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

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In re : **Chapter 11 Case No.**
REPUBLIC AIRWAYS HOLDINGS INC., et al., : **16-10429 (SHL)**
Debtors.¹ : **(Jointly Administered)**

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**DEBTORS' STATEMENT REGARDING PROPOSED AMENDED FINAL TRADING
ORDER ESTABLISHING NOTIFICATION PROCEDURES AND APPROVING
RESTRICTIONS ON CERTAIN TRANSFERS OF CLAIMS AGAINST AND
INTERESTS IN THE DEBTORS' ESTATES**

Upon the Debtors' Motion Pursuant to 11 U.S.C. §§ 362 & 105(a) for Entry of
Interim and Final Orders Establishing Notification Procedures and Approving Restrictions on
Certain Transfers of Claims Against and Interests in the Debtors (the "Motion")² [ECF No. 18],

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1. The Debtors in these chapter 11 cases are the following entities: Republic Airways Holdings Inc.; Republic Airways Services, Inc.; Republic Airline Inc.; Shuttle America Corporation; Midwest Air Group, Inc.; Midwest Airlines, Inc.; and Skyway Airlines, Inc. The Debtors' employer tax identification numbers and addresses are set forth in their respective chapter 11 petitions.
 2. All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.

the Debtors contemporaneously herewith submit a proposed Amended Final Trading Order Establishing Notification Procedures and Approving Restrictions on Certain Transfers of Claims Against and Interests in the Debtors' Estates (the "Amended Order," attached as Exhibit A to the contemporaneously filed Notice of Presentment).

Since the Court entered the Final Trading Order [ECF No. 206] approving the Motion, the Debtors, in consultation with the Official Committee of Unsecured Creditors, have determined that it is appropriate to increase the Threshold Amount in the Final Trading Order from \$4.94 million to \$22.5 million. In addition, the Debtors, after consulting with the Creditors' Committee, propose to make certain changes to the Final Trading Order intended to protect the Debtor's ability to successfully implement a Section 382(l)(5) Plan as further described herein.

As discussed in the Motion, under section 382(l)(5), the limitations imposed by section 382 of the Tax Code do not apply to a debtor that undergoes an Ownership Change as a result of the consummation of a chapter 11 plan if the plan provides that the person or entities who owned the debtor's stock immediately before the relevant Ownership Change and/or "qualified creditors" emerge from the reorganization owning (as a result of their prior ownership of stock or claims that are "qualified indebtedness") at least 50 percent of the total value and voting power of the debtor's stock immediately after the Ownership Change. *See* I.R.C. § 382(l)(5)(A). Qualified creditors are, in general, creditors who (a) held their claims continuously for at least 18 months prior to the petition date or (b) hold claims incurred in the ordinary course of the debtor's business and held those claims continuously since they were incurred. Importantly, a "de minimis" rule generally provides that a creditor that does not satisfy either of the foregoing requirements may still be considered a qualified creditor if that creditor

will own, directly or indirectly, less than 5 percent of the reorganized debtor's equity immediately after the ownership change. *See* Treas. Reg. § 1.382-9(d)(3).

Section 3 of the Final Trading Order sets forth restrictions and procedures for trading in Covered Claims. The Debtors propose in the Amended Order certain changes to this section intended to ensure that where applicable, any Person acquiring new claims fits into the de minimis rule. According to section 1.382-9(d)(3)(i) of the Treasury Regulations, the de minimis rule does not apply to any Person whose participation in formulating the bankruptcy plan made evident to the Debtors that the person has not owned the indebtedness for 18 months prior to the petition date.

Accordingly, in section 3(b) of the Amended Order, the Debtors propose certain changes intended to (i) prevent the actions of any Person from making evident to the Debtors whether they have owned claims for less than 18 months, (ii) allow the Debtors to rectify the damage caused by any such Person who made evident to the Debtors that they owned the claim for less than 18 months, and (iii) provide the Debtors a reasonable cushion to allow a sell-down by any such Person who made evident that they owned the claim for less than 18 months where the Person's actions might affect the Debtors' ability to effectuate a 382(l)(5) Plan.

Section 4(a) of the Final Trading Order sets forth procedures for the Debtors to issue Reporting Notices in order to assess the feasibility of implementing a 382(l)(5) Plan. According to section 1.382-9(d)(2)(iii) of the Treasury Regulations, the Debtors have a duty to determine whether Substantial Claimholders and any Person that violated the Participation Restriction are "qualified creditors" who have held the debt for the requisite period (18 months) before the Ownership Change. Accordingly, in section 4(a) of the Amended Order, the Debtors propose additional language to explicitly give the Debtors the ability to determine whether its

indebtedness is owned by a creditor who held its claim continuously for at least 18 months prior to the petition date.

Finally, the Debtors propose a change to the Definition of Person in the Amended Order intended to ensure that persons acting in concert are properly aggregated for purposes of applying the threshold amounts in the Amended Order.

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