

**Hearing Date & Time: August 16, 2016 at 9:30 a.m. (Eastern Time)**  
**Objection Deadline: August 9, 2016 at 4:00 p.m. (Eastern Time)**

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*Attorneys for the Debtors  
and Debtors in Possession*

**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.<sup>1</sup>** : **(Jointly Administered)**

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**NOTICE OF HEARING ON DEBTORS' MOTION FOR ORDER PURSUANT  
TO 11 U.S.C. §§ 363(b), 363(f) & 363(m) AND FED. R. BANKR. P. 6004  
AUTHORIZING THE DEBTORS TO TRANSFER TITLE TO CERTAIN AIRCRAFT**

**PLEASE TAKE NOTICE** that a hearing will be held at **9:30 a.m. (Eastern Time) on August 16, 2016** before the Honorable Sean H. Lane, United States Bankruptcy Judge, United States Bankruptcy Court for the Southern District of New York, One Bowling Green,

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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.

New York, New York 10004 to consider *Debtors' Motion for Order Pursuant to 11 U.S.C. §§ 363(b), 363(f) & 363(m) and Fed. R. Bankr. P. 6004 Authorizing the Debtors to Transfer Title to Certain Aircraft* (the "Motion").

**PLEASE TAKE FURTHER NOTICE** that any responses or objections (the "Objections") to the Motion shall be in writing, shall conform to the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules for the Southern District of New York, shall be filed with the Bankruptcy Court (a) by attorneys practicing in the Bankruptcy Court, including attorneys admitted pro hac vice, electronically in accordance with General Order M-399 (which can be found at [www.nysb.uscourts.gov](http://www.nysb.uscourts.gov)), and (b) by all other parties in interest, on a CD-ROM, in text-searchable portable document format (PDF) (with a hard copy delivered directly to Chambers), in accordance with the customary practices of the Bankruptcy Court and General Order M-399, to the extent applicable, and shall be served in accordance with General Order M-399 on (i) the attorneys for the Debtors, Zirinsky Law Partners PLLC, 375 Park Avenue, Suite 2607, New York, New York 10152 (Attn: Bruce R. Zirinsky, Esq. ([bzirinsky@zirinskylaw.com](mailto:bzirinsky@zirinskylaw.com)), Sharon J. Richardson, Esq. ([srichardson@zirinskylaw.com](mailto:srichardson@zirinskylaw.com)), and Gary D. Ticoll, Esq. ([gticoll@zirinskylaw.com](mailto:gticoll@zirinskylaw.com))) and Hughes Hubbard & Reed LLP, One Battery Park Plaza, New York, New York 10004 (Attn: Christopher K. Kiplok, Esq. ([chris.kiplok@hugheshubbard.com](mailto:chris.kiplok@hugheshubbard.com)) and Gabrielle Glemann, Esq. ([gabrielle.glemann@hugheshubbard.com](mailto:gabrielle.glemann@hugheshubbard.com))), (ii) the Office of the United States Trustee, 201 Varick Street, Suite 1006, New York, New York 10014 (Attn: Brian Masumoto, Esq.), (iii) counsel to the Official Committee of Unsecured Creditors, Morrison & Foerster LLP, 250 West 55th Street, New York, New York 10019 (Attn: Brett H. Miller, Esq. ([bmiller@mofo.com](mailto:bmiller@mofo.com)), Todd M. Goren, Esq. ([tgoren@mofo.com](mailto:tgoren@mofo.com)), and Erica J. Richards, Esq. ([erichards@mofo.com](mailto:erichards@mofo.com))),

(iv) the Ad Hoc Committee of Equity Holders of Republic Airways Holdings Inc., Schulte Roth & Zabel LLP, 919 Third Avenue, New York, New York 10022 (Attn: Adam C. Harris, Esq. (adam.harris@srz.com), Lawrence V. Gelber, Esq. (lawrence.gelber@srz.com), and David M. Hillman, Esq. (david.hillman@srz.com)), and (v) all entities that requested notice in these chapter 11 cases under Fed. R. Bankr. P. 2002, so as to be so filed and received no later than **August 9, 2016 at 4:00 p.m. (Eastern Time)**.

**PLEASE TAKE FURTHER NOTICE** that if no Objections are timely filed and served, the relief requested in the Motion may be granted with no further notice or opportunity to be heard.

Dated: New York, New York  
July 26, 2016

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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.<sup>2</sup>** : **(Jointly Administered)**

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**DEBTORS' MOTION FOR ORDER PURSUANT TO 11 U.S.C.  
§§ 363(b), 363(f) & 363(m) AND FED. R. BANKR. P. 6004 AUTHORIZING THE  
DEBTORS TO TRANSFER TITLE TO CERTAIN AIRCRAFT**

TO THE HONORABLE SEAN H. LANE,  
UNITED STATES BANKRUPTCY JUDGE:

Republic Airways Holdings Inc. ("RAH"), and certain of its wholly-owned direct and indirect subsidiaries, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively with RAH, "Republic" or the "Debtors"), respectfully represent:

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2. 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.

### **Background**

1. On February 25, 2016 (the “Commencement Date”) the Debtors each commenced in this Court a voluntary case under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”). The Debtors are authorized to continue to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in these cases.

2. On March 4, 2016, the United States Trustee for the Southern District of New York appointed the Official Committee of Unsecured Creditors.

3. Pursuant to Fed. R. Bankr. P. 1015(b), the Debtors’ chapter 11 cases have been consolidated for procedural purposes only and are being jointly administered.

4. Detailed information regarding Republic’s business, capital structure, and the circumstances leading to the commencement of these chapter 11 cases is set forth in the Declaration of Bryan K. Bedford Pursuant to Local Bankruptcy Rule 1007-2 (the “Bedford Declaration”), filed with the Court on the Commencement Date.

### **Jurisdiction**

5. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b).

### **Relief Requested**

6. By this motion, Republic requests entry of an order substantially in the form annexed hereto, pursuant to sections 363(b), 363(f), and 363(m) of the Bankruptcy Code and Rule 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), (i) approving the Multi-Party Agreement, substantially in the form and substance as attached

hereto as Exhibit A (the “Multi-Party Agreement”)<sup>3</sup> by and among Shuttle America Corporation, Republic Airline Inc., RAH, Embraer S.A., Embraer Netherlands B.V. (“EBV”), ECC Leasing Company Limited (“ECC”), Wells Fargo Bank Northwest, National Association, as Owner Trustee (“Owner Trustee”), Agência Especial de Financiamento Industrial – FINAME (“FINAME”), and The Bank of New York Mellon, as Security Trustee (“Security Trustee”), and (ii) authorizing the Debtors to transfer to EBV their right, title and interest with respect to the fifteen aircraft identified in Schedule I to the Multi-Party Agreement (the “ERJs”) in exchange for the consideration described herein.

### **Background**

7. An integral step in Republic’s restructuring is its plan to streamline its operations by operating a single aircraft type (E170/175) by returning out of favor aircraft, like the Embraer model ERJ-140/145 aircraft. (See Bedford Declaration ¶ 28.) In furtherance of this goal and to maximize the value of its estates for the benefit of all parties in interest, Republic has entered a consensual agreement to transfer to EBV the fifteen ERJs subject to the terms of the Multi-Party Agreement.

8. Each ERJ is subject to a loan agreement secured by a mortgage for the benefit of FINAME. In addition to the 15 ERJs, approximately 65 of Republic’s E170/175 aircraft (the “EJETs”) are subject to FINAME liens (via certain security trustees) securing the debt under the loan agreement and related agreements. The ERJs and EJETs are subject to certain cross-default provisions. On March 23, 2016, the Debtors filed a Notice of Election Pursuant to 11 U.S.C. § 1110 With Respect to BNDES Financed Aircraft (ECF No. 374)

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3. The Multi-Party Agreement is subject to approval by FINAME’s board of executive officers and will be executed following Bankruptcy Court approval.

agreeing to perform all obligations of the Debtors under the security agreements with respect to both the ERJs and EJETs.

9. As Republic is winding down its flying of ERJ-140/145 aircraft, it no longer has any use for the ERJs. All but three of the ERJs have been parked since before the Commencement Date. The remaining three ERJs will no longer be necessary on or before September 30, 2016.<sup>4</sup>

10. Under the Multi-Party Agreement,<sup>5</sup> following approval by this Court and provision of certain consideration by EBV and by Embraer to FINAME, FINAME has agreed to cancel Republic's obligations to make principal and interest payments on the existing mortgage financings relating to the ERJs (subject to EBV's right to assert prepetition claims with respect to such obligations) and terminate the relevant loan documents.<sup>6</sup> FINAME has further agreed to waive cross-defaults relating to the ERJs in connection with the EJETs. In exchange, Republic has agreed to convey to EBV its right, title and interest to the ERJs on an "as is" "where is" basis. This transaction is beneficial to the Republic estates because it provides for a consensual disposition of out-of-favor aircraft and protects the EJETs from any attempt by FINAME to exercise any cross-default rights that it may otherwise assert.

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4. Following the title transfer, two of the three ERJs in operation will be leased to the Debtors through September 30, 2016. The remaining ERJ will be parked by the Debtors on or before August 15, 2016.

5. The summary of the Multi-Party Agreement contained in this Motion is provided for purposes of convenience only. In the event of any inconsistency between the summary contained herein and the terms and provisions of the Multi-Party Agreement, the terms of the Multi-Party Agreement shall control.

6. Notwithstanding cancellation of the debt, each of EBV, FINAME and Republic has reserved all rights with respect to any prepetition claims in connection with the mortgage documents on the ERJs and the outstanding principal and interest thereunder. Embraer, EBV, ECF, Owner Trustee, Security Trustee and FINAME have also entered into a separate agreement without the Debtors in regard to the ERJs.

11. The Multi-Party Agreement is the product of good faith, arm's-length negotiations among the Parties. The Debtors' business judgment is that the transaction contemplated by the Multi-Party Agreement is in the best interest of their estates.

**The Transfer Should be Authorized**

12. Section 363(b) of the Bankruptcy Code permits a debtor to use, sell, or lease property with court approval. *See* 11 U.S.C. § 363(b). Courts interpreting section 363(b) consistently hold that transactions outside of the ordinary course of business should be approved when they are supported by sound business reasons. *See In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983); *In re Borders Group, Inc.*, 453 B.R. 477, 482 (Bankr. S.D.N.Y. 2011); *In re General Motors Corp.*, 407 B.R. 463, 493–94 (Bankr. S.D.N.Y. 2009).

13. The Debtors submit that sound business reasons exist for approval of the transfer of title to the ERJs to EBV. The consideration received by Republic—the cancellation of the outstanding obligations and waiver of cross-defaults with valuable EJETs—far exceeds any value Republic may otherwise receive and allows the Debtors to be relieved of property that is not required for an effective reorganization. Moreover, EBV has agreed to cause two of the ERJs to be leased back to Republic through September 30, 2016 for use in the wind-down flying for its code-share partners. Republic has received this Court's approval to surrender and transfer title to its other ERJ-140/145 aircraft to lenders and lessors.<sup>7</sup> Accordingly, the Debtors submit that the transfer of title to the ERJs pursuant to the Multi-Party Agreement is in the best interests of the Debtors' estates and should be approved.

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7. *See, e.g.*, Order Pursuant to 11 U.S.C. §§ 105(a), 363(b), 365, 554 & 1110 and Fed. R. Bankr. P. 6006 & 6007 Authorizing Debtors to Transfer Title To and Abandon Certain Owned Aircraft And Engines and Reject Related Aircraft Lease (ECF No. 215) (authorizing the surrender and return of six owned ERJ-140/145 aircraft); Order Granting Debtors' Second Omnibus Motion Pursuant To 11 U.S.C. §§ 363(B), 365, 554 & 1110 And Fed. R. Bankr. P. 6006 & 6007 Authorizing Debtors To (I) Transfer Title To And Surrender Certain Owned Aircraft And (Ii) Reject Certain Aircraft And Engine Leases (ECF No. 370) (authorizing the surrender and return of four owned ERJ-140/145 aircraft).



**The Transfer of Title is Free and Clear of Claims**

14. Under section 363(f) of the Bankruptcy Code, a debtor-in-possession may sell property free and clear of any interest in such property of an entity other than the estate only if any of the following requirements are satisfied:

(1) applicable nonbankruptcy law permits sale of such property free and clear of such interest; (2) such entity consents; (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property; (4) such interest is in bona fide dispute; or (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f); *see also In re Bygaph, Inc.*, 56 B.R. 596, 606 n.8 (Bankr. S.D.N.Y. 1986)

(“Section 363(f) is in the disjunctive, such that the sale free of the interest concerned may occur if any one of the conditions of § 363(f) have been met.”). Here, the party with a lien on the ERJs, FINAME, is consenting to the title transfer and agreeing to terminate the relevant loan documents. Accordingly, section 363(f)(2) will be satisfied and the sale should be approved free and clear of any interest pursuant to section 363(f) of the Bankruptcy Code.

**Good Faith Purchaser**

15. The Debtors also request that the Court find that EBV is acting in good faith and entitled to the protections under section 363(m) of the Bankruptcy Code. Section 363(m) of the Bankruptcy Code provides:

The reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

11 U.S.C. § 363(m).

16. The terms and conditions of the Multi-Party Agreement were negotiated by the parties at arm's length, without collusion, and in good faith. The Multi-Party Agreement provides for fair and reasonable consideration for the ERJs. Moreover, EBV is not an "insider" of the Debtors and does not hold any interests in the Debtors. Accordingly, EBV should be afforded the protections under section 363(m) of the Bankruptcy Code.

**Notice**

17. Notice of this Motion has been provided in accordance with the Court's Case Management Order, dated March 2, 2016 (ECF No. 70), and upon filing with the Court, the application will be available for inspection on Republic's Case Website (located at <https://cases.primeclerk.com/RJET>). Republic submits that, in view of the facts and circumstances, no other or further notice need be given.

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

WHEREFORE Republic respectfully requests entry of an order granting the relief requested herein and such other and further relief as is just.

Dated: New York, New York  
July 26, 2016

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**EXHIBIT A**

[REDACTED]

**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.<sup>1</sup>** : **(Jointly Administered)**

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**ORDER PURSUANT TO 11 U.S.C. §§ 363(b), 363(f) & 363(m)  
AND FED. R. BANKR. P. 6004 AUTHORIZING THE DEBTORS  
TO TRANSFER TITLE TO CERTAIN AIRCRAFT**

A hearing having been held on August 16, 2016 (the “Hearing”), to consider the motion, dated July 26, 2016 (the “Motion”),<sup>2</sup> of Republic Airways Holdings Inc. (“RAH”), and certain of its wholly-owned direct and indirect subsidiaries, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively with RAH, “Republic” or the “Debtors”), pursuant to sections 363(b), 363(f), and 363(m) of title 11, United States Code (the “Bankruptcy Code”) and Rule 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) for entry of an order approving the Multi-Party Agreement and authorizing the Debtors to transfer title to the ERJs pursuant to the terms of the Multi-Party Agreement annexed to the Motion as Exhibit A, as more fully described in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order of Reference M-431, dated February 1, 2012 (Preska, C.J.); and consideration of the Motion and the requested relief being a core proceeding the Bankruptcy

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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. Capitalized terms used, but not otherwise defined herein, shall have the meanings given such terms in the Motion.

Court can determine pursuant to 28 U.S.C. § 157(b)(2); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided in accordance with the Order Pursuant to 11 U.S.C. § 105(a) & Fed. R. Bankr. P. 1015(c), 2002(m) & 9007 Implementing Certain Notice and Case Management Procedures (ECF No. 70), and it appearing that no other or further notice need be provided; and upon the record of the Hearing and all of the proceedings had before the Court; and the Court having found and determined that the Multi-Party Agreement was negotiated, proposed and entered into by the parties without collusion, in good faith and from arm's-length bargaining positions and EBV is not an "insider" of the Debtors, as that term is defined in section 101(31) of the Bankruptcy Code; and good and sufficient reasons for approval of the relief requested in the Motion have been articulated, and the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors and other parties in interest and the Debtors have demonstrated both (i) good, sufficient and sound business reasons and justifications and (ii) compelling circumstances for a sale of the ERJs outside of the ordinary course of business pursuant to section 363(b) of the Bankruptcy Code; and after due deliberation and sufficient cause appearing therefor, it is

ORDERED that the Motion is hereby granted as provided herein; and it is further

ORDERED that the Multi-Party Agreement, and all the terms and conditions thereof, is approved in all respects; and it is further

ORDERED that the Debtors are authorized, but not directed, to enter into, consummate, and close the Multi-Party Agreement for the transfer of the ERJs and to undertake all of the transactions contemplated thereby in connection therewith, including (but not limited

to) the preparation, execution, filing, or delivery of any documents, deeds, assignments, or other instruments in furtherance of the foregoing; and it is further

ORDERED that the transactions contemplated by the Multi-Party Agreement effect a legal, valid, enforceable and effective transfer of the ERJs to EBV, and shall (upon closing) vest EBV with all right, title, and interest in (i) the ERJs, subject to any encumbrances contained in the Multi-Party Agreement and (ii) the Assigned Prepetition Claims, as provided in and subject to the Multi-Party Agreement; and it is further

ORDERED that the Multi-Party Agreement may be modified, amended, or supplemented by the parties thereto in a writing signed by both parties, and in accordance with the terms thereof, without further order of the Court, *provided, however*, that any such modification, amendment, or supplement does not have a material adverse effect on the Debtors' estates; and it is further

ORDERED that EBV is entitled to all of the protections afforded by section 363(m) of the Bankruptcy Code and that any reversal or modification on appeal of the authorization provided herein to consummate the transfer of title to the ERJs shall not affect the validity of the transfer of title to the ERJs to EBV; and it is further

ORDERED that this Court shall retain jurisdiction to hear and determine all matters arising from or related to this Order.

Dated: New York, New York  
\_\_\_\_\_, 2016

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United States Bankruptcy Judge