or certified mail, postage prepaid) to the address of such party specified herein (and shall be effective when such mailing shall be effective, as provided therein). Each party hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

9.15. Waiver of Jury Trial. EACH PARTY HERETO, TO THE EXTENT PERMITTED BY LAW, WAIVES ALL "RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT, OR PROCEEDING ARISING OUT OF, IN CONNECTION WITH OR RELATING TO, THIS AGREEMENT, THE OTHER LOAN DOCUMENTS AND ANY OTHER TRANSACTION CONTEMPLATED HEREBY AND THEREBY. THIS WAIVER APPLIES TO ANY ACTION, SUIT OR PROCEEDING WHETHER SOUNDING IN TORT, CONTRACT OR OTHERWISE.

9.16. Entire Agreement; Release; Survival.

(a) THE LOAN DOCUMENTS EMBODY THE ENTIRE AGREEMENT OF THE PARTIES AND SUPERSEDE ALL PRIOR AGREEMENTS AND UNDERSTANDINGS RELATING TO THE SUBJECT MATTER HEREOF AND ANY PRIOR LETTER OF INTEREST, COMMITMENT LETTER AND SIMILAR AGREEMENTS INVOLVING THE BORROWER, THE AGENT AND ANY LENDER OR ANY OF THE AGENT'S OR THE LENDERS' AFFILIATES RELATING HERETO. IN THE EVENT OF ANY CONFLICT BETWEEN THE TERMS OF THIS AGREEMENT AND ANY OTHER LOAN DOCUMENT

(OTHER THAN THE FINAL DIP ORDER CURRENTLY IN EFFECT, IN WHICH CASE SUCH FINAL DIP ORDER SHALL GOVERN), THE TERMS OF THIS AGREEMENT SHALL GOVERN (UNLESS OTHERWISE EXPRESSLY STATED IN SUCH OTHER LOAN DOCUMENT OR SUCH TERMS OF SUCH OTHER LOAN DOCUMENTS ARE NECESSARY TO COMPLY WITH APPLICABLE REQUIREMENTS OF LAW, IN WHICH CASE SUCH TERMS SHALL GOVERN TO THE EXTENT NECESSARY TO COMPLY THEREWITH).

(b) Subject to entry of the Interim DIP Order, execution of this Agreement by the Borrower constitutes a full, complete and irrevocable release of any and all claims against the Agent or any Lender (in each case, in its capacity as such) which the Borrower may have at law or in equity in respect of all prior discussions and understandings, oral or written, relating to the subject matter of this Agreement and the other Loan Documents.

(c) Any indemnification or other protection provided to any Indemnatee pursuant to this Agreement shall (x) survive the termination of the Term Loan Commitments and the payment in full or other satisfaction of all other Obligations and (y) inure to the benefit of any Person that at any time held such a right thereunder (as an Indemnatee or otherwise) and, thereafter, its successors and permitted assigns.

9.17. Patriot Act. Each Lender and the Agent that is subject to the Bank Secrecy Act hereby notifies the Borrower that pursuant to the requirements of the Patriot Act, it is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow such Lender or the Agent to identify the Borrower in accordance with the Patriot Act.

ARTICLE X DEFINITIONS

10.1. Defined Terms. The following terms are defined in the Sections or subsections referenced opposite such terms:

<u>Term</u>	<u>Section</u>
Acceleration	7.2(b)
Acceptable Plan	4.6(a)(iii)
Agent	Preamble
Agreement	Preamble
Approved Budget	2.1(c)
Bankruptcy Court	Recitals
Borrower	Preamble
Chapter 11 Case	Recitals
Confirmation Order	4.6(a)(v)
Conversion Shares	1.9
Debtor	Preamble
Disclosure Statement	4.6(a)(iii)
Disclosure Statement Order	4.6(a)(v)
Event of Default	7.1

<u>Term</u>	<u>Section</u>
Indemnatee.....	9.4(c)
Lender	Preamble
Lenders.....	Preamble
Milestones	4.6(a)
OFAC	3.10
Petition Date.....	Recitals
Restructuring Support Agreements	2.1(h)
RSA Assumption Order	4.6(a)(i)
SDN List	3.10
Tranche A DIP Lien.....	6.1(a)
Tranche A Term Loan Commitment.....	1.1(a)
Tranche B DIP Lien	6.1(b)
Tranche B Conversion Election	1.9
Tranche B Term Loan Commitment.....	1.1(b)

In addition to the terms defined elsewhere in this Agreement, the following terms have the following meanings:

“Assignment of Insurances” shall mean the assignment of insurances, dated as of the date hereof, entered into between Borrower, as assignor, and the Lenders as assignee.

“Assignment of Reinsurances” shall mean the assignment of reinsurances, dated as of the date hereof, entered into between the insurer or insurance broker, as the case may be, as assignor, and the Lenders, as assignee;

“Attorney Costs” means all reasonable and documented fees and disbursements of any law firm or other external counsel acting for the Agent or any Lender hereunder and as permitted hereunder.

“Aviation Authority” means the Civil Aviation Authority of the Philippines (CAAP) or any person who is from time to time vested with the control and supervision of, or has jurisdiction over, the registration, airworthiness, and operation of aircraft or other matters relating to civil aviation in the State of Registration.

“Bankruptcy Code” means Title 11 of the United States Code, 11 U.S.C. § 101, et seq.

“Bankruptcy Rules” means the Federal Rules of Bankruptcy Procedure.

“Borrowing” means each borrowing under a Notice of Borrowing of Loan(s) by the Borrower from the Lenders pursuant to this Agreement.

“Bridge Loan Obligations” means all principal, accrued and unpaid interest, all other “Secured Obligations” (as defined therein), and any and all fees, costs, and other charges due and payable by the Borrower pursuant to (a) that certain loan agreement, dated February 10, 2021, between the Borrower and Buona Sorte Holdings, Inc., (b) that certain loan agreement,

dated May 27, 2021, between the Borrower and Buona Sorte Holdings, Inc., and (c) that certain loan agreement, dated August 19, 2021, between the Borrower and Buona Sorte Holdings, Inc., in each case, as amended, restated, supplemented, or modified from time to time.

“Business Day” means any day that is not a Saturday, Sunday, or a day on which banks are required or authorized to close in New York City or Manila.

“Carve-Out” has the meaning ascribed to such term in the DIP Order then in effect.

“Collateral” means all of the Borrower’s right, title and interest in, to and under, the following property, in each case whether tangible or intangible, wheresoever located, and whether now owned by the Borrower or hereafter acquired and whether now existing or hereafter coming into existence:

- (a) the Mabuhay Miles Program;
- (b) Pledged Aircraft and Related Pledged Aircraft Engines;
- (c) Pledged Spare Engines; and
- (d) all proceeds of any and all of the foregoing.

“Collateral Documents” means, collectively, this Agreement, the DIP Order, each Pledged Aircraft Mortgage Agreement, each Pledged Engine Mortgage Agreement, the Assignment of Insurances, the Assignment of Reinsurances, the DPOA, the Mabuhay Miles Pledge Agreement, and any and all other security agreements, pledge agreements, and other similar agreements, and all amendments, restatements, modifications, or supplements thereof, or thereto, by or between the Borrower pledging or granting a Lien on Collateral now or hereafter delivered to the Agent pursuant to or in connection with the transactions contemplated hereby, and all financing statements, mortgages, or comparable documents now or hereafter filed in accordance with the UCC or comparable law against the Borrower in favor of the Agent, on behalf of the Lenders, as any of the foregoing may be amended, restated, and/or modified from time to time.

“Compulsory Acquisition” means, in relation to a Pledged Aircraft or Pledged Engine, requisition of title or other compulsory acquisition, requisition, appropriation, expropriation, deprivation, or confiscation for any reason of such Pledged Aircraft or any Pledged Engine by any Governmental Authority or other competent authority, whether de jure or de facto, but shall exclude requisition for use or hire not involving requisition of title.

“Closing Date” means the date on which the Bankruptcy Court shall have entered the Interim DIP Order and all other conditions set forth in Section 2.1 hereof are satisfied or waived in accordance with the terms herein.

“Default” means any event or circumstance that, with the passing of time or the giving of notice or both, would (if not cured or otherwise remedied during such time) become an Event of Default.

“Deregistration Power of Attorney” or “DPOA” means any irrevocable deregistration power of attorney, dated as of the date hereof, provided by the Borrower and/or any lessee in the form attached hereto as Annex B (Form of Deregistration Power of Attorney), or such other form as local counsel may advise as being required or advisable under the laws of the state of incorporation of the Borrower and/or lessee and the State of Registration.

“DIP Liens” means, together, the Tranche A DIP Liens and the Tranche B DIP Liens.

“DIP Order” means the Interim DIP Order or the Final DIP Order, as applicable.

“Dollars”, “dollars” and “\$” each mean lawful money of the United States of America.

“Electronic Transmission” means each document, instruction, authorization, file, information and any other communication transmitted, posted, or otherwise made or communicated by e-mail, facsimile or E-Fax, or other customary electronic system.

“Equity Interest” means, with respect to a Person, all of the shares, options, warrants, interests, participations, or other equivalents (regardless of how designated) of or in such Person, whether voting or nonvoting, including capital stock (or other ownership or profit interests or units), 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 U.S. Securities and Exchange Commission under the Securities Exchange Act of 1934).

“Excluded Taxes” means any of the following Taxes imposed on or with respect to a Lender or required to be deducted or withheld from a payment to a Lender: (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case imposed as a result of such Lender being organized under the laws of, or having its principal office or lending office in, or being a tax resident of, the jurisdiction imposing such Tax (or any political subdivision thereof), (b) Taxes imposed on amounts payable to or for the account of such Lender pursuant to a law in effect on the date on which such Lender becomes a party to this Agreement or (c) Taxes attributable to such Lender’s failure to provide any Tax forms or Tax documentation reasonably requested by the Agent or the Borrower pursuant to Section 9.4(d).

“Final DIP Order” means a final order of the Bankruptcy Court in form and substance reasonably acceptable to the Agent and the Lenders entered in the Chapter 11 Case after a final hearing authorizing and approving on a final basis, among other things, (a) the Borrower to obtain credit and incur the Obligations, (b) the substantive terms of this Agreement and the Loan Documents, (c) the granting of the Liens on the Collateral with the priority contemplated in this Agreement, and (d) the repayment and refinancing of the Bridge Loan Obligations, that has not been reversed, stayed, modified, or amended and as to which the time to appeal or seek leave to appeal, petition for certiorari, reargue, or seek rehearing has expired and no proceeding for certiorari, reargument, or rehearing is pending or if an appeal, petition for certiorari, reargument, or rehearing has been sought, the order of the Bankruptcy Court has been affirmed by the highest court to which the order was appealed, from which the reargument or

rehearing was sought, or certiorari has been denied and the time to take any further appeal or to seek certiorari or further reargument or rehearing has expired.

“Governmental Authority” means any nation, sovereign, or government, any state or other political subdivision thereof, any agency, authority, or instrumentality thereof and any entity or authority exercising executive, legislative, taxing, judicial, regulatory, or administrative functions of or pertaining to government, including any central bank, stock exchange, regulatory body, arbitrator, public sector entity, supra-national entity (including the European Union and the European Central Bank), and any self-regulatory organization (including the National Association of Insurance Commissioners).

“Host Aircraft” means any airframe: (a) on which any Pledged Spare Engine is installed from time to time, and (b) on to which any Pledged Aircraft Engine is installed from time to time if such airframe is not a Pledged Aircraft.

“Indemnified Taxes” means Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of the Borrower under any Loan Document.

“Initial Commitment Period” means the period commencing on the date of entry of the Interim DIP Order and ending on the date of entry of the Final DIP Order.

“Interest Payment Date” means, as to any Loan, (a) the last day of each March, June, September, and December to occur while such Loan is outstanding and the final maturity date of such Loan (whether by Acceleration or otherwise) and (b) the date of any repayment of principal made in respect thereof.

“Interim DIP Order” means an order of the Bankruptcy Court in form and substance reasonably acceptable to the Lenders entered in the Chapter 11 Case after an interim hearing authorizing and approving on an interim basis, among other things, (a) the Borrower to obtain credit and incur the Obligations, (b) the terms of this Agreement and the other Loan Documents on an interim basis, and (c) the granting of the Liens on the Collateral with the priority contemplated in this Agreement.

“Insurances” means, (a) in respect of a Pledged Aircraft or a Pledged Engine, any and all contracts or policies of insurance and reinsurance required to be effected and maintained under this Agreement in respect of such Pledged Aircraft or Pledged Engine, and (b) in respect of Host Aircraft, any and all contracts or policies of insurance and reinsurance maintained or required to be maintained with respect to such Host Aircraft.

“Lien” means any mortgage, deed of trust, pledge, hypothecation, assignment, fiduciary transfer for security purposes, charge, deposit arrangement, encumbrance, trust arrangement, easement, lien (statutory or otherwise), security interest or other security arrangement and any other preference, priority, or preferential arrangement of any kind or nature whatsoever.

“Loan Documents” means this Agreement, the Collateral Documents, the DIP Order, the Term Notes and all documents delivered to the Agent or the Lenders in connection with any of the foregoing.

“Loans” means, collectively, the Tranche A Term Loans and the Tranche B Term Loans.

“Loyalty Program” shall mean any customer loyalty program available to individuals (i.e., natural persons) that grants members in such program Miles based on a member’s purchasing behavior and that entitles a member to accrue and redeem such Miles for a benefit or reward, including flights and/or other goods and services.

“Mabuhay Miles Pledge Agreement” shall mean the pledge agreement, [dated as of the date hereof,] entered into by the Borrower in favor of the Lenders with respect to the Mabuhay Miles Program.

“Mabuhay Miles Program” means the Loyalty Program which is operated, owned, or controlled, directly or indirectly by the Borrower, as in effect from time to time, whether under the “Mabuhay Miles Program” name or otherwise, in each case including any successor program.

“Manuals and Technical Records” means, in respect of a Pledged Aircraft, Host Aircraft, or a Pledged Engine, all records, logs, manuals, technical data, and other materials and documents (whether kept or to be kept in compliance with any regulation of the Aviation Authority or otherwise) relating to such Pledged Aircraft, Host Aircraft, or Pledged Engine.

“Margin Stock” means “margin stock” as such term is defined in Regulation T, U, or X of the Federal Reserve Board.

“Material Adverse Effect” means a material adverse change in any of (a) the condition (financial or otherwise) or business, performance, operations, or Property of the Borrower taken as a whole; (b) the ability the Borrower to perform its obligations under any Loan Document; (c) the validity or enforceability of any Loan Document or the rights and remedies of the Lenders under any Loan Document, or (d) the validity, perfection, and priority of the DIP Liens on the Collateral to the extent required to be established and maintained by the DIP Order and the Collateral Documents in favor of the Lenders.

“Maturity Date” means the earliest of (a) the date that is 63 months after the Petition Date, (b) entry by the Bankruptcy Court of an order dismissing the Chapter 11 Case or converting the Chapter 11 Case to a case under chapter 7 of the Bankruptcy Code, or (c) the effective date of a chapter 11 plan in the Chapter 11 Case if the conversion election pursuant to Section 1.8 hereof is not made.

“Miles” shall mean miles, points, and/or other units that are a medium of exchange used solely within the Mabuhay Miles Program.

“Notice of Borrowing” means a notice given by the Borrower to the Agent, on behalf of the Lenders, pursuant to Section 1.4.

“Obligations” means all Loans and other indebtedness, fees, interest, advances, debts, liabilities, obligations, covenants, and duties owing by the Borrower to any Lender, the Agent, or any other Person required to be indemnified, that arises under any Loan Document, whether or not for the payment of money, whether arising by reason of an Borrowing, loan, guaranty, indemnification, or in any other manner (including under the DIP Order), whether direct or indirect (including those acquired by assignment), absolute or contingent, due or to become due, now existing or hereafter arising and however acquired.

“Organization Documents” means, (a) the certificate or articles of incorporation, the bylaws, any certificate of determination, or instrument relating to the rights of preferred shareholders of such corporation and any shareholder rights agreement or (b) any other document setting forth the manner of election or duties of the officers, directors, managers, or other similar persons, or the designation, amount or relative rights, limitations, and preference of the Equity Interests of a Person.

“Part” means all appliances, parts, accessories, instruments, navigational and communications equipment, furnishings, modules, components, and other items of equipment (other than complete engines).

“Patriot Act” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, P.L. 107-56.

“Permits” means, with respect to any Person, any permit, approval, authorization, license, registration, certificate, concession, grant, franchise, variance, or permission from, and any other contractual obligations with, any Governmental Authority, in each case whether or not having the force of law and applicable to or binding upon such Person or any of its Property or to which such Person or any of its Property is subject.

“Permitted Liens” means

(a) Liens granted by the Interim DIP Order and created pursuant to the Collateral Documents to secure the Obligations;

(b) Liens existing on the Closing Date and listed on Schedule 5.1 hereto;

(c) Liens securing the Bridge Loan Obligations;

(d) “Permitted Liens” as defined in the agreements governing the Bridge Loan Obligations;

(e) Liens perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code;

(f) Liens for Taxes that are not yet due and payable or that are being contested in good faith with the appropriate taxing authorities;

(g) Liens securing indebtedness permitted by this Agreement;

(h) Liens contemplated by the Acceptable Plan to secure the Borrower's incurrence of indebtedness for borrowed money on or after the effective date thereof; and

(i) Liens arising in the ordinary course of business that do not, individually or in the aggregate, materially interfere with the ordinary conduct of the business of the Borrower.

"Person" means any individual, partnership, corporation (including a business trust and a public benefit corporation), joint stock company, estate, association, firm, enterprise, trust, limited liability company, unincorporated association, joint venture and any other entity or Governmental Authority.

"PFRS" means the Philippine Financial Reporting Standard, as in effect from time to time.

"Pledged Aircraft" shall mean each airframe described in Part A of Schedule 3.8 and any and all Parts, so long as the same shall be incorporated or installed in or attached to such airframe or so long as title thereto remains vested in Borrower after the removal from such airframe in accordance with this Agreement, and the Related Pledged Aircraft Engines, whether or not any of such Pledged Aircraft Engines may from time to time be installed on such airframe or any other airframe, and where the context permits, references to "Pledged Aircraft" shall include the Manuals and Technical Records for such Pledged Aircraft.

"Pledged Aircraft Engines" shall mean the engines listed in Part B of Schedule 3.8 together with all Parts from time to time belonging to, installed in, or appurtenant to any such engine, and where the context permits, references to "Pledged Aircraft Engine" shall include the Manuals and Technical Records for such Pledged Aircraft Engine.

"Pledged Aircraft Mortgage Agreement" shall mean, in respect of each Pledged Aircraft, the first priority mortgage, dated as of the date hereof, governed by Philippines law, in respect of such Pledged Aircraft.

"Pledged Engine" shall mean each of the Pledged Aircraft Engines and the Pledged Spare Engines.

"Pledged Engine Mortgage Agreement" shall mean, in respect of each Pledged Spare Engine, the first priority mortgage, dated as of the date hereof, governed by Philippines law, in respect of such Pledged Spare Engine.

"Pledged Spare Engines" shall have mean the engines listed in Part C of Schedule 3.8 together with all Parts from time to time belonging to, installed in, or appurtenant to any such engine, and where the context permits, references to "Pledged Spare Engine" shall include the Manuals and Technical Records for such Pledged Spare Engine.

"Property" means any interest in any kind of property or asset, whether real, personal, or mixed, and whether tangible or intangible.

"Related Person" means, with respect to any Person, in each case, in its capacity as such, each affiliate of such Person and each director, officer, employee, agent, trustee,

representative, attorney, accountant and each insurance, environmental, legal, financial and other advisors and other consultants and agents of or to such Person or any of its affiliates.

“Removed Engine” shall have the meaning given to such term in Annex A attached hereto.

“Required Lenders” means, at any time, Lenders having at the time in excess of fifty percent (50%) of the sum of (a) the aggregate unfunded Tranche A Term Loan Commitments then outstanding *plus* the Tranche A Term Loans outstanding and (b) the aggregate funded Tranche B Term Loan Commitments then outstanding *plus* the Tranche B Term Loans outstanding.

“Requirement of Law” means with respect to any Person, the common law and any federal, state, local, foreign, multinational, or international laws, statutes, codes, treaties, standards, rules and regulations, guidelines, ordinances, orders, judgments, writs, injunctions, decrees (including administrative or judicial precedents or authorities), and the interpretation or administration thereof by, and other determinations, directives, requirements, or requests of, any Governmental Authority, in each case whether or not having the force of law and that are applicable to or binding upon such Person or any of its Property or to which such Person or any of its Property is subject.

“Responsible Officer” means the chief executive officer or the president of the Borrower or any other officer having substantially the same authority and responsibility.

“State of Registration” means the Philippines or, such other state on whose national aircraft register such Aircraft may be registered at any time.

“Superpriority Claim” means an allowed claim against the Borrower or its estate in the Chapter 11 Case which is an administrative expense claim having priority over (a) any and all allowed administrative expenses and (b) all unsecured claims now existing or hereafter arising, including any administrative expenses of the kind specified in the Bankruptcy Code, including section 105, 326, 328, 330, 331, 364(c)(1), 365, 503, 506(c), 507, 546, 726, 1113, or 1114 of the Bankruptcy Code.

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

“Term Loan Commitment” means, for each Lender, its Tranche A Term Loan Commitment and its Tranche B Term Loan Commitment.

“Term Note” means a promissory note of the Borrower payable to a Lender and evidencing the Obligations of the Borrower to such Lender resulting from the Loans made to the Borrower by such Lender or its predecessor(s).

“Total Loss” means, in respect of a Pledged Aircraft or Pledged Engine, any of the following events:

(a) the actual or constructive total loss of such Pledged Aircraft or Pledged Engine (including any damage to such Pledged Aircraft or Pledged Engine which results in an insurance settlement on the basis of a total loss, or requisition for use or hire of such Pledged Aircraft or Pledged Engine which results in an insurance settlement on the basis of a total loss);

(b) such Pledged Aircraft or Pledged Engine being destroyed or damaged beyond repair;

(c) the Compulsory Acquisition of the Pledged Aircraft or Pledged Engine;

(d) the hijacking, theft, confiscation, capture, detention, seizure, or requisition for use or hire of such Pledged Aircraft or Pledged Engine other than where the same amounts to Compulsory Acquisition of such Pledged Aircraft or Pledged Engine which deprives the operator of the use of such Pledged Aircraft or Pledge Engine for more than 180 consecutive days, excluding requisition for use or hire by any Governmental Authority of the State of Registration; or

(e) the requisition for use or hire of such Pledged Aircraft or Pledged Engine by any Governmental Authority of the State of Registration (other than where the same amounts to Compulsory Acquisition of such Pledged Aircraft) which deprives the operator of the use of such Pledged Aircraft or Pledged Engine for more than 180 consecutive days;

provided that if there occurs a Total Loss in respect of an airframe, a Total Loss will be deemed to have occurred in respect of such Pledged Aircraft to which such airframe is attributable.

“Tranche A Lender” means each Lender that has a Tranche A Term Loan or Tranche A Term Loan Commitment (in its capacity as such).

“Tranche A Term Loan” means any amount borrowed under Section 1.1(a).

“Tranche B Lender” means each Lender that has a Tranche B Term Loan or Tranche B Term Loan Commitment (in its capacity as such).

“Tranche B Term Loan” means any amount borrowed under Section 1.1(b).

“UCC” means the Uniform Commercial Code of any applicable jurisdiction and, if the applicable jurisdiction shall not have any Uniform Commercial Code, the Uniform Commercial Code as in effect from time to time in the State of New York.

“United States” and “U.S.” each means the United States of America.

10.2. Other Interpretive Provisions.

(a) Defined Terms. Unless otherwise specified herein or therein, all terms defined in this Agreement or in any other Loan Document shall have the defined meanings when used in any certificate or other document made or delivered pursuant hereto. The meanings of defined terms shall be equally applicable to the singular and plural forms of the defined terms.

Terms (including uncapitalized terms) not otherwise defined herein and that are defined in the UCC shall have the meanings therein described.

(b) The Agreement. The words “hereof”, “herein”, “hereunder” and words of similar import when used in this Agreement or any other Loan Document shall refer to this Agreement or such other Loan Document as a whole and not to any particular provision of this Agreement or such other Loan Document; and subsection, section, schedule and exhibit references are to this Agreement or such other Loan Documents unless otherwise specified.

(c) Certain Common Terms. The term “documents” includes any and all instruments, documents, agreements, certificates, indentures, notices and other writings, however evidenced. The term “including” is not limiting and means “including, without limitation.” The term “or” has the inclusive meaning represented by the phrase “and/or”.

(d) Performance; Time. Whenever any performance obligation hereunder or under any other Loan Document (other than a payment obligation) shall be stated to be due or required to be satisfied on a day other than a Business Day, such performance shall be made or satisfied on the next succeeding Business Day.

(e) Contracts; Instruments. Unless otherwise expressly provided herein or in any other Loan Document, references to agreements, orders and other contractual instruments, including this Agreement and the other Loan Documents, shall be deemed to include all subsequent amendments, thereto, restatements and substitutions thereof and other modifications and supplements thereto which are in effect from time to time, but only to the extent such amendments and other modifications are not prohibited by the terms of any Loan Document.

(f) Laws. References to any statute or regulation may be made by using either the common or public name thereof or a specific cite reference and are to be construed as including all statutory and regulatory provisions related thereto or consolidating, amending, replacing, supplementing, or interpreting the statute or regulation.

10.3. Accounting Terms and Principles. All accounting determinations required to be made pursuant hereto shall, unless expressly otherwise provided herein, be made in accordance with PFRS.

[Signature Pages Follow.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their duly authorized officers as of the day and year first above written.

BORROWER:

PHILIPPINE AIRLINES, INC.

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

Address for notices:

5th Floor PNB Financial Center CCP Complex
Diosdado Macapagal Avenue
Pasay City, Philippines
Attention: Nilo Thaddeus P. Rodriguez
Email: nilo.rodriquez@pal.com.ph and
corporate.finance@pal.com.ph

With a copy to:

Debevoise & Plimpton LLP
919 Third Avenue
New York, NY 10022
Attention: Jasmine Ball and Nick Kaluk
Phone: 212-909-6000
Email: jball@debevoise.com and
nkaluk@debevoise.com

LENDER

PAL HOLDINGS INC.

By: _____
Name: _____
Title: _____

Address for notices:

[•]
[•]
[•]
Attention: _____
Phone: _____
Email: _____

With a copy to:

White & Case LLP
1221 Avenue of the Americas
New York, NY 10020
Attention: Todd Wolynski
Phone: +1 212 819 8266
Email: todd.wolynski@whitecase.com

LENDER

BUONA SORTE HOLDINGS, INC.

By: _____
Name: _____
Title: _____

Address for notices:

19F BDO Plaza 8737 Paseo de Roxas, Makati City,
Metro Manila, Philippines

Attention: _____
Phone: _____
Email: _____

With a copy to:

White & Case LLP
1221 Avenue of the Americas
New York, NY 10020
Attention: Todd Wolynski
Phone: +1 212 819 8266
Email: todd.wolynski@whitecase.com

THE AGENT:

BUONA SORTE HOLDINGS, INC.,
as the Agent

By: _____
Name: _____
Title: _____

Address for notices:

19F BDO Plaza 8737 Paseo de Roxas, Makati City,
Metro Manila, Philippines

Attention: _____
Phone: _____
Email: _____

With a copy to:

White & Case LLP
1221 Avenue of the Americas
New York, NY 10020
Attention: Todd Wolynski
Phone: +1 212 819 8266
Email: todd.wolynski@whitecase.com

Annex B

Approved Budget

Philippine Airlines, Inc.
Weekly Cashflow Forecast
Basis: Rolling Forecast with July Actuals
As of September 3, 2021

\$ in millions

Week of:	Aug 30, 2021	Sep 6, 2021	Sep 13, 2021	Sep 20, 2021	Sep 27, 2021	Oct 4, 2021	Oct 11, 2021	Oct 18, 2021	Oct 25, 2021	Nov 1, 2021	Nov 8, 2021	Nov 15, 2021	Nov 22, 2021	Nov 29, 2021
Week (2021)	Week 35	Week 36	Week 37	Week 38	Week 39	Week 40	Week 41	Week 42	Week 43	Week 44	Week 45	Week 46	Week 47	Week 48
Operating Cash Flows														
Receipts														
Sales receipt	20.57	22.29	22.29	22.29	22.29	22.20	22.20	22.20	22.20	23.89	23.89	23.89	23.89	23.89
Cash holdout release	1.25	1.25	1.25	1.25	1.25	1.25	1.25	1.25	1.25	1.00	1.00	1.00	1.00	1.00
Total Receipts	21.82	23.54	23.54	23.54	23.54	23.45	23.45	23.45	23.45	24.89	24.89	24.89	24.89	24.89
Operating Disbursements														
Payroll & Benefits	(2.66)	(2.69)	(2.69)	(2.69)	(2.69)	(3.03)	(3.03)	(3.03)	(3.03)	(3.05)	0.00	(3.05)	0.00	(3.05)
Aircraft Leases	(1.96)	0.00	0.00	0.00	(4.49)	0.00	0.00	0.00	(30.31)	0.00	0.00	0.00	0.00	(27.43)
Maintenance	(7.09)	(5.78)	(5.78)	(5.78)	(5.78)	(8.30)	(8.30)	(8.30)	(8.30)	(7.54)	(7.54)	(7.54)	(7.54)	(7.54)
Fuel	(6.08)	(6.88)	(6.88)	(6.88)	(6.88)	(7.03)	(7.03)	(7.03)	(7.03)	(7.34)	(7.34)	(7.34)	(7.34)	(7.34)
Financing charges	(0.89)	(1.58)	(1.58)	(1.58)	(1.58)	(1.15)	(1.15)	(1.15)	(1.15)	(2.37)	(2.37)	(2.37)	(2.37)	(2.37)
Other operating expenses	(3.69)	(6.77)	(6.77)	(2.08)	(2.27)	(6.82)	(6.82)	(6.82)	(7.02)	(5.88)	(5.88)	(5.88)	(5.88)	(5.88)
Total Operating Disbursements	(22.37)	(23.70)	(23.70)	(19.01)	(23.69)	(26.33)	(26.33)	(26.33)	(56.84)	(26.18)	(23.13)	(26.18)	(23.13)	(53.62)
Restructuring Costs														
Critical Vendor	-	(6.24)	(12.48)	(6.24)	(37.44)	(5.00)	(5.00)	(5.00)	(5.00)	(4.00)	(4.00)	(4.00)	(4.00)	(4.00)
RSAs	-	-	-	-	(37.23)	-	-	-	-	-	-	-	-	(55.80)
Other restructuring costs	(2.00)	-	-	(5.89)	(7.10)	-	-	(1.20)	(13.25)	-	-	-	-	-
Total Restructuring Costs	(2.00)	(6.24)	(12.48)	(12.13)	(81.77)	(5.00)	(5.00)	(6.20)	(18.25)	(4.00)	(4.00)	(4.00)	(4.00)	(59.80)
Net Cash Flows Pre-DIP	(2.56)	(6.40)	(12.64)	(7.60)	(81.91)	(7.88)	(7.88)	(9.08)	(51.64)	(5.30)	(2.24)	(5.30)	(2.24)	(88.53)
Beginning Cash Balance	28.64	41.09	54.69	42.05	34.46	182.54	174.66	166.78	157.70	261.07	255.77	253.53	248.23	245.99
Net Cash Flows Pre-DIP	(2.56)	(6.40)	(12.64)	(7.60)	(81.91)	(7.88)	(7.88)	(9.08)	(51.64)	(5.30)	(2.24)	(5.30)	(2.24)	(88.53)
Bridge Loan	15.00	-	-	-	(100.00)	-	-	-	-	-	-	-	-	-
DIP borrowing/repayment - Tranche A	-	20.00	-	-	230.00	-	-	-	-	-	-	-	-	-
DIP borrowing/repayment - Tranche B	-	-	-	-	100.00	-	-	-	155.00	-	-	-	-	-
Exit Facility	-	-	-	-	-	-	-	-	-	-	-	-	-	150.00
Ending Cash Balance	41.09	54.69	42.05	34.46	182.54	174.66	166.78	157.70	261.07	255.77	253.53	248.23	245.99	307.45

Exhibit B

Proposed Final Order

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

In re:

PHILIPPINE AIRLINES, INC.,¹

Debtor.

Chapter 11

Case No. 21-11569 (SCC)

**FINAL ORDER (A) AUTHORIZING THE DEBTOR TO OBTAIN POSTPETITION
FINANCING; (B) GRANTING LIENS AND SUPERPRIORITY ADMINISTRATIVE
EXPENSE CLAIMS; (C) GRANTING ADEQUATE PROTECTION TO THE BRIDGE
LENDER; (D) MODIFYING THE AUTOMATIC STAY; AND (E) GRANTING
RELATED RELIEF**

This matter is before the Court on the motion (the “**Motion**”)² of Philippine Airlines Inc., the debtor in possession in these proceedings (the “**Debtor**”), requesting entry of a final order (this “**Final Order**”) pursuant to sections 105, 361, 362, 363(b), 363(e), 364(c)(1), 364(c)(2), 364(c)(3), 364(d), and 364(e) of title 11 of the United States Code (the “**Bankruptcy Code**”) and Rules 2002, 4001, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Rule 4001-2 of the Local Bankruptcy Rules for the Southern District of New York (the “**Local Rules**”):

(1) authorizing the Debtor, on the terms set forth in the DIP Loan Documents (as defined below), to obtain postpetition financing, consisting of the DIP Facility (as defined below) in an aggregate principal amount of up to \$505 million (the “**DIP Commitments**”) comprising (a) a first lien secured Tranche A multi-draw term loan

¹ 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.

² Capitalized terms used but not defined herein shall have the meanings ascribed to them in the DIP Credit Agreement (as defined herein) attached to this Final Order as **Annex A** or, if not defined in the DIP Credit Agreement, in the Motion.

facility (the “**Tranche A DIP Facility**”) in an aggregate principal amount of \$250 million (each individual loan made thereunder, a “**Tranche A DIP Loan**,” collectively the loans made thereunder, the “**Tranche A DIP Loans**,” and, together with related obligations incurred under the Tranche A DIP Facility, the “**Tranche A DIP Obligations**”), \$20 million of which has been drawn before entry of this Final Order and the remainder of which will be available in a single draw upon entry of this Final Order, from Buona Sorte Holdings, Inc. (the “**Initial Tranche A DIP Lender**,” and together with all successors and permitted assigns, the “**Tranche A DIP Lenders**”); and (b) a second lien secured Tranche B multi-draw term loan facility (the “**Tranche B DIP Facility**” and, together with the Tranche A DIP Facility, the “**DIP Facility**”) in an aggregate principal amount of \$255 million (each individual loan made thereunder, a “**Tranche B DIP Loan**,” collectively the loans made thereunder, the “**Tranche B DIP Loans**,” and, together with related obligations incurred under the Tranche B DIP Facility, the “**Tranche B DIP Obligations**”; the Tranche B DIP Loans, collectively with the Tranche A DIP Loans, are the “**DIP Loans**”), which shall be available in no more than two draws upon entry of this Final Order, from PAL Holdings Inc. (the “**Initial Tranche B DIP Lender**,” and together with all successors and permitted assigns, the “**Tranche B DIP Lenders**”; the Initial Tranche A DIP Lender and the Initial Tranche B DIP Lender are, together, the “**Initial DIP Lenders**” and, together with all successors and permitted assigns, the “**DIP Lenders**”);³ in each case subject to the satisfaction of the conditions precedent

³ For the avoidance of doubt, (a) nothing herein shall preclude the ability of the DIP Lenders to, in accordance with the applicable DIP Loan Documents, offer a portion of the DIP Commitments and DIP Loans to third-party capital providers and other financial institutions or other entities, it being understood that no such assignment or transfer shall become effective with respect to any portion of the DIP Commitments until the

set forth in the DIP Credit Agreement; for which Buona Sorte Holdings, Inc. shall serve as administrative and collateral agent (in such capacities, together with its successors in such capacities, the “**DIP Agent**,” and the DIP Agent, together with the DIP Lenders, are the “**DIP Secured Parties**” and each is a “**DIP Secured Party**”);

(2) authorizing the Debtor to execute and deliver additional documentation consistent with the terms of (or as may be required by) the DIP Credit Agreement substantially in the form attached hereto as **Annex A** without exhibits or schedules (as such agreement may be amended, in accordance with its terms and this Final Order, and including the exhibits and schedules thereto, the “**DIP Credit Agreement**”) and the other DIP Loan Documents, and to perform such other and further acts as may be necessary or appropriate in connection therewith, or otherwise required under the DIP Loan Documents;

(3) authorizing the Debtor to use proceeds of the DIP Loans (the “**DIP Loan Proceeds**”) as permitted in the DIP Loan Documents and in accordance with this Final Order and the Approved Budget (as defined herein), including, upon entry of the Final Order, to pay in full and refinance all Bridge Loan Obligations (as defined below);

(4) granting valid, binding, continuing, enforceable, and automatically perfected (a) security interests in and liens on all of the Collateral (as defined in the DIP Credit Agreement, and referred to herein as the “**DIP Collateral**”) to the DIP Agent for the benefit of the DIP Secured Parties, and (b) granting superpriority administrative expense status to the DIP Obligations (as defined below), in each case subject to the

Closing Date (as defined in the DIP Credit Agreement); and (b) thereafter, assignments and participations of DIP Loans and DIP Commitments shall be in accordance with the DIP Loan Documents.

Carve Out (as defined below) and, in the case of the Tranche B DIP Obligations, the Bridge Loan Obligations and the Adequate Protection Superpriority Claims;

(5) authorizing the Debtor to pay the principal, interest, fees, expenses, disbursements, and other amounts payable under the DIP Loan Documents as and when such amounts become due and payable without other or further notice or order;

(6) authorizing the Debtor to use, on the terms described herein, the Bridge Loan Collateral (as defined herein) and providing adequate protection to the Bridge Lender for any diminution in value of its interests in the Bridge Loan Collateral;

(7) vacating and modifying the automatic stay imposed under section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of this Final Order and the other DIP Loan Documents;

(8) waiving the Debtor's ability to surcharge against any DIP Collateral pursuant to section 506(c) of the Bankruptcy Code and any right of the Debtor under the "equities of the case" exception in section 552(b) of the Bankruptcy Code;

(9) scheduling a final hearing to consider entry of the Final Order, and in connection therewith, giving and prescribing the manner of notice of the Final Hearing (as defined below) on the Motion;

(10) waiving any applicable stay with respect to the effectiveness and enforceability of this Final Order (including under Bankruptcy Rule 6004); and

(11) granting the Debtor such other and further relief as is just and proper.

The Court having held an interim hearing on [●], 2021 (the "**Interim Hearing**") and entered an interim order (ECF No. [●]) (the "**Interim Order**") that, among other things, scheduled a final hearing on [●], 2021 (the "**Final Hearing**") to consider entry of this Final

Order and grant the relief sought in the Motion on a final basis, as set forth in the Motion and the DIP Loan Documents; and upon consideration of (a) the Motion and the exhibits attached thereto, (b) the First Day Declaration and the Walker Declaration, (c) the evidentiary record, as well as the arguments and statements of counsel, made at the Interim Hearing and the Final Hearing, and (d) all other matters brought to the Court's attention at the Interim Hearing and the Final Hearing; and the Court having found and determined that the relief sought in the Motion is in the best interests of the Debtor, its estate, creditors, stakeholders, and all other parties-in-interest, and essential for the continued operation of the Debtor's business and the preservation of the value of the Debtor's assets 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 consideration, and good and sufficient cause appearing therefor:

THE COURT HEREBY FINDS AND DETERMINES:⁴

A. Petition Date. On September 3, 2021 (the "**Petition Date**"), the Debtor filed with the Court a voluntary petition for relief under chapter 11 of the Bankruptcy Code and is continuing to operate its business as a debtor-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in this case.

B. Jurisdiction; Core Proceeding. This Court has jurisdiction over this Chapter 11 Case, the Motion, this Final Order, and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157(b) and 1334. This is a "core" proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

C. Need for Postpetition Financing. An ongoing need exists for the Debtor to obtain the DIP Loans in order to permit, among other things, the Debtor to meet its obligations arising

⁴ To the extent any findings of fact constitute conclusions of law, they are adopted as such, and vice versa.

during the Debtor's Chapter 11 Case, including the administration of the Debtor's Chapter 11 Case, so as to maximize the value of its business and assets as debtor in possession under chapter 11 of the Bankruptcy Code. The Debtor does not have sufficient available sources of working capital to operate its business without access to the DIP Facility, and its existing liquidity is deteriorating at a rate that requires access to the DIP Loan Proceeds. The Debtor's ability to preserve and maintain its assets, to pay employees, and to otherwise fund operations and an orderly reorganization process, is essential to the Debtor's viability and preservation of the going-concern value of its business and the value of its assets. Without access to the DIP Facility, the Debtor's estate would suffer immediate and irreparable harm.

D. Proposed DIP Facility. The Debtor has requested that the DIP Lenders establish the DIP Facility pursuant to which the Debtor may obtain DIP Loans from time to time in accordance with the DIP Loan Documents, with all DIP Loans to be secured by DIP Liens upon the DIP Collateral as described below, and all DIP Loans and obligations of the Debtor contemplated by the DIP Loan Documents to be granted superpriority administrative expense claims, as and to the extent set forth in the DIP Loan Documents. The DIP Lenders are willing to establish the DIP Facility upon the terms and conditions set forth in the DIP Loan Documents.

E. No Credit Available on More Favorable Terms. Despite diligent efforts and a sufficient marketing process, the Debtor has been unable to obtain postpetition financing on terms more favorable than those offered by the DIP Lenders under the DIP Loan Documents. The Debtor is unable to obtain adequate unsecured credit under section 503(b)(1) of the Bankruptcy Code. The Debtor also is unable to obtain secured credit allowable under section 364 of the Bankruptcy Code without granting the DIP Liens and the DIP Superpriority Claims (each, as defined below) under sections 364(c) and 364(d) of the Bankruptcy Code on the terms

and conditions set forth in this Final Order and the DIP Loan Documents. Further, the DIP Facility provides additional benefits to the Debtor, including the Tranche A DIP Lenders' agreement to grant the Debtor the option to convert the Tranche A DIP Obligations (other than payment of professional fees and expenses) to unsecured loans and the Tranche B DIP Lenders' agreement to grant the Debtor the option to convert the Tranche B DIP Obligations (other than payment of professional fees and expenses) to 79.5% of the common equity of the reorganized Debtor, in each case on the terms set forth in the DIP Loan Documents and pursuant to an Acceptable Plan.

F. Approved Budget. The Debtor has delivered to the DIP Agent a 13-week cash flow forecast of receipts and disbursements for the period from the Closing Date (as defined in the DIP Credit Agreement), attached to this Final Order as **Annex B** (the "**Approved Budget**"), which Approved Budget is reasonably acceptable to the DIP Lenders in accordance with the DIP Loan Documents. The DIP Secured Parties are relying upon the Approved Budget in entering into the DIP Loan Documents.

G. Certain Conditions to DIP Facility. The DIP Lenders' willingness to make the DIP Loans is conditioned upon, among other things, (a) the Debtor obtaining Court approval to enter into the DIP Loan Documents and to incur all of its obligations thereunder, and to confer upon the DIP Secured Parties all rights, powers, and remedies thereunder and (b) the DIP Secured Parties being granted, as security for the prompt payment of the obligations under the DIP Facility and all other DIP Obligations, perfected security interests in and liens upon the DIP Collateral, and that such perfected security interests and liens have the priorities set forth herein.

H. Service of Motion and Notice of Final Hearing. The affidavit and declaration of service on file with the Court (ECF No. [●]) demonstrate that the Debtor has served copies of

the Motion (together with the copies of the proposed DIP Credit Agreement and Approved Budget annexed hereto as **Annexes A & B**, respectively), and notice of the Final Hearing by electronic mail, telecopy transmission, hand delivery, overnight courier, or first class United States mail upon (a) the United States Trustee, U.S. Federal Office Building, 201 Varick Street, Room 1006, New York, NY 10014 (Attn: Susan A. Arbeit); (b) counsel to any official committee of unsecured creditors (the “Creditors’ Committee”); (c) holders of the 30 largest unsecured claims against the Debtor; (d) the parties to the RSAs; (e) the Debtor’s existing lienholders; (f) the Internal Revenue Service; (g) the United States Attorney’s Office for the Southern District of New York; (h) the Federal Aviation Administration; (i) the Initial DIP Lenders and their counsel, White & Case LLP, 1221 Avenue of the Americas, New York, NY 10020 (Attn: Andrew Zatz and Todd Wolynski); and (j) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Court finds that the foregoing notice of the Motion, as it relates to this Final Order and the Final Hearing, is appropriate, due, and sufficient for all purposes under the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules, including sections 102(1) and 364 of the Bankruptcy Code and Bankruptcy Rule 4001(c), and that no further notice of the relief sought at the Final Hearing and the relief granted herein is necessary or required.

I. **Debtor’s Stipulations.** After consultation with its attorneys and financial advisors, and without prejudice to the rights of parties in interest as set forth in paragraph 14 herein, the Debtor, on its behalf and on behalf of its estate, admits, stipulates, acknowledges, and agrees as follows (subparagraphs I(a) through I(e) below are referred to herein, collectively, as the **“Debtor’s Stipulations”**):

(a) *Bridge Loan Facilities.* Pursuant to those certain Loan Agreements, dated as of February 10, 2021 (the “**First Bridge Loan Agreement**”), May 27, 2021 (the “**Second Bridge Loan Agreement**”), and August 19, 2021 (the “**Third Bridge Loan Agreement**”) respectively (each as amended, restated, or otherwise modified from time to time, the “**Bridge Loan Agreements**,” and collectively with any other agreements and documents executed or delivered in connection therewith, each as may be amended, restated, or otherwise modified from time to time, the “**Bridge Loan Documents**”), between the Debtor and Buona Sorte Holdings, Inc., a corporation duly organized and existing under the laws of the Republic of the Philippines, as lender thereunder (the “**Bridge Lender**”), the Bridge Lender provided certain term loans to the Debtor (the “**Bridge Loans**” and, collectively with all accrued and unpaid interest thereon, all other Secured Obligations (as defined in the Bridge Loan Agreements), and all fees, costs, and other charges due and payable under the Bridge Loan Documents, the “**Bridge Loan Obligations**”).

(b) *Bridge Loans.* Pursuant to the Bridge Loan Agreements, the Bridge Lender provided credit facilities (the “**Bridge Loan Facilities**”) to the Debtor in an aggregate principal amount of \$100 million, comprised of (i) \$60 million pursuant to the First Bridge Loan Agreement, (ii) \$25 million pursuant to the Second Bridge Loan Agreement, and (iii) \$15 million pursuant to the Third Bridge Loan Agreement. The Bridge Loan Facilities provided the Debtor with the necessary liquidity and runway to prepare for an organized bankruptcy filing and negotiate Restructuring Support Agreements with numerous lenders and lessors regarding the Debtor’s go-forward

aircraft leases, long-term loans, and optimized fleet leasing strategy in accordance with the Debtor's revised business plan.

(c) *Bridge Loan Liens and Bridge Loan Collateral.* As more fully set forth in the Bridge Loan Documents, prior to the Petition Date, the Debtor granted to the Bridge Lender a first priority security interest in and a continuing lien on (the “**Bridge Loan Liens**”) each of the Aircraft, Engines, and Spare Engines (each as defined in the Bridge Loan Agreements, collectively, the “**Bridge Loan Collateral**”), subject only to any Permitted Liens (as defined in the Bridge Loan Agreements, and as used herein, the “**Bridge Loan Permitted Liens**”).

(d) *Validity, Perfection, and Priority of Bridge Loan Obligations and Bridge Loan Liens.* The Debtor acknowledges and agrees that, as of the Petition Date, (i) the Bridge Loan Liens on the Bridge Loan Collateral were valid, binding, enforceable, non-avoidable, and properly perfected and were granted to, or for the benefit of, the Bridge Lender for fair consideration and reasonably equivalent value; (ii) the Bridge Loan Liens were senior in priority over any and all other liens on the Bridge Loan Collateral, subject only to Bridge Loan Permitted Liens and liens senior by operation of law (solely to the extent any such liens were valid, properly perfected, non-avoidable, and senior in priority to the Bridge Loan Liens as of the Petition Date, the “**Prior Liens**”); (iii) the Bridge Loan Obligations constitute legal, valid, binding, and non-avoidable obligations of the Debtor enforceable in accordance with the terms of the applicable Bridge Loan Documents; (iv) no offsets, challenges, objections, defenses, claims, or counterclaims of any kind or nature to any of the Bridge Loan Liens or Bridge Loan Obligations exist, and no portion of the Bridge Loan Liens or Bridge Loan Obligations are subject to any challenge or

defense, including avoidance, disallowance, disgorgement, recharacterization, or subordination (equitable or otherwise) pursuant to the Bankruptcy Code or applicable non-bankruptcy law; (v) the Debtor and its estate have no claims, objections, challenges, causes of action, and/or choses in action, including avoidance actions under Chapter 5 of the Bankruptcy Code or applicable state law equivalents or actions for recovery or disgorgement, against the Bridge Lender, or any of its respective affiliates, agents, attorneys, advisors, professionals, officers, directors, or employees arising out of, based upon, or related to the Bridge Loan Facilities; (vi) the Debtor has waived, discharged, and released any right to challenge any of the Bridge Loan Obligations, the priority of the Debtor's obligations thereunder, or the validity, extent, and priority of the Bridge Loan Liens; and (vii) the Bridge Loan Obligations constitute allowed, secured claims within the meaning of sections 502 and 506 of the Bankruptcy Code.

(e) Non-Controlling Party. The Bridge Lender shall not be deemed to be in control of the operations of the Debtor or to be acting as a "responsible person" or "owner or operator" with respect to the operation or management of the Debtor.

J. Prior Liens. Nothing herein shall constitute a finding or ruling by this Court that any alleged Prior Lien is valid, senior, enforceable, prior, perfected, or non-avoidable. Moreover, nothing shall prejudice the rights of any party in interest, including the Debtor, the DIP Agent, the Bridge Lender, or a Committee (if appointed), to challenge the validity, priority, enforceability, seniority, avoidability, perfection, or extent of any alleged Prior Lien. The right of a seller of goods to reclaim such goods under section 546(c) of the Bankruptcy Code is not a Prior Lien; rather, any such alleged claim arising or asserted as a right of reclamation (whether asserted under section 546(c) of the Bankruptcy Code or otherwise) shall have the same rights

and priority with respect to the DIP Liens (as defined below) as such claim had with the Bridge Loan Liens.

K. Finding of Good Cause. Good cause has been shown for the entry of this Final Order and authorization for: (a) the DIP Lenders to provide the Debtor with the DIP Loans and (b) the Debtor to accept, incur, and undertake the DIP Obligations pursuant to the DIP Loan Documents as provided herein. The Debtor's need for financing of the type afforded by the DIP Loan Documents is critical. Entry of this Final Order will preserve the value of the assets of the Debtor's estate and is in the best interests of the Debtor, its creditors and its estate. The terms of the DIP Facility are fair and reasonable, including the interest rates and fees owed thereunder, reflect the Debtor's exercise of prudent business judgment consistent with its fiduciary duties, and are supported by reasonably equivalent value and fair consideration.

L. Finding of Good Faith. Based upon the record presented at the Final Hearing, the DIP Facility has been negotiated in good faith and at arm's length between the Debtor, on the one hand, and the DIP Secured Parties, on the other. All of the DIP Obligations, including all DIP Loans made pursuant to the DIP Loan Documents and all other liabilities and obligations of the Debtor under this Final Order, owing to the DIP Secured Parties shall be deemed to have been extended by the DIP Secured Parties in "good faith," as such term is used in section 364(e) of the Bankruptcy Code, and in express reliance upon the protections offered by section 364(e) of the Bankruptcy Code. The DIP Secured Parties shall be entitled to the full protection of section 364(e) of the Bankruptcy Code in the event that this Final Order or any provision hereof is vacated, reversed, or modified, on appeal or otherwise.

M. No Liability to Third Parties. The Debtor stipulates and the Court finds that in making decisions to advance loans to the Debtor, in administering any DIP Loans, in accepting

the Approved Budget, or in taking any other actions permitted by this Final Order or the DIP Loan Documents in their respective capacities as DIP Lenders or DIP Agent, none of the DIP Secured Parties shall be deemed to be in control of the operations of the Debtor or to be acting as a “responsible person” or “owner or operator” with respect to the operation or management of the Debtor.

N. No Claims or Causes of Action. There exist no claims or causes of action against any of the DIP Agent, the other DIP Secured Parties or the Bridge Lender with respect to, in connection with, related to, or arising from the DIP Loan Documents; or the DIP Facility that may be asserted by the DIP Secured Parties, the Debtor, the Bridge Lender or any other person or entity.

O. Adequate Protection. The Bridge Lender is entitled to receive adequate protection to the extent of any diminution in value of its interests in the Bridge Loan Collateral as set forth in this Final Order.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDICATED AND DECREED as follows:

1. Grant of Motion; Authorization of Final Financing; Use of Proceeds.

(a) The Motion is hereby granted as and to the extent provided herein, and the Court hereby authorizes and approves the Debtor’s execution and delivery of the DIP Loan Documents, and the Debtor’s execution and delivery of all instruments, security agreements, assignments, pledges, mortgages, reaffirmations, and other documents referred to therein or reasonably requested by the DIP Secured Parties to give effect to the terms thereof and as will be drafted and executed as contemplated therein, in each case, in final form and substance consistent with this Final Order and otherwise reasonably acceptable to the DIP Secured Parties (collectively, this Final Order, the DIP Credit Agreement, the Collateral Documents, the

Approved Budget, and any other document delivered to any DIP Secured Party in connection with any of the foregoing, in each case, as the same may be amended, restated, or otherwise modified from time to time in accordance with the terms of this Final Order and the DIP Credit Agreement, are referred to herein as the “**DIP Loan Documents**”).

- (b) The Debtor is hereby authorized to borrow under the DIP Loan Documents and this Final Order up to an aggregate principal amount of \$505,000,000 (inclusive of amounts previously borrowed), subject to any conditions and limitations on availability in the DIP Loan Documents, plus all interest, fees, and other charges payable in connection with the DIP Loans as provided in the DIP Credit Agreement and other DIP Loan Documents; to incur any and all liabilities and obligations under the DIP Loan Documents; to pay all principal, interest, fees, expenses, and other obligations provided for under the Approved Budget and the other DIP Loan Documents, including the obligations under the DIP Loan Documents to indemnify the Indemnitees (as defined in the DIP Credit Agreement); and to pay in full and refinance all Bridge Loan Obligations with the proceeds of Tranche A DIP Loans.
- (c) No DIP Secured Party shall have any obligation or responsibility to monitor the use of the DIP Loans, and each DIP Secured Party may rely upon the Debtor’s representations that the amount of the DIP Loans requested at any time, and the use thereof, are in accordance with the requirements of this Final Order, the Approved Budget, the DIP Loan Documents, the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules.

(d) The Debtor may obtain and use the DIP Loan Proceeds only as permitted under the DIP Loan Documents. For the avoidance of doubt, no DIP Loan Proceeds may be used to make any payment in settlement or satisfaction of any prepetition claim (other than the Bridge Loan Obligations) or administrative claim (other than the DIP Obligations or the Adequate Protection Superpriority Claims (as defined below)), unless such payment is (x) in compliance with the Approved Budget or (y) separately approved or authorized by the Court upon notice to the DIP Agent.

2. Entry into, Execution, Delivery, and Performance of DIP Loan Documents. The Debtor is hereby authorized (to the extent not already accomplished) (a) to enter into the DIP Credit Agreement and the other DIP Loan Documents, (b) to incur and perform the DIP Obligations arising from and after the date of this Final Order under the DIP Facility, (c) to repay amounts borrowed, together with interest, and (d) to pay all fees, costs, and expenses contemplated therein, as well as any other outstanding DIP Obligations to the DIP Secured Parties, in each case in accordance with and subject to the terms and conditions set forth in this Final Order, the other DIP Loan Documents, and such additional documents, instruments, and agreements as may reasonably be required by the DIP Secured Parties to implement the terms or effectuate the purpose of and transactions contemplated by the DIP Loan Documents, the terms of which are incorporated by reference. The DIP Loan Documents may be executed and delivered on behalf of the Debtor by any officer, director, or agent of the Debtor, who by signing shall be deemed to represent himself or herself to be duly authorized and empowered to execute such DIP Loan Documents for and on behalf of the Debtor; the DIP Secured Parties shall be authorized to rely upon any such person's execution and delivery of any of the DIP Loan

Documents as having done so with all requisite power and authority to do so; and the execution and delivery of any of the DIP Loan Documents by any such person on behalf of the Debtor shall be conclusively presumed to have been duly authorized by all necessary corporate action of the Debtor. Upon execution and delivery thereof, each of the DIP Loan Documents shall constitute valid and binding obligations of the Debtor, enforceable against the Debtor in accordance with its terms for all purposes during its Chapter 11 Case, any subsequently converted case of the Debtor under chapter 7 of the Bankruptcy Code (a “**Successor Case**”), and after the dismissal of any Chapter 11 Case. Subject to the provisions of paragraph 14, no obligation, payment, or transfer under the DIP Loan Documents, the Interim Order, or this Final Order (including in connection with any adequate protection provided to the Bridge Lender) shall be stayed, restrained, voidable, avoidable, or recoverable under the Bankruptcy Code or under any applicable non-bankruptcy law (including under sections 502(d), 544, 547, 548, 549, or 550 of the Bankruptcy Code or under any applicable Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act, Uniform Voidable Transactions Act, or similar statute or common law), or subject to any defense, reduction, setoff, recoupment, or counterclaim.

3. DIP Liens. As security for the Debtor’s payment and performance under the DIP Loan Documents, all principal, interest, costs, expenses, fees, and other charges at any time payable by the Debtor to the DIP Secured Parties in connection with the DIP Loan Documents, all reimbursement obligations, and all other indebtedness and obligations contemplated under any of the DIP Loan Documents (all of the foregoing being collectively called the “**DIP Obligations**”), the DIP Agent, for itself and for the benefit of the DIP Lenders, is hereby granted (effective and perfected when the Interim Order was entered, and ratified and continuing with this Final Order, and without the necessity of the execution, filing, or recording by the Debtor or

the DIP Agent of security agreements, pledge agreements, mortgages, financing statements, or other agreements) the following valid, binding, enforceable, non-avoidable, and automatically and properly perfected security interests in and liens upon all of the DIP Collateral (collectively, the “**DIP Liens**”) in the priorities set forth in subparagraphs (a) and (b) below, each of which shall be subject to the Carve Out:

(a) Tranche A DIP Liens. (i) First priority liens pursuant to section 364(c)(2) of the Bankruptcy Code on all DIP Collateral that was not encumbered by Bridge Loan Liens or Permitted Senior Liens (as defined below), and (ii) to the extent any DIP Collateral is subject to any (x) Bridge Loan Liens, (y) Prior Liens or (z) liens perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code (the foregoing clauses (y) and (z) being referred to collectively as the “**Permitted Senior Liens**”), senior liens, pursuant to section 364(d) of the Bankruptcy Code, on such DIP Collateral subject and subordinate only to Permitted Senior Liens (clauses (i) and (ii) together, the “**Tranche A DIP Liens**”).

(b) Tranche B DIP Liens. Pursuant to section 364(c)(3) of the Bankruptcy Code, junior liens on all of the DIP Collateral subject and subordinate to any Permitted Senior Liens, the Tranche A DIP Liens, and the Bridge Loan Liens (the “**Tranche B DIP Liens**”).

(c) Liens Senior to Certain Other Liens. The DIP Liens shall not be (i) subject or subordinate to (A) any lien or security interest that is avoided and preserved for the benefit of the Debtor or the Debtor’s estate under section 551 of the Bankruptcy Code, (B) except to the extent the DIP Loan Documents expressly allow a postpetition lien to have priority over the DIP Liens, any postpetition liens granted by the Debtor to other persons or entities or otherwise arising after the Petition Date, including any liens or security interests granted in favor of any federal, state, municipal, or other governmental unit, commission, board, or court for any

liability of the Debtor, or (C) any intercompany or affiliate liens or security interests against the Debtor; (ii) subordinated to or made *pari passu* with any other lien or security interest on the DIP Collateral under section 363 or 364 of the Bankruptcy Code; or (iii) subject to sections 510(c), 549, or 550 of the Bankruptcy Code. In no event shall any person or entity who pays (or, through the extension of credit to the Debtor, causes to be paid) any of the DIP Obligations be subrogated, in whole or in part, to any rights, remedies, claims, privileges, liens, or priorities granted to or in favor of, or conferred upon, any DIP Secured Party by the terms of any DIP Loan Documents or this Final Order unless such person or entity contemporaneously causes payment in full of all of the DIP Obligations.

(d) Right to Challenging Competing Liens. The DIP Agent (at the direction of the DIP Lenders in accordance with the terms of the DIP Credit Agreement) shall have the right to challenge the validity, priority, perfection, extent, or amount of any lien or security interest filed against the Debtor that relates to DIP Collateral that purports to be senior to any DIP Lien, including any lien or security interest that, if found to be valid, enforceable, non-revocable, and perfected, would constitute a Prior Lien.

(e) Solely for the purposes of this Final Order, notwithstanding anything to the contrary herein or in the DIP Loan Documents, DIP Collateral shall not include any of the Debtor's (i) leasehold interests in equipment (aircraft, engines, flight simulators, or other equipment) leases or the equipment leased thereunder or (ii) equipment subject to financing arrangements (whether through secured loans, finance leases, or otherwise) and interests in the underlying financing agreements, in each case to the extent that the relevant lease or financing agreement prohibits or conditions the grant of a lien or the assignment of the lease or other financing agreement upon the consent of a non-debtor counterparty to the extent such consent

(A) is not actually obtained (after the use of commercially reasonable efforts to obtain such consent) and (B) is required under applicable law to grant the applicable security interest.

4. Superpriority Claims.

(a) Allowed Claims. All DIP Obligations shall at all times constitute superpriority administrative expense claims against the Debtor (the “**DIP Superpriority Claims**”) that will, in accordance with section 364(c)(1) of the Bankruptcy Code, have priority over any and all administrative expenses of and unsecured claims against the Debtor now existing or hereafter arising, of any kind or nature whatsoever, including all administrative expenses of the kind specified in, or arising or ordered under, sections 105, 326, 328, 503(b), 506(c), 507(a), 507(b), 546(c), 726, and 1114 of the Bankruptcy Code (including those resulting from the conversion of the Chapter 11 Case pursuant to section 1112 of the Bankruptcy Code), subject only to the Carve Out and, with respect to the DIP Superpriority Claims arising under the Tranche B Facility, the Bridge Loan Obligations and the Adequate Protection Superpriority Claims. The DIP Superpriority Claims shall survive any conversion of the Chapter 11 Case to a case under chapter 7 of the Bankruptcy Code or the dismissal of the Chapter 11 Case. Subject only to the Carve Out, and, with respect to the DIP Superpriority Claims arising under the Tranche B Facility, the Bridge Loan Obligations and the Adequate Protection Superpriority Claims, the DIP Superpriority Claims shall be payable from and have recourse to all pre- and postpetition property of the Debtor and its estate (excluding Avoidance Actions but including Avoidance Proceeds (as such terms are defined below)).

(b) Proceeds of Avoidance Actions. The DIP Superpriority Claims shall have recourse to all proceeds (the “**Avoidance Proceeds**”) of all of the Debtor’s claims and causes of action pursuant to sections 502(d), 544, 545, 547, 548, 549, 551, 553(b), 732(2), or 742(2) of the

Bankruptcy Code (the “**Avoidance Actions**”), including all of the Debtor’s claims and causes of actions pursuant to section 549 of the Bankruptcy Code to recover any postpetition transfer of DIP Collateral or postpetition transfer of DIP Loan Proceeds.

5. Adequate Protection Liens.

(a) Pursuant to Sections 361 and 363(e) of the Bankruptcy Code, as adequate protection to the Bridge Lender for any diminution in value of its interests in the Bridge Loan Collateral, the Bridge Lender is hereby granted continuing valid, binding, enforceable, and perfected postpetition security interests in and liens on the DIP Collateral (the “**Adequate Protection Liens**”), subject to the Carve Out, the Permitted Senior Liens, the Tranche A DIP Liens, and the Bridge Loan Liens.

(b) The Adequate Protection Liens, which became effective upon the entry of the Interim Order, and are ratified and continuing under this Final Order, shall not at any time be (i) subject or subordinate to (A) any lien or security interest that is avoided and preserved for the benefit of the Debtor or the Debtor’s estate under section 551 of the Bankruptcy Code, (B) except to the extent of the DIP Liens and that the DIP Loan Documents expressly allow a postpetition lien to have priority over the DIP Liens, any postpetition liens granted by the Debtor to other persons or entities or otherwise arising after the Petition Date, including any liens or security interests granted in favor of any federal, state, municipal, or other governmental unit, commission, board, or court for any liability of the Debtor, (C) any intercompany or affiliate liens or security interests against the Debtor, or (D) the Tranche B DIP Liens; (ii) subordinated to or made *pari passu* with any other lien or security interest on the DIP Collateral under section 363 or 364 of the Bankruptcy Code except as set forth herein; or (iii) subject to sections 510(c), 549, or 550 of the Bankruptcy Code. In no event shall any person or entity who pays (or,

through the extension of credit to the Debtor, causes to be paid) any of the Bridge Loan Obligations be subrogated, in whole or in part, to any rights, remedies, claims, privileges, liens, or priorities granted to or in favor of, or conferred upon, the Bridge Lender by this Interim Order unless such person or entity contemporaneously causes payment in full of all of the Bridge Loan Obligations.

6. Adequate Protection Superpriority Claims. As further adequate protection to the Bridge Lender for any diminution in value of its interests in the Bridge Loan Collateral, the Bridge Lender is hereby granted an allowed superpriority administrative expense claim against the Debtor (the “**Adequate Protection Superpriority Claims**”) that will, to the extent provided by section 507(b) of the Bankruptcy Code, have priority over any and all administrative expenses of and unsecured claims against the Debtor now existing or hereafter arising, of any kind or nature whatsoever, including all administrative expenses of the kind specified in, or arising or ordered under, sections 105, 326, 328, 503(b), 506(c), 507(a), 507(b), 546(c), 726, and 1114 of the Bankruptcy Code (including those resulting from the conversion of the Chapter 11 Case pursuant to section 1112 of the Bankruptcy Code), subject only to the Carve Out, the DIP Superpriority Claims arising under the Tranche A DIP Facility (but not those arising under the Tranche B DIP Facility), and the Bridge Loan Obligations. The Adequate Protection Superpriority Claims shall survive any conversion of the Chapter 11 Case to a case under chapter 7 of the Bankruptcy Code or the dismissal of the Chapter 11 Case. Subject only to the Carve Out and the DIP Superpriority Claims arising under the Tranche A DIP Facility (but not those arising under the Tranche B DIP Facility), and the Bridge Loan Obligations, the Adequate Protection Superpriority Claims shall be payable from and have recourse to all pre- and postpetition

property of the Debtor and its estate (excluding Avoidance Actions but including Avoidance Proceeds).

7. Adequate Protection Payments. The Debtor is authorized and directed to provide further adequate protection to the Bridge Lender in the form of payment in cash of (a) accrued interest on the Bridge Loans at the non-default rate due under the Bridge Loan Documents (with the Bridge Lender's right to pursue payment of interest at the default rate preserved); (b) promptly upon entry of this Final Order, the reasonable and documented out-of-pocket fees, costs, and expenses incurred by the Bridge Lender, owed by the Debtor pursuant to the Bridge Loan Documents and arising prior to the Petition Date, including reasonable and documented out-of-pocket fees and expenses of White & Case LLP; and (c) in accordance with the procedures set forth in paragraph 17 hereof, the reasonable and documented out-of-pocket fees, costs, and expenses incurred by the Bridge Lender due pursuant to the Bridge Loan Documents, owed by the Debtor pursuant to the Bridge Loan Documents, and arising on or after the Petition Date, including reasonable and documented out-of-pocket fees and expenses of White & Case LLP.

8. Repayment of DIP Obligations. The DIP Obligations shall be due and payable, and shall be paid, as and when provided in the DIP Loan Documents and as provided herein, without defense, offset, or counterclaim. Without limiting the generality of the foregoing, in no event shall the Debtor be authorized to offset or recoup any amounts owed, or allegedly owed, by any DIP Secured Party to the Debtor or any of its respective subsidiaries or affiliates against any of the DIP Obligations without the prior written consent of the DIP Secured Parties, if any, that would be adversely affected by any such offset or recoupment, and no such consent shall be implied from any action, inaction or acquiescence by any DIP Secured Party.

9. Payments Free and Clear. All payments or proceeds remitted to the Bridge Lender as adequate protection or the DIP Agent by or on behalf of the Debtor pursuant to the DIP Loan Documents, the provisions of this Final Order, or any subsequent order of this Court, shall be received free and clear of any claim, charge, assessment, or other liability, including any such claim or charge arising out of or based on, directly or indirectly, section 506(c) or the “equities of the case” exception of section 552(b) of the Bankruptcy Code.

10. Fees and Expenses of Estate Professionals. Subject to paragraphs 12 and 13 below, the Debtor is authorized to use proceeds of DIP Loans to pay such compensation and expense reimbursement (collectively, “**Professional Fees**”) of professional persons (including attorneys, financial advisors, accountants, investment bankers, appraisers, and consultants, in each case to the extent such professional person’s retention is subject to court approval) retained pursuant to section 327, 330, 331, or 1103 of the Bankruptcy Code, as applicable, by the Debtor (such retained professionals, the “**Debtor’s Professionals**”) or Creditors’ Committee, (such retained professionals, the “**Committee Professionals**” and, collectively with the Debtor’s Professionals, the “**Professionals**”), to the extent that such compensation and expense reimbursement is authorized and approved by the Court at any time.

11. Section 506(c) Claims. Except to the extent of the Carve Out, no costs or expenses of administration shall be imposed upon any DIP Secured Party or on any DIP Collateral pursuant to section 506(c) of the Bankruptcy Code or otherwise without the prior written consent of such DIP Secured Party, and no such consent shall be implied from any action, inaction, or acquiescence by any DIP Secured Party. Further, the Debtor waives, and shall not assert in this Chapter 11 Case or any Successor Case, any surcharge claim under

sections 105(a) and/or 506(c) of the Bankruptcy Code or otherwise with respect to the DIP Obligations, the DIP Liens, the Bridge Loan Obligations, or the Bridge Loan Liens.

12. Carve Out.

(a) Notwithstanding anything to the contrary in this Final Order, any other DIP Loan Document, or any other order of this Court to the contrary, the rights and claims of the DIP Lenders, including the DIP Liens and DIP Superpriority Claims, shall be subject and subordinate in all respects to the payment of the Carve Out. As used in this Final Order, “**Carve Out**” means the sum of (i) all fees required to be paid to the Clerk of the Court and to the United States Trustee under sections 156(c) and 1930(a) of title 28 of the United States Code plus interest, if any, as set forth in section 3717 of title 31 of the United States Code (without regard to the notice set forth in (iii) below); (ii) all reasonable fees and expenses up to \$150,000 incurred by a trustee under section 726(b) of the Bankruptcy Code (without regard to the notice set forth in (iii) below); (iii) to the extent allowed at any time, whether allowed by the Court prior to or after delivery of a Carve Out Trigger Notice (as defined below), whether by interim order, procedural order, or otherwise, all unpaid fees and expenses (including any restructuring, sale, success, or other transaction fee of any investment bankers or financial advisors) accrued or incurred by the Professionals (such fees and expenses, the “**Allowed Professional Fees**”) at any time before or on the first business day following the day on which a Carve Out Trigger Notice is delivered by the DIP Agent in accordance with this paragraph 12 (such date of delivery, the “**Termination Declaration Date**”); and (iv) Allowed Professional Fees incurred after the first business day following the Termination Declaration Date, to the extent allowed at any time, whether by interim order, procedural order, or otherwise, in an aggregate amount not to exceed \$2,000,000 less the amount of any prepetition retainers received by the Professionals and not

applied to the fees, disbursements, costs, and expenses set forth in clause (iii) above (the amount set forth in this clause (iv), the “**Post-Carve Out Trigger Notice Cap**”). For purposes of the foregoing, “**Carve Out Trigger Notice**” shall mean a written notice delivered by email (or other electronic means) by the DIP Agent (at the direction of the Tranche A DIP Lenders until such time as the Tranche A DIP Obligations have been satisfied in full, and then at the direction of the Tranche B DIP Lenders) to the Debtor, its lead restructuring counsel, the U.S. Trustee, and counsel to any Creditors’ Committee, which notice may be delivered following the occurrence and during the continuation of an Event of Default, stating that the Post-Carve Out Trigger Notice Cap has been invoked.

(b) On the Termination Declaration Date, the Carve Out Trigger Notice shall constitute a demand to the Debtor to utilize all cash on hand as of such date to fund a reserve in an amount equal to the then-unpaid amounts of the Allowed Professional Fees within one business day of the Termination Declaration Date; *provided* that in the event that a Termination Declaration Date occurs, each Professional shall have two business days to deliver to the Debtor such Professional’s good faith estimate of the Allowed Professional Fees incurred through the Termination Declaration Date, and the Debtor shall fund into the Carve Out Account (as defined below) such amounts within one business day of receipt of such estimates. The Debtor shall deposit and hold such amounts (the “**Pre-Carve Out Trigger Notice Reserve**”) in the Carve Out Account in trust to pay such then-unpaid Allowed Professional Fees prior to any and all other Allowed Professional Fees. On the Termination Declaration Date, the Carve Out Trigger Notice shall also constitute a demand to the Debtor to utilize all cash on hand as of such date and any available cash thereafter held by the Debtor, after funding the Pre-Carve Out Trigger Notice Reserve, to fund a reserve in an amount equal to the Post-Carve Out Trigger Notice Cap. The

Debtor shall deposit and hold such amounts (the “**Post-Carve Out Trigger Notice Reserve**” and, together with the Pre-Carve Out Trigger Notice Reserve, the “**Carve Out Reserves**”) in a segregated account (the “**Carve Out Account**”) at an institution reasonably designated by the DIP Agent (at the direction of the Tranche A DIP Lenders until such time as the Tranche A DIP Obligations have been satisfied in full, and then the Tranche B DIP Lenders) in trust to pay such Allowed Professional Fees benefiting from the Post-Carve Out Trigger Notice Cap prior to any and all other Allowed Professional Fees. All funds in the Pre-Carve Out Trigger Notice Reserve shall be used first to pay the obligations set forth in clauses (i) through (iii) of the definition of Carve Out set forth above (the “**Pre-Carve Out Amounts**”) until paid in full, and then, to the extent the Pre-Carve Out Trigger Notice Reserve has not been reduced to zero, to repay the DIP Obligations, unless the DIP Obligations have been indefeasibly paid in full and all DIP Commitments have been terminated, in which case such remaining funds shall be retained by the Debtor. All funds in the Post-Carve Out Trigger Notice Reserve shall be used first to pay the obligations set forth in clause (iv) of the definition of Carve Out set forth above (the “**Post-Carve Out Amounts**”) until paid in full, and then, to the extent the Post-Carve Out Trigger Notice Reserve has not been reduced to zero, to repay the DIP Obligations, unless the DIP Obligations have been indefeasibly paid in full and all DIP Commitments have been terminated, in which case such remaining funds shall be retained by the Debtor.

(c) Notwithstanding anything to the contrary in this Final Order or the other DIP Loan Documents, following delivery of a Carve Out Trigger Notice, none of the DIP Secured Parties shall be permitted to sweep or foreclose on cash (including cash received as a result of the sale or other disposition of any assets) of the Debtor in the Carve Out Account, but shall have a security interest in any residual interest in the Carve Out Reserves, with any excess

paid to the DIP Agent for application to the DIP Obligations in accordance with the DIP Loan Documents and this paragraph 12. Further, notwithstanding anything to the contrary in this Final Order or the other DIP Loan Documents, (i) disbursements by the Debtor from the Carve Out Account shall not constitute DIP Loans or increase or reduce the DIP Obligations, (ii) the failure of the Carve Out Reserves to satisfy in full the Allowed Professional Fees shall not affect the priority of the Carve Out, (iii) in no way shall the Approved Budget, Carve Out, Post-Carve Out Trigger Notice Cap, Carve Out Reserves, or any of the foregoing be construed as a cap or limitation on the amount of the Allowed Professional Fees due and payable by the Debtor, and (iv) the Carve Out as provided for and capped by this Final Order shall be senior to and have priority over all liens securing the DIP Obligations and the DIP Superpriority Claims. Notwithstanding the foregoing, subject to the terms of any applicable retention orders entered by the Court, the DIP Secured Parties reserve all of their rights to challenge or otherwise object to any of the fees or expenses sought to be approved by any of the Professionals.

(d) Any payment or reimbursement made prior to the Termination Declaration Date in respect of any Allowed Professional Fees shall not reduce the Carve Out. Any payment or reimbursement made on or after the Termination Declaration Date in respect of any Allowed Professional Fees shall permanently reduce the Carve Out on a dollar-for-dollar basis.

(e) None of the DIP Secured Parties shall be responsible for the payment or reimbursement of any fees or disbursements of any Professional incurred in connection with the Chapter 11 Case or any Successor Case. Nothing in this Final Order or otherwise shall be construed to obligate the DIP Secured Parties, in any way, to pay compensation to, or to reimburse expenses of, any Professional or to guarantee that the Debtor has sufficient funds to pay such compensation or reimbursement.

13. DIP Proceeds Restrictions. Neither the Carve Out nor any DIP Loan Proceeds or DIP Collateral shall be used to, among other things (any of the following each a “**Prohibited Purpose**”): (a) object to, seek subordination of, or contest the validity, extent, perfection, priority, or enforceability of the DIP Facility or the amount due thereunder and the superpriority claims granted thereby, the DIP Liens, the Bridge Loan Facilities or the amount due thereunder, or the Bridge Loan Liens; (b) investigate, initiate, assert, or prosecute any claim, defense, demand, or cause of action against the DIP Agent, the DIP Lenders, or the Bridge Lender, or any of their respective officers, directors, employees, agents, attorneys, representatives, subsidiaries, affiliates, or shareholders, under or relating to the DIP Facility, including, in each case, any action, suit or other proceeding for breach of contract or tort or pursuant to sections 105, 506, 510, 544, 547, 548, 549, 550, 552, or 553 of the Bankruptcy Code, or under any other applicable law (state, federal, or foreign), or otherwise; (c) prevent, hinder, or delay, whether directly or indirectly, any DIP Secured Party’s or the Bridge Lender’s assertion or enforcement of its liens and security interests, or its efforts to realize upon any DIP Collateral or Bridge Loan Collateral or the claims authorized or granted under the DIP Loan Documents or the Bridge Loan Documents, as applicable, or exercise any other rights and remedies under the DIP Loan Documents or Bridge Loan Documents, as applicable, or applicable law; (d) seek to modify any of the rights granted under this Final Order to any DIP Secured Party or the Bridge Lender; (e) assert any defense, counterclaim, or offset to this Final Order, any DIP Obligations, or any Bridge Loan Obligations; or (f) object to, contest, delay, prevent, or interfere in any way with the exercise of rights or remedies by any DIP Secured Party with respect to any DIP Collateral, after the occurrence and during the continuance of an Event of Default (as defined in the DIP Credit Agreement); *provided, however*, that the Carve Out and such DIP Loan and DIP Collateral

proceeds may be to pay the allowed fees and expenses, in an amount not to exceed \$100,000 in the aggregate (the “**Investigation Budget Amount**”), incurred solely by a Creditors’ Committee (if appointed), in investigating (but not prosecuting or challenging) the validity, enforceability, perfection, priority, or extent of the Bridge Loan Liens within 60 calendar days following the date of entry of this Final Order, unless otherwise extended by the Court.

14. Effect of Stipulations on Third Parties.

(a) Generally. The Debtor’s Stipulations are and shall be irrevocably binding on the Debtor. All creditors and parties in interest and all of their successors in interest and assigns, including a Creditors’ Committee (if appointed), shall also be bound by the Debtor’s Stipulations unless, and solely to the extent that, any creditor, a party in interest or Creditors’ Committee, in each case that has sought and obtained standing and the requisite authority to commence a Challenge (as defined below) (other than the Debtor, as to which any Challenge is irrevocably waived and relinquished) (i) has timely filed the pleadings, and timely commenced the proceeding required under the Bankruptcy Code and Bankruptcy Rules, including as required pursuant to Part VII of the Bankruptcy Rules (in each case subject to the limitation set forth in this paragraph 14), challenging any of the Debtor’s Stipulations (each such proceeding or pleading commencing a proceeding or other contested matter, a “**Challenge**”) by the earlier of (A) the date of entry of an order confirming a plan for the Debtor and (B) the later of (1) for a Creditors’ Committee (if appointed), 60 days from the entry of this Final Order, or (2) 75 days following the entry of the Final Order for any other party in interest with requisite standing (the earlier to occur of (A) and (B), the “**Challenge Deadline**”), as such applicable date may be extended in writing from time to time in the sole discretion of the Bridge Lender or by this Court for good cause shown pursuant to an application filed by a party in interest prior to the expiration

of the Challenge Deadline, and (ii) this Court enters judgment in favor of the plaintiff or movant in any such timely commenced Challenge proceeding and any such judgment has become a final judgment that is not subject to any further review or appeal.

(b) Binding Effect. To the extent no Challenge proceeding is timely commenced by the Challenge Deadline, or to the extent such proceeding does not result in a final and non-appealable judgment of this Court that is inconsistent with the Debtor's Stipulations, then, without further notice, motion, or application to, order of, or hearing before, this Court, the Debtor's Stipulations shall, pursuant to this Final Order, become binding, conclusive, and final on any person, entity, or party in interest in this Chapter 11 Case, and their respective successors and assigns, and in any Successor Case for all purposes, and shall not be subject to challenge or objection by any party in interest, including a trustee, responsible individual, examiner with expanded powers, or other representatives of the Debtor's estate. Notwithstanding anything to the contrary herein, if any such proceeding is timely commenced, the Debtor's Stipulations shall nonetheless remain binding on all other parties in interest and preclusive as provided in subparagraph (a) above except to the extent that any of the Debtor's Stipulations is expressly the subject of a timely filed Challenge, which Challenge is successful as set forth in a final judgment as provided in subparagraph (a) above. To the extent any such Challenge proceeding is timely commenced, as adequate protection, the Bridge Lender shall be entitled to payment of the reasonable related costs and expenses, including reasonable and documented attorneys' fees of one law firm and, to the extent necessary, one local counsel in each relevant jurisdiction, incurred in defending itself in any such proceeding. Upon a successful Challenge brought pursuant to this paragraph 14, the Court may fashion any appropriate remedy.

15. Reservation of Rights.

(a) Protection from Subsequent Financing Order. Prior to the payment in full of all DIP Obligations and Bridge Loan Obligations and the termination of funding commitments under the DIP Facility in accordance with the terms of the DIP Loan Documents and the Bridge Loan Facilities in accordance with the terms of the Bridge Loan Documents, there shall not be entered in this Chapter 11 Case or in any Successor Case any order other than with the consent of the Bridge Lender, the DIP Agent, and the requisite DIP Lenders (as provided for in the DIP Loan Documents) that authorizes the obtaining of credit or the incurrence of indebtedness by the Debtor (or any trustee or examiner) that is: (i) secured by a security interest, mortgage, or other lien on all or any part of the DIP Collateral that is equal or senior to the DIP Liens or the Adequate Protection Liens or (ii) entitled to claims with payment priority that is equal or senior to the DIP Superpriority Claims or the Adequate Protection Superpriority Claims; *provided, however,* that nothing herein shall prevent the entry of an order that specifically provides for, as a condition to the granting of the benefits of clauses (i) and (ii) above, (1) the payment in full of all of the DIP Obligations and the Bridge Loan Obligations and (2) the termination of any funding commitments under the DIP Loan Documents and the Bridge Loan Documents.

(b) Rights Upon Dismissal, Conversion, or Consolidation. The dismissal, conversion, or substantive consolidation of the Chapter 11 Case shall not affect the rights or remedies of any DIP Secured Party or the Bridge Lender under the DIP Loan Documents or this Final Order, and all of the respective rights and remedies hereunder and thereunder of each DIP Secured Party and the Bridge Lender shall remain in full force and effect as if such Chapter 11 Case had not been dismissed, converted, or substantively consolidated.

(c) Survival of Final Order. This Final Order, and any actions taken pursuant hereto, shall survive the entry of and shall not be modified, superseded, impaired, discharged, or

in any way altered, without the consent of the DIP Secured Parties, by any order that may be entered: (i) confirming any plan of reorganization or liquidation in the Debtor's Chapter 11 Case; (ii) converting the Debtor's Chapter 11 Case to a case under chapter 7 of the Bankruptcy Code; (iii) dismissing the Debtor's Chapter 11 Case or any Successor Case; or (iv) pursuant to which the Court abstains from hearing the Chapter 11 Case or any Successor Case. The terms and provisions of this Final Order, including the claims, liens, security interests, and other protections granted to the DIP Secured Parties and the Bridge Lender pursuant to this Final Order or the other DIP Loan Documents, shall continue in full force and effect notwithstanding the entry of any such order, and such rights, claims and liens shall maintain their priority as provided by this Final Order and the other DIP Loan Documents to the maximum extent permitted by law until all of the DIP Obligations are indefeasibly paid in full in accordance with the DIP Loan Documents.

(d) No Discharge. None of the DIP Obligations shall be discharged by the entry of any order confirming a plan of reorganization or liquidation in this Chapter 11 Case, unless such obligations have been indefeasibly paid in full in accordance with the DIP Loan Documents on or before the effective date of such plan, or each of the DIP Secured Parties has otherwise agreed in writing, and, pursuant to section 1141(d)(4) of the Bankruptcy Code, the Debtor has waived such discharge.

(e) Credit Bid Protection. The DIP Secured Parties shall have, subject to section 363(k) of the Bankruptcy Code, the unqualified right to credit bid up to the full amount of the DIP Obligations and the DIP Superpriority Claims, without the need for further Court order authorizing the same, in connection with any sale of any of the DIP Collateral, whether such sale is effectuated through section 363 or 1129 of the Bankruptcy Code, by a chapter 7

trustee under section 725 of the Bankruptcy Code, or otherwise. The Debtor shall not object to or support any objection to any DIP Secured Party credit bidding up to the full amount of its outstanding DIP Obligations in accordance with the applicable DIP Loan Documents in any sale of any DIP Collateral, whether such sale is effectuated through section 363 or 1129 of the Bankruptcy Code, by a chapter 7 trustee under section 725 of the Bankruptcy Code, or otherwise.

(f) No Marshaling. In no event shall any DIP Secured Party be subject to the equitable doctrine of “marshaling” or any similar doctrine with respect to any DIP Collateral.

(g) No Requirement to File Claim for DIP Obligations. Notwithstanding anything to the contrary contained in any prior or subsequent order of the Court, including any order establishing a deadline for the filing of proofs of claim or requests for payment of administrative expenses under section 503(b) of the Bankruptcy Code, no DIP Secured Party or Bridge Lender shall be required to file any proof of claim or request for payment of administrative expenses with respect to any of the DIP Obligations or the Bridge Loan Obligations, all of which shall be due and payable in accordance with the DIP Loan Documents and the Bridge Loan Documents applicable thereto without the necessity of filing any such proof of claim or request for payment of administrative expenses; and the failure to file any such proof of claim or request for payment of administrative expenses shall not affect the validity, priority, or enforceability of any of the DIP Loan Documents or the Bridge Loan Documents or of any DIP Obligations or Bridge Loan Obligations arising at any time thereunder, or prejudice or otherwise adversely affect any DIP Secured Party or any Bridge Lender’s rights, remedies, powers, or privileges under any of the DIP Loan Documents, the Bridge Loan Documents, this Final Order, or applicable law.

16. Automatic Perfection of Liens. Effective when the Interim Order was entered, and ratified and continuing with the entry of this Final Order, the DIP Liens and Adequate Protection Liens are effective, valid, binding, enforceable, and duly perfected. None of the DIP Secured Parties or the Bridge Lender shall be required to file any UCC-1 financing statement, mortgage, deed of trust, assignment, pledge, security deed, notice of lien, or any similar document or instrument in any jurisdiction or take any other action (including taking possession of any of the DIP Collateral) in order to validate the perfection of any DIP Liens or the Adequate Protection Liens, but all of such filings and other actions are hereby authorized by the Court. If the DIP Agent or Bridge Lender, in its discretion, chooses to file or record any such mortgage, deed of trust, assignment, pledge, security deed, notice of lien, or UCC-1 financing statement, or take any other action in any jurisdiction to evidence the perfection of any part of the DIP Liens or the Adequate Protection Liens, as applicable, the Debtor and its respective officers are authorized and directed to use commercially reasonable efforts to execute, file, and record any documents or instruments as the DIP Agent or the Bridge Lender, as applicable, may reasonably request, and all such documents and instruments shall be deemed to have been filed or recorded at the time and on the date of entry of this Final Order. The DIP Agent or Bridge Lender may, in its reasonable discretion, file a certified copy of this Final Order in any filing office in any jurisdiction in which the Debtor is organized or has or maintains any DIP Collateral or an office, and each filing office is directed to accept such certified copy of this Final Order for filing and recording. The DIP Agent, the DIP Lenders, or the Bridge Lender may require the Debtor to enter into non-U.S. security documentation with respect to such DIP Collateral located in non-U.S. jurisdictions, and the Debtor and its respective officers are authorized and directed to use commercial reasonable efforts to execute, file, and record any documents or instruments as the

DIP Agent, the DIP Lenders, or the Bridge Lender may reasonably request, and all such documents and instruments shall be deemed to have been filed or recorded at the time and on the date of entry of this Final Order.

17. Reimbursement of Fees, Costs, and Expenses of DIP Secured Parties and the Bridge Lender. The Debtor shall reimburse the DIP Secured Parties for their reasonable and documented out-of-pocket fees, costs, and expenses, whether accrued on, prior to, or after the Closing Date, in connection with (a) the preparation, negotiation, execution, and administration of the DIP Loan Documents and any other document prepared in connection therewith or the consummation and administration of any transaction contemplated therein, including any amendment or waiver of the DIP Loan Documents, (b) the funding of the DIP Loans, (c) the creation, perfection, or protection of the DIP Liens (including all search, filing and recording fees), (d) internal audit reviews and field examinations, (e) the enforcement or preservation of any right or remedy under any DIP Loan Document, any DIP Obligation, or with respect to the DIP Collateral, (f) the commencement, defense, conduct of, intervention in, or the taking of any other action (including preparation for and/or response to any subpoena or request for document production relating thereto) with respect to, any proceeding related to the Debtor, any DIP Loan Document or DIP Obligation, (g) the review of pleadings and other filings made with the Bankruptcy Court, (h) attendance at hearings in respect of the Chapter 11 Case, (i) any refinancing or restructuring of the DIP Loans in the nature of a “work-out,” and (j) defending and prosecuting any actions or proceedings arising out of or relating to the DIP Obligations or any transactions related to arising in connection with the DIP Loan Documents; *provided* that, in the case of each of the foregoing clauses (a)-(j), such fees, costs, and expenses of counsel shall be limited to one law firm on behalf of all DIP Secured Parties and, to the extent necessary, one

local counsel in each relevant jurisdiction (and in the case of an actual or perceived conflict of interest, one additional law firm on behalf of the affected DIP Secured Party). Each professional (including, pursuant to paragraph 7, those retained by the Bridge Lender) or party shall provide copies of applicable invoices (which invoices may be redacted or summarized for protection of an applicable privilege or the work product doctrine) (the fees thereunder, the “**Invoiced Fees**”) to lead restructuring counsel to the Debtor, counsel to any Creditors’ Committee, and the U.S. Trustee, which invoices shall, for any law firm or other counsel, include (i) a general, brief description of the nature of the matters for which services were performed, (ii) a list of the relevant attorneys and total hours billed by each for the relevant period, and (iii) such other detail regarding the Invoiced Fees as the U.S. Trustee may reasonably request to be provided on a confidential basis. Any objections raised by the Debtor, the U.S. Trustee, or the Creditors’ Committee challenging any portion of the Invoiced Fees (such portion, the “**Disputed Invoiced Fees**”) must be in writing and state with particularity the grounds therefor and must be submitted to the applicable professional or party within ten business days of receipt (the “**Review Period**”) and, if after the Review Period an objection remains unresolved, such objection will be subject to resolution by the Court. After the Review Period, the undisputed portion of Invoiced Fees will be paid promptly by the Debtor, without the necessity of filing formal fee applications, regardless of whether such amounts arose or were incurred before or after the Petition Date. Notwithstanding the foregoing, the Debtor is authorized to pay any such costs, fees, and expenses required as a condition precedent to the obligations of the DIP Lenders pursuant to the DIP Credit Agreement without the need to provide notice to any other party or otherwise comply with the procedures set forth in this paragraph 17 and without any further application to or order of this Court. The Debtor shall pay any Disputed Invoiced Fees promptly upon resolution of the

objection, including to the extent resolved through approval by the Court, to the extent of such approval. In no event shall any invoice or other statement submitted by any DIP Secured Party or the Bridge Lender to the Debtor, the Creditors' Committee, the U.S. Trustee, or any other interested person (or any of their respective Professionals) with respect to fees or expenses incurred by any professional retained by such DIP Secured Party or the Bridge Lender operate to waive the attorney/client privilege, the work-product doctrine, or any other evidentiary privilege or protection recognized under applicable law.

18. Amendments and Waivers. The Debtor and the DIP Secured Parties are hereby authorized to enter into, in accordance with the terms of the applicable DIP Loan Documents and without further order of the Court, any amendments to, modifications of, or waivers with respect to any of such DIP Loan Documents (and the payment of any fees, expenses, or other amounts payable in connection therewith) on the following conditions: (a) the amendment, modification, or waiver must not constitute a material change to the terms of such DIP Loan Document; and (b) copies of the amendment, modification, or waiver must be served upon counsel for any Creditors' Committee and the U.S. Trustee. Any amendment, modification, or waiver that constitutes a material change, to be effective, must be approved by the Court. For purposes hereof, a "material change" shall mean a change to a DIP Loan Document that operates to shorten the term of the DIP Facility or the maturity of the DIP Obligations, to increase the aggregate amount of the DIP Commitments, to increase the rate of interest other than as currently provided in or contemplated by such DIP Loan Documents, to add specific Events of Default, or to enlarge the nature and extent of remedies available to the DIP Agent following the occurrence of an Event of Default. Without limiting the generality of the foregoing, no amendment of a DIP Loan Document that postpones or extends any date or

deadline therein or herein (including the expiration of the term of a DIP Facility), nor any waiver of an Event of Default, shall constitute a “material change” and any such amendment may be effectuated by the Debtor and the DIP Secured Parties without the need for further approval of the Court.

19. Events of Default; Remedies.

(a) Notice of Default. Upon the occurrence of an Event of Default under (and as defined in) any DIP Loan Document and during the continuance thereof: (i) the DIP Lenders may declare, on a pro rata basis, all or any portion of the DIP Facility to be suspended or terminated, whereupon such DIP Facility shall forthwith be suspended or terminated; (ii) the Debtor shall have no right to request any extension of credit under the DIP Facility or to use DIP Loan Proceeds or any DIP Collateral or proceeds of DIP Collateral other than towards the satisfaction of the Bridge Loan Obligations, the DIP Obligations, and the Carve Out, as provided herein, and (iii) subject to the terms of the DIP Credit Agreement, the DIP Agent may in its discretion serve upon counsel for the Debtor, counsel for any Creditors’ Committee, and the U.S. Trustee a written notice (a “**Default Notice**”) setting forth the Events of Default, in which event (unless the Court determines that no Event of Default exists or continues to exist, after notice and a hearing) effective five business days after the Default Notice is filed (the “**Remedies Notice Period**”), the DIP Agent and the Bridge Lender shall be deemed to have received complete relief from the automatic stay imposed by section 362(a) of the Bankruptcy Code (and any other stay then in effect) and shall be authorized, without further notice to the Debtor or any other interested party or any further order of this Court, to (A) declare all or any portion of the unpaid principal amount of all outstanding DIP Loans or Bridge Loans, as applicable, all interest accrued and unpaid thereon, and all other amounts owing or payable under any of the DIP Loan

Documents or Bridge Loan Documents, as applicable, to be immediately due and payable, (B) demand payment and enforce collection of all DIP Obligations, and (C) otherwise exercise all rights and remedies available to them under the DIP Loan Documents or the Bridge Loan Documents, as applicable. During the Remedies Notice Period, the Debtor and any Creditors' Committee shall be entitled to seek an emergency hearing with the Court (such hearing, a "**Remedies Hearing**"). In any Remedies Hearing the Debtor shall waive its right to and shall not be entitled to seek relief, including under section 105 of the Bankruptcy Code, to the extent that such relief would impair or restrict the rights and remedies of the DIP Agent or the Bridge Lenders as set forth in this Final Order or in any of the other DIP Loan Documents or Bridge Loan Documents, as applicable, and the only issue that may be raised by the Debtor is whether, in fact, an Event of Default has occurred. Prior to the adjudication of the Remedies Hearing, the Debtor may use the proceeds of the DIP Facility (to the extent drawn prior to the occurrence of an Event of Default) solely to fund essential operations in accordance with past practice, the DIP Loan Documents, and the Approved Budget. Upon the effectiveness of any relief from the automatic stay granted or deemed to have been granted pursuant to this paragraph 19(a), each of the DIP Agent and Bridge Lender may, in its discretion, take all actions and exercise all other rights and remedies under this Final Order, the other DIP Loan Documents, the Bridge Loan Documents, and applicable law that may be necessary or deemed appropriate to collect any of the DIP Obligations or Bridge Loan Obligations, as applicable, and otherwise enforce any of the provisions of this Final Order. The DIP Agent's or Bridge Lender's delay or failure to exercise rights and remedies under any DIP Loan Documents, this Final Order, the Bridge Loan Documents, or applicable law shall not constitute a waiver of any of its rights and remedies

hereunder, thereunder, or otherwise, unless any such waiver is pursuant to a written instrument executed by the DIP Agent or Bridge Lender, as applicable.

(b) Rights Cumulative. The rights, remedies, powers, and privileges conferred upon any DIP Secured Party and the Bridge Lender pursuant to this Final Order shall be in addition to and cumulative with those contained in the other applicable DIP Loan Documents and Bridge Loan Documents and created under applicable law.

20. Modification of Automatic Stay. The automatic stay provisions of section 362 of the Bankruptcy Code are hereby modified to the extent necessary to implement the provisions of this Final Order and the DIP Loan Documents, thereby permitting the DIP Agent, as and to the extent provided herein, to receive proceeds of the DIP Collateral for application to the DIP Obligations, to file or record any UCC-1 financing statements, mortgages, deeds of trust, assignments, pledges, security deeds, or other instruments and documents evidencing or validating the perfection of any DIP Liens, and to enforce any DIP Liens; and the Bridge Lender, as and to the extent provided herein, to receive adequate protection.

21. Effect of Appeal. Consistent with section 364(e) of the Bankruptcy Code, if any or all of the provisions of this Final Order are hereafter modified or reversed, such modification or reversal on appeal shall not affect the validity of any debt so incurred, or any liens or priorities granted by the Debtor to any DIP Secured Party, prior to the effective date of such modification or reversal, whether or not any such entity knew of the appeal, unless the authorization and incurring of such debt, or the granting of such lien or priority, were stayed pending appeal.

22. Service of Final Order. Promptly after the entry of this Final Order, the Debtor shall serve copies of this Final Order to the parties having been given notice of the Final Hearing.

23. No Deemed Control; Exculpation.

(a) In determining to make any DIP Loans under the DIP Loan Documents, or in exercising any rights or remedies as and when permitted pursuant to this Final Order or the other DIP Loan Documents, no DIP Secured Party shall be deemed to be in control of the Debtor or its operations with respect to the operation or management of such Debtor, nor shall the DIP Secured Parties (in their respective capacities as such) owe any fiduciary duty to the Debtor, its creditors, shareholders, or estate.

(b) None of the DIP Loan Documents or any other document related to the DIP Facility shall in any way be construed or interpreted to impose or allow the imposition upon any DIP Secured Party any liability for any claims arising from the prepetition (subject to paragraph 14) or postpetition activities of the Debtor in the operation of its business or in connection with its restructuring efforts. So long as a DIP Secured Party complies with its obligations under the applicable DIP Loan Documents and applicable law: (i) such DIP Secured Party shall not, in any way or manner, be liable or responsible for (A) the safekeeping of the DIP Collateral, (B) any loss or damage thereto occurring or arising in any manner or fashion from any cause, (C) any diminution in the value thereof, or (D) any act or default of any carrier, servicer, bailee, custodian, forwarding agency, or other person or entity; and (ii) all risk of loss, damage, or destruction of the DIP Collateral shall be borne by the Debtor.

24. Binding Effect; Successors and Assigns. The provisions of this Final Order shall be binding upon all parties in interest in this Chapter 11 Case, including the Debtor, the DIP Secured Parties, and its and their respective successors and assigns (including any chapter 11 or chapter 7 trustee hereafter appointed for the estate of the Debtor, any examiner appointed pursuant to section 1104 of the Bankruptcy Code, any Creditors' Committee, or any other fiduciary appointed as a legal representative of the Debtor or with respect to any property of the

estate of the Debtor), and shall inure to the benefit of the Debtor, the DIP Secured Parties, and its and their respective successors and assigns. In no event shall any DIP Secured Party have any obligation to make DIP Loans to, or permit the use of the DIP Collateral by, any chapter 7 trustee, chapter 11 trustee, or similar responsible person appointed or elected for the estate of the Debtor.

25. Objections Overruled. Any and all objections to the relief requested in the Motion, to the extent that such objections are to entry of this Final Order and that have not otherwise been withdrawn, waived, or resolved by consent at or before the Final Hearing, and all reservations of rights included therein, are hereby OVERRULED and DENIED.

26. Conditions Precedent. No DIP Lender shall have any obligation to make any DIP Loans, or otherwise fulfil any obligation of such DIP Lender set forth in the DIP Loan Documents, unless the conditions precedent to making such extensions of credit or fulfilling any such obligation under the DIP Loan Documents have been satisfied in full or waived in accordance with the DIP Loan Documents.

27. Section 552(b). The Bridge Lender shall be entitled to all of the rights and benefits of Section 552(b) of the Bankruptcy Code and the “equities of the case” exception under Section 552(b) of the Bankruptcy Code shall not apply to the Bridge Lender with respect to proceeds, product, offspring, or profits of any of the Bridge Loan Collateral.

28. Effectiveness; Enforceability. This Final Order shall constitute findings of fact and conclusions of law and shall take effect and be fully enforceable *nunc pro tunc* to the Petition Date immediately upon entry hereof. Notwithstanding Bankruptcy Rules 4001(a)(3), 6004(h), 6006(d), 7062, or 9014 of the Bankruptcy Rules or any other Bankruptcy Rule, or Rule 62(a) of the Federal Rules of Civil Procedure, this Final Order shall be valid, take full effect, and

be enforceable immediately upon entry hereof; there shall be no stay of execution or effectiveness of this Final Order; and any stay of the effectiveness of this Final Order that might otherwise apply is hereby waived for cause shown.

29. Inconsistencies. To the extent that any provision in the other DIP Loan Documents are inconsistent with any of the provisions of this Final Order, the provisions of this Final Order shall govern and control.

30. Headings. Section headings used herein are for convenience only and are not to affect the construction of or to be taken into consideration in interpreting this Final Order.

Dated: _____, 2021
New York, New York

THE HONORABLE SHELLEY C. CHAPMAN
UNITED STATES BANKRUPTCY JUDGE