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*Proposed Counsel to the Debtor and Debtor in Possession*

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

| | |
|---|---|
| **In re:** | **Chapter 11** |
| **PHILIPPINE AIRLINES, INC.,** | **Case No.** 21-11569 (SCC) |
| **Debtor.**[1] | |

**STIPULATION AND ORDER BETWEEN DEBTOR AND COUNTERPARTIES CONCERNING CERTAIN EQUIPMENT**

This Stipulation (this "**Stipulation**") is entered into on the date hereof by and among Philippine Airlines, Inc. (the "**Lessee**" or the "**Debtor**") and each of the parties set forth in Exhibit A hereto (the "**Counterparties**," and the Counterparties together with the Lessee, the "**Parties**") with respect to the agreements (the "**Agreements**" and each an "**Agreement**") and the equipment (the "**Equipment**"), in each case, listed on Exhibit A hereto.

**Recitals**

A. On 3 September, 2021 (the "**Petition Date**"), the Lessee filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. § 101, et seq. (as amended or modified, the "**Bankruptcy Code**") in the United States Bankruptcy Court for the

[1] The Debtor in this case, along with the Debtor's registration number in the applicable jurisdiction, is as follows: Philippine Airlines, Inc. (PW37). The Debtor's corporate headquarters is located at PNB Financial Center, President Diosdado Macapagal Avenue, CCP Complex, Pasay City 1300, Metro Manila, Philippines.

Southern District of New York (the "**Court**"). The Debtor is authorized to operate its businesses and manage its properties as Debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in this case.

B. The Debtor and the Counterparties have engaged in extensive good faith negotiations in an effort to assist the Debtor in its efforts to rationalize its fleet while (i) minimizing the administrative costs and burdens associated with the Equipment and (ii) protecting the respective Counterparties' rights and interests (collectively, the "**Interests**" and each, an "**Interest**") in the Equipment.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and other good and valuable consideration, the Parties, intending to be legally bound, stipulate and agree as follows:

1. (a) This Stipulation is effective for the period from the Petition Date through the earliest to occur of (i) the date the Equipment is made available for return to the Counterparties as contemplated pursuant to decretal paragraph 4(a) hereof, (ii) with respect to any Agreement subject to assumption under section 365 of the Bankruptcy Code, the date of the entry of an order of the Court approving the assumption (or assumption and assignment) of such Agreement, (iii) the effective date of a plan of reorganization for the Debtor in its chapter 11 case that has been confirmed by the Court (such date, the "**Plan Effective Date**"), (iv) the date of an order converting the Debtor's chapter 11 case to a case under chapter 7 of the Bankruptcy Code, (v) the date that the Lessee announces that it has permanently discontinued all scheduled passenger service, (vi) the date of substantial consummation of a sale of all or substantially all assets of the Debtor, and (vii) such other date as the Counterparties and the Debtor may agree in writing with respect to the Equipment (such period of effectiveness, the "**Stipulation Period**").

(b) Upon the termination of the Stipulation Period for any reason other than assumption of an Agreement, the Debtor shall (i) return the Equipment to the Counterparties in accordance with the procedures set forth in decretal paragraphs 3(f), 3(g) and 4 hereof and (ii) comply with the provisions of decretal paragraphs 3(a) through 3(e) hereof until the earlier of (x) the date of such return and (y) the thirtieth (30th) day after the date the Stipulation Period terminates (or for such longer period as may be agreed to by the Debtor and the Counterparties), provided that, in the event that any delay past the end of such period is the direct result of the Debtor's commercially unreasonable delay (which shall exclude any delays caused by or related to the COVID-19 pandemic) to make the Equipment available pursuant to decretal paragraph 4(a)(x)(i) or to arrange for and carry out a ferry flight as contemplated pursuant to decretal paragraph 4(a)(y)(iv), then such period shall be extended for the duration of such delay.

2. The Debtor represents and warrants that as of the date of the execution of this Stipulation and at the time the Agreements were entered into by and between the Debtor and Counterparties, the Debtor did not hold an air carrier operating certificate issued pursuant to chapter 447 of title 49, United States Code and, accordingly for that reason, section 1110 of the Bankruptcy Code is not applicable to the Equipment.

3. During the Stipulation Period:

(a) at any time while the Equipment is not being operated, the Lessee shall:

(i) at the Lessee's expense, maintain and store the Equipment in accordance with the Lessee's maintenance and storage program approved by the applicable aviation authority and based on the maintenance program of the manufacturer of such item of Equipment or such other maintenance program as agreed in writing by the applicable Counterparty and the Debtor (the "**Storage Program**"); *provided* that such maintenance obligation under this

Stipulation shall not include the performance of any Excluded Maintenance (as defined in the PBH Agreement (as defined below)) in respect of the Equipment;

(ii) at the Lessee's expense, continue to carry and maintain all insurances with respect to the Equipment in accordance with the terms required by, and in amounts not less than the amounts required under, the applicable Agreements; and

(iii) in lieu of any inspection rights otherwise set forth under the applicable Agreements, provide the applicable Counterparty or its representative with reasonable access to inspect the Equipment at the sole expense of such Counterparty, *provided* that such inspection shall not unreasonably interfere with the operations of the Lessee and shall be conducted in accordance with the applicable procedures and protocols established by the Lessee which do not unreasonably interfere with such Counterparty's or its representative's ability to conduct an inspection of the scope and nature contemplated by such Counterparty's inspection rights in the applicable Agreements;

(b) at any time during which the Equipment is being operated, the Lessee shall:

(i) at the Lessee's expense, operate and maintain the Equipment pursuant to the maintenance, possession, and use covenants of the Agreements; *provided* that such maintenance obligation under this Stipulation shall not include the performance of any Excluded Maintenance in respect of the Equipment; *provided further* that if the Equipment would have been eligible for the issuance of a special ferry flight permit for a return flight (as contemplated under decretal paragraph 4(a) hereof) as of the Petition Date, the Lessee shall not operate such Equipment in a manner that would cause such Equipment to possess insufficient flight hours and/or flight cycles remaining for safe and permissible operation of the Equipment from wherever it is then located to such return location;

(ii) at the Lessee's expense, continue to carry and maintain all insurances with respect to the Equipment in accordance with the terms required by, and in amounts not less than the amounts required under, the applicable Agreements; and

(iii) in lieu of any inspection rights otherwise set forth under the applicable Agreements, provide the applicable Counterparty or its representative with reasonable access to inspect the Equipment at the sole expense of such Counterparty; *provided* that any such inspection does not unreasonably interfere with the operation or maintenance of the Equipment or the Lessee's operations generally and shall be conducted in accordance with the applicable procedures and protocols established by the Lessee which do not unreasonably interfere with such Counterparty's or its representative's ability to conduct an inspection of the scope and nature contemplated by such Counterparty's inspection rights in the applicable Agreements;

(c) following the earlier of (i) ten (10) business days following the entry of the final order of the Court (the "**Final DIP Order**") approving a debtor in possession loan or loans to the Debtor in an aggregate amount of not less than $350,000,000 (the "**DIP Loan**") and (ii) five (5) business days following the date on which all conditions to the availability of the DIP Loan following the entry of the Final DIP Order are satisfied (or waived) (the earlier of (i) and (ii), the "**PBH Effective Date**"), the Lessee shall pay for the usage of any item of the Equipment identified on Exhibit A on a power by the hour basis in accordance with the terms and payment dates provided in the PBH Agreement;

(d) on the PBH Effective Date, the Lessee shall pay to the Counterparties the accrued PBH Rent (as defined in the PBH Agreement) for the period from the Petition Date through the PBH Effective Date in accordance with the provisions of the PBH Agreement;

(e) the Lessee shall (i) except for the Excluded Obligations (as defined in the

PBH Agreement) and as otherwise set forth in this Stipulation or the PBH Agreement, comply with all provisions of the applicable Agreements insofar as they relate to the Stipulation Period (including, without limitation, the Debtor's obligation to pay maintenance reserves that accrued under the Agreements based on utilization of the Equipment or the passage of time that occurred on or after the Petition Date) and (ii) on the PBH Effective Date, pay to the Counterparties the aggregate of all outstanding maintenance reserves that accrued under the Agreements based on utilization of the Equipment or the passage of time that occurred prior to the Petition Date;

(f) the Debtor may, subject to both (i) decretal paragraph 3(h), and (ii) any requirement by the Court that a further order or notice is necessary, at any time upon 15 days' notice to the Counterparties, reject an Agreement or abandon the Equipment and return the Equipment in accordance with the procedures set forth in decretal paragraph 4 hereof. For the avoidance of doubt and notwithstanding anything to the contrary herein, the Debtor may seek authorization to reject or abandon any of the Equipment and the Agreements corresponding to such Equipment solely on an aircraft by aircraft basis (*i.e.,* an individual airframe with its associated engines) or in the case of Agreements that are engine leases, solely on an engine by engine basis, and shall not be permitted to reject or abandon only a portion of an aircraft (*e.g.* an airframe but not its associated engines) or an engine (e.g., an engine but not its associated engine stands or quick engine change unit) or some but not all of the Agreements to the extent such Agreements relate to the same Equipment, and this Stipulation shall remain in full force and effect as to any remaining Equipment that are not subject to any rejected Agreement;

(g) subject to decretal paragraph 3(h) below, the Counterparties may notify the Debtor of the Counterparties' desire to terminate the Stipulation Period as to any Agreement and the Equipment related thereto at any time upon 30 days' prior written notice to the Debtor,

whereupon the Debtor shall return the Equipment in accordance with procedures set forth in decretal paragraph 4 hereof;

(h) notwithstanding the foregoing or anything herein to the contrary, unless either (i) that certain Restructuring Support Agreement dated 3 September 2021 between the Debtor and the Counterparties (the "**RSA**") terminates or is terminated in accordance with its terms pursuant to Section 5.01, 5.02, 5.03, or 5.05 thereof or (ii) an Agreement or an item of Equipment is expressly stated in the RSA to be subject to rejection or abandonment, as applicable, then (x) the Counterparties shall not have any right to terminate the Stipulation Period under decretal paragraph 3(g) above and (y) the Lessee shall not have any right or ability to reject any Agreement or abandon any Equipment pursuant to decretal paragraph 3(f) above or pursuant to sections 365, 554 or 1123 of the Bankruptcy Code. Subject to the foregoing, the Debtor shall comply with the terms of Exhibit B to the PBH Agreement with respect to any Equipment or Agreement subject to abandonment or rejection, as applicable; and

(i) promptly following the entry of an order approving this Stipulation, the Debtor and the relevant Counterparties shall enter into an agreement governing the payment of power by the hour usage for each Airframe or Engine identified on Exhibit A during the Stipulation Period in the form annexed hereto as Exhibit B (as modified to reflect the existing transaction specific details, the "**PBH Agreement**").

4. Upon termination of the Stipulation Period for any reason other than assumption of an Agreement:

(a) (x) the Debtor shall cooperate with the relevant Counterparty on completing an orderly redelivery process by:

(i) immediately making the Equipment (together with (1) the original engines listed on Exhibit A hereto, which shall be installed on the airframe (unless any such engine is not in an airworthy condition or is subject to a possessory lien relating to the pre-petition period and remains in the custody of the party holding such lien), (2) any other equipment, parts or accessories constituting the Equipment under the Agreement that were installed thereon during the last regularly scheduled flight or that constitute loose equipment that was located thereon during the last regularly scheduled flight title to which is vested in a Counterparty (provided, that the Debtor shall not intentionally remove or replace such items of loose equipment to avoid or manipulate compliance with this provision) (it being understood that the Lessee shall not intentionally discriminate by replacing an APU or landing gear or other part with a lesser value part in anticipation of redelivery), and (3) any quick engine change (QEC) kit that was delivered to the Lessee together with the Equipment (which QEC may be returned either installed on the airframe or, if a particular engine is off-wing, in parts) and any engine stand on which the Equipment was delivered to the Lessee) available to the applicable Counterparty at its or their then-current location and in its or their then "as is, where is" condition and after 30 days (or such longer period as is agreed in writing by the Lessee and the applicable Counterparties) of the Equipment being made available for return (provided that in the event that return is delayed past the end of such 30 day period as a direct result of the Debtor's commercially unreasonable delay (which shall exclude any delays caused by or related to the COVID-19 pandemic) in making the Equipment available for return in accordance with the terms of this decretal paragraph 4(a)(x)(i), then such period shall be extended for the duration of such delay), all risk of damage, injury, loss and liability of the Equipment shall pass to the

applicable Counterparty and the Debtor shall have no further obligations whatsoever with respect to the Equipment except for any reasonable cooperation pursuant to subclause (y) below; provided the Counterparties retain the right to assert a claim against Debtor as set forth in decretal paragraph 7 below (subject to the Debtor's right to object to and/or challenge, among other things, the allowance, validity, priority, or amount of such claims and any purported liens asserted by any of the Counterparties);

(ii) providing the applicable Counterparty or its representatives reasonable access to any electronically accessible records relating to the Equipment and permitting the downloading and copying thereof, including access to the digital aircraft records repository via such data sharing service (if any) as the Debtor may use for such purpose from time to time;

(iii) upon the applicable Counterparty's request and at such Counterparty's sole cost and expense, cooperating in taking all actions (including filings) and signing and providing all documents reasonably required by the Counterparties with regard to the deregistration and export from the current state of registration or country of previous importation (in each case, to the extent applicable); and

(iv) preparing and delivering to the applicable Counterparty or its representatives all technical records, documents, reports and statements relating to the Equipment that are in the Debtor's possession or control (the "**Technical Records**"), in their then "as is, where is" condition, without certification or signature and without performing any independent verification or audit thereof, except that the Lessee will certify or sign an accident-incident clearance statement in respect of the Equipment (including the airframes, engines and landing gear) and any Technical Record that, in its reasonable

judgment, does not require Lessee to perform more than *de minimis* additional verification or audit, as more particularly described in the PBH Agreement; and

(y) the Debtor shall, upon the applicable Counterparty's request and at such Counterparty's sole cost and expense, in a commercially reasonable manner:

(i) use its commercially reasonable efforts, taking into account the Debtor's operational and commercial limitations, to cooperate with such Counterparty on locating any Technical Records, documents, reports and statements relating to the Equipment that such Counterparty identifies as missing or otherwise not made available at the time of the return;

(ii) cooperate with the Counterparties in order to assign any remaining assignable manufacturer warranties and warranty claims, or the benefit thereof, to the owner of the related Equipment;

(iii) use commercially reasonable efforts, taking into account the Debtor's operational and commercial limitations, to cooperate with the Counterparty in connection with the Counterparty recovering any engine that is subject to a perfected prepetition possessory lien; and

(iv) deliver the Equipment, the Technical Records and all other items listed in decretal paragraph 4(a)(x) above, as applicable, from its or their then current location to a location in the contiguous United States, Europe, or Asia advised by such Counterparty and reasonably acceptable to the Debtor and, provided this can be accomplished in normal operation, via a single non-stop (i.e. without any stops for re-fueling) ferry flight and/or shipment in the case of Equipment subject to Agreements that are engine leases (the timing, manner and scheduling of such ferry flight and/or shipment to be subject to a commercial

reasonableness standard, taking into account the Debtor's operational and commercial limitations as to feasibility, timing and manner of redelivery), *provided* that, absent gross negligence or willful misconduct of the Debtor, the Debtor shall incur no liability as a result of complying with its obligations under this decretal paragraph 4(a)(y)(iv).

(b) the automatic stay provided under section 362 of the Bankruptcy Code shall be and hereby is modified to allow the Debtor and the Counterparties to (i) effectuate the provisions of this Stipulation, (ii) transfer, move, deregister, dispose of or effect title transfer of such Equipment, as applicable, (iii) apply any security deposit and/or maintenance reserves held by such Counterparty to the extent permitted by and in accordance with the terms of the Agreements against the obligations of the Debtor thereunder and (iv) allow the Counterparties to cancel or terminate any such Agreements. So long as any set off or application is effected in accordance with the terms of the Agreements, the Debtor agrees (i) not to challenge the right of the Counterparties to set off or otherwise apply such security deposits or maintenance reserves upon termination of the Stipulation Period (other than as a result of an assumption of an Agreement) regardless of anything to the contrary herein and (ii) that such security deposits and/or maintenance reserves shall be utilized first to offset the amount of the applicable Counterparties' prepetition claims . The Counterparties agree that they shall not assert any claims against the Debtor in any court other than this Court, except as authorized by this Court;

(c) the Counterparties shall, within 30 days of receipt of the Debtor's summary of charges therefor, reimburse the Debtor for the Debtor's actual and reasonable costs and expenses of (i) storing, insuring and maintaining the Equipment beginning on the thirtieth day after the date that the Stipulation Period terminates (provided that if any delay past such thirtieth day in making the Equipment available pursuant to decretal paragraph 4(a)(x) or arranging for and carrying out a

ferry flight as contemplated pursuant to decretal paragraph 4(a)(y)(iv) is the direct result of the Debtor's commercially unreasonable delay (which shall exclude any delays caused by or related to the COVID-19 pandemic), the Counterparties shall not have any obligation pursuant to this paragraph (c) to reimburse the Debtor for the period of such delay) through the date that the Equipment is returned to the Counterparties and (ii) performing any other services or taking any other actions described in decretal paragraphs 4(a)(x)(iii) and 4(a)(y). For the avoidance of doubt, any amounts charged by the Debtor to the Counterparties pursuant to the terms of this Stipulation for storage, maintenance or other services shall be determined as follows: (x) if performed or provided by parties other than the Debtor, such costs shall be the actual amounts invoiced to the Lessee for such services without any added profit or other mark-up and (y) otherwise, be charged in accordance with the Lessee's standard rates charged to third parties for such services. All payments to the Debtor under this Stipulation shall be made by wire transfer in immediately available funds, without any set-off or counterclaim; and

(d) notwithstanding the termination of the Stipulation Period, the Agreements shall be deemed to continue in effect through the date that the Debtor returns the Equipment to the Counterparties solely for the purpose of enabling the Debtor to comply with its obligations under this decretal paragraph 4.

5. During the Stipulation Period, the performance by the Lessee of the terms and conditions set forth in this Stipulation, the RSA and the PBH Agreement shall satisfy any and all rights of the Counterparties to administrative expense status or priority in payment under any applicable provision of the Bankruptcy Code for any claims arising out of or related to the Stipulation Period based on the obligations (both monetary or performance based, or in each case lack thereof) of the Debtor in this chapter 11 case, including pursuant to sections 361, 362, 363,

364, 365 or 503 of the Bankruptcy Code, or any similar provision under the Cape Town Convention on International Interests in Mobile Equipment and the Protocol thereto on Matters Specific to Aircraft Equipment, each as opened for signature on November 16, 2001, that arise out of or relate to the Equipment. For the avoidance of doubt, except to the extent included in the Excluded Obligations, nothing contained herein shall be deemed to limit or impair any Counterparty's right to assert an administrative claim for breach of any indemnity obligation under the Agreements that arises from and after the Petition Date or an administrative or other claim under the RSA.

6. The Counterparties have an allowed administrative expense claim for any amounts due under the PBH Agreement arising during the Stipulation Period.

7. Following any breach of this Stipulation or of the PBH Agreement by the Debtor, the Counterparties may assert (and shall be allowed) an administrative expense claim against the Debtor, as permitted under the Bankruptcy Code, for unpaid amounts either (i) due under the PBH Agreement arising during the Stipulation Period or (ii) payable under this Stipulation for amounts accruing during the Stipulation Period, along with any actual damages resulting from such breach. Except in the case of a breach of the Debtor's obligations under decretal paragraphs 3(a), 3(b) or 3(c) of this Stipulation, or any maintenance, possession or use covenants of the Agreements, as to which Debtor shall not have any notice or cure period, to the extent that the Counterparties assert that the Debtor has breached its obligations under any other provision of this Stipulation or the PBH Agreement (the "**Specified Obligations**"), (i) if the Counterparties have actual knowledge of such breach, the Counterparties shall provide the Debtor prompt written notice thereof and (ii) if such breach is capable of being cured, the Debtor shall have 30 days from receipt of written notice to remedy such breach of the Specified Obligations (such cure deadline, as such may be extended

as provided below, the "**Cure Period**"). If such curable breach is remedied within such Cure Period, then the Counterparties shall not assert or otherwise be entitled to any administrative expense or priority in payment with respect to such breach of the applicable Specified Obligations. If, on the other hand, the Debtor fails to remedy any curable breach of the Specified Obligations within the Cure Period, then, unless such breach is waived in writing by the Counterparties or the Cure Period is extended in writing by the Counterparties (which waiver or extension, in either case, shall be in the Counterparties' sole discretion), then the Stipulation Period shall terminate immediately after the conclusion of such Cure Period (or, if the breach is not curable, then the Stipulation Period shall terminate 30 days' after the applicable Counterparties send a notice in writing to the Lessee specifying that the Stipulation Period is so terminated as a result of such breach) and, in each such case, the Debtor shall comply with its obligations under decretal paragraph 4 hereof. Nothing contained herein shall be deemed to require a Counterparty to provide the Debtor with notice of a breach of any of the Specified Obligations if the Counterparty is not actually aware of such breach or elects to delay or refrain from enforcing its remedies with respect to such breach.

8. Notwithstanding anything herein or in the PBH Agreement to the contrary, subject to the terms of the RSA and those Definitive Documents (as defined in the RSA) executed by the Counterparties, the Counterparties have and may assert (subject to allowance of the amount of the claim by the Court) each of the following against the Debtor solely as pre-petition (non-administrative priority status expense) claims: (x) any claim that (1) would have been entitled to administrative expense or priority in payment but for this Stipulation or the PBH Agreement (including, if and to the extent entitled under the terms of the Agreements, any claim for repossession, remarketing, and other costs and losses incurred as a result of the Debtor's breach of

the Agreements) and (2) is not payable under this Stipulation or the PBH Agreement, (y) any claims for the difference between the rent, maintenance payments, return compensation payments or other obligations payable or performable by the Debtor under the Agreements during the Stipulation Period as compared to the rent, maintenance payments, return compensation payments or other obligations payable or performable by the Debtor under the Agreements (as modified by the PBH Agreement and this Stipulation) during the Stipulation Period and (z) other pre-petition claims that the Counterparties may have against the Debtor, including but not limited to claims for the difference between the rent, maintenance payments and return compensation payments or other obligations payable or performable by the Debtor under the Agreements during the period prior to the Petition Date as compared to the rent, maintenance payments, return compensation payments or other obligations payable or performable by the Debtor under the Agreements (as modified by the PBH Agreement and this Stipulation) during the period prior to the Petition Date. The Counterparties shall have until the later of: (1) 30 days after the effective date of rejection of the Agreements or the abandonment of the Equipment and (2) any general claims bar date set by the Court to file a proof of claim for any pre-petition claims, including claims arising out of or relating to the rejection of the Agreements or the abandonment of the Equipment. The Counterparties may file an administrative claim on or before any administrative claim bar date that is set by the Court. The Debtor and any representative of the Debtor's estates reserve all defenses, rights and remedies with respect to any claim (administrative or otherwise) asserted by any Counterparty.

9. The execution of this Stipulation and the PBH Agreement is not an assumption or cure under any applicable provision of the Bankruptcy Code by the Debtor in respect of the Agreements between the Debtor, as applicable, and the Counterparties. The rights of the Debtor, as applicable, (i) to assume any Agreements under Bankruptcy Code section 365(b)(1), including,

without limitation, ascertaining the cure amounts and other obligations required with respect to such assumptions, (ii) to reinstate any Agreement or otherwise leave any Counterparty unimpaired under Bankruptcy Code section 1124, or (iii) to provide the "indubitable equivalent" under Bankruptcy Code section 1129(b)(2)(A)(iii), shall, in each case, be based upon the Agreements (ignoring in their entirety any changes, revisions or modifications to the terms of the Agreements effected by this Stipulation and the PBH Agreement). The Debtor agrees that it shall not include any Agreement, its rights under such Agreement, or any Equipment as collateral nor grant any lien on such Agreement, its rights under such Agreement or any Equipment under any debtor in possession financing without the prior written consent of the applicable Counterparty. In addition, any currently existing right of the Counterparties to seek adequate protection in the event that any motion could be anticipated to result in the diminution in the value of the Counterparties' Interests in the Debtor's property or the Equipment, or to interpose objections to any sale by the Debtor of any property in which the Counterparties have an Interest, are hereby reserved and preserved, as are all of the Debtor's rights, remedies, defenses and objections with respect to any such matters. Except as provided in this Stipulation, all rights of the Parties are hereby reserved and preserved, including, for the avoidance of doubt, any right of the Counterparties to security deposits and maintenance reserves, and with respect to the RSA. All rights of the Parties provided in this Stipulation shall survive the termination of this Stipulation.

10. This Stipulation shall be binding, *nunc pro tunc*, as of the Petition Date, upon (i) the Debtor and any trustee or examiner that may be appointed in this chapter 11 case, and their respective successors and assigns, (ii) the Counterparties and their respective successors and assigns and (with respect to those Counterparties that are trusts or trustees) trust beneficiaries who so direct or authorize the trusts or trustee of the trusts to enter into this Stipulation, and (iii) the

trustee in the event that the chapter 11 case is converted to a case under chapter 7 of the Bankruptcy Code.

11. This Stipulation, the PBH Agreement, the Agreements and the RSA (including all exhibits thereto) contain the entire agreement among the Parties with respect to the subject matter hereof, and may only be modified in writing, signed by the applicable Parties or their duly appointed agents. In the event of any conflict or inconsistency between any provision of any Agreement, on the one hand, and any provision of this Stipulation or the PBH Agreement, on the other hand, the provisions of this Stipulation and the PBH Agreement shall control. In the event of any conflict or inconsistency between any provision of the Stipulation, on the one hand, and any provision of the PBH Agreement, on the other hand, the provisions of this Stipulation shall control.

12. This Stipulation may be executed in one or more counterparts, by facsimile, electronic transmission or otherwise, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

13. This Stipulation shall be effective immediately upon approval by the Court. The Court shall retain jurisdiction for purposes of resolving any issues arising out of or relating to this Stipulation or the PBH Agreement.

SO ORDERED:

Dated: New York, New York
October 1, 2021

/S/ Shelley C. Chapman

THE HONORABLE SHELLEY C. CHAPMAN
UNITED STATES BANKRUPTCY JUDGE

Stipulated and agreed to by:

Dated: New York, New York
3 September, 2021

DEBEVOISE & PLIMPTON LLP, ON
BEHALF OF PHILIPPINE AIRLINES, INC.

By: */s/ Jasmine Ball*

919 Third Avenue
New York, New York 10022
Telephone: (212) 909 6000
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Jasmine Ball

*Proposed Counsel to the Debtor*
*and Debtor in Possession*

Dated:
3 September, 2021

WILMINGTON TRUST SP SERVICES (DUBLIN) LIMITED,
not in its individual capacity but solely as owner trustee

By:_____

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# EXHIBIT A

**Counterparties**

1. Wilmington Trust SP Services (Dublin) Limited, not in its own capacity but solely as owner trustee as Lessor

**Equipment**

Collectively, the following aircraft equipment is referred to in the Stipulation as the "**Equipment**":

The following Airframe and Engines and related equipment, as more particularly defined in the applicable Agreements related to such Equipment (along with all constituent engines, equipment, parts and appurtenances thereto):

(a) One (1) Bombardier model DHC-8Q-Series 400 airframe bearing manufacturer's serial number 4585 and Philippine registration mark RP-C5910, together with two (2) Pratt & Whitney Canada model PW150A engines respectively bearing manufacturer's serial numbers PCE-FA1312 and PCE-FA1321.

(b) One (1) Bombardier model DHC-8Q-Series 400 airframe bearing manufacturer's serial number 4587 and Philipine registration mark RP-C5911, together with two (2) Pratt & Whitney Canada model PW150A engines respectively bearing manufacturer's serial numbers PCE-FA1324 and PCE-FA1325.

**Agreements**

A. Aircraft Lease Agreement dated 14 September 2018 between Wilmington Trust SP Services (Dublin) Limited, not in its own capacity but solely as owner trustee as Lessor and Philippine Airlines, Inc. as amended, novated and supplemented from time to time.

B. Certificate of Acceptance dated 20 September 2018 between Wilmington Trust SP Services (Dublin) Limited, not in its own capacity but solely as owner trustee and Philippine Airlines, Inc.

C. Aircraft Lease Agreement dated 17 September 2018 between Wilmington Trust SP Services (Dublin) Limited, as not in its own capacity but solely as owner trustee as Lessor and Philippine Airlines, Inc, as amended, novated and supplemented from time to time.

D. Certificate of Acceptance dated 25 October 2018 between Wilmington Trust SP Services (Dublin) Limited, not in its own capacity but solely as owner trustee and Philippine Airlines, Inc.

E. Any and all other operative documents relating to the Equipment including, without limitation, all lease agreements, loan agreements, funding agreements, indentures, all parties agreements, participation agreements, security agreements, intercreditor agreements, guarantee agreements and indemnity agreements, as applicable.

**PRIVATE AND CONFIDENTIAL**

**EXHIBIT B**

**[Redacted]**

**POWER BY THE HOUR AGREEMENT**
**(AIRCRAFT MSNs 4585 and 4587)**

**THIS POWER BY THE HOUR AGREEMENT (AIRCRAFT MSNs 4585 and 4587)** (together with schedules and exhibits hereto, this "PBH Agreement") is dated _____, 2021, among Philippine Airlines, Inc. (the "Lessee" or the "Debtor") and the counterparty or counterparties listed on the signature pages hereto (each, a "Counterparty" and collectively, the "Counterparties").

**WHEREAS**, the Counterparties and the Lessee are parties to the agreements listed on Exhibit 1 hereto (the "Agreements") relating to certain aircraft (the "Equipment" or "PBH Equipment");

**WHEREAS**, on _____, 2021 (the "Petition Date"), the Lessee commenced a case under chapter 11 of title 11 of the United States Code (the "Chapter 11 Case") in the United States Bankruptcy Court for the Southern District of New York (the "Court");

**WHEREAS**, on _____, 2021, the Lessee and the Counterparties entered into the *Stipulation and Order Between Certain Debtor and Counterparties Concerning Certain Equipment* (the "Lessor Stipulation and Order") providing that the Lessee and the Counterparties (as defined in the Lessor Stipulation and Order) may enter into a PBH Agreement (as defined in the Lessor Stipulation and Order); and

**WHEREAS**, this PBH Agreement is the PBH Agreement referenced in the Lessor Stipulation and Order in respect of the Equipment.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Lessee and the Counterparties hereby agree as follows:

1. **Definitions**. All capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Lessor Stipulation and Order or, if not defined therein, in the applicable Agreement. In addition, certain terms used in this PBH Agreement and in the Lessor Stipulation and Order are defined on Exhibit 2 hereto.

2. **Effectiveness**. The power by the hour arrangements set forth in this PBH Agreement shall be applicable in respect of the usage of the Equipment during the period commencing on [redacted] (such period, the "PBH Period"), *provided* that the confidentiality provisions in Section 10(d) below shall survive the end of the PBH Period and the termination of this PBH Agreement in accordance with the terms thereof.

3. **PBH Rent**.

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(a) [redacted]

5. **Payment Account**. All payments by the Lessee to the Counterparties hereunder shall be made to the account specified in the Agreements or as otherwise agreed to by the Parties.

6. **Payments Generally**. All payments by the Lessee to the Counterparties hereunder shall be made in accordance with the applicable procedures (including any tax gross-up and tax indemnity provisions) established in the Agreements.

[redacted]

[redacted]

9. **Miscellaneous.**

(a) The effectiveness of this PBH Agreement and any obligations and/or liabilities of the Debtor and the Counterparties hereunder shall be subject to the Court entering the Lessor Stipulation and Order.

(b) This PBH Agreement may be executed in one or more counterparts, by facsimile, electronic transmission or otherwise, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same instrument.

(c) This PBH Agreement and any claim, controversy or dispute relating to or arising out of this PBH Agreement shall be governed by, and construed in accordance with, the laws of the State of New York; *provided* that the Court shall have exclusive jurisdiction to hear disputes arising from or related to this PBH Agreement during the pendency of the Chapter 11 Case.

(d) Each of the Counterparties undertakes and agrees to cause itself , its affiliates, and each of their respective affiliates, directors, officers, employees and advisers to retain in strict confidence the terms of this PBH Agreement (including all schedules hereto) ("Confidential Information"), and not to use, disclose to others or permit the use or disclosure of any Confidential Information during the period from the date hereof through the end of the PBH Period and for one year thereafter; *provided*, that Confidential Information may be disclosed (i) to such Counterparty's affiliates, and their respective directors, officers, employees, agents, actual or potential transferees, lenders, servicers, managers, auditors, current or prospective investors, current or prospective purchasers, current or prospective financiers, and any of their respective advisers that need to know such information (provided that such recipients agree to maintain the confidentiality of such information on substantially the same terms as those set forth in this paragraph); (ii) if required by applicable law or judicial order or if requested by any governmental or regulatory authority having jurisdiction over such Counterparty; (iii) as permitted by the confidentiality provisions of the Agreements; or (iv) as may be required to obtain the Court's approval of this PBH Agreement; *provided* that the Counterparties shall have no obligation under this paragraph to maintain as confidential any Confidential Information that has come within the public domain through no fault of or action by the Counterparties or that has otherwise been previously disclosed to the person receiving such Confidential Information by the Lessee, the Debtor or any of their respective affiliates, directors, officers, employees or advisers.

[*Signature Pages Follow*]

IN WITNESS WHEREOF, this PBH Agreement has been executed and delivered by each of the parties hereto on the date first set forth above.

**LESSEE:**

PHILIPPINE AIRLINES, INC.

By: _____
Name:
Title:

By: _____
Name:
Title:

**COUNTERPARTIES:**

**WILMINGTON TRUST SP SERVICES (DUBLIN) LIMITED**
(not in its individual capacity but solely as owner trustee)
as Lessor

By: _____
Name:
Title:

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Schedule 1
to
Power by the Hour Agreement

**[Redacted]**

**PBH Rate**

| Aircraft | Airframe | Engine 1 | Engine 2 |
|---|---|---|---|
| [redacted] | [redacted] | [redacted] | [redacted] |
| [redacted] | [redacted] | [redacted] | [redacted] |

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Schedule 2
to
Power by the Hour Agreement

**[Redacted]**

## Form of PBH Utilization Statement

| | | | |
|---|---|---|---|
| **PBH UTILISATION STATEMENT** | | | |
| **Bombardier DHC-8Q-Series 400 MSN [ ] (RP-C[ ])** | | | |
| For the Period : | | | |
| | | | |
| **AIRFRAME** | | | |
| Flight Hours utilized for the Month | | | |
| Flight Cycles utilized for the Month | | | |
| | | | |
| **ENGINE** | | | |
| Type : Pratt & Whitney Canada PW 150A | | | |
| **ENGINE STATUS** | | | |
| Engine Serial Number | | [ ] | [ ] |
| Installed on | | RP-C[ ] | RP-C[ ] |
| Hours utilized this month | | | |
| Cycles utilized this month | | | |
| | | | |
| **AUXILIARY POWER UNIT** | | | |
| Serial Number | | PW- [ ] | |
| APU Hours / Cycles utilized for the month | | | |
| | | | |
| **LANDING GEARS** | | | |
| | **NLG** | **LH MLG** | **RH MLG** |

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| | | | | |
|---|---|---|---|---|
| Serial Number | | [ ] | [ ] | [ ] |
| Hours utilized this month | | | | |
| Cycles utilized this month | | | | |
| | | | | |
| Prepared by: | | | | |
| Noted by: | | | | |
| Checked by: | | | | |

## EXHIBIT 1 TO PBH AGREEMENT

**Counterparties**

1. Wilmington Trust SP Services (Dublin) Limited, not in its own capacity but solely as owner trustee as Lessor

**Equipment**

1. One (1) Bombardier model DHC-8Q-Series 400 airframe bearing manufacturer's serial number 4585 and Philippine registration mark RP-C5910, together with two (2) Pratt & Whitney Canada model PW150A engines respectively bearing manufacturer's serial numbers PCE-FA1312 and PCE-FA1321.

2. One (1) Bombardier model DHC-8Q-Series 400 airframe bearing manufacturer's serial number 4587 and Philipine registration mark RP-C5911, together with two (2) Pratt & Whitney Canada model PW150A engines respectively bearing manufacturer's serial numbers PCE-FA1324 and PCE-FA1325.

**Agreements**

A. Aircraft Lease Agreement dated 14 September 2018 between Wilmington Trust SP Services (Dublin) Limited, not in its own capacity but solely as owner trustee as Lessor and Philippine Airlines, Inc. as amended, novated and supplemented from time to time.

B. Certificate of Acceptance dated 20 September 2018 between Wilmington Trust SP Services (Dublin) Limited, not in its own capacity but solely as owner trustee and Philippine Airlines, Inc.

C. Aircraft Lease Agreement dated 17 September 2018 between Wilmington Trust SP Services (Dublin) Limited, as not in its own capacity but solely as owner trustee as Lessor and Philippine Airlines, Inc, as amended, novated and supplemented from time to time.

D. Certificate of Acceptance dated 25 October 2018 between Wilmington Trust SP Services (Dublin) Limited, not in its own capacity but solely as owner trustee and Philippine Airlines, Inc.

E. Any and all other operative documents relating to the Equipment including, without limitation, all lease agreements, loan agreements, funding agreements, indentures, all parties agreements, participation agreements, security agreements, intercreditor agreements, guarantee agreements and indemnity agreements, as applicable.

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## EXHIBIT 2 TO PBH AGREEMENT

**[Redacted]**

## Certain Definitions and Terms

1. [redacted]

[redacted]



[redacted]

[redacted]

6. Allowance of Prepetition Claims with respect to Equipment Subject to PBH Agreement.

A. The Parties agree that, in the event that Agreements are assumed on the Plan Effective Date in accordance with the RSA, the Counterparties' general unsecured claims against the Lessee for the matters described in the first sentence of decretal paragraph 8 of the Lessor Stipulation and Order with respect to the Equipment subject to this PBH Agreement and the associated Agreements related to such PBH Equipment is in the amount of US$3,522,331 in respect of MSN 4585 and US$2,521,420 in respect of MSN 4587 (to be held in the name of Wilmington Trust SP Services (Dublin) Limited) (not in its individual capacity but solely as owner trustee) (the "PBH Allowed Claim"), which PBH Allowed Claim shall be treated as an allowed general unsecured claim against the Lessee. Upon entry of the Lessor Stipulation and Order, such PBH Allowed Claim shall be allowed in such amount set forth above without the need of the Counterparties filing a proof of claim. The Lessee hereby represents and warrants that the claims of all aircraft lease damages for which it is reaching agreements as to the allowed amounts of such claims under similar power-by-the-hour agreements or other agreements have been calculated using the same general terms, methodologies, discount rates and assumptions

(subject to reasonable valuation and expense differences for different aircraft types and vintages).

B. In the event that the Debtor breaches the terms of this PBH Agreement and/or the Lessor Stipulation and Order, the Lessor retains the right and may assert an amended claim to the PBH Allowed Claim to reflect any additional and actual damages, subject to the Debtor's rights to object to such amended claims.

C. Except as provided herein, upon the entry of the Lessor Stipulation and Order, the PBH Allowed Claim for the Equipment subject to this PBH Agreement shall not be (either directly or indirectly) (y) subject to any challenge, objection, reduction, subordination, counterclaim or offset for any reason or (z) subject to any objection, subordination, avoidance or recovery actions under Sections 502(d), 510, 542, 544, 545, 547, 548, 549, 550, 551 and 553 of the Bankruptcy Code.

D. In the event that the Stipulation Period terminates without the Agreements being assumed by the Debtor on the Plan Effective Date in accordance with the RSA, then the allowance of the PBH Allowed Claim shall be void ab initio and the PBH Allowed Claim shall be disallowed; provided, however, that the Counterparties shall be entitled to assert any and all prepetition general unsecured claims under the Agreements by filing a proof of claim against the Debtor (i) in the case where the Agreement is rejected or the Equipment is abandoned, as provided and within the time periods in paragraph 8 of the Lessor Stipulation and Order and (ii) in cases where the Agreements are not rejected or the Equipment is not abandoned, on or before the later of: (i) 30 days after the end of the Stipulation Period and (ii) any general claims bar date set by the Court to file a proof of claim for any pre-petition cases, and the Debtor and the Debtor's estate reserves and retains the right to challenge, contest, or otherwise object to such proof of claim.

7. Non-discrimination.

A. [redacted]

[redacted]

C. [redacted]

- [redacted]

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**EXHIBIT 3 TO PBH AGREEMENT**

**[Redacted]**

Technical Records

[redacted]