

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)**

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**NOTICE OF HEARING ON 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
CODESHARE AGREEMENT WITH UNITED AIRLINES, INC.**

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

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.

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 Entry of an Order Pursuant to 11 U.S.C. § 363(b) and Fed. R. Bankr. P. 6004 Authorizing and Approving Amendment to Codeshare Agreement with United Airlines, Inc.* (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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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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In re : **Chapter 11 Case No.**

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

Debtors.¹ : **(Jointly Administered)**

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**DEBTORS' 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 CODESHARE AGREEMENT WITH UNITED AIRLINES, INC.**

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 relief sought in this motion—authority to amend the United Express Agreement (as defined below), which was assumed by the Debtors on June 16, 2016—together with the relief sought in the contemporaneously filed motion to approve a global settlement with Embraer S.A. and its affiliates (“Embraer”),² 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. Pursuant to the United Express Agreement, Republic and United Airlines Inc. (“United”) intended to increase the number of aircraft that Republic operates for United by ■ E175 aircraft in 2016 and 2017. Prior to the commencement of these chapter 11 cases, Republic had agreed to purchase the ■ E175 aircraft from Embraer pursuant to the E175 Purchase Agreement (as defined below). However, on or about August 31, 2016, Republic notified Embraer and United that it may not be able to take delivery of the ■ E175 aircraft because purchasing the aircraft would require significant initial capital and Republic found third-party financing to be difficult, if not impossible, to obtain during the chapter 11 cases.

2. See 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, filed on November 15, 2016 (the “Embraer Motion”).

3. To, among other things, avoid further delay in placing the E175 aircraft into service, United has agreed to purchase the [REDACTED] E175 aircraft directly from Embraer and, as further detailed in the Embraer Motion, Republic and Embraer have agreed to amend the E175 Purchase Agreement to terminate Republic's obligation to purchase the aircraft. United in turn has agreed to amend the United Express Agreement to lease [REDACTED] of the purchased E175s to Republic for deployment under the United Express Agreement, thereby allowing the Debtors to avoid obtaining capital to fund their own acquisition of the aircraft while still increasing their revenues under the United Express Agreement. The [REDACTED] aircraft are expected to be delivered to Republic between April 2017 and September 2017. [REDACTED]

4. Under the agreement between United and Embraer, Embraer will commence construction of the aircraft promptly and begin delivery to United in April 2017. [REDACTED]

[REDACTED] Republic has adequate crew resources to satisfy its obligations under its codeshare agreements with each of its codeshare partners. In addition, the agreement of United to purchase the aircraft mitigates potential damage claims that Embraer might assert in connection with cancelation of delivery of the aircraft to Republic.

5. The relief sought in this motion reflects the continued cooperative arrangement with United and the Debtors and further aligns the United Express Agreement with the Debtors' long-term business plan. 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

6. 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.

7. 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”).

8. On March 4, 2016, pursuant to section 1102 of the Bankruptcy Code, the United States Trustee formed an Official Committee of Unsecured Creditors. No trustee or examiner has been appointed in the Debtors’ cases.

9. 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

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 section 363(b) of the Bankruptcy Code and Bankruptcy Rule 6004, approving and authorizing Shuttle America Corporation (“Shuttle”), Republic Airline Inc.

(“Republic Airline”), and Republic Airways Holdings Inc. (“RAH”) to enter into that certain Fifteenth Amendment, dated as of November 14, 2016 (“Amendment No. 15,” annexed hereto as Exhibit A) to that certain United Express Agreement dated as of December 28, 2006, United Contract # 172884 by and among United, Shuttle, and Republic Airline (as previously amended, the “United Express Agreement,” and as amended by Amendment No. 15, the “Restructured United Express Agreement”).

The Restructured United Express Agreement

12. The Debtors assumed the United Express Agreement pursuant to a Court Order dated June 16, 2016 approving Amendment No. 14 to the United Express Agreement, the assumption of the United Express Agreement, and the settlement of United’s claims against the Debtors (ECF No. 678, the “United Settlement Order”). Fifty-four E170/E175 aircraft are currently in service under the United Express Agreement. At the time the United Express Agreement was assumed, the Debtors and United expected to increase the number of aircraft in service under the United Express Agreement by up to ■ E175 aircraft in 2017. The Debtors were obligated to purchase the additional ■ aircraft (the “New Embraer Aircraft”) pursuant to that certain Amended and Restated Purchase Agreement COM0190-10, dated as of January 23, 2013 (as previously amended, modified, and supplemented from time to time, the “E175 Purchase Agreement”) between Republic Airline and Embraer.

13. Following the Commencement Date, as a result of the commencement of the chapter 11 cases, the Debtors determined that they would not be able to obtain financing for the deliveries of New Embraer Aircraft that were scheduled to commence in August 2016. As a result, Embraer ceased production of the New Embraer Aircraft. The Debtors are contemporaneously filing the Embraer Motion, pursuant to which the Debtors will, among other

things, enter an amendment to the E175 Purchase Agreement to cancel the existing orders for the New Embraer Aircraft and terminate all rights and obligations with respect to such aircraft.

14. Pursuant to Amendment No. 15, [REDACTED] of the New Embraer Aircraft (the “Remaining New Embraer Aircraft”) will be leased to the Debtors and deployed under the Restructured United Express Agreement, beginning in April 2017. [REDACTED]

[REDACTED].

15. The principal terms and conditions of Amendment No. 15 are described below:³

- a. **Lease**: Republic and United shall enter a lease for each of the Remaining New Embraer Aircraft on customary commercial terms.⁴
- b. **Delivery**: Upon United’s request, Republic will act as United’s agent for the purpose of inspecting and accepting delivery of the Remaining New Embraer Aircraft.
- c. **Set-off**: As additional security to induce the parties to enter into the transactions contemplated by the New Aircraft Leases, Republic and United each agree that a non-defaulting party can set off amounts owed from any payment due.
- d. **Amendment Fee**: Republic agrees to pay United a one-time fee in the amount of [REDACTED] (the “Amendment Fee”) on the effective date of the Debtors’ Plan of Reorganization.
- e. **Guaranty**: RAH agrees that its guaranty of the United Express Agreement shall apply to the Restructured United Express Agreement and all new leases of the Remaining New Embraer Aircraft.

3. The summary of Amendment No. 15 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 Amendment No. 15, the terms of Amendment No. 15 shall control.

4. The Debtors expect that the first two aircraft will be delivered to United and leased to Republic Airline in April 2017.

Basis for Relief

16. The Debtors submit that, to the extent not already approved by the Court in the United Settlement Order, entering into Amendment No. 15 is an ordinary course business transaction authorized pursuant to section 363(c)(1) of the Bankruptcy Code. At the request of United and out of an abundance of caution, however, the Debtors are seeking authority to enter into Amendment No. 15 and to implement the transactions and agreements contemplated therein under section 363(b) of the Bankruptcy Code.

17. 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 submit that sound business reasons exist for approval of Amendment No. 15 and authorization of the transactions set forth therein. The terms of Amendment No. 15 are highly beneficial to the Debtors’ estates. United’s purchase of the New Embraer Aircraft mitigates what may otherwise be substantial claims from Embraer if the Debtors were forced to reject the E175 Purchase Agreement. Moreover, under the terms of Amendment No. 15, the Debtors avoid having to obtain sufficient capital to fund the payment of their own acquisition of the New Embraer Aircraft, which would be difficult for the Debtors to do while in chapter 11, and the costs attendant to incurring such capital. Amendment No. 15 also provides the Debtors with increased certainty for an extended period of time regarding their relationship with both United and Embraer. The terms of Amendment No. 15 will enable the Debtors to increase revenues under the Restructured United Express Agreement without

burdening their balance sheet with new debt to finance the purchase of the New Embraer Aircraft.⁵

20. Amendment No. 15 is the product of extensive negotiations between the Debtors and United. The Debtors and United 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. Based upon the foregoing, the Debtors' decision to enter into Amendment No. 15 is supported by sound business reasons and should be approved.

Request For Waiver of Stay

21. 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

22. 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.

23. No previous request for the relief sought herein has been made to this or any other court.

5. Payment of the Amendment Fee is appropriate because United is required to incur significant additional capital purchasing the New Embraer Aircraft, and also because the substantial economic benefits to Republic of the transactions in Amendment No. 15 far exceed the Amendment Fee.

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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Exhibit A

[REDACTED]

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

-----x

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. § 363(b) AND FED. R. BANKR.
P. 6004 (I) AUTHORIZING AND APPROVING AMENDMENT TO
CODESHARE AGREEMENT WITH UNITED AIRLINES, INC.**

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 section 363(b) of title 11, United States Code (the "Bankruptcy Code") and Fed. R. Bankr. P. 6004 for entry of an order authorizing and approving amendment to codeshare agreement with United Airlines Inc., as more fully described in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order of Reference M-431, dated February 1, 2012 (Preska, C.J.); and consideration of the Motion and the requested relief being a core proceeding the Bankruptcy Court can determine pursuant to 28 U.S.C. § 157(b)(2); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper

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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.
 2. Unless otherwise defined herein, each capitalized term shall have the meaning ascribed to it in the Motion.

notice of the Motion having been provided in accordance with the Order Pursuant to 11 U.S.C. § 105(a) & Fed. R. Bankr. P. 1015(c), 2002(m) & 9007 Implementing Certain Notice and Case Management Procedures (ECF No. 70), and it appearing that no other or further notice need be provided; and upon the record of the Hearing and all of the proceedings had before the Court; and the Court having found and determined that the relief sought in the Motion is in the best interests of the Debtors, their estates, creditors, and all parties in interest, and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is

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

ORDERED that pursuant to section 363(b) of the Bankruptcy Code, Shuttle, Republic Airline and RAH are authorized to enter into Amendment No. 15 and perform all obligations thereunder; and it is further

ORDERED that 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; and it is further

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

Dated: New York, New York
_____, 2016

United States Bankruptcy Judge