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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-_____ (___)**
Debtors.¹ : **(Joint Administration Pending)**

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**DEBTORS' MOTION FOR THE ENTRY OF AN ORDER PURSUANT TO
11 U.S.C. §§ 105(a), 362 & 365 OF THE BANKRUPTCY CODE ENFORCING AND
RESTATING AUTOMATIC STAY AND IPSO FACTO PROVISIONS**

1. The Debtors in these chapter 11 cases are the following entities: Republic Airways Services, Inc.; Shuttle America Corporation; Republic Airline Inc.; Republic Airways Holdings Inc.; 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.

TO THE HONORABLE 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:

Background

1. On the date hereof (the “Commencement Date”) each of the Debtors filed with this Court a voluntary petition for relief under chapter 11 of title 11, 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, examiner, or statutory committee of unsecured creditors has been appointed in these cases.

2. Contemporaneously herewith, the Debtors have filed a motion requesting joint administration of their chapter 11 cases for procedural purposes only pursuant to rule 1015(b) of the Federal Rules of Bankruptcy Procedure.

Republic’s Business

3. RAH is a holding company whose common stock is traded on the NASDAQ under the symbol “RJET.” RAH provides scheduled regional passenger services through its wholly-owned operating air carrier subsidiaries, Shuttle America Corporation (“Shuttle America”) and Republic Airline Inc. (“Republic Airline”). Republic offers approximately 1,000 flights daily to 105 cities in 38 states, Canada, the Caribbean, and the Bahamas through Republic’s fixed-fee code-share agreements with United Continental Holdings, Inc. (“United”), Delta Air Lines, Inc. (“Delta”), and American Airlines Group, Inc. (“American,” and collectively with United and Delta, the “Codeshare Partners”), operating under the designations of United Express, Delta Connection, and American Eagle, including service out of

the Codeshare Partners' respective hubs and focus cities. Republic's operational fleet consists of approximately 210 aircraft.

4. As of January 31, 2016, on a consolidated basis, Republic had assets and liabilities of \$3,561,000,000 and \$2,971,000,000 (unaudited). For the year ended December 31, 2015, on a consolidated basis, Republic had operating revenue of \$1,343,900,000 and operating expenses of \$1,259,200,000 (unaudited). In 2015, Republic carried 21,900,000 passengers an average of 479 miles per passenger, with a passenger load factor of 79.2%.

5. 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, filed with the Court on the Commencement Date.

Jurisdiction

6. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

Relief Requested

7. Republic's business operations are conducted internationally, with significant assets moving across the United States border every day. Republic flies to Canada, the Bahamas, the Dominican Republic, Turks and Caicos, Martinique, and Guadalupe, or to other locations as directed by its Codeshare Partners from time to time. Republic facilitates their international operations by, among other things, leasing space in international airports and contracting with foreign vendors for repair services, equipment and aircraft inspections and to supply airline crews with lodging and transportation. Republic also contracts with foreign aircraft manufacturers and equipment providers in Europe and South America to obtain their

aircraft, engines, and necessary parts. Republic heavily relies on these vendors in Europe and South America to supply Republic with the equipment necessary for maintaining its business operations. As a result, Republic's property is often outside of the United States and in the possession of Republic's foreign creditors.

8. Many of these creditors may be unfamiliar with the scope of a debtor in possession's authority to conduct its business, the operation of the automatic stay, and other provisions of the Bankruptcy Code. Some may decline to provide goods or services, or to allow access to foreign airports, unless their claims are paid in full. Such actions may well create operational chaos as without such goods and services provided by these creditors, and without airport access, Republic will incur significant costs and potentially devastating operational disruptions. In addition, upon learning of Republic's chapter 11 cases, counterparties may attempt to terminate their leases or contracts with Republic pursuant to *ipso facto* provisions in contravention of section 365 of the Bankruptcy Code.

9. Accordingly, by this Motion, Republic seeks entry of an order, pursuant to sections 105(a), 362, and 365 of the Bankruptcy Code, enforcing and restating the automatic stay and *ipso facto* provisions of the Bankruptcy Code. Republic believes that a specific order from this Court will help to protect Republic and its assets from improper actions, particularly by parties in foreign jurisdictions who are not familiar with the Bankruptcy Code or its protections and who might otherwise violate those sections. A proposed form of order is attached hereto.

The Relief Requested Should be Granted

10. As a result of the commencement of these cases, and by operation of law pursuant to section 362 of the Bankruptcy Code, the automatic stay enjoins all persons from, among other things, taking any action to obtain possession of property of the estate or to exercise control over property of the estate. The injunction contained in section 362 of the Bankruptcy

Code constitutes a fundamental protection for debtors, which, provides Republic with a “breathing spell from [their] creditors” that is essential to Republic’s ability to reorganize successfully. *See, e.g., Shugrue v. Air Line Pilots Ass’n, Int’l (In re Ionosphere Clubs, Inc.)*, 922 F.2d 984, 989 (2d Cir. 1990) (citations omitted).

11. Given its fundamental importance to a debtor’s reorganization, courts broadly construe the stay provisions of section 362. The automatic stay has been held to preclude unilateral actions by nondebtor parties to terminate contracts without court order, *see, e.g., Fed. Ins. Co. v. Sheldon*, 150 B.R. 314, 319-20 (S.D.N.Y. 1993) (termination of insurance contract void because it violated automatic stay), and has been held to apply extraterritorially, *see Hong Kong & Shanghai Banking Corp. v. Simon (In re Simon)*, 153 F.3d 991, 996 (9th Cir. 1998) (“Given this clear expression of intent by Congress in the express language of the Bankruptcy Code, we conclude that Congress intended extraterritorial application of the Bankruptcy Code as it applies to property of the estate.”); *Nakash v. Zur (In re Nakash)*, 190 B.R. 763, 768 (Bankr. S.D.N.Y. 1996) (“[B]ased upon the applicable Code sections [and] other indicia of congressional intent, . . . the automatic stay applies extraterritorially.”); *In re McLean Indus.*, 74 B.R. 589, 601 (Bankr. S.D.N.Y. 1987) (“The automatic stay applies extraterritorially.”).

12. In addition, section 365(e)(1)(B) of the Bankruptcy Code invalidates so-called “ipso facto” provisions by prohibiting a debtor’s contract counterparties from terminating their contracts because of the bankruptcy filing. Section 365(e)(1)(B) of the Bankruptcy Code provides, subject to certain limited exceptions, that:

Notwithstanding a provision in an executory contract or unexpired lease, or in applicable law, an executory contract or unexpired lease of the debtor may not be terminated or modified, and any right or obligation under such contract or lease may not be terminated or modified, at any time after the commencement of the

case solely because of a provision in such contract or lease that is conditioned on . . . the commencement of a case under this title.

11 U.S.C. § 365(e)(1)(B).

13. Thus, the application of the protections afforded a debtor by sections 362 and 365 of the Bankruptcy Code is automatic upon the filing of a chapter 11 petition. See 11 U.S.C. § 362 (“a petition filed under section 301 . . . of this title . . . operates as a stay applicable to all entities, of [among other things,] any act to obtain possession over property of the estate or property of the estate or to exercise control over property of the estate”); 11 U.S.C. § 365 (“any right or obligation under [an executory contract or unexpired lease of the debtor] may not be terminated or modified, at any time after the commencement of the case solely because of” an *ipso facto* provision).

14. Section 105(a) of the Bankruptcy Code authorizes the Court to 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). Section 105(a) therefore authorizes bankruptcy courts to issue injunctions and take other necessary steps in aid of their jurisdiction.

15. Notwithstanding the fundamental nature of the automatic stay and *ipso facto* protections, and the fact that they arise as a matter of law upon the commencement of a chapter 11 case, not all parties affected or potentially affected by the commencement of a chapter 11 case are aware of these Bankruptcy Code provisions and of their significance and impact. Experience has shown that it is often necessary to advise third parties of the existence and effect of the automatic stay and the invalidation of *ipso facto* provisions, particularly in cases in which the debtor conducts significant business in foreign jurisdictions. Occasionally, it is necessary to commence proceedings in the bankruptcy court to enforce these provisions. Accordingly, it is

not uncommon for a bankruptcy court to issue an order embodying and restating the provisions of sections 362 and 365 of the Bankruptcy Code.

16. Although an order of the sort sought by this motion is not necessary to trigger the protections of sections 362 and 365, the entry of such an order will be helpful for Republic in explaining to its creditors, particularly its foreign creditors, of the existence and broad scope of these protections. The granting of the relief requested will help ensure that (i) the nondebtor parties to unexpired leases and executory contracts with Republic will continue to perform and will not unilaterally terminate its contracts and (ii) creditors do not seize Republic's assets, or take any other action in violation of the automatic stay. Republic submits that the relief requested herein will facilitate a smooth and orderly transition into chapter 11 and minimize the disruption of Republic's business affairs.

Notice

17. Notice of this motion is being provided to (i) the Office of the United States Trustee for the Southern District of New York, (ii) the holders of the ten largest secured claims against Republic (on a consolidated basis), (iii) the holders of the forty largest unsecured claims against Republic (on a consolidated basis), (iv) the attorneys for the agents under Republic's prepetition revolving credit facilities, (v) the attorneys for Republic's Codeshare Partners, (vi) the International Brotherhood of Teamsters, (vii) the Securities and Exchange Commission, (viii) the Internal Revenue Service, and (ix) the Office of the United States Attorney for the Southern District of New York. Republic submits that, in view of the facts and circumstances, such notice is sufficient and 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 that the Court enter an order substantially in the form annexed hereto granting the relief requested herein and such other and further relief as is just.

Dated: New York, New York
February 25, 2016

/s/ Bruce R. Zirinsky

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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-_____ (___)**
Debtors.¹ : **(Jointly Administered)**

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**ORDER PURSUANT TO 11 U.S.C. §§ 105(a), 362 & 365 OF THE
BANKRUPTCY CODE ENFORCING AND RESTATING
AUTOMATIC STAY AND IPSO FACTO PROVISIONS**

A hearing having been held on _____, 2016 (the “Hearing”), to consider the motion, dated February 25, 2016 (the “Motion”),² 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”), seeking an order pursuant to sections 105(a), 362 and 365 of title 11 of the Bankruptcy Code enforcing and restating the automatic stay and *ipso facto* provisions of the Bankruptcy Code, all as more fully set forth in the Motion; and the Declaration of Bryan K. Bedford Pursuant to Local Bankruptcy Rule 1007-2 having been filed with the Court contemporaneously with the Motion (the “Bedford Declaration”); and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and Amended Standing Order of Reference M-431, dated January 31, 2012

1. The Debtors in these chapter 11 cases are the following entities: Republic Airways Services, Inc.; Shuttle America Corporation; Republic Airline Inc.; Republic Airways Holdings Inc.; 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 not otherwise herein defined shall have the meanings ascribed to them in the Motion.

(Preska, C.J.); and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and sufficient notice of the Motion having been provided to (i) the Office of the United States Trustee for the Southern District of New York, (ii) the holders of the ten largest secured claims against Republic (on a consolidated basis), (iii) the holders of the forty largest unsecured claims against Republic (on a consolidated basis), (iv) the attorneys for the agents under Republic's prepetition revolving credit facilities, (v) the attorneys for Republic's Codeshare Partners, (vi) the International Brotherhood of Teamsters, (vii) the Securities and Exchange Commission, (viii) the Internal Revenue Service, and (ix) the Office of the United States Attorney for the Southern District of New York (collectively, the "Notice Parties"), and it appearing that no other or further notice need be given; and upon the Motion, the papers in support thereof and the responses thereto, if any, the Bedford Declaration, the record of the Hearing, and all of the proceedings had before the Court; and the Court having found and determined that the relief sought in the Motion is necessary to avoid immediate and irreparable harm to Republic and its estates, as contemplated by Fed. R. Bankr. P. 6003, and is in the best interests of Republic, its estates, creditors, and all parties in interest, and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is

ORDERED that the Motion is granted as set forth herein; and it is further

ORDERED that subject to the exceptions to the automatic stay contained in section 362(b) of the Bankruptcy Code and the right of any party in interest to seek relief from the automatic stay in accordance with section 362(d) of the Bankruptcy Code, all persons (including individuals, partnerships, corporations, and other persons and entities and all those

acting on their behalf) whether located within the United States or otherwise, and governmental units, whether any foreign country (including any division, department, agency, instrumentality or service thereof and all those acting on their behalf), or of the United States, any state or locality therein or any territory or possession thereof, are hereby stayed, restrained, and enjoined from:

- (a) taking any action whether inside or outside the United States to obtain possession of property of any of the Debtors' estates wherever located or to exercise control over property of any of the estates, wherever located, or interfere in any way with the conduct by any of the Debtors of their businesses, including, without limitation, **attempts to interfere with deliveries or events or attempts to arrest, attach, seize or reclaim, in any United States or foreign jurisdiction, any aircraft, equipment, supplies or other assets of any of the Debtors;**
- (b) taking any action to create, perfect, or enforce any lien against property of the estate of any of the Debtors;
- (c) commencing or continuing (including the issuance or employment of process) **any** judicial, administrative, or other action or proceeding against any of the Debtors that was or could have been commenced before the commencement of the Debtors' chapter 11 cases or recovering a claim against any of the Debtors that arose before the commencement of the Debtors' chapter 11 cases;
- (d) enforcing, against any of the Debtors or against property of the estate of any of the Debtors, a judgment or order obtained before the commencement of the Debtors' chapter 11 cases;
- (e) taking any action to create, perfect, or enforce against property of any of the Debtors any lien to the extent that such lien secures a claim that arose prior to the commencement of the Debtors' chapter 11 cases;
- (f) taking any action to collect, assess, or recover a claim against any of the Debtors that arose prior to the commencement of the Debtors' chapter 11 cases; and
- (g) offsetting any debt owing to any of the Debtors that arose before the commencement of the Debtors' chapter 11 cases against any claim against any of the Debtors.

; and it is further

ORDERED that pursuant to sections 362 and 365 of the Bankruptcy Code, and subject to any relevant provisions or exceptions provided for in the Bankruptcy Code, notwithstanding a provision in a contract ("Contract") or lease ("Lease") or any applicable law, all persons (including individuals, partnerships, corporations, and other persons and entities and all those acting on their behalf) are hereby stayed, restrained, and enjoined from terminating or modifying any and all Contracts and Leases to which any Debtor is party or signatory, at any time after the commencement of these cases because of a provision in such Contract or Lease that is conditioned on the (i) insolvency or financial condition of any of the Debtors at any time before the closing of these cases or (ii) commencement of these cases under the Bankruptcy Code. Accordingly, all such persons are required to continue to perform their obligations under such Leases and Contracts during the postpetition period; and it is further

ORDERED that nothing in this Order or the Motion shall constitute a rejection or assumption by the Debtors, as debtors in possession, of any executory contract or unexpired lease; and it is further

ORDERED that in accordance with the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure and applicable law, upon request of a party in interest, and after notice and a hearing, this Court may grant relief from the restraints imposed herein in the event that it is necessary, appropriate and warranted to terminate, annul, modify, or condition the injunctive relief herein; and it is further

ORDERED that this Court shall retain jurisdiction to hear and determine all matters arising from or related to the interpretation, implementation, or enforcement of this Order; and it is further

ORDERED that this Court retains jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Dated: New York, New York
_____, 2016

United States Bankruptcy Judge