

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)

Bruce R. Zirinsky  
Sharon J. Richardson  
Gary D. Ticoll  
ZIRINSKY LAW PARTNERS PLLC  
375 Park Avenue, Suite 2607  
New York, New York 10152  
(212) 763-0192

Christopher K. Kiplok  
Gregory C. Farrell  
Erin E. Diers  
HUGHES HUBBARD & REED LLP  
One Battery Park Plaza  
New York, New York 10004  
(212) 837-6000

*Attorneys for the Debtors  
and Debtors in Possession*

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

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**In re** : **Chapter 11 Case No.**  
**REPUBLIC AIRWAYS HOLDINGS INC., et al.,** : **16-10429 (SHL)**  
**Debtors.<sup>1</sup>** : **(Jointly Administered)**

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**NOTICE OF HEARING ON DEBTORS' MOTION FOR AN ORDER PURSUANT TO  
11 U.S.C. §§ 362, 363(b) AND 365(a) AND FED. R. BANKR. P. 6004, 6006 AND 9019  
(I) APPROVING THE RESTRUCTURING AGREEMENTS WITH GENERAL  
ELECTRIC AND ITS AFFILIATES (II) AUTHORIZING THE DEBTORS TO ASSUME  
AMENDED MAINTENANCE AGREEMENT, AMENDED LETTER AGREEMENTS  
AND THE RELATED GENERAL TERMS AGREEMENT, (III) APPROVING  
ALLOWED CLAIM, AND (IV) GRANTING RELATED RELIEF**

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1. The Debtors in these chapter 11 cases are the following entities: Republic Airways Holdings Inc.; Republic Airways Services, Inc.; Republic Airline Inc.; Shuttle America Corporation; Midwest Air Group, Inc.; Midwest Airlines, Inc.; and Skyway Airlines, Inc. The Debtors' employer tax identification numbers and addresses are set forth in their respective chapter 11 petitions.

**PLEASE TAKE NOTICE** that a hearing will be held at **11:00 a.m. (Eastern Time) on December 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(b) and 365(a) and Fed. R. Bankr. P. 6004, 6006, and 9019 (I) Approving the Restructuring Agreements with General Electric and Its Affiliates, (II) Authorizing the Debtors to Assume Amended Maintenance Agreement, Amended Letter Agreements, and Amended General Terms Agreement, (III) Approving Allowed Claim, 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](mailto:bzirinsky@zirinskylaw.com)), Sharon J. Richardson, Esq. ([srichardson@zirinskylaw.com](mailto:srichardson@zirinskylaw.com)), and Gary D. Ticoll, Esq. ([gticoll@zirinskylaw.com](mailto:gticoll@zirinskylaw.com))) and

Hughes Hubbard & Reed LLP, One Battery Park Plaza, New York, New York 10004 (Attn: Christopher K. Kiplok, Esq. (chris.kiplok@hugheshubbard.com) and Gabrielle Glemann, Esq. (gabrielle.glemann@hugheshubbard.com)), (ii) the Office of the United States Trustee, 201 Varick Street, Suite 1006, New York, New York 10014 (Attn: Brian Masumoto, Esq.), (iii) counsel to the Official Committee of Unsecured Creditors, Morrison & Foerster LLP, 250 West 55th Street, New York, New York 10019 (Attn: Brett H. Miller, Esq. (bmiller@mofo.com), Todd M. Goren, Esq. (tgoren@mofo.com), and Erica J. Richards, Esq. (erichards@mofo.com)), and (iv) the Ad Hoc Committee of Equity Holders of Republic Airways Holdings Inc., Schulte Roth & Zabel LLP, 919 Third Avenue, New York, New York 10022 (Attn: Adam C. Harris, Esq. (adam.harris@srz.com), Lawrence V. Gelber, Esq. (lawrence.gelber@srz.com), and David M. Hillman, Esq. (david.hillman@srz.com)), so as to be so filed and received no later than **December 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

/s/ Gary D. Ticoll  
Bruce R. Zirinsky  
Sharon J. Richardson  
Gary D. Ticoll  
ZIRINSKY LAW PARTNERS PLLC  
375 Park Avenue, Suite 2607  
New York, New York 10152  
(212) 763-0192  
bzirinsky@zirinskylaw.com  
srichardson@zirinskylaw.com  
gticoll@zirinskylaw.com

Christopher K. Kiplok  
Gregory C. Farrell  
Erin E. Diers  
HUGHES HUBBARD & REED LLP  
One Battery Park Plaza  
New York, New York 10004  
(212) 837-6000  
chris.kiplok@hugheshubbard.com  
gregory.farrell@hugheshubbard.com  
erin.diers@hugheshubbard.com

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**DEBTORS' MOTION FOR AN ORDER PURSUANT TO 11 U.S.C.  
§§ 362, 363(b) AND 365(a) AND FED. R. BANKR. P. 6004, 6006 AND 9019  
(I) APPROVING THE RESTRUCTURING AGREEMENTS WITH GENERAL  
ELECTRIC AND ITS AFFILIATES (II) AUTHORIZING THE DEBTORS TO ASSUME  
AMENDED MAINTENANCE AGREEMENT, AMENDED LETTER AGREEMENTS  
AND THE RELATED GENERAL TERMS AGREEMENT, (III) APPROVING  
ALLOWED CLAIM, AND (IV) GRANTING RELATED RELIEF**

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1. The Debtors in these chapter 11 cases are the following entities: Republic Airways Services, Inc.; Shuttle America Corporation; Republic Airline Inc.; Republic Airways Holdings Inc.; Midwest Air Group, Inc.; Midwest Airlines, Inc.; and Skyway Airlines, Inc. The Debtors' employer tax identification numbers and addresses are set forth in their respective chapter 11 petitions.

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

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

**Preliminary Statement**

1. The Debtors seek, through this motion, to amend and assume restructured agreements with General Electric and its affiliates (each a “GE Party” and collectively the “GE Parties”)—the manufacturer and maintenance provider of the engines for substantially all of the Debtors’ aircraft. The GE Parties have provided maintenance services for Republic’s owned and leased engines for over a decade.

2. The Debtors’ agreements with the GE Parties are an essential component to Republic’s successful restructuring. The services provided by the GE Parties ensure that Republic’s engines are properly maintained and that Republic has sufficient spare engines to satisfy its obligations under its agreements with its codeshare partners. Pursuant to the global restructuring, as detailed below, Republic and the GE Parties have agreed to amend and assume the MCPH Agreement, GTA and related Letter Agreements (each as defined below) to align the agreements to Republic’s restructured aircraft fleet and codeshare agreements.

3. The global resolution also resolves more than [REDACTED] in claims asserted by the GE Parties—a significant portion of which the GE Parties have asserted are entitled to administrative priority—including the following components:

- i. Over \$26 million with respect to unpaid prepetition invoices, which the GE Parties asserted were secured by mechanics’ liens on the Debtors’ property and a portion of which the GE Parties asserted were entitled to priority under sections 546(c) or 503(b)(9) of the Bankruptcy Code;

- ii. Over \$ [REDACTED] million with respect to damages under the MCPH Agreement in connection with the removal of certain engines that were returned to lenders and lessors during the chapter 11 cases, which the GE Parties asserted was required to be cured in connection with the assumption of the MCPH Agreement;
- iii. Over \$ [REDACTED] million with respect to damages under the GTA and related Letter Agreements with respect to Republic's termination of its obligation to purchase E170/175 aircraft from Embraer S.A. ("Embraer"), which the Debtors asserted was required to be cured in connection with the assumption of the GTA and related Letter Agreements.<sup>1</sup>

In full settlement of the GE Parties' prepetition and postpetition claims against the Debtors, the GE Parties will receive a cure payment of \$37 million and a single general unsecured claim in the amount of \$10 million against RAH.

4. The relief sought in this motion will restore and reinforce a strong and long-term relationship between the GE Parties and the Debtors and fully resolve the GE Parties' claims against the Debtors. Accordingly, for the reasons set forth in this motion, the Debtors submit that restructuring and assuming their agreements with the GE Parties and the settlement of the GE Parties' claims, as described herein, represents a sound exercise of the Debtors' business judgment and is in the best interests of the Debtors, their estates, and all parties in interest.

### **Procedural Background**

5. On February 25, 2016 (the "Commencement Date"), the Debtors each commenced in this Court a voluntary case under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). The Debtors are authorized to continue to operate their businesses and

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1. The settlement of the claims asserted by the GE Parties is a condition precedent of the effectiveness of the global settlement reached with Embraer, which is further described in the *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").

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

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

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

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

### **Jurisdiction**

9. 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**

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

- i. authorizing the Debtors to enter into, and perform all obligations under:
  - a. the Restructuring Letter Agreement (the "Restructuring Letter Agreement," annexed hereto as Exhibit A) with General Electronic Company and its subsidiaries and



affiliates<sup>2</sup> (each, a “GE Party,” and collectively, the “GE Parties”)

- b. Amendment No. 6 (the “MCPH Amendment,” annexed hereto as Exhibit B) to the CF34-8E5 Maintenance Cost Per Hour (MCPH) Engine Services Agreement No. 1-20268243-4, dated as of June 21, 2005, between GE Engine Services, LLC (as successor to GE Engine Services, Inc.) (“GEES”) and RAH (as amended, restated, supplemented or otherwise modified previously, the “MCPH Agreement,” and as amended by the MCPH Amendment, the “Restructured MCPH Agreement”);
  - c. Amendment No. 1 (the “LA-4 Amendment,” annexed hereto as Exhibit C) to Letter Agreement No. 4 dated September 18, 2014 (“LA No. 4”) relating to the General Terms Agreement No. GE-04-0015, dated as of September 27, 2004 (as amended, restated, supplemented or otherwise modified previously, the “GTA”); and
  - d. Amendment No. 1 (the “LA-5 Amendment,” annexed hereto as Exhibit D) to Letter Agreement No. 5 dated March 12, 2015 relating to the GTA (“LA No. 5,” together with LA No. 4 and the other letter agreements related to the GTA, the “Letter Agreements”).
- ii. authorizing the Debtors to assume the Restructured MCPH Agreement, the GTA, and the Letter Agreements, as amended (collectively, the “Restructured Letter Agreements,” and together with the MCPH Agreement, GTA, and Restructuring Letter Agreement, the “Restructuring Agreements”);
  - iii. authorizing the Debtors to pay the cure amount of \$37 million (the “Cure Amount”);
  - iv. allowing to the GE Parties a general unsecured claim in the amount of \$10 million against RAH (the “Allowed Claim”), provided that such Allowed Claim shall not be subject to challenge, reduction or offset for any reason; and

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2. The GE Parties include, but are not limited to, Aero Space Systems, Ltd., Airfoil Technologies International – Singapore Pte Ltd, CFM International, Inc., GE Aviation Service Operation LLP, GE Aviation Service Operation LLP, GE Aviation Systems LLC, GE Engine Services, LLC, GE Engine Services-Dallas, Inc., GE On Wing Support, Inc., GE Engine Services Distribution, LLC, MRA Sytems, Inc., Tri Remanufacturing Inc., and Unison Industries (Elano Division).

- v. modifying the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms of the Restructuring Agreements, including the application by the GE Parties of \$10 million of the GEES Reserve (as defined below) to satisfy a portion of the Cure Amount.

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

**The GE Agreements and Claims**

12. GE engines are installed on substantially all of Republic's aircraft and are maintained by the GE Parties. The GE Parties are a necessary partner to Republic's successful restructuring and continued operations.

*The MCPH Agreement*

13. GEES provides maintenance and repair services for Republic's owned and leased engines on a cost per engine flight hour ("EFH") basis pursuant to the MCPH Agreement. The MCPH Agreement requires that Republic maintain minimums for (i) the number of engines covered under the MCPH Agreement and (ii) the EFH per covered Engine. Under the MCPH Agreement, Republic purchases certain Life-Limited Parts ("LLPs") for its engines from the GE Parties. [REDACTED]

[REDACTED]

[REDACTED].

14. Through the chapter 11 cases, the Debtors have returned 19 E170/175 aircraft to lenders and lessors that were installed with engines previously covered under the

MCPH Agreement.<sup>3</sup> As a result, the number of covered engines in the MCPH Agreement was reduced by 38 engines. The GE Parties have asserted that the removal of such engines from the program resulted in damages under the MCPH Agreement over the remaining term of the MCPH Agreement exceeding \$ [REDACTED] million as a result of damages related to [REDACTED]  
[REDACTED]

15. Certain engines installed on recently delivered aircraft were not covered under the MCPH Agreement. In July 2016, the Debtors issued a request for proposals to engine maintenance providers seeking a comprehensive maintenance offer with respect to such engines, as well as future deliveries. The Debtors, together with their financial advisors, determined that the proposal received from GEES represented the best overall value to the Debtors.

The GTA

16. Pursuant to the GTA, GE and Republic have agreed on the general terms applicable to engines and related equipment and services sold by GE to the Debtors. GE, Shuttle, and Republic Airline entered LA No. 4 to reflect the purchase by Shuttle or Republic Airline of [REDACTED] new E175 aircraft with installed GE engines delivered pursuant to the Amended and Restated Purchase Agreement between Embraer S.A. and Republic Airline (the “E175 Purchase Agreement”) and [REDACTED] spare engines, which deliveries were expected to begin in July 2015 and continue through the second quarter of 2017. As of the Commencement Date, [REDACTED] aircraft and [REDACTED] spare engine had been delivered pursuant to LA No. 4. GE, Shuttle, and Republic

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3. See, Order Pursuant to 11 U.S.C. § 365(a) and Fed. R. Bankr. P. 6006 Authorizing Debtors to Reject Aircraft Lease with Dougherty Air Trustee, LLC (N807MD), dated June 17, 2016 (ECF No. 690) (rejecting lease on 1 EJET); Order Pursuant to 11 U.S.C. § 365(a) and Fed. R. Bankr. P. 6006 Authorizing Debtors to Reject Certain Aircraft Lease with GECAS, entered October 21, 2016 (ECF No. 1135) (rejecting leases on 17 EJETs). The Debtors are also seeking Court approval to sell three (3) aircraft with engines covered under the MCPH Agreement. (See Debtors’ Motion for Order Pursuant to 11 U.S.C. §§ 363(b), 363(f) and 363(m) and Fed. R. Bankr. P. 6004 and 9019 (I) Authorizing the Debtors to Sell Certain Aircraft, Prepay Certain Aircraft Loans, and Consensually Terminate Related Aircraft Leases and (II) Approving Allowed Claims, filed on October 27, 2015 (ECF No. 1154)). The Letter of Intent with Aeroliterol provides that the engines will continue to be covered under the MCPH Agreement.

Airline entered Letter Agreement No. 5 to the GTA to reflect the purchase by Shuttle or Republic Airline of [REDACTED] new E175 aircraft with installed GE engines pursuant to the E175 Purchase Agreement and [REDACTED] spare engines, which deliveries were expected to begin in November 2015 and continue through the fourth quarter of 2017.

17. By the Embraer Motion, Republic is seeking Court approval to amend the E175 Purchase Agreement to terminate its obligations to purchase [REDACTED] E175s. By a motion filed contemporaneously with the Embraer Motion, Republic is seeking Court approval of an amendment with United Airlines, Inc. (“United”) pursuant to which Republic will lease certain new E175 aircraft from United (the “Remaining New Embraer Aircraft”), and [REDACTED]. [REDACTED]. GE asserted that the reduced order of engines under the GTA [REDACTED] will result in damages exceeding \$ [REDACTED] million.

Reclamation and 503(b)(9) Claims

18. On March 15, 2016, a GE Party made a reclamation demand on the Debtors pursuant to section 546(c) of the Bankruptcy Code asserting that they were entitled to reclaim \$903,073.00 of their claims (the “Reclamation Claim”). On May 9, 2016, a GE Party filed a proof of claim against RAH asserting that its claim of \$705,835.50 is entitled to priority treatment under section 503(b)(9) of the Bankruptcy Code (the “503(b)(9) Claim”).

19. 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 Procedures for Treatment of Reclamation Claims* (the “Reclamation Notice,” ECF No. 721), pursuant to which the Debtors deemed valid \$189,872.50 of the Reclamation Claim and denied the remaining portion of the Reclamation Claim on the basis that (i) \$683,190.00 would be allowed pursuant to section 503(b)(9) of the Bankruptcy Code, (ii) \$21,869.00 was for goods

received outside of the reclamation period, (iii) \$7,704.00 related to good not specifically identifiable in the Debtors' possession on the date of the Reclamation Claim, and (iv) \$617.50 related to amounts that did not match the Debtors' books and records.

20. 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 the 503(b)(9) Claim on the basis that insufficient documentation was provided. The Debtors and the GE Parties agreed to adjourn the objection deadline with respect to the Debtors' 503(b)(9) Notice to December 23, 2016.

#### Claims

21. On July 22, 2016, the GE Parties filed (i) claim no. 964 against RAH alleging that RAH received goods and services prior to the Commencement Date in the amount of \$26,309,661.02 and (ii) claim no. 963 against Shuttle alleging that Shuttle received goods and services prior to the Commencement Date in the amount of \$857,910.50 (together, the "GE Claims," and collectively with the Reclamation Claim and the 503(b)(9) Claim, the "Asserted Claims"). The GE Parties asserted that the GE Claims are secured by mechanics' liens on the property. The GE Parties attached a summary of invoices to the GE Claims, which included invoices for, among other things, component repairs, tool leases, LLP prepayment, supplemental invoices, and flight hour claims.

#### The Restructuring Agreements

22. Through the proposed transactions, the Debtors and the GE Parties will mutually restructure their relationship to better align with the Debtors' continued operations and fully resolve the Asserted Claims. The Restructuring Agreements are the product of good faith,

arm's-length negotiations between the Debtors and the GE Parties. The principal terms and conditions of the Restructuring Agreements are described below:<sup>4</sup>

i. **Restructured Letter Agreements:**

- a. Covered Engines: Terminates Republic's obligations with respect to future deliveries of GE engines other than five additional spare engines, two of which will be delivered in the third quarter of 2017 and three of which will be delivered in the fourth quarter of 2017.
- b. Spare Parts Credits: Reduces the total credits under the agreement for use for purchases from GE of spare parts and spare engines or services from a maximum allowance of [REDACTED].
- c. [REDACTED].

ii. **Restructured MCPH Agreement:**

- a. Removed Engines: The engines installed on surrendered aircraft and engines installed on Embraer aircraft that will not be delivered to the Debtors are removed from the MCPH Agreement.
- b. Added Engines: The engines installed on recently delivered aircraft are added to the MCPH Agreement.
- c. Term: The term for coverage for the covered engines is extended to align with the Debtors' codeshare agreements.
- d. Rates: The rates for the covered engines are revised as reflected in the MCPH Amendment.
- e. Scope of Services: The scope of services is revised to [REDACTED];

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4. The summary of the Restructuring Agreements 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 Restructuring Agreements, the terms of the Restructuring Agreements shall control.

f. LLP Payments: [REDACTED]

g. [REDACTED]

- iii. **Cure Amount:** Republic will pay the Cure Amount within fifteen (15) days of the satisfaction of the conditions precedent set forth in the Restructuring Letter Agreement, provided that \$10 million of such amount will be applied by the GE Parties from the GEES Reserve.
- iv. **Allowed Claim:** In full and final settlement of all of the pre-petition and post-petition claims of the GE Parties against the Debtors, including but not limited to the Asserted Claims, GE shall be allowed the Allowed Claim.

**The Transactions Contemplated in the Restructuring Agreements Are Supported  
By the Debtors' Business Judgment and Should Be Approved by the Court**

23. 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).

24. 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).

25. The Debtors submit that sound business reasons exist for approval of the Restructuring Agreements and authorization of the transactions set forth therein. The Restructuring Letter Agreement resolves all of the Asserted Claims and establishes the future relationship between the Debtors and the GE Parties. The amendments to the Letter Agreements align the Debtors’ rights and obligations to purchase spare engines with the current size of its aircraft fleet. The MCPH Amendment ensures that all of Republic’s engines will be covered on



an engine flight hour basis throughout the term of the existing codeshare agreements with respect to such engines. Overall, the transactions in the Restructuring Agreements will enable the Debtors to receive competitive prices for the acquisition of necessary spare engines and competitive rates for maintenance of the engines on its entire aircraft fleet.

26. Based on the foregoing, entry into the Restructuring Agreements 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 Restructuring Agreements should be approved.

**Assumption of the Restructured MCPH Agreement,  
Restructured Letter Agreements and GTA is a Sound  
Exercise of the Debtors' Business Judgment**

27. 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).

28. 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).

29. 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).

30. The Debtors’ assumption of the Restructured MCPH Agreement, Restructured Letter Agreements, and GTA (together, the “Assumed GE Agreements”) is in the best interest of the Debtors’ estates. Each of the Assumed GE Agreements provides significant benefits to Republic’s estates and will be vital to Republic’s continuing operational success.

31. The Restructured MCPH Agreement will provide the Debtors with certainty with respect to their ongoing maintenance expenses on their entire engine fleet. Under the MCPH Agreement, rather than pay for maintenance repairs as they arise, which could result in unexpected demands on the Debtors’ liquidity, the Debtors pay a regular, fixed monthly amount with respect to engine maintenance services. The certainty provided by the Restructured

MCPH Agreement will allow the Debtors to ensure that they have sufficient liquidity to meet their ongoing operational needs. With respect to the recently delivered engines, the Debtors, together with their financial advisors, sought out proposals for maintenance services from other maintenance providers and determined that inducting the engines into the MCPH Agreement, as amended by the MCPH Amendment, reflects the best overall value for the Debtors' business needs.

32. The Restructured Letter Agreements and the GTA allow the Debtors to continue their important relationship with the GE Parties, including with respect to the purchase of necessary spare engines to service its restructured aircraft fleet. The Restructured Letter Agreements align the existing GTA and related letter agreements with the Debtors' current business plan, including the termination of the Debtors' obligations to purchase new aircraft under the E175 Purchase Agreement, as further detailed in the Embraer Motion. Assuming the GTA and related Letter Agreements will ensure that Republic has access to valuable benefits, including warranties, performance guarantees, and other rights provided under these agreements. Moreover, absent assumption of the Assumed GE Agreements, Republic may be forced to reject such agreements, which would result in significant rejection damages without significant benefits.

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

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

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

35. 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.").

36. 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.”).

37. “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.

38. The Debtors believe, in their reasonable business judgment, that the proposed settlement with the GE 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 GE Parties and the Debtors. The settlement reduces over [REDACTED] in claims that the GE Parties have asserted or may potentially assert—a significant portion of which the GE Parties assert are secured by mechanics’ liens or entitled to administrative priority—to a single allowed unsecured claim in the aggregate amount of \$10 million and a Cure Amount of \$37 million. The proposed settlement significantly reduces the potential claims against the Debtors’ estates and ensures that the Debtors can continue a cooperative relationship with a valuable partner to its ongoing reorganization.

39. The Debtors submit that it would have been difficult to achieve resolution of the Asserted Claims, and a restructured relationship with the GE Parties 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 GE Parties and will avoid the significant time and resources the Debtors otherwise would have to expend on resolving the significant claims asserted by the GE 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.

40. The proposed resolution and settlement of the GE Parties' claims is the product of extensive negotiations between the Debtors and the GE Parties. The Debtors and the GE Parties 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.

41. 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  
the GE Parties to Apply a Portion of the Reserve Against the Cure Amount**

42. 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 the GE Parties to apply \$10 million of the GEES Reserve against the Cure Amount.

43. Here, cause exists because by modifying the automatic stay to permit the application of a portion of the GEES Reserve, the amount owed to the GE Parties will be reduced, dollar-for-dollar. The amounts that will be applied are related to the Cure Amount and, as such, the overall amount due to the GE Parties by the Debtors will be reduced without negatively impacting other holders of claims against the Debtors. In addition, cause exists because application of the GEES Reserve is part and parcel of the Restructuring Agreements and facilitated the resolutions incorporated therein, including the restructuring of the Debtors' relationship with the GE 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 the GE Parties should be permitted to apply \$10 million of the GEES Reserve to satisfy the Cure Amount.

**Request For Waiver of Stay**

44. 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**

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

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

Dated: New York, New York  
November 15, 2016

/s/ Gary D. Ticoll  
Bruce R. Zirinsky  
Sharon J. Richardson  
Gary D. Ticoll  
ZIRINSKY LAW PARTNERS PLLC  
375 Park Avenue, Suite 2607  
New York, New York 10152  
(212) 763-0192  
bzirinsky@zirinskylaw.com  
srichardson@zirinskylaw.com  
gticoll@zirinskylaw.com

Christopher K. Kiplok  
Gregory C. Farrell  
Erin E. Diers  
HUGHES HUBBARD & REED LLP  
One Battery Park Plaza  
New York, New York 10004  
(212) 837-6000  
chris.kiplok@hugheshubbard.com

*Attorneys for the Debtors and Debtors in  
Possession*



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

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**In re** : **Chapter 11 Case No.**  
**REPUBLIC AIRWAYS HOLDINGS INC., et al.,** : **16-10429 (SHL)**  
**Debtors.**<sup>1</sup> : **(Jointly Administered)**

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**ORDER PURSUANT TO 11 U.S.C. §§ 362, 363(b) AND 365(a) AND FED. R. BANKR. P. 6004, 6006 AND 9019 (I) APPROVING THE RESTRUCTURING AGREEMENTS WITH GENERAL ELECTRIC AND ITS AFFILIATES (II) AUTHORIZING THE DEBTORS TO ASSUME AMENDED MAINTENANCE AGREEMENT, AMENDED LETTER AGREEMENTS AND RELATED GENERAL TERMS AGREEMENT, (III) APPROVING ALLOWED CLAIM, 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"),<sup>2</sup> of Republic Airways Holdings Inc. ("RAH"), and certain of its wholly-owned direct and indirect subsidiaries, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively with RAH, "Republic" or the "Debtors"), pursuant to sections 362, 363(b) and 365(a) of the Bankruptcy Code and rules 6004, 6006 and 9019 of the Federal Rules of Bankruptcy Procedure, (i) approving the Restructuring Agreements with General Electric and its affiliates, (ii) authorizing the Debtors to assume the Restructured MCPH Agreement, Restructured Letter Agreements, and GTA, (iii) authorizing the Debtors to pay the Cure Amount to the GE Parties, (iv) approving the Allowed Claim, and (v) granting related relief, each as more fully described in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C.

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1. The Debtors in these chapter 11 cases are the following entities: Republic Airways Holdings Inc.; Republic Airways Services, Inc.; Republic Airline Inc.; Shuttle America Corporation; Midwest Air Group, Inc.; Midwest Airlines, Inc.; and Skyway Airlines, Inc. The Debtors' employer tax identification numbers and addresses are set forth in their respective chapter 11 petitions.
2. Capitalized terms not otherwise defined herein have the meanings ascribed to them in the Motion.

§§ 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, the Bedford Declaration, 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 is sections 362, 363, and 365 of the Bankruptcy Code and Bankruptcy Rules 6004, 6006, and 9019.
- B. The Motion satisfies Bankruptcy Rules 2002, 6004, 6006, and 9019.
- C. Proper, timely, adequate and sufficient notice of the Motion has been provided in accordance with the Bankruptcy Code, the Bankruptcy Rules, the Local Bankruptcy Rules and the CMO, and no other or further notice of the Motion or the entry of this Order shall be required.
- D. Based on the record before the Court, the Debtors have demonstrated good and sufficient reasons for the Court to approve the Motion.
- E. Neither GE, 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 Restructuring Agreements and the transactions contemplated therein, and entry of this Order is in the best interests of the Debtors' estates and creditors.

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

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

I. The GE Parties are consenting to the assumption of the Restructured MCPH Agreement, Restructured Letter Agreements and the GTA and thus, no adequate assurance of future performance by Republic is required under section 365(b) of the Bankruptcy Code.

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

**IT IS HEREBY ORDERED** that:

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

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

3. The Debtors are authorized, pursuant to section 365(a) of the Bankruptcy Code, to assume the Restructured MCPH Agreement, Restructured Letter Agreements and the GTA.

4. The GE Parties are hereby granted an allowed general unsecured claim in the amount of \$10 million against RAH, which claim (a) shall be in full settlement, satisfaction, release and discharge of all pre- and post-petition claims of the GE Parties in the chapter 11 cases and (b) shall not be subject to challenge, reduction or offset for any reason.

5. The Debtors are authorized and shall pay to the GE Parties the Cure Amount of \$37 million within fifteen (15) days after the satisfaction of the conditions precedent in the Restructuring Letter Agreement.

6. The automatic stay arising pursuant to section 362(a) of the Bankruptcy Code is modified to the extent necessary to effect the application of the GEES Reserve as set forth in the Restructuring Letter Agreement.

7. 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.

8. The proofs of claim filed by the GE Parties in the chapter 11 cases (including without limitation the Asserted Claims) shall be deemed automatically amended to reflect the terms of this Order (and any claims in excess of such amounts shall be deemed to have been withdrawn), all without the need for any further action by any party and the Debtors' claims agent shall update the claims register in accordance with this Order.

9. 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.

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

Dated: New York, New York

\_\_\_\_\_, 2016

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Honorable Sean H. Lane  
United States Bankruptcy Judge

**EXHIBIT A**  
**Restructuring Letter Agreement**

[REDACTED]

**EXHIBIT B**  
**MCPH Amendment**

[REDACTED]

**EXHIBIT C**  
**LA-4 Amendment**

[REDACTED]



**EXHIBIT D**  
**LA-5 Amendment**

[REDACTED]