

Hearing Date & Time: December 21, 2016 at 11:00 a.m. (Eastern Time)  
Objection Deadline: December 14, 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 AN ORDER  
PURSUANT TO 11 U.S.C. §§ 362, 363(b) AND 365(a) AND FED. R. BANKR. P.  
6004, 6006 AND 9019 (I) APPROVING SETTLEMENT AGREEMENT WITH  
UNITED TECHNOLOGIES CORPORATION, PRATT & WHITNEY DIVISION  
(II) AUTHORIZING THE DEBTORS TO ASSUME AMENDED ENGINE  
PURCHASE AGREEMENT, AMENDED MAINTENANCE AGREEMENT,  
AND RELATED SIDE LETTER AND (III) GRANTING RELATED RELIEF**

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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.

**PLEASE TAKE NOTICE** that a hearing will be held at **11:00 a.m. (Eastern Time) on December 21, 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, New York, New York 10004 to consider *Debtors' Motion for an Order Pursuant to 11 U.S.C. §§ 362, 363(b) and 365(a) and Fed. R. Bankr. P. 6004, 6006, and 9019 (I) Approving Settlement Agreement with United Technologies Corporation, Pratt & Whitney Division, (II) Authorizing the Debtors to Assume Amended Engine Purchase Agreement, Amended Maintenance Agreement, and Related Side Letter, and (III) Granting Related Relief* (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 pursuant to the Case Management Procedures approved by the Court (ECF No. 70) and in accordance with General Order M-399 (which can be found at <http://www.nysb.uscourts.gov/sites/default/files/m399.pdf>), 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) and Gabrielle Glemann, Esq. (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), Todd M. Goren, Esq. (tgoren@mofo.com), and Erica J. Richards, Esq. (erichards@mofo.com)), and (iv) counsel to 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)), so as to be so filed and received no later than **December 14, 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  
November 30, 2016

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SOUTHERN DISTRICT OF NEW YORK**

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**REPUBLIC AIRWAYS HOLDINGS INC., et al.,** : **16-10429 (SHL)**  
**Debtors.**<sup>1</sup> : **(Jointly Administered)**

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**DEBTORS' MOTION FOR AN ORDER PURSUANT TO 11 U.S.C. §§ 362, 363(b) AND  
365(a) AND FED. R. BANKR. P. 6004, 6006 AND 9019 (I) APPROVING SETTLEMENT  
AGREEMENT WITH UNITED TECHNOLOGIES CORPORATION, PRATT &  
WHITNEY DIVISION (II) AUTHORIZING THE DEBTORS TO ASSUME AMENDED  
ENGINE PURCHASE AGREEMENT, AMENDED MAINTENANCE AGREEMENT,  
AND RELATED SIDE LETTER AND (III) GRANTING RELATED RELIEF**

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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 SEAN H. LANE  
UNITED STATES BANKRUPTCY JUDGE:

Republic Airways Holdings Inc. (“RAH”) and those of its subsidiaries that are debtors and debtors in possession in these proceedings (together with RAH, “Republic” or the “Debtors”) respectfully represent:

**Preliminary Statement**

1. The Debtors seek, through this motion, to amend and assume restructured agreements with United Technologies Corporation, acting through its Pratt & Whitney Division (“P&W”). P&W is the manufacturer and maintenance provider of engines for CS300 aircraft (the “CS300s”). In February 2010, RAH and Bombardier Inc. (“Bombardier”) entered a purchase agreement pursuant to which RAH agreed to purchase 40 CS300s from Bombardier. Concurrently, RAH agreed (i) to purchase from P&W spare engines for the CS300s and (ii) that P&W would provide maintenance services for the engines on the CS300s. At that time, Republic paid to P&W [REDACTED] as an advance payment (the “Advance Payment”) for the purchase of spare engines.

2. On October 20, 2016, the Debtors reached a settlement with Bombardier and its affiliates pursuant to which, among other things, the Debtors and Bombardier agreed to defer scheduled payment and deliveries for the CS300s.<sup>2</sup> As a result, the Debtors sought P&W’s agreement to amend the payment and delivery schedules set forth in the Engine Purchase Agreement, Maintenance Agreement, and Side Letter (each as defined below) to align such engine agreements with the revised schedule for the CS300s deliveries.

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2. See Motion for an Order Pursuant to 11 U.S.C. §§ 363(b) & 365(a) and Fed. R. Bankr. P. 6004, 6006 & 9019 For Authorization to (I) Enter into Settlement Agreement with Bombardier, Inc., Learjet, Inc. and C Series Aircraft Limited Partnership and (II) Assume Purchase Agreement, as Amended, with Bombardier Inc., filed on October 20, 2016 (ECF No. 1126, the “Bombardier Motion”). The Bombardier Motion will be heard by this Court on December 8, 2016.

3. Following arm's length negotiations, Republic and P&W have entered into the Settlement Agreement, dated November 30, 2016 (the "Settlement Agreement," annexed hereto as Exhibit A), that restructures their existing agreements consistent with Republic's business plan and its restructured agreement with Bombardier. The Settlement Agreement also resolves more than \$5.7 million in claims asserted by P&W in connection with the agreements related to the CS300s. In full settlement of P&W's prepetition and postpetition claims against the Debtors with respect to the Assumed Agreements (as defined below), P&W will be entitled to a cure payment in the amount of \$1 million and will be permitted to set off \$1 million of the Advance Payment against such cure amount.

4. Accordingly, for the reasons set forth in this motion, the Debtors submit that restructuring and assuming their agreements with P&W and the settlement of P&W's claims, as described herein, represents a sound exercise of the Debtors' business judgment and is in the best interests of the Debtors, their estates, and all parties in interest.

#### **Procedural Background**

5. 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 businesses and manage their properties as debtors in possession pursuant to Bankruptcy Code sections 1107(a) and 1108.

6. The Debtors' chapter 11 cases are being jointly administered for procedural purposes only pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

7. On March 4, 2016, the United States Trustee formed an Official Committee of Unsecured Creditors in the Debtors' cases. No trustee or examiner has been appointed in the Debtors' cases.

8. 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.

9. On July 22, 2016, P&W filed a general unsecured claim against RAH (assigned claim number 1004, the "Asserted Claim") asserting damages in the amount of \$5,737,258.14 under the Engine Purchase Agreement (as defined below).

#### **Jurisdiction**

10. This Court has jurisdiction to consider this motion 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**

11. By this Motion, the Debtors request entry of an order substantially in the form annexed hereto, pursuant to sections 362, 363(b), and 365(a) of the Bankruptcy Code and Bankruptcy Rules 6004, 6006, and 9019,

- i. authorizing the Debtors to enter into, and perform all obligations under the Settlement Agreement, including:
  - a. amending the PurePower PW1524 Spare Engine Purchase and Support Agreement, dated February 19, 2010, between P&W and RAH (the "Engine Purchase Agreement," and as amended, the "Amended Engine Purchase Agreement"); and
  - b. amending the PW1524G PureSolution Maintenance Program Agreement, dated February 19, 2010, between



P&W and RAH (the “Maintenance Agreement, and as amended, the “Amended Maintenance Agreement”);

- ii. authorizing the Debtors to assume the Amended Engine Purchase Agreement, Amended Maintenance Agreement, and Side Letter No. 1 to the Maintenance Agreement, dated February 11, 2010, between P&W and RAH (the “Side Letter,” and together with the Amended Engine Purchase Agreement and the Amended Maintenance Agreement, the “Assumed Agreements”); and
- iii. modifying the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms of the Settlement Agreement, including the application by P&W of \$1 million of the Advance Payment as a cure payment in full and final settlement of the Asserted Claim and any defaults under the Assumed Agreements, leaving [REDACTED] as the Advance Payment for the purchase of spare engines under the Amended Engine Purchase Agreement.

12. For the reasons discussed herein, the Debtors submit that the relief sought is reasonable, represents an appropriate exercise of their sound business judgment, and is in the best interests of the Debtors’ estates and all stakeholders in these chapter 11 cases.

### **The Settlement Agreement**

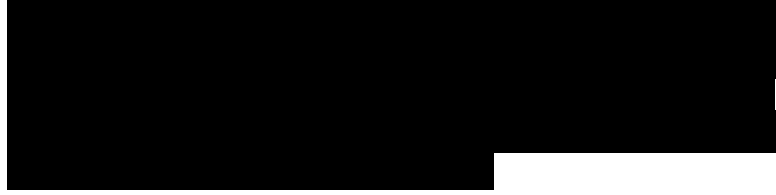
13. Through the Settlement Agreement, the Debtors and P&W will mutually restructure their relationship to better align with the Debtors’ continued operations and fully resolve the Asserted Claim. The Settlement Agreement is the product of good faith, arm’s-length negotiations between the Debtors and P&W. The principal terms and conditions of the Settlement Agreement are described below:<sup>3</sup>

- i. **Amended Engine Purchase Agreement:**
  - a. The delivery schedule for spare engines for CS300s is amended as set forth in the Settlement Agreement.

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3. The summary of the Settlement 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 Settlement Agreement, the terms of the Settlement Agreement shall control.

b.



c.



ii. **Amended Maintenance Agreement:**

- a. The schedule of covered engines is amended to reflect the delayed delivery of CS300s and related engines.
- b. In the event that Republic terminates the Amended Engine Purchase Agreement, the Amended Maintenance Agreement will terminate automatically.

iii. **Cure Payment:** In full and final satisfaction of the Asserted Claim and cure of any defaults under any P&W Agreement, P&W is entitled to a cure payment in the amount of \$1 million (the “Cure Payment”), which will be satisfied by P&W setting off \$1 million of the Advance Payment in accordance with the terms of the Settlement Agreement.

iv. **Release:** With the exception of the right to receive the Cure Payment, P&W releases the Debtors from any and all claims arising from or otherwise related to the Asserted Claim or any Assumed Agreement.

**The Transactions Contemplated in the Settlement Agreement Are Supported By the Debtors’ Business Judgment, Are in the Best Interests of the Debtors’ Estates, and Should Be Approved by the Court**

14. Section 365(a) of the Bankruptcy Code provides, in pertinent part, that a debtor in possession, “subject to the court’s approval, may assume or reject any executory contract or unexpired lease of the debtor.” 11 U.S.C. § 365(a). *See also NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 521 (1984); *Orion Pictures Corp. v. Showtime Networks, Inc. (In re Orion Pictures Corp.)*, 4 F.3d 1095, 1098 (2d Cir. 1993) (reaffirming that “[t]he purpose behind allowing the assumption or rejection of executory contracts is to permit the trustee or debtor-in-possession to use valuable property of the estate and to renounce title to and abandon burdensome property”) (internal quotations and citation omitted).

15. The standard to be applied by a court in determining whether assumption of an executory contract pursuant to section 365(a) should be approved is the “business judgment” test, which requires that the debtor determine that the requested assumption would be beneficial to its estate. *See, e.g., Grp. of Inst. Inv’rs, Inc. v. Chicago, Milwaukee, St. Paul & Pac. R.R. Co.*, 318 U.S. 523, 550 (1943) (“the question [of assumption] . . . is one of business judgment”); *Orion Pictures Corp.*, 4 F.3d at 1099 (to decide a motion to assume, the court must put itself in the position of the trustee and determine whether such assumption would be a good decision or a bad one); *In re Gucci*, 193 B.R. 411, 414-15 (S.D.N.Y. 1996) (decision to assume was exercise of good business judgment); *In re Nat’l Sugar Refining Co.*, 26 B.R. 765, 767 (Bankr. S.D.N.Y. 1983) (debtor seeking to assume a profitable contract should be allowed to do so).

16. Upon finding that the debtor has exercised sound business judgment in determining that the assumption of an executory contract is in the best interests of the debtor, the court should approve such assumption under Bankruptcy Code section 365(a). *See, e.g., In re Riodizio, Inc.*, 204 B.R. 417, 424 (Bankr. S.D.N.Y. 1997); *In re Bradlees Stores, Inc.*, 194 B.R. 555, 558 n.1 (Bankr. S.D.N.Y. 1996); *In re G Survivor Corp.*, 171 B.R. 755, 757 (Bankr. S.D.N.Y. 1994). A debtor’s decision to assume an executory contract based on its business judgment generally will not be disturbed “absent a showing of bad faith or abuse of business discretion.” *In re Chipwich, Inc.*, 54 B.R. 427, 430-31 (Bank. S.D.N.Y. 1985).

17. Section 363 of the Bankruptcy Code provides that a debtor, “after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b). Although section 363 of the Bankruptcy Code does not specify a standard for determining when it is appropriate for a court to authorize the use, sale, or lease of

property of the estate, the Second Circuit has required that such use, sale, or lease be based upon the sound business judgment of the debtor. *See Official Comm. of Unsecured Creditors of LTV Aerospace & Def. Co. v. LTV Corp. (In re Chateaugay Corp.)*, 973 F.2d 141, 143 (2d Cir. 1992); *Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1070 (2d Cir. 1983) (requiring “some articulated business justification” to approve the use, sale or lease of property outside the ordinary course of business). In that regard, “[w]here the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor’s conduct.” *Comm. of Asbestos-Related Litigants and/or Creditors v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986).

18. The business judgment rule shields a debtor’s management from judicial second-guessing. *Johns-Manville Corp.*, 60 B.R. at 615-16 (“[A] presumption of reasonableness attaches to a debtor’s management decisions.”). Once a debtor articulates a valid business justification, “[t]he business judgment rule ‘is a presumption that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action was in the best interests of the company.’” *In re Integrated Res., Inc.*, 147 B.R. 650, 656 (S.D.N.Y. 1992) (quoting *Smith v. Van Gorkom*, 488 A.2d 858, 872 (Del. 1985)). Thus, if a debtor’s actions satisfy the business judgment rule, then the transaction in question should be approved under section 363(b)(1). Indeed, when applying the “business judgment” standard, courts show great deference to a debtor’s business decisions. *See Pitt v. First Wellington Canyon Assocs. (In re First Wellington Canyon Assocs.)*, No. 89-C-593, 1989 WL 106838, at \*3 (N.D. Ill. Sept. 8, 1989) (“Under this test, the debtor’s business judgment . . . must be accorded deference unless shown that the bankrupt’s decision was taken in bad faith or in

gross abuse of the bankrupt's retained discretion.”), *denying reconsideration*, 1989 WL 165028 (N.D. Ill. Dec. 28, 1989).

19. The Debtors' entry into the Settlement Agreement and assumption of the Assumed Agreements is in the best interest of the Debtors' estates and constitutes a proper exercise of the Debtors' sound business judgment. The Settlement Agreement resolves the Asserted Claim on a favorable basis for the Debtors and cements the Debtors' important relationship with P&W. The Settlement Agreement will ensure that the Debtors receive competitive prices for the acquisition of spare engines and competitive rates for maintenance of the engines on the CS300s. The amendments to the Engine Purchase Agreement and Maintenance Agreement align the Debtors' rights and obligations with respect to the engines on the CS300s to reflect the agreement reached with Bombardier. Moreover, absent assumption of the Assumed Agreements, Republic may be forced to reject such agreements, which could result in the assertion by P&W of significant rejection damage claims.

20. Based on the foregoing, entry into the Settlement Agreement and assumption of the Assumed Agreements constitutes a proper exercise of the Debtors' sound business judgment and is in the best interests of the Debtors' estates and creditors. Accordingly, the entry into and performance under the Settlement Agreement should be approved.

21. The Court is not being asked to make a finding as to whether there are existing defaults under the Assumed Agreements because P&W is consenting to the relief sought by the Debtors in this motion, and any amounts owed under the Assumed Agreements will be paid or received by the Debtors in the ordinary course. Accordingly, no adequate assurance of the Debtors' future performance needs to be provided by the Debtors. It is well-established that if a debtor's counterparty has consented to the assumption of an executory contract, the debtor

need not provide adequate assurance of future performance under section 365(b)(1)(C). *See, e.g.*, 11 U.S.C. § 365(b)(2); *In re United Airlines Inc.*, 368 F.3d 720, 726 (7th Cir. 2004).

**Resolution of the Asserted Claim Is Fair And Equitable,  
Reasonable, and In The Best Interests of the Estates**

22. To approve a compromise or settlement under Bankruptcy Rule 9019(a), the Court should find that the compromise or settlement is fair and equitable, reasonable, and in the best interests of the debtor's estate. *See, e.g., In re Ionosphere Clubs, Inc.*, 156 B.R. 414, 426 (S.D.N.Y. 1993), *aff'd*, 17 F.3d 600 (2d Cir. 1994). In determining whether to approve the settlement, the Court must make an independent determination that the settlement is fair and reasonable. *Nellis v. Shugrue*, 165 B.R. 115, 122-23 (S.D.N.Y. 1994). The Court may consider the opinions of the trustee or debtor in possession that the settlement is fair and reasonable. *Id.*; *In re Purofied Down Prods. Corp.*, 150 B.R. 519, 522 (S.D.N.Y. 1993). In addition, the Court may exercise its discretion "in light of the general public policy favoring settlements." *In re Hibbard Brown & Co.*, 217 B.R. 41, 46 (Bankr. S.D.N.Y. 1998); *see also Nellis v. Shugrue*, 165 B.R. at 123 ("[T]he general rule [is] that settlements are favored and, in fact, encouraged by the approval process.").

23. In determining whether to approve a proposed settlement, the Court need not decide the numerous issues of law and fact raised by the settlement, but rather should "canvass the issues and see whether the settlement falls below the lowest point in the range of reasonableness." *In re W.T. Grant Co.*, 699 F.2d 599, 608 (2d Cir. 1983) (internal quotations omitted); *see also In re Purofied Down Prods.*, 150 B.R. at 522 ("[T]he court need not conduct a 'mini-trial' to determine the merits of the underlying litigation.").

24. "The 'reasonableness' of [a] settlement depends upon all factors, including probability of success, the length and cost of the litigation, and the extent to which the settlement

is truly the product of ‘arms-length’ bargaining, and not fraud or collusion.” *In re Ionosphere Clubs, Inc.*, 156 B.R. at 428.

25. The Debtors believe, in their reasonable business judgment, that the proposed settlement with P&W is in the best interests of their estates and creditors, and constitutes an efficient and cost-effective method for resolving the claims between P&W and the Debtors. The settlement reduces over \$5.7 million in claims that P&W has asserted and additional claims that P&W may potentially assert to a single cure payment of \$1 million. The proposed settlement reduces the potential claims against the Debtors’ estates and ensures that the Debtors can maintain a cooperative relationship with a valuable partner to its ongoing reorganization. The Debtors submit that it would have been difficult to achieve resolution of the Asserted Claim, and a restructured relationship with P&W, on better terms than those provided in the proposed settlement. The proposed settlement will avoid the significant time and resources the Debtors otherwise would have to expend on resolving the Asserted Claim.

26. The proposed resolution and settlement of P&W’s claims is the product of extensive negotiations between the Debtors and P&W. The Debtors and P&W have been represented by sophisticated advisors, including highly respected legal counsel. The negotiations have been pursued in good faith and at arm’s length by both parties.

27. For these reasons, the Debtors submit that the proposed settlement is in the best interest of their estates and stakeholders, is well within the range of reasonableness, and thus should be approved.

**Cause Exists to Modify the Automatic Stay to Permit P&W to  
Apply or Setoff a Portion of the Advance Payment Against the Cure Payment**

28. Section 362(d) of the Bankruptcy Code permits a party in interest to request a modification of the automatic stay provided in section 362(a) of the Bankruptcy Code

“for cause.” 11 U.S.C. § 362(d)(1). The Debtors request that this Court modify the automatic stay of section 362(a) to permit P&W to apply or setoff \$1 million of the Advance Payment in full satisfaction of the Cure Payment.

29. Here, cause exists to modify the automatic stay to permit the application or setoff of a portion of the Advance Payment against the Cure Payment. As the Cure Payment would have to be paid in full in any event, the setoff will have no adverse effect on the Debtors’ estates or other creditors holding claims against the Debtors. In addition, cause exists because application of the Advance Payment is part and parcel of the Settlement Agreement and facilitated the resolutions incorporated therein. Therefore, cause exists to modify the automatic stay under section 362(d) of the Bankruptcy Code, and P&W should be permitted to apply or setoff \$1 million of the Advance Payment to fully satisfy the \$1 million Cure Payment.

#### **Request For Waiver of Stay**

30. As discussed herein, there are immediate and material benefits to the Debtors, and immediate entry and implementation of the order is of vital importance to the Debtors. To implement the foregoing successfully, the Debtors seek a waiver of the fourteen-day stay of an order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h) to the extent that such rule applies.

#### **Notice**

31. Notice of this motion is being provided in accordance with the Court’s Case Management Order, dated March 2, 2016 (ECF No. 70), and upon filing with the Court, the motion will be available for inspection on Republic’s Case Website (located at <https://cases.primeclerk.com/RJET/>). Republic submits that no other or further notice need be given.



WHEREFORE, the Debtors request entry of the order annexed hereto, granting  
the relief requested herein and such other and further relief as is just.

Dated: New York, New York  
November 30, 2016

/s/ Gary D. Ticoll  
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**UNITED STATES BANKRUPTCY COURT  
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**In re** : **Chapter 11 Case No.**  
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**ORDER PURSUANT TO 11 U.S.C. §§ 362, 363(b) AND 365(a) AND FED.  
R. BANKR. P. 6004, 6006 AND 9019 (I) APPROVING SETTLEMENT AGREEMENT  
WITH UNITED TECHNOLOGIES CORPORATION, PRATT & WHITNEY DIVISION  
(II) AUTHORIZING THE DEBTORS TO ASSUME AMENDED ENGINE PURCHASE  
AGREEMENT, AMENDED MAINTENANCE AGREEMENT, AND RELATED SIDE  
LETTER AND (III) GRANTING RELATED RELIEF**

A hearing having been held on December 21, 2016 (the "Hearing"), to consider the motion, dated November 30, 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 362, 363(b) and 365(a) of the Bankruptcy Code and rules 6004, 6006 and 9019 of the Federal Rules of Bankruptcy Procedure, (i) approving Settlement Agreement with United Technologies Corporation, Pratt & Whitney Division, (ii) authorizing the Debtors to assume the Amended Engine Purchase Agreement, Amended Maintenance Agreement, and related Side Letter, and (iii) granting related relief, each as more fully described in the Motion; 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

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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 not otherwise defined herein have the meanings ascribed to them in the Motion.

Reference M-431, dated January 31, 2012 (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 in accordance with the Court's Case Management Order dated March 2, 2016 (ECF No. 70) ("CMO"), and it appearing that no other or further notice need be given; and the Court having considered the Motion, the papers in support thereof, and all of the proceedings had before the Court; and the appearances of all interested parties having been noted in the record of the Hearing; and after due deliberation and sufficient cause appearing therefor, and for reasons stated in the record of the Hearing;

**IT IS HEREBY FOUND AND CONCLUDED** that:

- A. The statutory predicates for the relief requested in the Motion are sections 362, 363, and 365 of the Bankruptcy Code and Bankruptcy Rules 6004, 6006, and 9019.
- B. The Motion satisfies Bankruptcy Rules 2002, 6004, 6006, and 9019.
- C. Proper, timely, adequate and sufficient notice of the Motion has been provided in accordance with the Bankruptcy Code, the Bankruptcy Rules, the Local Bankruptcy Rules and the CMO, and no other or further notice of the Motion or the entry of this Order shall be required.
- D. Based on the record before the Court, the Debtors have demonstrated good and sufficient reasons for the Court to approve the Motion.
- E. Neither P&W, its affiliates, nor their respective representatives is an "insider" of any of the Debtors as that term is used in section 101(31) of the Bankruptcy Code.
- F. The entry into the Settlement Agreement and the transactions contemplated therein, and entry of this Order is in the best interests of the Debtors' estates and creditors.

G. The Settlement Agreement was negotiated, proposed and entered into by the parties in good faith, from arms' length bargaining positions, and without collusion or fraud.

H. Sound business reasons have been articulated for entering into the Settlement Agreement and the transactions contemplated therein and it is a sound exercise of business judgment to enter into and perform under the Settlement Agreement, and consummate the transactions contemplated thereby.

I. P&W is consenting to the assumption of the Amended Engine Purchase Agreement, Amended Maintenance Agreement and the Side Letter and thus, no adequate assurance of future performance by Republic is required under section 365(b) of the Bankruptcy Code.

J. Each of the foregoing findings by the Court will be deemed a finding of fact if and to the full extent that it makes and contains factual findings and a conclusion of law if and to the full extent that it makes legal conclusions.

**IT IS HEREBY ORDERED** that:

1. The Motion is hereby granted as provided herein. To the extent any objections or reservations of rights to the Motion have not been withdrawn or resolved by this Order, they are overruled in all respects on the merits.

2. Pursuant to section 363(b) of the Bankruptcy Code, (i) the Settlement Agreement is hereby approved and (ii) the Debtors are authorized to enter into and perform all obligations under the Settlement Agreement.

3. The Debtors are authorized, pursuant to section 365(a) of the Bankruptcy Code, to assume the Amended Engine Purchase Agreement, Amended Maintenance Agreement, and the Side Letter.

4. In full settlement, satisfaction, release and discharge of all pre- and post-petition claims of P&W with respect to the Amended Engine Purchase Agreement, Amended Maintenance Agreement, and the Side Letter, P&W shall be entitled to a cure payment of \$1,000,000.

5. The automatic stay arising pursuant to section 362(a) of the Bankruptcy Code is modified to the extent necessary to effect the application or setoff of the Advance Payment as set forth in the Settlement Agreement.

6. The Asserted Claim shall be disallowed and expunged. The Debtors' court-appointed claims and noticing agent is authorized and directed to modify the Debtors' official claims registry to reflect the relief provided herein.

7. The Asserted Claim shall be deemed automatically amended to reflect the terms of this Order without the need for any further action by any party and the Debtors' claims agent shall update the claims register in accordance with this Order.

8. Notwithstanding the provisions of Bankruptcy Rule 6004, this Order shall not be stayed for 14 days after the entry hereof, but shall be effective and enforceable immediately upon entry by this Court.

9. 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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Honorable Sean H. Lane  
United States Bankruptcy Judge

**EXHIBIT A**  
**Settlement Agreement**

## SETTLEMENT AGREEMENT

Settlement Agreement, dated as of November 30, 2016 (this “Agreement”), between Republic Airways Holdings Inc., a Delaware corporation (“RAH”), and United Technologies Corporation, a Delaware corporation, acting through its Pratt & Whitney Division (“P&W”, and together with RAH, the “Parties,” and each a “Party”).

**WHEREAS**, P&W and RAH are parties to (i) the PurePower PW1524 Spare Engine Purchase and Support Agreement, dated as of February 19, 2010 (the “Purchase and Support Agreement”), (ii) the PW1524G PureSolution Maintenance Program Agreement, dated as of February 19, 2010 (the “Maintenance Agreement”) and (iii) the Side Letter No. 1 to the PureSolution Agreement, dated February 11, 2010 (the “Side Letter” and, together with the Purchase and Support Agreement and the Maintenance Agreement, the “P&W Agreements”).

**WHEREAS**, on February 25, 2016, each of RAH and certain of its direct and indirect subsidiaries, as debtors and debtors in possession (collectively, the “Debtors”) commenced voluntary cases under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) jointly administered under Case No. 16-10429 (SHL) (the “Bankruptcy Cases”) in the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”);

**WHEREAS**, P&W has filed a proof of claim (the “Claim”) in the asserted amount and priority as set forth on **Exhibit “A”**; and

**WHEREAS**, the Debtors and P&W, pursuant to this Agreement, wish (a) to settle the Claim of P&W against Debtors and (b) to provide for the amendment of the Purchase and Support Agreement and Maintenance Agreement as further described herein and the assumption by the Debtors of the P&W Agreements, as amended.

NOW, THEREFORE, the parties hereto agree as follows:

**1. Approval.** The Debtors will file a motion (the “Approval Motion”) with the Bankruptcy Court seeking an order in form and substance reasonably acceptable to P&W (the “Approval Order”) authorizing the Debtors (i) to enter into the settlement contemplated herein and (ii) to assume the P&W Agreements as amended by this Agreement.

**2. Effective Date.** This Agreement shall be effective on the date the Approval Order has been entered and is not stayed (the “Effective Date”).

**3. Amendment of P&W Agreements; Assumption of P&W Agreements as Amended.**

**3.1** On the Effective Date, the Purchase and Support Agreement shall be deemed amended as follows:

(a) Article 5 shall be amended by changing Table 1, under the caption “Firm Delivery Schedule”, to read in its entirety as follows:

NO.	MONTH	YEAR
1	████	████
2	██████	████
3	████	████
4	██████	████
5	████	████
6	██████	████
7	████	████

(b) Section 6.1 shall be amended to read in its entirety as follows:

“6.1



(c) Section 6.3 shall be amended to change the last two sentences thereof to read in their entirety as follows:





(d) The last paragraph of Article 6 shall be amended by inserting at the beginning of the second sentence thereof the following: “Subject to Section 6.3,”.

(e) Article 11 shall be amended by adding the following after the last sentence thereof:

[REDACTED]

**3.2** On the Effective Date, the Maintenance Agreement shall be amended as follows:

(a) Article 11 shall be amended to add a new Section 11.5 at the end of such Article reading as follows:

“11.5 [REDACTED]

(b) Attachment 2 to the Agreement shall be amended and restated in its entirety as follows:

“ATTACHMENT 2  
PUREOLUTION<sup>SM</sup> ELIGIBLE ENGINES  
DELIVERY SCHEDULE  
AIRCRAFT DELIVERY SCHEDULE  
Firm Deliveries

CS300 Aircraft <sup>1</sup>	Scheduled Delivery Quarter	CS300 Aircraft <sup>1</sup>	Scheduled Delivery Quarter
First Firm Aircraft	[REDACTED]	Twenty-First Firm Aircraft	[REDACTED]
Second Firm Aircraft	[REDACTED]	Twenty-Second Firm Aircraft	[REDACTED]
Third Firm Aircraft	[REDACTED]	Twenty-Third Firm Aircraft	[REDACTED]
Fourth Firm Aircraft	[REDACTED]	Twenty-Fourth Firm Aircraft	[REDACTED]
Fifth Firm Aircraft	[REDACTED]	Twenty-Fifth Firm Aircraft	[REDACTED]
Sixth Firm Aircraft	[REDACTED]	Twenty-Sixth Firm Aircraft	[REDACTED]
Seventh Firm Aircraft	[REDACTED]	Twenty-Seventh Firm Aircraft	[REDACTED]
Eighth Firm Aircraft	[REDACTED]	Twenty-Eighth Firm Aircraft	[REDACTED]
Ninth Firm Aircraft	[REDACTED]	Twenty-Ninth Firm Aircraft	[REDACTED]
Tenth Firm Aircraft	[REDACTED]	Thirtieth Firm Aircraft	[REDACTED]
Eleventh Firm Aircraft	[REDACTED]	Thirty-First Firm Aircraft	[REDACTED]
Twelfth Firm Aircraft	[REDACTED]	Thirty-Second Firm Aircraft	[REDACTED]
Thirteenth Firm Aircraft	[REDACTED]	Thirty-Third Firm Aircraft	[REDACTED]

1. Each CS300 Aircraft to be delivered with two Firm Engines.

Fourteenth Firm Aircraft		Thirty-Fourth Firm Aircraft	
Fifteenth Firm Aircraft		Thirty-Fifth Firm Aircraft	
Sixteenth Firm Aircraft		Thirty-Sixth Firm Aircraft	
Seventeenth Firm Aircraft		Thirty-Seventh Firm Aircraft	
Eighteenth Firm Aircraft		Thirty-Eighth Firm Aircraft	
Nineteenth Firm Aircraft		Thirty-Ninth Firm Aircraft	
Twentieth Firm Aircraft		Fortieth Firm Aircraft	

SPARE ENGINE DELIVERY SCHEDULE

Firm Deliveries

NO.	MONTH	YEAR
1		
2		
3		
4		
5		
6		
7		

**3.3** On the Effective Date, the P&W Agreements, as amended by this Agreement, shall be deemed assumed. P&W consents to the assumption of the P&W Agreements.

**4. Cure Amount.** In full and final satisfaction of the Claim and cure of any defaults under any P&W Agreement, effective on the Effective Date, P&W shall be entitled to a cure amount from RAH in the amount of \$1,000,000, and such cure amount shall be satisfied by P&W retaining \$1,000,000 from the advance amount paid by RAH pursuant to Section 6.1 of the Purchase and Support Agreement, leaving as the advance amount paid by RAH for the initial six spare Engines pursuant to Section 6.1 of the Purchase and Support Agreement (the “Cure Amount”).

**5. Release of Claim.** With the exception of the right to receive the Cure Amount, effective on the Effective Date, P&W fully, finally and forever waives, releases and renounces, and discharges the Debtors from, any and all claims (whether prepetition unsecured, priority, administrative or postpetition), causes of action, suits, debts, obligations, liabilities, accounts, damages, defenses, or demands whatsoever, known or unknown, asserted or unasserted, arising from or otherwise related to the Claim or any P&W Agreement.

6. **Miscellaneous.**

(a) **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of New York.

(b) **Disputes.** All disputes arising under or in connection with this Agreement shall, prior to the issuance of a final decree from the Bankruptcy Court closing the Bankruptcy Cases, be resolved by the Bankruptcy Court, which shall have exclusive jurisdiction over such disputes. After such final decree has been issued, the Parties hereto agree that the appropriate and exclusive forum for any legal action or proceeding arising out of this Agreement shall be the U.S. District Court for the Southern District of New York or the courts of the State of New York sitting in the City and County of New York, and each of the Parties hereto irrevocably submits itself and its property to the exclusive jurisdiction of such courts and agrees to comply with all requirements necessary to give such courts jurisdiction. Each of the Parties hereto irrevocably waives any objection that it may now or hereafter have to the jurisdiction or venue of any such action or proceeding in any such court or that such action or proceeding was brought in an inconvenient forum. Each Party further agrees, to the extent permitted by law, that final and non-appealable judgment against it in any action or proceeding contemplated above shall be conclusive and may be enforced in any other jurisdiction within or outside the United States by suit on the judgment, a certified or exemplified copy of which shall be conclusive evidence of the fact and the amount of indebtedness. THE PARTIES HERETO WAIVE ANY AND ALL RIGHTS THAT THEY MAY HAVE TO A JURY TRIAL WITH RESPECT TO DISPUTES ARISING OUT OF THIS AGREEMENT TO THE FULL EXTENT PERMITTED BY LAW.

(c) **Assignment.** The rights and obligations of each of the parties hereto under this Agreement may not be assigned, transferred or novated without the prior written consent of the other parties, which consent may not be unreasonably withheld.

(d) **Counterparts.** This Agreement may be executed in one or more counterparts (including by facsimile or electronic (e.g., pdf) transmission), each of which together or separately shall constitute an original and, which taken together, shall be considered one and the same binding agreement.


(e) **Confidentiality.** The Parties agree that the terms of this Agreement are confidential and shall not be disclosed, except (i) to the professionals retained by the Creditors' Committee in the Bankruptcy Cases on a "Professionals' Eyes Only" basis, (ii) where compelled or required by court order or any governmental agency or any applicable law or regulation, (iii) to a Party's auditors, tax representatives, or legal counsel, (iv) where disclosure is necessary and unavoidable to carry out the Party's business or to enforce this Agreement, or (v) as an exhibit to the Approval Motion filed in the Bankruptcy Cases, *provided* that any portions of this Agreement designated confidential by P&W to RAH prior to filing the Approval Motion with the Bankruptcy Court shall be filed in a redacted form with such redactions as are reasonably acceptable to the Parties. The Parties shall take reasonable steps to prevent disclosure of the terms of this Agreement by others, including by instructing any persons to whom disclosure is made that they may not disclose the terms of this Agreement to any other person other than as provided herein. Nothing herein shall in any way limit any other confidentiality obligations the Parties have to one another, including any such obligations under the P&W Agreements.

**6.2 Binding Agreement.** This Agreement shall inure to the benefit of the parties hereto together with their respective successors and permitted assigns.

[This space intentionally left blank; signature page follows]

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of  
the date first set forth above.

REPUBLIC AIRWAYS HOLDINGS INC.

By:  \_\_\_\_\_  
Name: **Ethan J. Blank**  
Title: **Vice President, General Counsel**

UNITED TECHNOLOGIES CORPORATION,  
ACTING THROUGH ITS PRATT & WHITNEY  
DIVISION

By: \_\_\_\_\_  
Name:  
Title:

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date first set forth above.

REPUBLIC AIRWAYS HOLDINGS INC.

By: \_\_\_\_\_  
Name:  
Title:

UNITED TECHNOLOGIES CORPORATION,  
ACTING THROUGH ITS PRATT & WHITNEY  
DIVISION

By:  \_\_\_\_\_  
Name: Alicia Perrault  
Title: Assoc Gen Counsel

**EXHIBIT "A"**

<b>CREDITOR</b>	<b>DEBTOR</b>	<b>CLAIM NO./ SCHEDULE ID</b>	<b>SCHEDULED AMOUNT &amp; CLASSIFICATION</b>	<b>CLAIMED AMOUNT &amp; CLASSIFICATION</b>	<b>BASIS FOR CLAIM</b>
UNITED TECHNOLOGIES CORPORATION, PRATT & WHITNEY DIVISION	Republic Airways Holdings Inc.	1004	N/A	GUC: \$5,737,258.14	Sales and Service Credit Advances from March 10 to October 10