

Hearing Date & Time: December 8, 2016 at 11:00 a.m. (Eastern Time)
Objection Deadline: December 1, 2016 at 4:00 p.m. (Eastern Time)

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*Attorneys for the Debtors
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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)**

-----X

**NOTICE OF HEARING ON DEBTORS' MOTION FOR AN ORDER
PURSUANT TO 11 U.S.C. §§ 362, 363 & 365(a) AND FED. R. BANKR. P. 6004,
6006 & 9019 (I) APPROVING THE LETTER OF INTENT BETWEEN CERTAIN
DEBTORS AND EMBRAER S.A., (II) AUTHORIZING THE DEBTORS TO ASSUME
AMENDED PURCHASE AGREEMENT, EAMS MAINTENANCE AGREEMENT,
AND AMENDED EPOOL AGREEMENT, (III) APPROVING ALLOWED
CLAIMS, AND (IV) GRANTING RELATED RELIEF**

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 8, 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 & 365(a) and Fed. R. Bankr. P. 6004, 6006 & 9019 (I) Approving the Letter of Intent Between Certain Debtors and Embraer S.A., (II) Authorizing the Debtors to Assume Amended Purchase Agreement, EAMS Maintenance Agreement, and Amended EPool Agreement, (III) Approving Allowed Claims, and (IV) 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), Sharon J. Richardson, Esq. (srichardson@zirinskylaw.com), and Gary D. Ticoll, Esq. (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) 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 filed and received no later than **December 1, 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 15, 2016

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SOUTHERN DISTRICT OF NEW YORK**

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

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**DEBTORS' MOTION FOR AN ORDER PURSUANT TO 11 U.S.C. §§ 362, 363 & 365(a)
AND FED. R. BANKR. P. 6004, 6006 & 9019 (I) APPROVING THE LETTER OF
INTENT BETWEEN CERTAIN DEBTORS AND EMBRAER S.A., (II) AUTHORIZING
THE DEBTORS TO ASSUME AMENDED PURCHASE AGREEMENT, EAMS
MAINTENANCE AGREEMENT, AND AMENDED EPOOL AGREEMENT,
(III) APPROVING ALLOWED CLAIMS, AND (IV) GRANTING RELATED RELIEF**

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.

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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 relief sought in this motion, together with the relief sought in the contemporaneously filed motion to approve an amendment to the Debtors’ agreement with its codeshare partner, United Airlines, Inc. (“United”),¹ represents a significant step forward in reaching the Debtors’ strategic objectives in these proceedings and will set the stage for the Debtors’ successful and expedient exit from these chapter 11 cases.

2. The Debtors seek, through this motion, to restructure and assume their agreements with Embraer S.A. (“Embraer”) and its affiliates (each an “Embraer Party” and collectively the “Embraer Parties”)—the manufacturer and maintenance provider of the Debtors’ entire aircraft fleet—and resolve hundreds of millions of dollars of asserted and contingent claims. The resolution reached in the Letter of Intent Regarding Embraer-Republic Global Settlement, dated November 14, 2016, between the Debtors and the Embraer Parties (the “LOI”) forms an integral part of the Debtors’ achieving their stated objectives in this case.

3. First, under the LOI, the Debtors and the Embraer Parties have agreed to amend an existing Purchase Agreement to terminate the Debtors’ obligation to purchase ■ E175 aircraft, ■

■. Pursuant to the LOI, Embraer will return to the Debtors

1. See Debtors’ Motion for Entry of an Order Pursuant to 11 U.S.C. § 363(b) and Fed. R. Bankr. P. 6004 Authorizing and Approving Amendment to Code Share Agreement with United Airlines, Inc., filed contemporaneously (the “United Motion”).

approximately [REDACTED] in pre-delivery deposits (“PDPs”) paid under the Purchase Agreement. United will purchase [REDACTED] E175 aircraft and, if the United Motion is approved, lease certain of the E175 aircraft to Republic Airline Inc. (“Republic Airline”) to operate under Republic’s codeshare agreement with United. By terminating the purchase obligation and leasing certain of the aircraft from United, the Debtors avoid having to obtain sufficient capital to fund the payment of their own acquisition of the aircraft while still increasing revenue under the United codeshare agreement.

4. Second, the global settlement provides for an amendment to the EPool Agreement with Embraer that will enable Republic to wind down its spare parts program with Embraer for its aircraft fleet. Republic may purchase the spare parts pursuant to the terms of the LOI. The Debtors, together with their financial advisors, have determined that acquiring the spare parts directly rather than continuing the EPool Agreement will save the Debtors approximately \$10 million annually.

5. Third, the Debtors have agreed to assume the existing EAMS Maintenance Agreement, which will ensure that Republic’s aircraft fleet is properly maintained at competitive rates.

6. Finally, the LOI provides for the resolution of more than \$360 million of asserted claims related to the assumed agreements and the agreements related to 29 ERJ-145 aircraft that were returned through the chapter 11 cases for unsecured claims in the aggregate amount of \$99 million and [REDACTED]

[REDACTED].²

2. As detailed below, Embraer will also [REDACTED].

7. In sum, the LOI establishes the terms for a strong long-term relationship between the Embraer Parties and the Debtors and will fully resolve all claims between the Embraer Parties and the Debtors. Accordingly, the Debtors submit that the relief requested in this motion 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

8. 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 sections 1107(a) and 1108 of the Bankruptcy Code.

9. 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").

10. 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.

11. 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

12. 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

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

i. approving the LOI (annexed hereto as Exhibit A) and authorizing, but not directing, the Debtors to enter into the binding agreements and other documents (the “Definitive Documents”) required to give effect to the transactions contemplated in the LOI, including, but not limited to, (a) a Settlement Agreement, (b) an amendment to that certain Amended and Restated Purchase Agreement COM0190-10, dated as of January 23, 2013 and the related Amended and Restated Letter Agreement COM0190-10, dated January 23, 2013 (together, as previously amended, modified, and supplemented from time to time, the “Purchase Agreement,” and as amended pursuant to the LOI, the “Restructured Purchase Agreement”) by and between Republic Airline and Embraer and (c) an amendment to that certain Flight Hour Program (POOL) Support Agreement No. DRN/GVD 073/12, dated as of March 1, 2013 (as amended, modified, supplemented from time to time, the “EPool Agreement,” and as amended pursuant to the LOI, the “Restructured EPool Agreement”), by and between Embraer Aircraft Customer Services, Inc. (“EACS”), Republic Airline, and Shuttle America Corporation (“Shuttle”);

ii. authorizing the Debtors to assume (a) the Restructured Purchase Agreement, (b) the Restructured EPool Agreement, and (c) that certain Heavy Maintenance Agreement No. DRN/GVD 007/11, dated as of May 19, 2011 (as amended, modified, supplemented from time to time, the “EAMS Maintenance Agreement,” and together with the Restructured Purchase Agreement and the Restructured EPool Agreement, the “Assumed Embraer Agreements,”), by and between Republic Airline and Embraer Aircraft Maintenance Services, Inc. (“EAMS”);

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 LOI, including the [REDACTED] to satisfy the Embraer Parties’ claims, [REDACTED] and the [REDACTED] approximately [REDACTED] to be returned to the Debtors, as set forth in the LOI;

iv. authorizing, but not directing, the Debtors to transfer title of the ERJ Aircraft (as defined below) to Embraer or its designee free and clear of all liens, claims, and encumbrances; and

v. allowing (i) Embraer S.A. a general unsecured claim in the amount of \$80 million, (ii) EACS a general unsecured claim in the amount of \$12 million, and (iii) the Embraer Parties a general unsecured claim in the amount of \$7 million, to be allocated between EACS and EAMS in Embraer S.A.'s discretion (collectively, the "Embraer Allocable Claims") in full and final satisfaction of the Embraer Parties' prepetition and postpetition claims, including without limitation the Asserted Claims (as defined below), *provided* that (a) the Embraer Allocable Claims shall not be subject to offset, subordination, attack, or other challenge and (b) each Embraer Allocable Claim shall be split into two claims allocated between Republic Airline and Shuttle (*pari passu* with the Codeshare Allocable Claims (as defined below), as set forth below.

14. For the reasons discussed herein, the Debtors submit that the relief sought in this motion 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 Debtors' Agreements with the Embraer Parties

15. Republic relies on the Embraer Parties for many facets of its operations. As described below, in addition to manufacturing all of the aircraft currently in Republic's fleet, the Embraer Parties provide maintenance services, spare parts support, and debt support for Republic's fleet. The Debtors have scheduled and the Embraer Parties have asserted, purchased or directed Security Trustees to assert over 30 claims against the Debtors in the asserted amount of over \$360 million, plus certain contingent and unliquidated amounts, which claims are listed on Schedule 1 hereto and described below.

The Purchase Agreement

16. Republic Airline and Embraer are parties to the Purchase Agreement pursuant to which Republic Airline agreed to purchase new E175 aircraft commencing in 2013, including the ■ remaining undelivered E175 aircraft (the "■ E175s"). The ■ E175s were scheduled to be delivered between August 2016 and August 2017. RAH guaranteed the

obligations of Republic Airline under the Purchase Agreement pursuant to that certain Guaranty Agreement, dated January 23, 2013 (the "Purchase Agreement Guaranty"). Pursuant to the Purchase Agreement, Republic has paid to Embraer [REDACTED] with respect to PDPs on the [REDACTED] E175s. Following the Commencement Date, the Debtors notified Embraer that they would not be able to take delivery of the [REDACTED] E175s on the schedule set forth in the Purchase Agreement.

17. On July 21, 2016, Embraer filed contingent and unliquidated claims (assigned claim numbers 846 and 872, together, the "Purchase Agreement Claims"), against Republic Airline and RAH with respect to damages in the event that the Debtors were to reject the Purchase Agreement. Embraer has asserted that it is entitled to [REDACTED]

The ERJ Aircraft

18. One of Republic's primary goals in these chapter 11 cases was to streamline its operations by operating a single aircraft type and returning out of favor aircraft. In furtherance of that goal, Republic has returned its entire fleet of ERJ 140/145 aircraft to lenders and lessors.³ The Embraer Parties have asserted claims, purchased claims, or directed the applicable Security Trustee to assert claims with respect to 29 of the returned ERJ 140/145 aircraft, which include (i) one ERJ-145 aircraft financed by an Embraer Party ("Aircraft N567RP"), (ii) fifteen ERJ-140/145 aircraft that were financed by Agencia Especial de Financiamento Industrial - FINAME (collectively, the "FINAME Aircraft"), and (iii) thirteen ERJ-140/145 aircraft for which an Embraer Party acquired the existing loans (collectively, the

3. The Debtors own outright two ERJ-140/145 aircraft that are not in use but serve as collateral for the Debtors' Court-approved debtor-in-possession financing.

“Subdebt Aircraft,” and collectively with Aircraft N567RP and the FINAME Aircraft, the “ERJ Aircraft”).

19. Embraer and Shuttle are parties to the Master Agreement, dated as of October 29, 2012 (as amended, the “Master Agreement”) under the terms of which, Embraer agreed to make payments to Shuttle to reimburse Shuttle for loan payments [REDACTED]. Upon the expiration of the loans for a FINAME Aircraft or Subdebt Aircraft, Shuttle agreed to deliver such aircraft to a designee of Embraer.

20. On April 25, 2016, the Debtors, certain of the Embraer Parties and the security trustee under certain of the Subdebt Aircraft agreements and the N567RP Aircraft agreements entered the *Stipulation and Order Approving Section 1110(b) Extension for N567RP, N569RP, N570RP, N571RP, N572RP, N573RP, N574RP, N575RP and N576RP*, which was approved by this Court on May 10, 2016 (the “Embraer 1110 Stipulation,” ECF No. 548). On the same date, the Debtors, Natixis, and the security trustees under certain of the Subdebt Aircraft agreements entered the *Stipulation and Order Approving Section 1110(b) Extension for N257JQ, N566RP, N577RP, N578RP and N579RP*, which was approved by this Court on May 10, 2016 (ECF No. 547, the “Natixis 1110(b) Stipulation,”⁴ and together with the Embraer 1110 Stipulation, the “1110 Stipulations”). Pursuant to the 1110 Stipulations, the Debtors agreed, among other things, to return the Subdebt Aircraft and Aircraft N567RP to the Embraer Parties. Each of the ERJ Aircraft was delivered to Embraer between March 2016 and October 2016 pursuant to the terms of the 1110 Stipulations. On August 18, 2016, this Court approved the

4. On June 23, 2016, Embraer’s counsel notified Republic’s counsel that an Embraer Party had assumed Natixis’ obligations under the Natixis 1110(b) Stipulation.

Multi-Party Agreement, under which Republic transferred title to the 15 FINAME Aircraft to an Embraer Party (ECF No. 902).

21. On July 21, 2016, Embraer filed a claim against Shuttle (assigned claim number 842, the “Master Agreement Claim”), asserting damages under the Master Agreement in the amount of \$84,029,538 for the amounts it advanced to Shuttle under the Master Agreement, plus interest. Embraer also asserted an unliquidated claim for Shuttle’s alleged failure to comply with other terms of the Master Agreement, [REDACTED]

[REDACTED]

22. In addition, the Embraer Parties have filed, directed the applicable security trustee to file, or purchased the following claims related to the ERJ Aircraft (collectively, the “ERJ Lender Claims,” and with the Master Agreement Claim, the “ERJ Aircraft Claims”):

Claim No.	Claimant	Debtors	Basis	Liquidated Amount
843, 847	Embraer Finance Ltd.	Shuttle RAH	N567RP Aircraft	\$3,297,203.35
1196	Embraer Netherlands B.V.	Shuttle	FINAME Aircraft	\$28,767,060.38
844, 891	Manufacturers Traders and Trust Company	Shuttle RAH	9 Subdebt Aircraft	\$42,473,451.61
850, 851	Wells Fargo Bank Northwest, National Association, as security trustee	Shuttle RAH	4 Subdebt Aircraft	\$23,792,857.96

The Supported EJets

23. The Embraer Parties provide [REDACTED] to the lenders and lessors for certain of Republic’s E170/175 fleet (the “Supported EJets”). Embraer purchased a portion of proofs of claim numbered 689 and 690 (together, the “EJet Support Claims”) against Republic Airline and RAH with respect to certain of the 23 junior loans for [REDACTED]

[REDACTED]. On October 21, 2016, this Court entered an order approving a general unsecured claim allowed to Embraer in the amount of \$6,869,458.65 with respect to the restructuring of five of the EJET Loans (ECF No. 1130). Embraer has consented to [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

The EPool Agreement

24. EACS, Republic Airline, and Shuttle are parties to the EPool Agreement. RAH guaranteed Republic Airline's and Shuttle's obligations under the EPool Agreement pursuant to that certain Guaranty, dated as of March 1, 2013 (the "EPool Guaranty"). Under the terms of the EPool Agreement, EACS provided to RAH certain spare parts necessary to service Republic's E170/175 fleet.

25. On July 22, 2016, EACS filed general unsecured claims against RAH, Shuttle and Republic Airline (assigned claim numbers 1227, 1232, and 1294; collectively, the "EPool Claims") asserting claims under the EPool Agreement of \$8,606,336.27 with respect to \$7,456,579.92 in prepetition unpaid invoices and \$1,149,756.35 with respect to postpetition unpaid invoices. EACS also asserted unliquidated amounts for fees, costs, expenses, and possible rejection damages with respect to the EPool Agreement and Guaranty.

The EAMS Maintenance Agreement

26. EAMS and Republic Airline are parties to the EAMS Maintenance Agreement. Under the terms of the EAMS Maintenance Agreement, EAMS performs repairs on

Republic's Embraer aircraft fleet and sells certain aircraft parts to Republic. EAMS asserts that it provided to RAH certain goods and services for use by Republic Airline and Shuttle for which EAMS has not received payment.

27. On July 22, 2016, EAMS filed a general unsecured claim against Republic Airline (assigned claim number 1295) asserting claims under the EAMS Maintenance Agreement of \$3,312,789.91, and a general unsecured claim against Shuttle (assigned claim number 1231) asserting claims under the EAMS Maintenance Agreement of \$1,849,114.56 (collectively, the "EAMS Claims"). Between March 11, 2016 and May 10, 2016, EAMS also asserted 26 statutory repairman's liens against certain of Republic's owned and leased aircraft with respect to unpaid invoices for repairs on the aircraft in the aggregate amount of over \$5 million (the "Statutory Liens," ECF Nos. 135, 136, 137, 138, 139, 319, 366, 367, 395, 396, 416, 417, 451, 468, 497, 498, 504, 528, 530, 531, 532, 533, 534, 536, 538, and 539).

Other Outstanding Invoices

28. Two other Embraer Parties—Embraer Aviation International SAS ("EAI") and Embraer Asia Pacific Pte Ltd. ("EAP")—also asserted claims against the Debtors with respect to unpaid invoices. On July 22, 2016, EAI filed a general unsecured claim against RAH (assigned claim number 1201) in the amount of \$28,238.61 for goods delivered to the Debtors before the Commencement Date (the "EAI Claim"). On the same date, EAP filed a general unsecured claim against RAH (assigned claim number 1230) in the amount of \$14,325.97 for goods delivered to the Debtors before the Commencement Date (the "EAP Claim").

Reclamation and 503(b)(9) Claims

29. On March 15, 2016, certain of the Embraer Parties made the following reclamation demands on the Debtors pursuant to section 546(c) of the Bankruptcy Code asserting

that they were entitled to reclaim certain portions of their claims (collectively, the “Reclamation Claims”):

Embraer Party	Amount of Asserted Reclamation Claim
EACS	\$1,242,193.97
EAMS	\$844,829.24
EAP	\$14,325.97
EAI	\$2,310.93
Embraer	\$49,500.00

30. Additionally, on May 10, 2016, the following Embraer Parties filed proofs of claim against the Debtors asserting that the following amounts are entitled to priority treatment under section 503(b)(9) of the Bankruptcy Code (collectively, the “503(b)(9) Claims,”⁵ and collectively with the Purchase Agreement Claims, ERJ Aircraft Claims, EJET Support Claims, EPool Claims, EAMS Claims, EAI Claims, EAP Claims, and Reclamation Claims, the “Asserted Claims”):

Claim No.	Debtor	Embraer Party	Amount of Asserted 503(b)(9) Claim
334	Republic Airline	EAMS	\$158,066.22
345	Republic Airline	EAMS	\$158,066.22
335	Republic Airline	EACS	\$685,579.11
344	Republic Airline	EACS	\$685,579.11
336	RAH	EACS	\$685,579.11
346	RAH	EACS	\$685,579.11
339	Shuttle	EACS	\$685,579.11
347	Shuttle	EACS	\$685,579.11
341	Shuttle	EAMS	\$105,749.92
352	Shuttle	EAMS	\$105,749.92

31. On June 28, 2016, the Debtors filed the *Reclamation Notice Under Order Pursuant to 11 U.S.C. §§ 105 and 546(c) Establishing and Implementing Exclusive and Global*

5. Certain of the 503(b)(9) claims are duplicative as they were filed with respect to the same invoices against more than one Debtor or in more than one proof of claim. However, each Embraer Party seeks only a single payment of each invoice included in its 503(b)(9) Claims.

Procedures for Treatment of Reclamation Claims (the “Reclamation Notice,” ECF No. 721), pursuant to which the Debtors deemed valid \$467,195.46 of the EACS Reclamation Claim and denied the remaining Reclamation Claims. On July 18, 2016, EACS, EAMS, Embraer, EAP, and EAI filed the *Preliminary Notice of Objection* to the Reclamation Notice (the “Reclamation Response,” ECF No. 790) objecting to the Debtors’ treatment of the Reclamation Claims.

32. On July 25, 2016, the Debtors filed the *Report and Objections to Claims Asserted Pursuant to 11 U.S.C. § 503(b)(9)* (ECF No. 829), pursuant to which the Debtors denied each of the 503(b)(9) Claims on the basis that insufficient documentation was provided and, in some cases, the claims were duplicative. On August 24, 2016, the Embraer Parties filed *Embraer’s (I) Response to Debtors’ Report and Objections to Claims Asserted Pursuant to 11 U.S.C. § 503(b)(9) and (II) Supplemental Response to Debtors’ Reclamation Notice Under the Order Pursuant to 11 U.S.C. §§ 105 & 546(c) Establishing and Implementing Exclusive and Global Procedures for Treatment of Reclamation Claims* (the “503(b)(9) Response,” ECF No. 927) objecting to the Debtors’ treatment of the 503(b)(9) Claims and supplementing the Reclamation Response.

The Global Settlement

33. Through the proposed transactions, the Debtors and the Embraer Parties will mutually restructure their relationship to better align with the Debtors’ continued operations and fully resolve the Asserted Claims. The LOI is the product of good faith, arm’s-length negotiations between the Debtors and the Embraer Parties. The principal terms and conditions of

the LOI, which shall become effective upon satisfaction of the express conditions⁶ set forth therein, are described below:⁷

1) **Assumption of Restructured Purchase Agreement**

- Aircraft Orders Cancelled. The existing aircraft orders will be cancelled, and all rights and obligations with respect to such cancelled aircraft under the Purchase Agreement will be terminated. Certain of [REDACTED] pursuant to the terms of the LOI.
- Application of PDPs. The PDPs will be applied as follows:
 - [REDACTED] as damages with respect to the Restructured Purchase Agreement;
 - [REDACTED] with respect to the EPool Agreement;
 - [REDACTED], to satisfy the amount of the unpaid charges for EAMS prepetition work;
 - Payment of certain legal fees and expenses estimated to be [REDACTED];
 - The balance of the PDPs will be paid by Embraer to Republic.

2) **ERJ Aircraft**

- If an Embraer Party elects to acquire any of the 14 ERJ Aircraft owned by the Debtors that secure loans held entirely by such Embraer Party, Republic will deliver full FAA bills of sale and warranty bills of sale for such aircraft at the time of transfer.

6. The conditions precedent to effectiveness of the Settlement Agreement are: (i) entry of an order that is not stayed approving this motion; (ii) United and Embraer entering into a purchase agreement for the [REDACTED] E175s and [REDACTED]; and (iii) Bankruptcy Court approval of a settlement between GE Engine Services, LLC and Republic.

7. The summary of the LOI 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 LOI, the terms of the LOI shall control.

3) **Supported EJets**

- Republic will [REDACTED] for Supported EJets, [REDACTED]

4) **Assumption of the Restructured EPool Agreement.**

- The EPool Agreement will be amended and assumed as provided in the LOI. The Restructured EPool Agreement will be terminated no later than March 31, 2017, [REDACTED].

5) **Assumption of the EAMS Maintenance Agreement**

- The EAMS Maintenance Agreement will be assumed in its current form.

6) **Allowed General Unsecured Claim**

- The Embraer Allocable Claims reflects the following components:
 - \$80 million in the aggregate with respect to (i) the 29 ERJ Aircraft loans and loan claims acquired by the Embraer Parties and (ii) the Master Agreement;
 - \$12 million for the early termination of the EPool Agreement; and
 - \$7 million in the aggregate with respect to unpaid invoices under the EAMS Maintenance Agreement and EPool Agreement.
- At the time of determination of any distributions to be made on account of general unsecured claims under a plan of reorganization or upon any liquidation for Republic Airline or Shuttle America in the chapter 11 cases, or any superseding chapter 7 cases involving any of the Debtors, an amount of each Embraer Allocable Claim, on a *pari passu* basis with the American Allocable Claim, the Delta Allocable Claim, and the United Allocable Claim (each, a "Codeshare Allocable Claim," and each as defined in the American Settlement Motion)⁸, shall be allocated between Shuttle America and Republic Airline such that the percentage recoveries in respect of such distributions to

8. The American Assumption Motion refers to the Debtors' Motion Pursuant to Sections 363(b) and 365(a) of the Bankruptcy Code and Bankruptcy Rules 6004, 6006 and 9019 for Authorization to (I) Assume Codeshare Agreement, as Amended, with American Airlines, Inc., (II) Enter Into or Assume Related Agreements, and (III) Settle Claims Between American Airlines, Inc. and the Debtors, filed on September 2, 2016 (ECF No. 957).

general unsecured claims against Republic Airline and Shuttle America (inclusive of the Embraer Allocable Claims and the Codeshare Allocable Claims) are equal or as nearly equal as is possible given such allocation.

34. By agreeing to the LOI, the Embraer Parties are continuing their cooperative partnership with the Debtors and further aligning with the Debtors to support the Debtors' business plan.

The Transactions Contemplated in the LOI Are Supported by the Debtors' Business Judgment and Should Be Approved by the Court

35. 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).

36. 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).

37. The Debtors submit that sound business reasons exist for approval of the LOI and authorization of the transactions set forth therein. The LOI resolves all of the Asserted Claims and establishes the future relationship between the Debtors and the Embraer Parties—one of Republic’s most significant creditors. The transactions in the LOI will provide the Debtors with critical certainty in terms of fleet planning and will enable the Debtors to receive competitive rates for maintenance of its aircraft fleet. Significantly, the compromise reached in the LOI will result in the prompt return of [REDACTED] PDPs to the Debtors, which will provide necessary liquidity for the Debtors’ ongoing operations and facilitate the Debtors’ expedient exit from these chapter 11 cases.

38. Based on the foregoing, entry into the LOI and the Definitive Documents is in the best interests of the Debtors’ estates and creditors and constitutes a proper exercise of

the Debtors' sound business judgment. Accordingly, the entry into and performance under the LOI, including entry into the Restructured Purchase Agreement, should be approved.

**Assumption of the Assumed Embraer Agreements is a Sound
Exercise of the Debtors' Business Judgment**

39. 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).

40. 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).

41. 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).

42. The Debtors' assumption of the Assumed Embraer Agreements is in the best interest of the Debtors' estates. Each of the Assumed Embraer Agreements provides significant benefits to Republic's estates. The Restructured Purchase Agreement significantly increases Republic's liquidity, while preserving Republic's relationship with the Embraer Parties and certain benefits of the Purchase Agreement. The Debtors, together with their financial advisors, have determined that the wind-down of the EPool Agreement in accordance with the terms of the Restructured E-Pool Agreement will save the Debtors approximately \$10 million per year. The wind-down period will ensure that the Debtors have the parts and necessary resources needed to transfer the services previously provided under the EPool Agreement to its own warehouses and maintenance personnel. The Debtors submit that the existing terms of the EAMS Maintenance Agreement provides competitive rates for the services performed and form an integral part of Republic's continuing operations and maintenance program. Moreover, absent assumption of the Assumed Embraer Agreements, Republic may be forced to reject such agreements, which would result in significant rejection damages without significant benefits.

43. The Court is not being asked to make a finding as to whether there are existing defaults under the Assumed Embraer Agreements because the Embraer Parties are consenting to the relief sought by the Debtors in this motion, and any amounts owed under the Assumed Embraer 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).

44. Based on the foregoing, assumption of the Assumed Embraer Agreements constitutes a proper exercise of the Debtors' sound business judgment. Accordingly, the entry into, performance under, and assumption of the Assumed Embraer Agreements should be approved.

**Transfer of the ERJ Aircraft is a Sound
Exercise of the Debtors' Business Judgment**

45. Sound business reasons exist for approval of the transfer of title of the ERJ Aircraft to Embraer. The consideration received by Republic—the cancellation of the outstanding obligations—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. Embraer already has possession of the ERJ Aircraft pursuant to the Court-approved 1110 Stipulations. Republic has received this Court's approval to surrender and transfer title to its other ERJ-

140/145 aircraft to lenders and lessors.⁹ Accordingly, the Debtors submit that the transfer of title to the ERJ Aircraft is in the best interests of the Debtors' estates and should be approved.

46. 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 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 parties with liens on the ERJ Aircraft—the Embraer Parties—are consenting to the title transfer and agreeing to terminate the relevant loan documents. Accordingly, section 363(f)(2) will be satisfied and the transfer should be approved free and clear of any interest pursuant to section 363(f) of the Bankruptcy Code.

47. The Debtors also request that the Court find that the Embraer Parties are 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:

9. *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 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).

48. The terms and conditions of LOI were negotiated by the parties at arm's length, without collusion, and in good faith. The LOI provides for fair and reasonable consideration for the ERJ Aircraft. Moreover, none of the Embraer Parties is an "insider" of the Debtors and no Embraer Party holds any interests in the Debtors. Accordingly, the Embraer Parties should be afforded the protections under section 363(m) of the Bankruptcy Code.

**Resolution of the Claims of the Embraer Parties Is Fair And Equitable,
Reasonable, and In The Best Interests of the Estates**

49. 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.").

50. 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.”).

51. “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.

52. The Debtors believe, in their reasonable business judgment, that the proposed settlement with the Embraer Parties is in the best interests of their estates and creditors, and constitutes an efficient and cost-effective method for resolving the claims between the Embraer Parties and the Debtors. The settlement reduces over \$360 million in asserted claims and hundreds of millions of dollars in potential unliquidated and contingent claims to allowed unsecured claims in the aggregate amount of \$99 million.

53. The most significant portion of the Embraer Allocable Claims relates to Embraer’s ERJ Aircraft Claims. The Embraer Parties facilitated the Debtors’ fleet transition to a single fleet by allowing for the early return of ERJ-140 and 145 aircraft—one of the Debtors’ stated objectives at the outset of these chapter 11 cases. As a result, the Embraer Parties ultimately shouldered significant losses in connection with the early return of the ERJ Aircraft. The Embraer Parties and the Debtors engaged in lengthy negotiations about how claims arising out of the Master Agreement and ERJ Lender Claims should be treated in these chapter 11 cases

and both parties believe they have strong arguments with respect to their claims and defenses in any litigation of those claims. The Embraer Parties have asserted that they suffered damages far in excess of the \$80 million allowed to the Embraer Parties under the LOI.

54. The Debtors submit that it would have been difficult to achieve resolution of the Asserted Claims, and a restructured relationship with the Embraer Parties, the Debtors' most significant equipment manufacturer, on better terms than those provided in the proposed settlement. The proposed settlement is part of the global restructuring of the business relationship between the Debtors and the Embraer Parties and will avoid the significant time and resources the Debtors otherwise would have to expend on resolving the significant claims asserted by the Embraer Parties. Moreover, the proposed settlement will provide the Debtors much-needed certainty with respect to its future operations, which will allow the Debtors to quickly and efficiently exit these chapter 11 cases.

55. The proposed resolution and settlement of Embraer's claims is the product of extensive negotiations between the Debtors and Embraer. The Debtors and Embraer each 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.

56. 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
Embraer to Apply PDPs Against Certain of the Embraer Parties' Claims**

57. 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 Embraer to apply the PDPs held by Embraer, totaling [REDACTED]
[REDACTED], as set forth in the LOI.

58. Here, cause exists because by modifying the automatic stay to permit the application of the PDPs, the amount owed to the Embraer Parties will be reduced, dollar-for-dollar. The amounts that will be applied are related to cure amounts owed under the Assumed Embraer Agreements, amounts for which Embraer asserted priority under section 546(c) or 503(b)(9) of the Bankruptcy Code, and amounts for which Embraer has asserted Statutory Liens. Indeed, the aggregate amount of the Reclamation Claims, 503(b)(9) Claims, and Statutory Liens is more than double the \$5.6 million that Embraer will pay to EAMS for unpaid invoices. The [REDACTED] Embraer under the Restructured Purchase Agreement is a fraction of the amount Embraer asserted it was permitted to retain as a result of Republic's failure to take delivery of the [REDACTED] E175s.

59. As such, the overall quantum of the claims asserted by the Embraer Parties will be reduced without negatively impacting other holders of claims against the Debtors. In addition, cause exists because application of the PDPs is part and parcel of the LOI and facilitated the resolutions incorporated therein, including the restructuring of the Debtors' relationship with the Embraer Parties that will facilitate the Debtors' emergence from these chapter 11 cases as a well-capitalized enterprise. Therefore, cause exists to modify the automatic stay under section 362(d) of the Bankruptcy Code, and Embraer should be permitted to apply the PDPs held by it as set forth in the LOI and return the balance to the Debtors.

Request For Waiver of Stay

60. 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

61. 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.

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

WHEREFORE, Republic requests 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 15, 2016

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Attorneys for the Debtors and Debtors in Possession

Exhibit A

[REDACTED]

SCHEDULE 1

Embraer Asserted and Scheduled Claims¹

Claim / Schedule No.	Debtor	Claimant	Total Schedule Amount	Total Asserted Amount
N/A	N/A	Embraer Aircraft Customer Services, Inc	N/A	Reclamation: \$1,242,193.97
N/A	N/A	EAMS - Embraer Aircraft Maintenance Services, Inc.	N/A	Reclamation: \$844,829.24
N/A	N/A	Embraer Asia Pacific Pte Ltd.	N/A	Reclamation: \$14,325.97
N/A	N/A	Embraer Aviation International SAS	N/A	Reclamation: \$2,310.93
N/A	N/A	Embraer S.A.	N/A	Reclamation: \$49,500
334	Republic Airline	EAMS - Embraer Aircraft Maintenance Services, Inc.	N/A	503(b)(9): \$158,066.22
335; 325448	Republic Airline	Embraer Aircraft Customer Services, Inc	GUC: \$685,579.11	503(b)(9): \$685,579.11
336; 325151	RAH	Embraer Aircraft Customer Services, Inc	GUC: \$685,579.11	503(b)(9): \$685,579.11
339	Shuttle	Embraer Aircraft Customer Services, Inc	N/A	503(b)(9): \$685,579.11
341	Shuttle	EAMS - Embraer Aircraft Maintenance Services, Inc.	N/A	503(b)(9): \$105,749.92

1. The Embraer Parties also filed claims, assigned claim numbers 837, 841, and 847, against RAH and Republic Airline, with respect to Embraer E190 aircraft bearing FAA registration mark N177HG and msn 19000481 (the “E190 Aircraft”). The portions of these claims related to the E190 Aircraft were resolved pursuant to the Settlement Agreement between ECC and Republic Airline, dated August 31 2016, which was approved by this Court on September 22, 2016 (ECF No. 1033).

Claim / Schedule No.	Debtor	Claimant	Total Schedule Amount	Total Asserted Amount
344	Republic Airline	Embraer Aircraft Customer Services, Inc	N/A	503(b)(9): \$685,579.11
345	Republic Airline	EAMS- EMBRAER AIRCRAFT MAINTENANCE SERVICES, INC	N/A	503(b)(9): \$158,066.22
346	RAH	Embraer Aircraft Customer Services, Inc	N/A	503(b)(9): \$685,579.11
347	Shuttle	Embraer Aircraft Customer Services, Inc	N/A	503(b)(9): \$685,579.11
352	Shuttle	EAMS - Embraer Aircraft Maintenance Services, Inc.	N/A	503(b)(9): \$105,749.92
689; 324717	Republic Airline	Embraer Finance Ltd. As Transferee of Natixis	N/A	Secured: \$49,668,498.32 (Unliquidated)
690	RAH	Embraer Finance Ltd. As Transferee of Natixis	N/A	Unliquidated
842	Shuttle	Embraer S.A.	N/A	Secured: \$84,029,538 (Unliquidated)
843	Shuttle	Embraer Finance Ltd.	N/A	Secured: \$3,297,203.35 (Unliquidated)
844	RAH	Manufacturers Traders and Trust Company	N/A	GUC: \$42,473,451.61 (Unliquidated)
846	Republic Airline	Embraer S.A.	N/A	Secured: Unliquidated
847	RAH	Embraer Finance Ltd.	N/A	GUC: \$23,713,667.99 (Contingent, Unliquidated)

Claim / Schedule No.	Debtor	Claimant	Total Schedule Amount	Total Asserted Amount
850	RAH	Wells Fargo Bank Northwest, National Association, as security trustee	N/A	GUC: \$23,792,857.96
851	Shuttle	Wells Fargo Bank Northwest, National Association, as security trustee	N/A	Secured: \$23,792,857.96
872	RAH	Embraer S.A.	N/A	GUC: \$212,991.59 (Contingent, Unliquidated)
891	Shuttle	Manufacturers Traders and Trust Company	N/A	Secured: \$42,473,451.61 (Unliquidated)
1196	Shuttle	Embraer Netherlands B.V. as Transferee of The Bank of New York Mellon, as Security Trustee, on behalf of itself and Agencia Especial de Financiamento Industrial - FINAME	N/A	Secured: \$28,767,060.38 (Unliquidated)
1201	RAH	Embraer Aviation International SAS	N/A	GUC: \$28,238.61 (Unliquidated)
1227	Republic Airline	Embraer Aircraft Customer Services, Inc.	N/A	GUC: \$8,606,336.27 (Unliquidated)
1230	RAH	Embraer Asia Pacific Pte Ltd.	N/A	GUC: \$14,325.97
1231	Shuttle	EAMS - Embraer Aircraft Maintenance Service, Inc.	N/A	GUC: \$1,849,114.56
1232	Shuttle	Embraer Aircraft Customer Service, Inc.	N/A	GUC: \$8,606,336.27 (Unliquidated)

Claim / Schedule No.	Debtor	Claimant	Total Schedule Amount	Total Asserted Amount
1294	RAH	Embraer Aircraft Customer Services, Inc.	N/A	GUC: \$8,606,336.27 (Unliquidated)
1295	Republic Airline	EAMS-Embraer Aircraft Maintenance Services, Inc.	N/A	GUC: \$3,312,789.91
324738	Shuttle	EMBRAER FINANCE	Secured: \$3,225,391.59	N/A
325446	Republic Airline	Embraer - Empresa Brasileira de Aeronaut	GUC: \$147,881.45	N/A
325447	Republic Airline	EMBRAER ACFT MAINT SERVICE INC	GUC: Undetermined (Unliquidated)	N/A
325487	Republic Airline	EMBRAER FINANCE (RAI)	GUC: \$284,421.69 (Unliquidated)	N/A
325488	Republic Airline	EMBRAER FLL - C/C	GUC: \$120,355.07 (Unliquidated)	N/A
325489	Republic Airline	Embraer Pool	GUC: Undetermined (Unliquidated)	N/A
325490	Republic Airline	EMBRAER	GUC: \$78,365.53 (Unliquidated)	N/A
325491	Republic Airline	EMBRAER	GUC: \$846,292.76 (Unliquidated)	N/A
325878	Republic Airline	EMBRAER FINANCE	Secured: \$20,129,198.77	N/A

Claim / Schedule No.	Debtor	Claimant	Total Schedule Amount	Total Asserted Amount
325907	Shuttle	EMBRAER ACFT MAINT SERVICE INC	GUC: Undetermined (Unliquidated)	N/A
325908	Shuttle	EMBRAER FINANCE (SAC)	GUC: \$72,239.24	N/A
325909	Shuttle	Embraer Pool	GUC: \$1,890,866.03 (Unliquidated)	N/A
325910	Shuttle	Embraer S.A.	GUC: Zero (Unliquidated)	N/A

**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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**ORDER PURSUANT TO 11 U.S.C. §§ 362, 363 & 365(a) AND FED. R.
BANKR. P. 6004, 6006 & 9019 (I) APPROVING THE LETTER OF INTENT
BETWEEN CERTAIN DEBTORS AND EMBRAER S.A., (II) AUTHORIZING THE
DEBTORS TO ASSUME AMENDED PURCHASE AGREEMENT, EAMS
MAINTENANCE AGREEMENT, AND AMENDED EPOOL AGREEMENT,
(III) APPROVING ALLOWED CLAIMS, AND (IV) GRANTING RELATED RELIEF**

A hearing having been held on December 8, 2016 (the "Hearing"), to consider the motion, dated November 15, 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"), pursuant to sections 362, 363, and 365(a) of the Bankruptcy Code and rules 6004, 6006 and 9019 of the Federal Rules of Bankruptcy Procedure, (i) approving the Letter of Intent Regarding Embraer-Republic Global Settlement, dated November 14, 2016, annexed to the Motion as Exhibit A (the "LOI") and authorizing, but not directing, Republic to enter into the binding agreements and other documents (the "Definitive Documents") required to give effect to the transactions contemplated in the LOI, including, but not limited to the Settlement Agreement and the amendments to the Purchase Agreement and EPool Agreement; (ii) authorizing the

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.

Debtors to assume the Restructured Purchase Agreement, the EAMS Maintenance Agreement, and the EPool Agreement; (iv) modifying the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms of the LOI; (v) authorizing, but not directing, the Debtors to transfer title to any of the ERJ Aircraft to the Embraer Parties; and (vi) allowing to the Embraer Parties prepetition general unsecured claims in the aggregate amount of \$99 million, 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 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 rules 2002, 6006, and 9019 of the Federal Rules of Bankruptcy Procedure.

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 Embraer, nor 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 LOI and the transactions contemplated therein, and entry of this Order are in the best interests of the Debtors’ estates and creditors.

G. The LOI 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 assuming the Assumed Embraer Agreements and the transactions contemplated therein and it is a sound exercise of business judgment to enter into and perform under the Assumed Embraer Agreements and consummate the transactions contemplated thereby.

I. The Embraer Parties are consenting to the assumption of the Assumed Embraer Agreements, and thus, no adequate assurance of future performance by the Debtors is required under section 365(b) of the Bankruptcy Code.

J. The settlement of the Embraer Allocable Claims (as defined herein) on the terms described herein is fair and reasonable.

K. 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. The LOI and all the terms and conditions thereof and the transactions and agreements contemplated therein are authorized and approved in all respects.

3. The Debtors are authorized, but not directed, pursuant to section 363(b) of the Bankruptcy Code, to enter into binding agreements to give effect to the transactions contemplated in the LOI (the “Definitive Documents”) and to execute, deliver, implement and fully perform any and all obligations, instruments, documents and papers and to take any and all actions that may be reasonably necessary or appropriate to implement the LOI and perform all obligations contemplated thereunder.

4. The Debtors are authorized, pursuant to section 365(a) of the Bankruptcy Code, to assume the Restructured Purchase Agreement, the Restructured EPool Agreement and the EAMS Maintenance Agreement.

5. The automatic stay arising pursuant to section 362(a) of the Bankruptcy Code is modified to the extent necessary to effect the application of PDPs as set forth in the LOI.

6. Upon effectiveness of the LOI, which shall occur upon the satisfaction of the express conditions set forth therein, in full settlement, satisfaction, release and discharge of all pre- and post-petition claims of the Embraer Parties, (i) Embraer S.A. is hereby granted an

allowed general unsecured claim in the amount of \$80 million, (ii) EACS is hereby granted an allowed general unsecured claim in the amount of \$12 million; and (iii) the Embraer Parties are granted an allowed general unsecured claim in the amount of \$7 million, to be allocated between EACS and EAMS in Embraer S.A.'s discretion (collectively, the "Embraer Allocable Claims"). The Embraer Allocable Claims shall each be split into two claims allocated by Republic Airline and Shuttle America (*pari passu* with the Delta Allocable Claim, the United Allocable Claim, and the American Allocable Claim (each a "Codeshare Allocable Claims) as set forth in paragraph 7.

7. At the time of determination of any distributions to be made on account of general unsecured claims under a plan of reorganization or upon any liquidation for Republic Airline or Shuttle America in the chapter 11 cases, or any superseding chapter 7 cases, an amount of each Embraer Allocable Claim, on a *pari passu* basis with each Codeshare Allocable Claim, shall be allocated between Shuttle America and Republic Airline such that the percentage recoveries in respect of such distributions to general unsecured claims against Shuttle America and Republic Airline (inclusive of the Embraer Allocable Claims and the Codeshare Allocable Claims) are equal or as nearly equal as is possible given such allocation. In the event of any consolidation of the estates of any or all of Shuttle America and Republic Airline for purposes of distributions to creditors, the Embraer Parties shall receive distributions in respect of the Embraer Allocable Claims from the consolidated entity in the same percentage as distributions on account of all other general unsecured claims against the consolidated estates.

8. 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.

9. The Asserted Claims are each resolved and other than the Embraer Allocable Claims, the Embraer Parties shall not assert any claims, including, without limitation, general unsecured claims, reclamation claims, or claims pursuant to section 503(b)(9) of the Bankruptcy Code in the chapter 11 cases of the Debtors arising pursuant to the Purchase Agreement, the Purchase Agreement Guaranty, the EPool Agreement, the EPool Guaranty, the EAMS Maintenance Agreement, the Master Agreement, the ERJ Aircraft, or the Supported EJets.

10. Any objections and liens filed by the Embraer Parties, including without limitation, the Statutory Liens, the Reclamation Response, and 503(b)(9) Response, are hereby withdrawn with prejudice and all such objections and statutory liens are resolved by the terms of the LOI.

11. Any transfer of the ERJ Aircraft effects a legal, valid, enforceable and effective transfer of the ERJ Aircraft to Embraer or its designee, and shall (upon closing) vest Embraer or its designee with all right, title, and interest in such ERJ Aircraft, as provided in the Definitive Documents, free and clear of any liens, claims and encumbrances. Embraer or its designee is entitled to all of the protections afforded by section 363(m) of the Bankruptcy Code and any reversal or modification on appeal of the authorization provided here to consummate the transfer of title to the ERJ Aircraft shall not affect the validity of the transfer of title to the ERJ Aircraft to Embraer or its designee.

12. The failure to specifically describe or include any particular provision in the LOI shall not diminish or impair the effectiveness of such provision, it being the intent of this Court that the LOI be approved in its entirety.

13. Any person or entity that did not timely object to the Motion is deemed to consent to the relief granted herein.

14. The provisions and effect of this Order, any actions taken pursuant to this Order and the Embraer Parties' and the Debtors' respective rights, obligations, remedies, and protections provided for herein and in the LOI and Definitive Documents shall survive the conversion, dismissal, and/or closing of these chapter 11 cases, appointment of a trustee herein, confirmation of a plan or plans of reorganization, and/or the substantive consolidation of these chapter 11 cases with any other case or cases, and the terms and provision of this Order as well as any protections granted to the Embraer Parties pursuant to this Order shall continue in full force and effect notwithstanding the entry of any such order.

15. Notwithstanding the provisions of rule 6004 of the Federal Rules of Bankruptcy Procedure, 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.

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

Dated: New York, New York

_____, 2016

Honorable Sean H. Lane
United States Bankruptcy Judge