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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-____ (____)

**DEBTOR'S MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS
AUTHORIZING THE DEBTOR TO ENTER INTO, CONTINUE
PERFORMANCE, AND PROVIDE CREDIT SUPPORT
UNDER HEDGING AND DERIVATIVE CONTRACTS**

Philippine Airlines, Inc., the above-captioned debtor and debtor in possession (the “**Debtor**” or “**PAL**,” and collectively with the Debtor’s non-debtor affiliates, the “**Airline**”), hereby moves (the “**Motion**”) for entry of 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 “**Proposed Orders**”), granting the relief described below. In support of the Motion, the Debtor relies upon and incorporates by reference the *Declaration of Nilo Thaddeus Rodriguez in Support of First Day Motions and Applications* (the “**First Day**

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.



Declaration”), which was filed with the Court on the Petition Date (as defined herein). In further support of the Motion, the Debtor, by and through its undersigned proposed counsel, respectfully represents:

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 in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The bases for the relief requested herein are sections 105(a), 363, and 364(c) of title 11 of the United States Code (the “**Bankruptcy Code**”).

Background

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

5. The Debtor and its affiliates are the largest airline group in the Philippines and the Debtor is the national flag carrier of the Philippines. Its principal activity is to provide air

transportation for passengers and cargo within and outside the Philippines. The Debtor is among the oldest airlines in the Asia Pacific region, having been founded in February 1941. With approximately 4,500 employees and over \$3 billion in annual gross revenue prior to the COVID-19 pandemic, the Debtor is the leading airline in the Philippines airline market.

6. In 2020, the Debtor was confronted with an extraordinary set of circumstances and flight disruptions induced by the COVID-19 pandemic. The COVID-19 crisis has had a catastrophic impact upon the aviation industry, causing major airlines to effectively halt many business operations. For major airlines such as PAL, the dramatic reduction in worldwide air travel caused significant balance sheet losses and created intractable challenges to meeting existing payment obligations.

7. In response to these unprecedented circumstances, PAL undertook a number of cost cutting measures and began discussions with key stakeholders in the hopes of mapping out a healthy future for the Airline. Those discussions, which spanned many months and involved all major stakeholders and their retained professionals, culminated in several restructuring support agreements (the “**RSAs**”) with substantially all of its aircraft lessors and lenders outlining the material terms for a proposed chapter 11 plan of reorganization (the “**Proposed Plan**”). The RSAs and the Proposed Plan contemplate (a) the reduction of the Debtor’s aircraft related obligations by approximately \$2.1 billion, (b) a \$505 million infusion of working capital to fund the Debtor’s ongoing operations during the Chapter 11 Case and upon emergence from its primary shareholder (the “**DIP Lender**”), (c) optimizing the Debtor’s fleet size, composition, and ownership costs as required by the new market, (d) maintaining and enhancing the Debtor’s key contracts and business partners to strengthen the Debtor’s viability during the pending COVID-19 pandemic and beyond, and (e) obtaining commitments for a \$150 million exit facility

from new investors to ensure PAL has adequate liquidity and runway to complete its restructuring.

8. The Debtor likewise engaged in good faith negotiations with its other critical creditors, including its primary original equipment manufacturers (“**OEM**”) and maintenance, repair, and overhaul service providers (“**MRO**”), to ensure that the Debtor continues to obtain the benefit of such critical goods and services. In addition, the OEMs and MROs have agreed to support the Proposed Plan by entering into RSAs, thereby providing additional certainty and predictability to the Debtor’s restructuring and Chapter 11 Case.

9. Prior to the Debtor’s Chapter 11 Case, the Debtor also (a) engaged in numerous good faith negotiations with a large number of its ordinary course vendors and suppliers, resulting in agreements to extend payment terms to provide the Debtor with additional breathing room and runway to assist it through the COVID-19 pandemic and (b) undertook a resizing of its operations, including the reduction of its workforce by 32%, to meet expected post-COVID-19 operational needs.

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

Relief Requested

11. The Debtor seeks entry of an order providing authority, but not direction, to: (a) enter into, guarantee and perform under Derivative Contracts, including rolling over, adjusting, modifying, settling, terminating, taking physical delivery of commodities, settling, guaranteeing and otherwise engaging in transactions thereunder so that the Debtor may continue to hedge the risk of fluctuations in the fuel prices that are critical to the Debtor’s business, (b) provide credit support under prepetition and postpetition Derivative Contracts, including, but not limited to,

posting letters of credit, entering into escrow agreements, opening and funding escrow accounts, posting collateral or margin, prepayment, taking physical delivery of commodities and settling Derivative Contracts (collectively, “**Credit Support**”), and (c) otherwise continue to comply with existing and new Derivative Contracts.

The Derivative Contracts

A. Need for Debtor’s Derivative Contracts

12. As background, derivative contracts are financial contracts, the values of which are based on, or “derived” from, the price of a traditional security such as a stock or bond, an asset such as a commodity or currency, a market index, or measures such as interest rates or currency exchange rates. Similarly, a forward contract is a derivative contract that obligates the purchaser to acquire a security, commodity, or other asset on a specified date in the future at a specified price, thereby assuming any risk that the market price for the item is less than the amount specific in the forward contract. Lastly, an option contract provides the purchaser the right, but not the obligation, to purchase a security, commodity, an amount of a foreign currency, or an asset at a specified price on a specified date, which is another method to help hedge against price fluctuations.

13. More specifically, the Debtor’s business (like all major airlines) is heavily dependent on, and therefore sensitive to, fluctuations of fuel prices. Due to the critical need for fuel and the global nature of the airline industry, fuel prices have a material impact on the Debtor’s operations. Consequently, in order to minimize drastic changes in operating costs and to ensure more predictability, the Debtor is, and has historically been, a party to derivative contracts to reduce the risks associated with these fluctuations. Without protection against drastic fluctuations, the Debtor’s operations and successful reorganization could be endangered, thereby

substantially harming all creditors. Such derivative contracts have included options, swaps, forward and futures contracts, or a combination of the foregoing, concerning Brent crude oil (the “**Derivative Contracts**”). Brent crude oil is the primary proxy hedge for jet fuel and is used to set the price of approximately two-thirds of the world's internationally traded crude oil supplies. The Debtor has a special team that is charged with determining which instruments should be used to hedge against fluctuations in Brent crude oil to protect against unexpected changes in fuel prices as well as the duration of the corresponding Derivative Contracts. This special team presents its recommendations to the Debtor’s management and board of directors prior to implementation.

14. Generally, Derivative Contracts are governed by and documented in the form of (a) master agreements; (b) confirmations issued under general terms and conditions; (c) enabling agreements; or (d) single transaction agreements. In this specialized industry, such contracts usually provide that they may be terminated upon, among other events, the commencement of a bankruptcy case. Upon such termination, both parties may cease further performance and aggregate amounts owed by each party may be “netted,” thereby providing for a net settlement payment from one party to the other. The Debtor’s Derivative Contracts likewise contain such provisions.

15. Derivative Contracts also typically include provisions for collateral support and obligations to post margin. Posting of margin requires participants to periodically deposit money with their counterparties based on the market-to-market values of the Derivative Contracts. A re-evaluation of the credit support requirement occurs periodically throughout the term of each Derivative Contract. Re-evaluation often results in one party having either to provide additional

collateral or return some of the existing collateral based on the current market and other developments since the contract was first entered into.

B. Debtor's Use of Derivative Contracts

16. The Debtor enters into certain Derivative Contracts in the ordinary course of business to reduce existing or expected risks associated with fluctuations in fuel prices, which is one of the Debtor's main operating expenses and significantly impacts the Debtor's operations. The Debtor's fuel-hedging program is based on both fixed swaps and options on Brent crude oil, which is a proxy hedge for jet fuel. The possible payoff on such hedges is determined by the difference between a fixed strike price and the average underlying price for jet fuel over a preset period. The mark-to-market valuation is made monthly. These fixed swaps and options allow the Debtor to efficiently hedge its exposure to fluctuations in the price of Brent crude oil, which has a high level of correlation to the price of jet fuel. Based on the Debtor's 2020 pre-pandemic consumption of jet fuel, a one dollar increase in fuel prices would generally result in a ten million dollar increase in the Debtor's fuel expense over the course of a year.

17. The fuel hedging contracts usually have a maximum tenor of 36 months. The Debtor historically has entered into Derivative Contracts for approximately 30 to 50 percent of its annual jet fuel consumption requirements; and in recent years, the Debtor has sought to hedge for approximately 50 to 70 percent of its annual jet fuel consumption requirements. These Derivative Contracts are entered into with approximately four counter-parties, which ensures that the Debtor is not reliant on only one party and is able to ensure fair and reasonable pricing.

18. The amount of fuel that is hedged by the Debtor in any particular year and at any particular time depends on a variety of factors relating to the price of fuel and the relative cost of entering into Derivative Contracts to hedge the Debtor's exposure to fluctuations. The Debtor

measures periodically its exposure to fuel price variability and calculates its value-at-Risk (VaR) and the VaR reduction by relying on the Derivative Contracts.

19. The Debtor does not post initial collateral for its fuel options but does, from time to time, post collateral in connection with its negative mark to market beyond set thresholds. As noted earlier, posting collateral and Credit Support is a common and typical provision in hedging and derivative contracts and the re-evaluation of the Credit Support requirement occurs periodically throughout the term of each contract.

20. As of the Petition Date, the Debtor is not party to any Derivative Contracts for foreign currencies because the Debtor determined in its business judgment that such Derivative Contracts were not necessary at the time in light of, among other things, the costs of entering into such contracts. During the pendency of this Chapter 11 Case, however, circumstances may change and the Debtor may determine, in its business judgment, that entering into Derivative Contracts for foreign currency rates may be necessary.

Basis for Relief

29. A reasonable hedging and derivative contract strategy is necessary to responsibly manage the financial risks attendant to the operation of an airline, which is inherently vulnerable to fluctuations in fuel prices. The Debtor believes that entering into and performing under the Derivative Contracts falls within the ordinary course of its business and thus does not require authorization from the Court. However, to make clear to potential counterparties that the Debtor does in fact have such authority, the Debtor seeks a confirmatory order of the Court. In addition, to the extent the Debtor will need to provide collateral to secure its obligations under the Derivative Contracts, the Debtor requests the Court's permission to post such collateral or provide other Credit Support.

A. The Debtor Should Be Authorized to Continue Performance under Prepetition Derivative Contracts.

30. The Debtor seeks to perform all obligations arising under any prepetition Derivative Contracts, including (a) making all payments when due and (b) providing credit support as necessary or appropriate, including, but not limited to, posting collateral or margin and/or the prepayment and settlement of the Derivative Contracts.

31. Recognizing the unique status of certain derivative contracts, such as forward contracts, commodities contracts, securities contracts, certain repurchase agreements, and swap agreements, in the financial and commodity markets, Congress added sections 555, 556, 559, and 560 to the Bankruptcy Code, which contain the “safe harbor” provisions that apply to such arrangements and accommodations. Notwithstanding the automatic stay of section 362 of the Bankruptcy Code, these safe-harbor provisions (a) allow a non-debtor party to terminate, liquidate and apply collateral held under a derivative contract upon the commencement of a bankruptcy case; (b) protect prepetition payments made under a derivative contract by a debtor to a non-debtor party from the avoidance powers of a trustee or debtor-in-possession (except in particular cases of actual intent to defraud other creditors); and (c) permit the non-debtor party to set off mutual claims against a debtor under a Derivative Contract without obtaining relief from the automatic stay. In other words, the Bankruptcy Code allows certain qualified non-debtor counterparties to Derivative Contracts to exercise rights and remedies that are not otherwise available to a debtor’s other counterparties or creditors.

32. Based on the foregoing, counterparties to the Derivative Contracts may seek to rely on these safe harbor provisions and terminate these contracts prematurely and discontinue trading prospectively because of, among other things, a perception that the Debtor presents an unacceptable level of risk exposure without adequate credit support. The Debtor, accordingly,

believes that it is necessary and appropriate to obtain from this Court an order that confirms the Debtor's authority to continue its customary practices regarding the Derivative Contracts in order to prevent any such risk to the Debtor's operations.

33. Pursuant to sections 105(a) and 1107 of the Bankruptcy Code, the Debtor must preserve its assets and protect the value of its estate. *See In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002) ("There are occasions when this [fiduciary] duty can only be fulfilled by the preplan satisfaction of a prepetition claim."); *see also Unofficial Comm. of Equity Holders of Penick Pharm., Inc. v. McManigle (In re Penick Pharm. Inc.)*, 227 B.R. 229, 232-33 (Bankr. S.D.N.Y. 1998) ("Specifically, in the case of an inanimate debtor in possession such as a corporation, the fiduciary duties born by a trustee for a debtor out of possession fall on the debtor's directors, officers and managing employees . . . who have a duty to maximize the value of the estate . . . and who are burdened to ensure that the resources that flow through the debtor in possession's hands are used to benefit the unsecured creditors and other parties in interest." (citations omitted)). Pursuant to section 105(a), the Court has the power to authorize the Debtor to perform such actions as are necessary to fulfill the requirements of section 1107. The Debtor's existing Derivative Contracts protect the Debtor's estate against fluctuations in fuel costs. The Debtor believes that an order confirming its authority to honor its obligations under the Derivative Contracts is necessary to induce its counterparties to maintain such Derivative Contracts in place during the Chapter 11 Case and enable the Debtor to continue to benefit from such contracts while seeking to implement its restructuring.

34. Termination of the Debtor's Derivative Contracts would (a) cause disruption to the Debtor's operations; (b) require the immediate attention of the Debtor's management at a time when its resources are extremely stressed; (c) expose the Debtor to fluctuations in jet fuel prices

to which its competitors are not similarly exposed; and (d) result in significant additional expenses and adversely affect the Debtor's restructuring efforts. The ability to continue using these Derivative Contracts to reduce existing or expected risks associated with fluctuations in expenditures is in the best interests of the Debtor's estate and important to its ongoing operations. In light of these foreseeable risks, the Court should authorize the Debtor to continue performing under its Derivative Contracts, and, where necessary, provide Credit Support.

35. Courts in this District have granted similar relief in cases of similar size and complexity, including in certain airline cases. *See, e.g., In re LATAM Airlines Group S.A.*, Case No. 20-11254 (JLG) (Bankr. S.D.N.Y. Sept. 15, 2020) [ECF No. 1069] (authorizing the debtors to continue performance under their prepetition derivative contracts and provide credit support relating to both pre and postpetition derivative contracts); *In re Grupo Aeromexico, S.A.B. de C.V.*, Case No. 20-11563 (SCC) (Bankr. S.D.N.Y. July 29, 2020) [ECF No. 207] (same); *In re Avianca Holdings S.A.*, Case No. 20-11133 (MG) (Bankr. S.D.N.Y. June 9, 2020) [ECF No. 246] (same); *In re AMR Corp.*, Case No. 11-15463 (SHL) (Bankr. S.D.N.Y. Dec. 22, 2011) [ECF No. 433] (same); *In re Northwest Airlines Corp.*, Case No. 05-17930 (ALG) (Bankr. S.D.N.Y. Oct. 7, 2005) [ECF No. 618] (same).²

B. The Debtor Should Be Authorized to Enter into Postpetition Derivative Contracts.

36. The Debtor believes that entering into additional Derivative Contracts falls within the ordinary course of its business, and thus does not require authorization from the Court. However, to make it clear to potential counterparties that the Debtor does, in fact, have such authority, the Debtor seeks an order of the Court confirming such authority.

37. Section 363(c)(1) of the Bankruptcy Code provides, in relevant part, that a debtor-

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

in-possession “may enter into transactions . . . in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing.” 11 U.S.C. § 363(c)(1). “The Bankruptcy Code is designed to allow a debtor-in-possession the flexibility to engage in ordinary transactions without unneeded oversight by creditors or the court, while at the same time giving creditors an opportunity to contest those transactions that are not ordinary.” *In re Dana Corp.*, 358 B.R. 567, 580 (Bankr. S.D.N.Y. 2006). As hedging is a routine and commercially necessary practice in the airline industry, the Debtor believes that entering into Derivative Contracts is in the ordinary course of its business, and therefore, it can consummate such transactions without notice and a hearing. *See Med. Malpractice Ins. Ass’n v. Hirsch (In re Lavigne)*, 114 F.3d 379, 384 (2d Cir. 1997) (“The term ‘ordinary course of business’ generally has been accepted to embrace the reasonable expectations of interested parties of the nature of transactions that the debtor would likely enter in the course of its normal, daily business.” (internal quotation marks and citation omitted)); *In re Coordinated Apparel, Inc.*, 179 B.R. 40, 43 (Bankr. S.D.N.Y. 1995) (holding that entering into a contract for the manufacture of clothing was within the ordinary course of business of a debtor engaged in the business of manufacturing and distributing clothing).

38. While the Bankruptcy Code does not define “ordinary course,” courts generally apply a two-step inquiry in determining whether this standard has been met. *Lavigne*, 114 F.3d at 385; *In re Dana Corp.*, 358 B.R. 567, 580 (Bankr. S.D.N.Y. 2006); *In re NextWave Pers. Commc’ns., Inc.*, 244 B.R. 253, 275 (Bankr. S.D.N.Y. 2000).

39. The first step, referred to as the “horizontal dimension test,” considers whether the postpetition transaction is of a sort commonly undertaken by companies in the debtor’s industry as ordinary business. *Lavigne*, 114 F.3d at 385; *Comm. of Asbestos-Related Litigants v. Johns-*

Manville Corp. (In re Johns-Manville Corp.), 60 B.R. 612, 618 (Bankr. S.D.N.Y. 1986) (debtor-in-possession's employment of professional lobbyists postpetition satisfied horizontal dimension test because debtor had used lobbyists extensively in the past and other companies similarly situated to debtor routinely employed such lobbyists); *Coordinated Apparel*, 179 B.R. at 43 (horizontal dimension test satisfied where debtor, which was clothing manufacturer and distributor, entered into a clothing manufacturing contract postpetition because it was the type of transaction into which similar companies would enter).

40. The second part of the test is the “vertical dimension test,” which considers the creditors’ expectations based on the debtor’s past business practices. *Lavigne*, 114 F.3d at 385; *Coordinated Apparel*, 179 B.R. at 43 (vertical dimension test satisfied because “a hypothetical creditor could reasonably expect a debtor engaged in the business of manufacturing and distributing clothing to enter into a contract for the manufacture of clothing”). Under this test, a court considers whether the transaction subjects a hypothetical creditor to an economic risk that is different from that which the creditor accepted when it extended credit. *Leslie Fay*, 168 B.R. at 304 (“In making this determination, courts look to the debtor’s prepetition business practices and conduct and compare them to its course of conduct postpetition.”); *See also Lavigne*, 114 F.3d at 385.

41. Pursuant to both the horizontal and vertical dimension tests, the Debtor should be authorized to continue entering into Derivative Contracts. First, companies in the airline industry routinely enter into such contracts. *See, e.g., In re LATAM Airlines Group S.A.*, Case No. 20-11254 (JLG) (Bankr. S.D.N.Y. Sept. 15, 2020) [ECF No. 1069]; *In re Avianca Holdings S.A.*, Case No. 20-11133 (MG) (Bankr. S.D.N.Y. June 9, 2020) [ECF No. 246]; *In re AMR Corp.*, Case No. 11-15463 (SHL) (Bankr. S.D.N.Y. Dec. 22, 2011) [ECF No. 433]; *In re Northwest*

Airlines Corp., Case No. 05-17930 (ALG) (Bankr. S.D.N.Y. Oct. 7, 2005) [ECF No. 618]; *In re US Airways Grp., Inc.*, Case No. 04-13819 (SSM) (Bankr. E.D. Va. Jan. 27, 2005) [ECF No. 1718]. Second, as described above, the Debtor routinely entered into such transactions in the past and, accordingly, a hypothetical creditor would not be exposed to a different risk than it expected when it provided credit to the Debtor. Moreover, most of the Debtor's annual and quarterly public filings make clear that the Debtor regularly enters into Derivative Contracts.

42. In addition, section 105(a) of the Bankruptcy Code provides that a "court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C § 105(a). Such orders are appropriate where they are essential to the debtor's reorganization efforts and fundamentally fair. *See e.g., In re C.A.F. Bindery, Inc.*, 199 B.R. 828, 835 (Bankr. S.D.N.Y. 1996); *In re Fin. News Network, Inc.*, 134 B.R. 732, 735-36 (Bankr. S.D.N.Y. 1991); *Momentum Mfg. Corp. v. Emp. Creditors Comm. (In re Momentum Mfg. Corp.)*, 25 F.3d 1132, 1136 (2d Cir. 1994) ("It is well settled that bankruptcy courts are courts of equity, empowered to invoke equitable principles to achieve fairness and justice in the reorganization process."). In this instance, the Court should use its broad equitable powers to confirm the Debtor's authority to enter into Derivative Contracts in the ordinary course of business.

43. In view of the Debtor's substantial consumption of jet fuel, the extent of its business operations in foreign countries and the highly volatile state of the global economy, it is crucial that the Debtor be able to freely hedge jet fuel prices, and if need be, currency exchange rates. As such, the Debtor believes it is in the best interests of its estate to have the authority to enter into Derivatives Contracts postpetition.

C. The Debtor Should Be Authorized to Provide Credit Support under Derivative Contracts.

44. In certain circumstances, in the ordinary course of the Debtor's business operations, the counterparties to the Debtor's Derivative Contracts require that the Debtor's obligations thereunder be secured by various forms of credit support. Industry practice requires "out of the money" parties to Derivative Contracts to provide credit support in the ordinary course of business based upon net mark-to-market valuations. Circumstances may arise that require the Debtor to grant its counterparties such protections with regards to Derivative Contracts entered both prepetition and postpetition. The Debtor expects that its counterparties may be willing to extend or continue to extend credit in exchange for certain inducements, such as the granting of priority claims or liens on certain unencumbered collateral pursuant to section 364(c)(1) and (2) of the Bankruptcy Code.

45. Both are appropriate under section 364(c) of the Bankruptcy Code, which provides, in relevant part:

(c) . . . 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.

46. Generally, courts apply a three-part test to determine whether a debtor may obtain credit under section 364(c). The three-part test includes demonstrating that (a) the debtor cannot obtain credit without granting the protections sought, (b) the credit is necessary to preserve the value 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 in re LATAM Airlines, Group S.A.*, 620 B.R. 722 (Bankr. S.D.N.Y. 2020); *In re Republic Airways Holdings Inc.*, 2016 WL 2616717, at *11 (Bankr. S.D.N.Y. May 4, 2016) (citing *In re Los Angeles Dodgers LLC*, 457 B.R. 308, 312-13 (Bankr. D. Del. 2011)).

47. Courts will evaluate the facts and circumstances of the particular case and accord significant weight to the necessity for obtaining financing. *See In re Ames Dep't Stores, Inc.*, 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990). “To demonstrate that it qualifies to seek secured financing under this section, a debtor need only demonstrate that that it has reasonably attempted, but failed, to obtain unsecured credit under sections 364(a) or (b).” *LATAM*, 620 B.R. at 767 (internal quotation marks omitted). Accordingly, “in evaluating the merits of proposed postpetition financing, courts will defer to a debtor’s business judgment provided that the financing does not unduly benefit a party in interest at the expense of the estate.” *Id.* *See also In re Ames Dep't Stores*, 115 B.R. at 40 (approving debtors’ proposed financing in absence of alternative financing and finding that the business judgment standard applies “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.”).

48. Although the Debtor is seeking relief under section 364(c) of the Bankruptcy Code, none of the consequences that courts are generally concerned about in determining whether it is appropriate to grant section 364 relief exist in this case. Rather, the relief sought herein serves to benefit the Debtor’s creditors by maintaining the Debtor’s operations and maximizing the value of the Debtor’s estate. First, it would be impossible for the Debtor to enter into only those Derivative Contracts that do not require any Credit support or that would take Credit Support in the form of a priority claim only, thereby limiting the availability of possible

beneficial contracts. Second, the ability to provide Credit Support is necessary to continue the Debtor's use of Derivative Contracts, and, consequently, for the uninterrupted and successful operations of the Debtor's business.

49. Providing Credit Support, on the other hand, will not result in any net loss to the Debtor. Counterparties would only realize on their collateral if the Debtor owed the counterparties money, which would only occur if the prices of fuel become favorable to a counterparty. Even though the Debtor could owe money on account of Derivative Contracts in these situations, the Debtor's business would still benefit overall from the favorable prices of fuel. Consequently, the losses from Derivative Contracts, if any, will be offset by gains in the Debtor's operations. Thus, the significant positive benefits of the Debtor's derivative strategy can be realized only by the Debtor's continued use of Derivative Contracts, including providing the necessary Credit Support thereunder.

50. Accordingly, the Debtor believes that the relief sought represents a fair and efficient mechanism for preserving the viability of the Debtor's business, while providing counterparties with sufficient inducement to enter into and continue performing under the Derivative Contracts.

Cause Exists to Authorize the Debtor's Financial Institutions to Honor Checks and Electronic Fund Transfers

51. The Debtor has sufficient funds to pay the amounts described in this Motion in the ordinary course of business by virtue of expected cash flows from ongoing business operations and anticipated access to its postpetition financing. In addition, under the Debtor's existing cash management system, the Debtor can readily identify checks or wire transfer requests as relating to an authorized payment in respect of the relief requested herein. Accordingly, the Debtor believes that checks or wire transfer requests, other than those relating to authorized payments,

will not be honored inadvertently. Therefore, the Debtor respectfully requests that the Court authorize and direct all applicable financial institutions, when requested by the Debtor, to receive, process, honor, and pay any and all checks or wire transfer requests in respect of the relief requested in this Motion.

The Debtor Has Satisfied Bankruptcy Rule 6003(b)

52. Bankruptcy Rule 6003(b) provides that, to the extent relief is necessary to avoid immediate and irreparable harm, a bankruptcy court may issue an order granting “a motion to use, sell, lease, or otherwise incur an obligation regarding property of the estate, including a motion to pay all or part of a claim that arose before the filing of the petition” within 21 days of filing a petition. Irreparable harm “is a continuing harm which cannot be adequately redressed by final relief on the merits and for which money damages cannot provide adequate compensation.” *Kamerling v. Massanari*, 295 F.3d 206, 214 (2d Cir. 2002) (internal quotations omitted). The “harm must be shown to be actual and imminent, not remote or speculative.” *Id.*

53. As set forth above, the Debtor believes an immediate and orderly transition into chapter 11 is critical to the viability of its operations and that any delay in granting the relief requested could hinder the Debtor’s operations and cause irreparable harm. The failure to receive the requested relief during the first 21 days of this Chapter 11 Case could severely disrupt the Debtor’s operations at this critical juncture and imperil the Debtor’s restructuring as contemplated by the RSAs. Accordingly, the Debtor submits that the relief requested herein is necessary to avoid immediate and irreparable harm, and that Bankruptcy Rule 6003(b) is satisfied.

Reservation of Rights

54. 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 estate; (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.

55. Moreover, the Debtor, by filing this Motion, is not expressing a view as to whether any particular contract falls within the purview of sections 556 or 560 of the Bankruptcy Code or that any particular counterparty is entitled to exercise rights pursuant to those sections.

**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 DIP Lender; (e) the United States Attorney’s Office for the Southern District of New York; (f) the Internal Revenue Service; (g) the Securities and Exchange Commission; (h) the Federal Aviation Administration; (i) the counterparties to the Derivative Contracts; and (j) 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 to any other court.

WHEREFORE, the Debtor respectfully requests that the Court enter the Proposed 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

Jasmine Ball
Nick S. Kaluk, III
Elie J. Worenklein
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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-____ (___)

**INTERIM ORDER AUTHORIZING THE DEBTOR TO ENTER INTO, CONTINUE
PERFORMANCE, AND PROVIDE CREDIT SUPPORT UNDER HEDGING AND
DERIVATIVE CONTRACTS**

Upon consideration of the motion (the “**Motion**”)² of the above-captioned debtor and debtor-in-possession (the “**Debtor**”), seeking entry of an order (this “**Interim Order**”) pursuant to sections 105(a), 363, and 364(c) of the Bankruptcy Code, authorizing, but not directing, the Debtor to: (a) continue performing under its existing Derivative Contracts; (b) enter into and perform under Derivative Contracts in accordance with its ordinary business practices; and (c) provide credit support as may be necessary to implement prepetition or postpetition Derivative Contracts; and this Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 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; and venue before this Court being proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and notice of the Motion being adequate and appropriate under the circumstances; and the Court having found that adequate notice of the

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 Motion.

Motion and opportunity for objection has been given under the circumstances, and that no other or further notice need be provided; and the Court having reviewed the Motion and the First Day Declaration and held a hearing to consider the relief requested in the Motion on a final basis (the “**Hearing**”); and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and the Court having determined that immediate relief is necessary to avoid irreparable harm to the Debtor and the Debtor’s estate as contemplated by Bankruptcy Rule 6003(b) and is in the best interests of the Debtor, its estate, the creditors, and all parties in interest; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor;

IT IS HEREBY ORDERED THAT:

1. The Motion is granted and approved on an interim basis as set forth herein.
2. Pursuant to sections 105 and 363 of the Bankruptcy Code, the Debtor is authorized, but not directed, in its sole discretion, to continue to perform under its prepetition Derivative Contracts and to enter into and perform under, new Derivative Contracts, in each case including rolling over, adjusting, modifying, paying option premiums, terminating, taking physical delivery of commodities, and otherwise engaging in transactions thereunder, without further order of the Court
3. Pursuant to section 364(c) of the Bankruptcy Code, the Debtor may provide or return Credit Support and pay settlement or termination payments, each in the ordinary course of business, with respect to prepetition or postpetition Derivative Contracts, without further order of the Court.
4. All obligations of the Debtor under the Derivative Contracts and the transactions executed thereunder shall constitute allowed administrative expense claims of the non-Debtor

party under section 503(b) of the Bankruptcy Code without the need for any such party to a Derivative Contract to file a motion seeking allowance of such administrative expense claims, provided, that the Debtor shall retain the right to dispute the amount (but not the priority) of any such claim subject to the terms of the applicable the Derivative Contract.

5. The provisions of sections 362 and 553 of the Bankruptcy Code are hereby modified to the extent necessary to permit non-Debtor counterparties to Derivative Contracts to exercise and enforce any and all rights and remedies provided in the Derivative Contracts, including but not limited to the suspension of performance thereunder, the termination, liquidation, or acceleration thereof, withholding of performance thereof, and setoff, netting, and application of any payment, settlement payment, termination value, termination payment, and any other amounts any non-Debtor party to a Derivative Contract would be entitled to receive or otherwise be obligated to pay under any Derivative Contract, in each case in accordance with the terms thereof, without the need for any further Court order. In this regard, there shall be no distinction between transactions entered into prepetition and postpetition.

6. All applicable banks and other financial institutions are hereby authorized to receive, process, honor, and pay any and all checks, drafts, wires, check transfer requests, or automated clearinghouse transfers evidencing amounts paid by the Debtor under this Order whether presented prior to, on, or after the Petition Date to the extent the Debtor has good funds standing to its credit with banks or other financial institutions. Such banks and financial institutions are authorized to rely on the representations of the Debtor as to which checks are issued or authorized to be paid pursuant to this Order without any duty of further inquiry and without liability for following the Debtor's instructions.

7. Nothing in this Order or any action taken by the Debtor in furtherance of the

implementation hereof shall be deemed to constitute an assumption or rejection of any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code, and all of the Debtor's rights with respect to such matters are expressly reserved.

8. Other than the relief expressly granted herein, nothing contained herein shall create, nor is it intended to create, any rights in favor of any party, *provided, however*, that the entry of an order converting the Chapter 11 Case to a case under chapter 7 of the Bankruptcy Code, shall constitute an event of default under the Derivative Contracts, to the extent not already expressly provided therein.

9. Nothing in this Order or the Motion shall be construed as prejudicing the rights of the Debtor to dispute or contest the amount of or basis for any claims against the Debtor in connection with or relating to the Debtor's Derivative Contracts.

10. Nothing in this Order nor the Debtor's payment of claims pursuant to this Order shall be construed as (a) an agreement or admission by the Debtor as to the validity or priority of any claim on any grounds, (b) a waiver or impairment of any of the Debtor's rights to dispute any claims on any grounds, (c) a promise by the Debtor to pay any claim, or (d) an implication or admission by the Debtor that such claim is payable pursuant to this Order.

11. The requirements set forth in Bankruptcy Rule 6003 are satisfied by the contents of the Motion.

12. A final hearing to consider the relief requested in the Motion shall be held on _____, 2021 at _____ (Prevailing Eastern Time) and any objections or responses to the Motion shall be filed and served on the Notice Parties so as to be actually received on or prior to _____, 2021 at 4:00 p.m. (Prevailing Eastern Time). Any objections or responses to the entry of the Final Order shall be (a) filed with the Court and (b) served upon and actually received by (i) the

United States Trustee, U.S. Federal Office Building, 201 Varick Street, Room 1006, New York, NY 10014 (Attn: Susan A. Arbeit), (ii) proposed counsel to the Debtor, Debevoise & Plimpton LLP, 919 Third Avenue, New York, NY 10022 (Attn: Jasmine Ball, Nick Kaluk, III, and Elie Worenklein), (iii) counsel to the DIP Lender, White & Case LLP, 1221 Avenue of the Americas, New York, NY 10020 (Attn: Andrew Zatz) and (iv) counsel to any official committee then appointed in this Chapter 11 Case, so as to be received by 4:00 p.m. (Prevailing Eastern Time) seven days before the hearing to approve the relief requested in the Motion on a final basis (the “**Objection Deadline**”). A reply to an objection may be filed with the Court and served on or before 12:00 p.m. (Prevailing Eastern Time) on the day that is at least two business days before the date of the applicable hearing. If no objections or responses are filed and served, this Court may enter the Final Order without further notice or hearing.

13. If no objections are timely filed and served as set forth herein, the Debtor shall, on or after the Objection Deadline, submit to the Court a final order substantially in the form of this Order, which order shall be submitted and may be entered with no further notice or opportunity to be heard afforded any party, and the Motion shall be approved *nunc pro tunc* to the date of the commencement of the Chapter 11 Case.

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

15. Notwithstanding any applicability of Bankruptcy Rule 6004 or any of the Local Rules, the terms and conditions of this Interim Order are immediately effective and enforceable upon its entry. If any or all of the provisions of this Order are stayed, modified in a manner

adverse to any non-Debtor party to a Derivative Contract, or vacated, or if this Order otherwise terminates, then such stay, modification, vacation, or termination will not affect (a) the validity of any indebtedness, obligation, or liability incurred pursuant to or arising from any transaction entered into by the Debtor pursuant to any Derivative Contract before the receipt of written notice by the non-Debtor party of the effective date of such stay, modification, vacation, or termination, (b) the validity or enforceability of the security interests, administrative claims, and netting, setoff, collection, and termination rights authorized or created hereby or pursuant to any Derivative Contract, or any related documents, or (c) the rights of the non-Debtor party to any Derivative Contract to exercise remedies as set forth in its Derivative Contract, and each such non-Debtor party shall be entitled to the benefits of the provisions of section 364(e) of the Bankruptcy Code for any credit extended pursuant to this Order.

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

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

Dated: _____, 2021
New York, New York

THE HONORABLE [●]
UNITED STATES BANKRUPTCY JUDGE

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-_____ (____)

**FINAL ORDER AUTHORIZING THE DEBTOR TO ENTER INTO,
CONTINUE PERFORMANCE, AND PROVIDE CREDIT
SUPPORT UNDER HEDGING AND DERIVATIVE CONTRACTS**

Upon consideration of the motion (the “**Motion**”)² of the above-captioned debtor and debtor-in-possession (the “**Debtor**”), seeking entry of an order (this “**Order**”) pursuant to sections 105(a), 363, and 364(c) of the Bankruptcy Code, authorizing, but not directing, the Debtor to: (a) continue performing under its existing Derivative Contracts; (b) enter into and perform under Derivative Contracts in accordance with its ordinary business practices; and (c) provide credit support as may be necessary to implement prepetition or postpetition Derivative Contracts; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, dated January 31, 2012; and venue being proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and notice of the Motion being adequate and appropriate under the circumstances; and the Court having found that adequate notice of the Motion and opportunity for objection has been given under the circumstances, and

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 Motion.

that no other or further notice need be provided; and the Court having reviewed the Motion and the First Day Declaration and held a hearing to consider the relief requested in the Motion on a final basis (the “**Hearing**”); and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and the Court having found that the relief requested in the Motion is in the best interests of the Debtor’s estate, its creditors, and other parties in interest; and any objections to the relief requested in the Motion having been withdrawn or overruled on the merits; and after due deliberation and sufficient cause appearing therefor;

IT IS HEREBY ORDERED THAT:

1. The Motion is granted and approved as set forth herein on a final basis.
2. Pursuant to sections 105 and 363 of the Bankruptcy Code, the Debtor is authorized, but not directed, in its sole discretion, to continue to perform under its prepetition Derivative Contracts and to enter into and perform under, new Derivative Contracts, in each case including rolling over, adjusting, modifying, paying option premiums, terminating, taking physical delivery of commodities, and otherwise engaging in transactions thereunder, without further order of the Court
3. Pursuant to section 364(c) of the Bankruptcy Code, the Debtor may provide or return Credit Support and pay settlement or termination payments, each in the ordinary course of business, with respect to prepetition or postpetition Derivative Contracts, without further order of the Court.
4. All obligations of the Debtor under the Derivative Contracts and the transactions executed thereunder shall constitute allowed administrative expense claims of the non-Debtor party under section 503(b) of the Bankruptcy Code without the need for any such party to a

Derivative Contract to file a motion seeking allowance of such administrative expense claims, provided, that the Debtor shall retain the right to dispute the amount (but not the priority) of any such claim subject to the terms of the applicable the Derivative Contract.

5. The provisions of sections 362 and 553 of the Bankruptcy Code are hereby modified to the extent necessary to permit non-Debtor counterparties to Derivative Contracts to exercise and enforce any and all rights and remedies provided in the Derivative Contracts, including but not limited to the suspension of performance thereunder, the termination, liquidation, or acceleration thereof, withholding of performance thereof, and setoff, netting, and application of any payment, settlement payment, termination value, termination payment, and any other amounts any non-Debtor party to a Derivative Contract would be entitled to receive or otherwise be obligated to pay under any Derivative Contract, in each case in accordance with the terms thereof, without the need for any further Court order. In this regard, there shall be no distinction between transactions entered into prepetition and postpetition.

6. All applicable banks and other financial institutions are hereby authorized to receive, process, honor, and pay any and all checks, drafts, wires, check transfer requests, or automated clearinghouse transfers evidencing amounts paid by the Debtor under this Order whether presented prior to, on, or after the Petition Date to the extent the Debtor has good funds standing to its credit with banks or other financial institutions. Such banks and financial institutions are authorized to rely on the representations of the Debtor as to which checks are issued or authorized to be paid pursuant to this Order without any duty of further inquiry and without liability for following the Debtor's instructions.

7. Nothing in this Order or any action taken by the Debtor in furtherance of the implementation hereof shall be deemed to constitute an assumption or rejection of any executory

contract or unexpired lease pursuant to section 365 of the Bankruptcy Code, and all of the Debtor's rights with respect to such matters are expressly reserved.

8. Other than the relief expressly granted herein, nothing contained herein shall create, nor is it intended to create, any rights in favor of any party, *provided, however*, that the entry of an order converting the Chapter 11 Case to a case under chapter 7 of the Bankruptcy Code, shall constitute an event of default under the Derivative Contracts, to the extent not already expressly provided therein.

9. Nothing in this Order nor the Debtor's payment of claims pursuant to this Order shall be construed as (a) an agreement or admission by the Debtor as to the validity or priority of any claim on any grounds, (b) a waiver or impairment of any of the Debtor's rights to dispute any claims on any grounds, (c) a promise by the Debtor to pay any claim, or (d) an implication or admission by the Debtor that such claim is payable pursuant to this Order.

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

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

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

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

Dated: _____, 2021
New York, New York

THE HONORABLE [●]
UNITED STATES BANKRUPTCY JUDGE