

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
HUGHES HUBBARD & REED LLP
One Battery Park Plaza
New York, New York 10004
(212) 837-6000

*Proposed Attorneys for the Debtors
and Debtors in Possession*

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

-----x

In re : **Chapter 11 Case No.**
REPUBLIC AIRWAYS HOLDINGS INC., et al., : **16-_____ (___)**
Debtors.¹ : **(Joint Administration Pending)**

-----x

**DEBTORS' MOTION PURSUANT TO 11 U.S.C. §§ 105(a), 363(b), 503(b) & 507(a)
FOR ENTRY OF INTERIM AND FINAL ORDERS (i) AUTHORIZING, BUT NOT
DIRECTING, DEBTORS TO PAY CERTAIN PREPETITION (a) CHARGES OF
SHIPPERS, WAREHOUSEMEN, AND OTHER LIEN CLAIMANTS AND
(b) CUSTOMS DUTIES, (ii) GRANTING ADMINISTRATIVE EXPENSE STATUS FOR
CERTAIN GOODS DELIVERED POSTPETITION, AND (iii) AUTHORIZING AND
DIRECTING FINANCIAL INSTITUTIONS TO HONOR AND PROCESS RELATED
CHECKS AND TRANSFERS**

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

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

Republic Airways Holdings Inc. (“RAH”), and certain of its wholly-owned direct and indirect subsidiaries, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively with RAH, “Republic” or the “Debtors”), respectfully represent:

Background

1. On the date hereof (the “Commencement Date”) each of the Debtors filed with this Court a voluntary petition for relief under chapter 11 of title 11, United States Code (the “Bankruptcy Code”). The Debtors are authorized to continue to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner, or statutory committee of unsecured creditors has been appointed in these cases.

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

Republic’s Business

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

designations of United Express, Delta Connection, and American Eagle, including service out of the Codeshare Partners' respective hubs and focus cities. Republic's operational fleet consists of approximately 230 aircraft.

4. As of January 31, 2016, on a consolidated basis, Republic had assets and liabilities of \$3,561,000,000 and \$2,971,000,000 (unaudited). For the year ended December 31, 2015, on a consolidated basis, Republic had operating revenue of \$1,343,900,000, operating expenses of \$1,259,200,000, and a net loss of \$27,117,000 (unaudited). In 2015, Republic carried 21,900,000 passengers an average of 479 miles per passenger, with a passenger load factor of 79.2%.

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

Jurisdiction

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

Relief Requested

7. By this motion, pursuant to sections 105(a), 363(b), 503(b), and 507(a) of the Bankruptcy Code, Republic seeks entry of an order (i) authorizing, but not directing, Republic to pay those prepetition charges owed to Shippers, Warehousemen, and Other Lien Claimants (each as defined below, and collectively, the "Lien Claimants") that Republic determines, in the exercise of its business judgment, to be necessary or appropriate to obtain the release of supplies, merchandise, goods, tools, equipment, components, materials, or other items

(collectively, the “Goods”) in transit or otherwise held by any Lien Claimants, (ii) requiring, as a condition to payment of such charges, that the respective Lien Claimants take all actions necessary to remove any liens on the related Goods, and (iii) authorizing, but not directing, Republic to pay prepetition customs duties, import-related taxes, and other incidental import and related expenses and charges, including without limitation, the fees charged by the Customs Brokers (collectively, “Customs Duties”) as Republic determines, in the exercise of its business judgment, to be necessary or appropriate to obtain Goods in transit and to satisfy related liens, if any and (iv) that this Court confirm the grant of administrative priority status to all undisputed obligations owing by Republic to third-party vendors and suppliers arising from the postpetition delivery of Goods ordered prior to the Commencement Date and confirm Republic’s authorization to pay such obligations in the ordinary course of business. Republic estimates that as of the Commencement Date, the aggregate amount of approximately \$3,590,000 is owed (i) to Lien Claimants for Goods in their possession or control and (ii) for Customs Duties, all of which is due within thirty days after the Commencement Date.

8. Republic also requests that the Court authorize and direct the banks and other financial institutions at which the Debtors maintain disbursement accounts to receive, process, honor, and pay, at Republic’s direction, to the extent of funds on deposit or otherwise available, any and all checks drawn or automatic or other electronic fund transfers requested or to be requested by Republic relating to the foregoing. Republic seeks authority to issue new postpetition checks, or effect new fund transfers, on account of such claims to replace any prepetition checks or electronic fund transfer requests that may be lost, dishonored, or rejected as a result of the commencement of these chapter 11 cases. A proposed form of order granting the relief requested herein on an interim basis is annexed hereto.

Shippers and Warehousemen

9. In operating its business, Republic uses and makes payments to domestic and foreign commercial common carriers, movers, shippers, freight forwarders and consolidators, delivery services, postal services, shipping auditing services, distributors, and other third-party service providers (collectively, the “Shippers”) to ship, transport, store, and otherwise facilitate the movement of Goods through established national and international distribution networks, as well as to third-party warehouses (the “Warehousemen”) to store Goods in transit (such payments, the “Shipping and Warehousing Charges”).

10. The services provided by the Shippers and Warehousemen are critical to Republic’s day-to-day operations. At any given time, there are numerous shipments en route to and from various locations. Therefore, certain Shippers and Warehousemen currently possess Goods that are vital to Republic’s operations.

11. Because of the commencement of these chapter 11 cases, certain Shippers and Warehousemen that hold such Goods for delivery may refuse to release the Goods pending receipt of payment for their prepetition services. Indeed, under some state laws, a Shipper or Warehouseman may have a lien on the Goods in its possession to secure the charges or expenses incurred for their transportation or storage.² Additionally, pursuant to section 363(e) of the Bankruptcy Code, the Shippers and Warehousemen, as bailees, may be entitled to adequate protection as holders of possessory liens.

2. For example, section 7-307 of the New York Uniform Commercial Code provides, in pertinent part that a “carrier has a lien on the goods covered by a bill of lading or on the proceeds thereof in its possession for charges after the date of the carrier’s receipt of the goods for storage or transportation, including demurrage and terminal charges, and for expenses necessary for preservation of the goods incident to their transportation reasonably incurred in their sale pursuant to law.”

12. Because delay in the shipment of Goods would disrupt Republic's operations and impede its reorganization efforts, it is imperative that Republic be authorized to pay any Shipping and Warehousing Charges, whether they arose prior to or after the Commencement Date, that Republic determines in its business judgment are necessary to pay to ensure the uninterrupted shipment and delivery of the Goods.

Other Lien Claimants

13. Republic routinely transacts business with a number of other third parties, including, without limitation, service technicians, building contractors, materialmen, and other service providers (the "Other Lien Claimants") that may be able to assert liens against Republic and its property if Republic fails to pay for the goods or services rendered.

14. Some Other Lien Claimants perform services for Republic, including aircraft and equipment repair. In order to maintain safety standards, flight schedules, and on-time performance, Republic must repair or replace aircraft parts and make on-the-spot repairs to aircraft on little or no notice. Any disruption in the flow of such parts or services would immediately affect on-time performance, a key to Republic's successful operations, causing Republic immediate and substantial economic harm and eroding its going concern value.

15. If amounts owed to the Other Lien Claimants are not paid, mechanics' or artisans' liens may be asserted or perfected against Republic's property notwithstanding the automatic stay imposed by section 362 of the Bankruptcy Code.³

16. To the extent any Other Lien Claimant has perfected a lien on any of Republic's property, or in Republic's estimation, could assert and perfect a lien, it is imperative

3. Republic does not concede that any liens described in this motion, including contractual liens, mechanics' liens, and statutory liens, are valid and expressly reserves the right to contest the extent, validity, perfection, or possible avoidance of all such liens.

that Republic be authorized to immediately pay such Other Lien Claimants—regardless of whether their claims arose prior to or after the Commencement Date—in order to secure the release of any such lien and Republic’s continued uninterrupted access to the goods and services provided by the Other Lien Claimants.

17. Republic proposes to pay the prepetition amounts owed to Lien Claimants that agree, to Republic’s satisfaction, to continue to provide Goods or services to Republic on terms no less favorable to Republic than those in effect prior to the Commencement Date or on such other terms individually agreed to between Republic and such Lien Claimant that Republic deems acceptable. Moreover, to the extent a Lien Claimant holds a mechanics’ lien, possessory lien, artisans’ lien, or similar lien on Republic’s property securing such claim, Republic proposes that the Lien Claimant must agree to take whatever action is necessary to remove such lien at the Lien Claimant’s sole expense.

18. Republic further proposes that if a Lien Claimant fails to comply with these conditions, then Republic may, in its discretion, and without further order of the Court, declare that: (i) the payment made to the Lien Claimant is a voidable postpetition transfer pursuant to section 549(a) of the Bankruptcy Code that Republic may recover from the Lien Claimant in cash or in goods (including by setoff against postpetition obligations) or (ii) the Lien Claimant shall immediately return the payment of its claim without giving effect to alleged setoff rights, recoupment rights, adjustments, or offsets of any type whatsoever, and the Lien Claimant’s claim shall be reinstated in an amount that will restore Republic and the Lien Claimant to their original positions as if the payment of the Lien Claimant’s claim had not been made.

Customs Duties

19. In the ordinary course of its business, Republic makes payments, itself and through third-party customs brokers (the “Customs Brokers”), of Customs Duties to the U.S. Customs and Border Protection Agency (the “U.S. Customs Service”) and to non-U.S. customs authorities in connection with the import or export of goods purchased from or delivered overseas (collectively, the “Imported/Exported Goods”). Republic relies on a number of Customs Brokers, as well as certain Shippers and Warehousemen to facilitate and assist it with this process. Republic pays certain of the Customs Brokers in advance, and others, after delivery.

20. The Imported/Exported Goods include components, parts, and equipment vital to Republic’s business operations that Republic are not readily obtainable from other suppliers. If Customs Duties are not timely paid, the U.S. Customs Service and non-U.S. customs authorities may demand liquidated damages, assess interest, or impose other sanctions, including by asserting liens against the Imported/Exported Goods under 19 C.F.R. § 141.1 (2005). Further, the Customs Brokers may, in some instances, assert shippers’ and warehousemen’s liens against the Imported/Exported Goods. Any liens or sanctions would be costly to Republic and its estates and inhibit Republic’s receipt of the Imported/Exported Goods. Accordingly, to facilitate continuous operations and avoid unnecessary costs and expenses, Republic requests authority to pay the Customs Duties.

Prepetition Orders

21. As of the Commencement Date, Republic had certain prepetition purchase orders (the “Prepetition Orders”) outstanding with various third-party vendors and suppliers (the “Vendors”) for Goods ordered by Republic that have not yet been delivered. These Vendors

may be concerned that, because Republic's obligations under the Prepetition Orders arose prior to the Commencement Date, such obligations will be treated as general unsecured claims in these chapter 11 cases. Accordingly, certain Vendors may refuse to provide Goods to the Debtors (or may recall shipments) purchased pursuant to the Prepetition Orders unless Republic issues substitute purchase orders postpetition or obtains an order of the Court (i) confirming that all undisputed obligations of Republic arising from the postpetition delivery of Goods subject to Prepetition Orders are afforded administrative expense priority status under section 503(b) of the Bankruptcy Code and (ii) confirming Republic's authorization to satisfy such obligations in the ordinary course of business.

22. As discussed, Republic depends upon on the timely delivery of Goods to operate its business. Any delay in the shipment or delivery of Goods could bring its operations to a halt. Further, the administrative burden of reissuing the Prepetition Orders would be significant and could delay the delivery of Goods necessary to operate Republic's business. Although it is difficult to estimate the total amount due and owing under the Prepetition Orders for Goods that are not scheduled to be delivered until after the Commencement Date, Republic submits that the total amount to be paid to the Vendors in connection therewith, if the relief requested herein is granted, is *de minimis* compared with the importance and necessity of the Goods.

**Request for Authority for Financial Institutions
to Honor and Process Related Checks and Transfers**

23. Republic requests that all banks and other financial institutions at which Republic maintains deposit accounts, including without limitation, the banks and financial institutions identified on Schedule 1 to the proposed order annexed hereto (collectively, the "Banks"), be authorized and directed to receive, process, honor, and pay, to the extent of funds

on deposit or otherwise available, all checks presented for payment, and to honor all automated or other electronic fund transfers requested or to be requested, related to the claims sought to be paid hereunder, regardless of whether the checks were presented or fund transfers requested, before or after the Commencement Date.

The Relief Requested Should Be Granted

24. Republic submits that the Court has authority pursuant to sections 105(a), 363, 503(b), and 507(a) of the Bankruptcy Code to grant the relief requested.

25. Section 363(b)(1) of the Bankruptcy Code provides that “[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” To approve the use of a debtor’s assets outside the ordinary course of business pursuant to section 363(b), “the debtor must articulate some business justification, other than the mere appeasement of major creditors.” *See In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989).

26. This business judgment rule is satisfied where “the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company.” *Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (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)), *appeal dismissed*, 3 F.3d 49 (2d Cir. 1993). “Where 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 v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986). Courts in this District consistently have declined to interfere with corporate decisions absent a showing of bad faith,

self-interest, or gross negligence, and have upheld a board's decisions as long as such decisions are attributable to any "rational business purpose." *Integrated*, 147 B.R. at 656 (quoting *CRTF Corp. v. Federated Dep't Stores*, 683 F. Supp. 422, 436 (S.D.N.Y. 1988)).

27. The relief requested also is authorized by section 105(a) of the Bankruptcy Code. Section 105(a) empowers the Court to "issue any order, process, or judgment that is necessary or appropriate" to carry out the provisions of the Bankruptcy Code. 11 U.S.C. § 105(a); see *Schwartz v. Aquatic Dev. Grp., Inc. (In re Aquatic Dev. Grp., Inc.)*, 352 F.3d 671, 680 (2d Cir. 2003) (Straub, J., concurring) ("[I]t is axiomatic that bankruptcy courts are 'courts of equity, empowered to invoke equitable principles to achieve fairness and justice in the reorganization process.'" (citation omitted). Here, the relief requested is necessary to carry out the provision discussed above and to meet the duties ascribed to Republic in section 1107(a) of the Bankruptcy Code, which "contains an implied duty of the debtor-in-possession" to act as a fiduciary to "protect and preserve the estate, including an operating business' going-concern value," on behalf of the debtor's creditors and other parties in interest. *In re CEI Roofing, Inc.*, 315 B.R. 50, 59 (Bankr. N.D. Tex. 2004) (quoting *In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002)); see also *Unofficial Comm. of Equity Holders v. McManigle (In re Penick Pharm. Inc.)*, 227 B.R. 229, 233 (Bankr. S.D.N.Y. 1998) ("[U]pon filing its petition, the Debtor became debtor in possession and, through its management . . . was burdened with the duties and responsibilities of a bankruptcy trustee.").

28. In a long line of well-established cases, courts consistently have permitted postpetition payment of prepetition obligations where necessary to preserve or enhance the value of a debtor's estate for the benefit of all creditors. See, e.g., *In re Fin. News Network, Inc.*, 134 B.R. 732, 735-36 (Bankr. S.D.N.Y. 1991) ("[A] bankruptcy court may allow pre-plan payments

of prepetition obligations where such payments are critical to the debtor’s reorganization.”); *Ionosphere*, 98 B.R. at 175 (citing *Miltenberger v. Logansport, C&S W.R. Co.*, 106 U.S. 286, 312 (1882) (payment of pre-receivership claim before reorganization permitted to prevent stoppage of “indispensable business relations”)); *Mich. Bureau of Workers’ Disability Comp. v. Chateaugay Corp. (In re Chateaugay Corp.)*, 80 B.R. 279, 285-86 (S.D.N.Y. 1987) (approving lower court order authorizing payment of prepetition wages, salaries, expenses, and benefits).

29. This “doctrine of necessity” functions in a chapter 11 reorganization as a mechanism by which the Court can exercise its equitable power to allow payment of critical prepetition claims not explicitly authorized by the Bankruptcy Code. See *In re Lehigh & New England Ry. Co.*, 657 F.2d 570, 581 (3d Cir. 1981) (quoting *In re Penn Cent. Transp. Co.*, 467 F.2d 100, 102 n.1 (3d Cir. 1972) (“[T]he ‘necessity of payment’ doctrine...[permits] immediate payment of claims of creditors where those creditors will not supply services or material essential to the conduct of the business until their pre-reorganization claims shall have been paid.”); *In re Boston & Me. Corp.*, 634 F.2d 1359, 1382 (1st Cir. 1980) (recognizing “existence of a judicial power to authorize trustees in reorganization to pay claims [for] goods and services indispensably necessary” to debtors’ continued operation); *In re Quality Interiors, Inc.*, 127 B.R. 391, 396 (“A general practice has developed . . . where bankruptcy courts permit the payment of certain pre-petition claims, pursuant to 11 U.S.C. § 105, where the debtor will be unable to reorganize without such payment.”); *In re Structurelite Plastics Corp.*, 86 B.R. 922, 931 (Bankr. S.D. Ohio 1988) (“[A] per se rule proscribing the payment of pre-petition indebtedness may well be too inflexible to permit the effectuation of the rehabilitative purposes of the Code.”). The rationale for the doctrine of necessity is consistent with the paramount goal of chapter 11 —

“facilitating the continued operation and rehabilitation of the debtor.” *Ionosphere*, 98 B.R. at 176.

30. The critical need for the continued receipt and distribution of Goods that Lien Claimants may hold on the Commencement Date or assert liens against amply justifies the relief sought herein. The prompt payment to the Lien Claimants and satisfaction of any liens asserted against Republic’s property are critical to the orderly and efficient operation of Republic’s business and an exercise of sound business judgment.

31. Furthermore, certain of the Lien Claimants delivered Goods in the ordinary course to Republic within the twenty days before the Commencement Date and are entitled to administrative expense priority pursuant to section 503(b)(9) of the Bankruptcy Code. Payment to any Lien Claimants on account of such deliveries at the onset of these chapter 11 cases, therefore, merely accelerates the timing of payment and not the ultimate treatment of such claims. Additionally, all creditors will benefit from the seamless transition of Republic’s operations into chapter 11. Indeed, the Bankruptcy Code does not prohibit a debtor from paying such administrative claims prior to confirmation. As administrative expenses incurred in the ordinary course of business, Republic may pay such amounts in accordance with its business judgment pursuant to section 363(c)(1) of the Bankruptcy Code.

32. It is also critical that Republic be authorized to continue to pay the Customs Duties. Any delay in payment could result in the Customs Brokers, the U.S. Customs Service, or non-U.S. customs authorities asserting liens against the Imported/Exported Goods or imposing fines, which would impact delivery of the Goods and significantly interfere with Republic’s operations.

33. A substantial portion, if not all, of the Customs Duties sought to be paid hereunder would be entitled to priority pursuant to section 507(a)(8)(F) of the Bankruptcy Code. Section 507(a)(8)(F), in pertinent part, affords eighth priority in payment to the allowed unsecured claims of governmental units for:

(F) a customs duty arising out of the importation of merchandise –

- (i) entered for consumption within one year before the date of the filing of the petition;
- (ii) covered by an entry liquidated or reliquidated within one year before the date of the filing of the petition; or
- (iii) entered for consumption within four years before the date of the filing of the petition but unliquidated on such date, if the Secretary of the Treasury certifies that failure to liquidate such entry was due to an investigation pending on such date into assessment of antidumping or countervailing duties or fraud, or if information needed for the proper appraisalment or classification of such merchandise was not available to the appropriate customs officer before such date.

11 U.S.C. § 507(a)(8). As priority claims, under a chapter 11 plan the Customs Duties must be paid in full before distributions are made to holders of general unsecured claims. Accordingly, the proposed relief most likely will affect only the timing of the payment of the Customs Duties, and therefore, will not prejudice the rights of general unsecured creditors.

34. Pursuant to section 503(b)(1)(A) of the Bankruptcy Code, obligations that arise in connection with the postpetition delivery of necessary goods and services are afforded administrative priority status. *See, e.g., Frito-Lay, Inc. v. LTV Steel Co. (In re Chateaugay Corp.)*, 10 F.3d 944, 956 (2d Cir. 1993) (“a claim will be afforded priority ‘only to the extent that the consideration supporting the claimant’s right to payment was both supplied to and beneficial to the debtor-in-possession in the operation of the business’”) (quoting *Trustees of Amalgamated Ins. Fund v. McFarlin’s, Inc.*, 789 F.3d 98, 101 (2d Cir. 1986); *In re Blockbuster*

Inc., Case No. 10-14997, 2010 WL 5559538, at *3 (Bankr. S.D.N.Y. Oct. 27, 2010) (final order ruling that the “Debtors’ undisputed obligations . . . that arise from the postpetition delivery of materials, goods, and services that were ordered in the prepetition period shall have administrative expense priority status pursuant to section 503(b) of the Bankruptcy Code.”). Thus, the granting of the relief requested herein with respect to the Prepetition Orders will not provide the Vendors with any greater priority than they otherwise would have if the relief were not granted, and will not prejudice any other party in interest.

35. Moreover, Republic’s satisfaction of undisputed obligations owed to Vendors in respect of the Prepetition Orders is consistent with its customary practices and thus also authorized under section 363(c)(1) of the Bankruptcy Code, which provides that a debtor in possession “may use property of the estate in the ordinary course of business without notice or a hearing.” Without the support of these Vendors, Republic will incur significant costs and lose valuable business relationships to the detriment of all parties in interest.

36. Finally, with respect to payments under Republic’s Prepetition Orders, the relief requested herein will not alter any Vendor’s position in the case; rather, the relief will provide Vendors with assurance of payment and thus avoid potential disruption of Republic’s operations. As discussed, any delay in the shipment or delivery of Goods could cause significant harm in that regard. Further, absent the relief requested herein, Republic may be required to expend substantial time and effort reissuing the Prepetition Orders. The disruption to the continuous flow of Goods that would be caused by this administrative burden could seriously impact Republic’s ability to operate its business.

37. Based upon the foregoing, the relief requested herein is essential, appropriate, and in the best interest of Republic's estates, creditors, and all parties in interest, and therefore, should be granted.

Reservation of Rights

38. Nothing contained herein is intended to be or shall be construed as (a) an admission as to the validity or priority of any claim against Republic, (b) a waiver of Republic's or any appropriate party in interest's rights to dispute any claim, or (c) an approval or assumption of any agreement, contract, program, policy, or lease under section 365 of the Bankruptcy Code. Likewise, if the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended to be and should not be construed as an admission to the validity or priority of any claim or a waiver of Republic's rights to dispute such claim subsequently.

39. Finally, any payments made by Republic in respect of the Prepetition Orders should not be deemed to constitute a prepetition assumption or adoption of any related agreement pursuant to section 365 of the Bankruptcy Code. Republic reserves all of their rights under the Bankruptcy Code with respect thereto.

Fed. R. Bankr. P. 6003 Is Satisfied

40. Fed. R. Bankr. P. 6003 provides that to the extent "relief is necessary to avoid immediate and irreparable harm," a Bankruptcy Court may approve a motion to "pay all or part of a claim that arose before the filing of the petition" prior to twenty-one days after the Commencement Date. As described herein the timely receipt of Goods and services are an integral part of Republic's business. Failure to satisfy the related claims, including Customs Duties, could subject Republic to a potential cessation of operations to the detriment of all parties in interest. Accordingly, Republic submits that the relief requested herein is necessary to avoid immediate and irreparable harm, and therefore, rule 6003 is satisfied.

Waiver of Fed. R. Bankr. P. 6004(a) and 6004(h)

41. To implement the foregoing immediately, Republic seeks a waiver of the notice requirements under Fed. R. Bankr. P. 6004(a) and the fourteen-day stay of an order authorizing the use, sale, or lease of property under rule 6004(h).

Notice

42. Notice of this motion is being provided to (i) the Office of the United States Trustee for the Southern District of New York, (ii) the holders of the ten largest secured claims against Republic (on a consolidated basis), (iii) the holders of the forty largest unsecured claims against Republic (on a consolidated basis), (iv) the attorneys for the agents under Republic's prepetition revolving credit facilities, (v) the attorneys for Republic's Codeshare Partners, (vi) the International Brotherhood of Teamsters, (vii) the Securities and Exchange Commission, (viii) the Internal Revenue Service, (ix) the Office of the United States Attorney for the Southern District of New York, and (x) the Banks. Republic submits that, in view of the facts and circumstances, such notice is sufficient and no other or further notice need be given.

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

WHEREFORE Republic respectfully requests (i) entry of an order substantially in the form annexed hereto granting the relief requested herein on an interim basis, (ii) entry of an order granting the relief requested herein on a final basis, and (iii) such other and further relief as is just.

Dated: New York, New York
February 25, 2016

/s/ Bruce R. Zirinsky

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

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

*Proposed Attorneys for the Debtors and
Debtors in Possession*

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

-----x

In re : **Chapter 11 Case No.**
REPUBLIC AIRWAYS HOLDINGS INC., et al., : **16-_____ (___)**
Debtors.¹ : **(Jointly Administered)**

-----x

INTERIM ORDER PURSUANT TO 11 U.S.C. §§ 105(a), 363(b), 503(b) & 507(a)
(i) AUTHORIZING, BUT NOT DIRECTING, DEBTORS TO PAY CERTAIN
PREPETITION (a) CHARGES OF SHIPPERS, WAREHOUSEMEN, AND OTHER LIEN
CLAIMANTS AND (b) CUSTOMS DUTIES, (ii) GRANTING ADMINISTRATIVE
EXPENSE STATUS FOR CERTAIN GOODS DELIVERED POSTPETITION, AND
(iii) AUTHORIZING AND DIRECTING FINANCIAL INSTITUTIONS
TO HONOR AND PROCESS RELATED CHECKS AND TRANSFERS

A hearing having been held on _____, 2016 (the "Hearing"), to consider the motion, dated February 25, 2016 (the "Motion"),² of Republic Airways Holdings Inc. ("RAH"), and certain of its wholly-owned direct and indirect subsidiaries, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively with RAH, "Republic" or the "Debtors"), pursuant to sections 105(a), 363(b), and 503(b), and 507(a) of title 11, United States Code (the "Bankruptcy Code"), for entry of an order (i) authorizing, but not directing, Republic to pay, in its discretion, (a) the prepetition claims of certain Lien Claimants, including Shippers, Warehousemen, and Other Lien Claimants and (b) Customs Duties, (ii) granting administrative status to the claims related to certain Goods ordered prepetition but delivered to Republic

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

2. Capitalized terms not otherwise herein defined shall have the meanings ascribed to them in the Motion.

postpetition, and (iii) authorizing and directing the banks and financial institutions at which Republic maintains disbursement accounts, including but not limited to, those identified on Schedule 1 hereto (collectively, the “Banks”) to pay, honor, and process related checks and automated and other electronic fund transfers with respect to the foregoing, all as more fully set forth in the Motion; and the Declaration of Bryan K. Bedford Pursuant to Local Bankruptcy Rule 1007-2 having been filed with the Court contemporaneously with the Motion (the “Bedford Declaration”); and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and Amended Standing Order of Reference M-431, dated January 31, 2012 (Preska, C.J.); and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and sufficient notice of the Motion having been provided to (i) the Office of the United States Trustee for the Southern District of New York, (ii) the holders of the ten largest secured claims against Republic (on a consolidated basis), (iii) the holders of the forty largest unsecured claims against Republic (on a consolidated basis), (iv) the attorneys for the agents under Republic’s prepetition revolving credit facilities, (v) the attorneys for Republic’s Codeshare Partners, (vi) the International Brotherhood of Teamsters, (vii) the Securities and Exchange Commission, (viii) the Internal Revenue Service, (ix) the Office of the United States Attorney for the Southern District of New York, and (x) the Banks (collectively, the “Notice Parties”), and it appearing that no other or further notice need be given; and upon the Motion, the papers in support thereof and the responses thereto, if any, the Bedford Declaration, the record of the Hearing, and all of the proceedings had before the Court; and the Court having found and determined that the relief sought in the Motion is necessary to avoid immediate and irreparable harm to Republic and its

estates, as contemplated by Fed. R. Bankr. P. 6003, and is in the best interests of Republic, its estates, creditors, and all parties in interest, and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is

ORDERED that the Motion is granted on an interim basis, as provided herein; and it is further

ORDERED that, pursuant to sections 105(a), 363(b), and 503(b) of the Bankruptcy Code, Republic is authorized, but not directed, to pay obligations owed to Lien Claimants, including, without limitation, Shippers, Warehousemen, and Other Lien Claimants, whether relating to the period before or after the Commencement Date, as Republic determines, in the exercise of its business judgment, to be necessary or appropriate to obtain the release or delivery of Goods to Republic (which may include the payment of claims under section 503(b)(9) of the Bankruptcy Code) upon such terms and in the manner provided in this Order and the Motion; provided that prior to a final hearing to consider the relief requested in the Motion (the "Final Hearing") the amount paid with respect to such obligations shall not exceed the aggregate amount of \$3,590,000; and it is further

ORDERED that, as a condition to Republic's payment of any obligations to a Lien Claimant which are secured by a mechanics' lien, possessory lien, artisans' lien, or similar lien on Republic's Goods or other property, the Lien Claimant shall agree to (a) continue to supply Goods or services to Republic on terms no less favorable to Republic those in effect prior to the Commencement Date or on such other terms individually agreed to between Republic and such Lien Claimant that Republic deems acceptable and (b) take whatever action is necessary to remove such lien at the Lien Claimant's sole expense; and it is further

ORDERED that if a Lien Claimant (a) has received payment of its claim and thereafter refuses to continue to supply Goods or services to Republic on terms no less favorable to Republic those in effect prior to the Commencement Date or on such other terms individually agreed to between Republic and such Lien Claimant that Republic deems acceptable or (b) that holds a mechanics' liens, possessory lien, artisans' lien, or similar lien on Republic's Goods or other property securing its claim, fails to take whatever action is necessary to remove such lien at the Lien Claimant's sole expense, then in the case of either (a) or (b), Republic may, in its discretion, declare that (x) the payment of the Lien Claimant's claim is a voidable postpetition transfer pursuant to section 549(a) of the Bankruptcy Code that Republic may recover in cash or in goods from such Lien Claimant (including by setoff against postpetition obligations) or (y) the Lien Claimant shall immediately return the payment of its claim without giving effect to alleged setoff rights, recoupment rights, adjustments, or offsets of any type whatsoever, and the claim shall be reinstated in such an amount so as to restore Republic and the Lien Claimant to their original positions as if no payment of the claim had been made; and it is further

ORDERED that Republic, any third parties acting as its Customs Brokers, and their agents are hereby authorized to make all payments with respect to Customs Duties, including related fees, whether relating to the period prior to or after the Commencement Date; and it is further

ORDERED that the undisputed obligations Republic arising under the Prepetition Orders are afforded administrative expense priority status pursuant to section 503(b)(1)(A) of the Bankruptcy Code; and it is further

ORDERED that, pursuant to section 363(c)(1) of the Bankruptcy Code, Republic is authorized to pay in the ordinary course of its business all undisputed obligations arising from

the postpetition delivery or shipment by Vendors of Goods under Prepetition Orders consistent with their customary practice; and it is further

ORDERED that nothing herein or in the Motion shall be construed as to limit, or in any way affect, Republic's ability to dispute or contest the amount of or basis for any claims against Republic arising in connection with the Prepetition Orders; and it is further

ORDERED that the Banks are authorized and directed to receive, process, honor, and pay, at Republic's direction, to the extent of funds on deposit or otherwise available therefor, any and all checks drawn or electronic fund transfers requested or to be requested by Republic in respect of any (a) obligations to Lien Claimants, (b) Customs Duties, or (c) Prepetition Orders, in each case whether relating to the period prior to or after the Commencement Date; and it is further

ORDERED that Republic is authorized, but not directed, to issue new postpetition checks, or effect new electronic fund transfers, on account of any payments made hereunder to replace any prepetition checks or electronic fund transfer requests that may be lost or dishonored or rejected as a result of the commencement of Republic's chapter 11 cases; and it is further

ORDERED that nothing contained in this Order or in the Motion, and no payments made pursuant to this Order are intended to be or shall be construed as (a) an admission as to the validity, priority, or perfection of any claim or lien against Republic or its property, (b) a waiver of Republic's or any appropriate party in interest's rights to avoid or dispute any claim or lien against Republic or its property, or (c) an approval or assumption of any agreement, contract, program, policy, or lease under section 365 of the Bankruptcy Code. Likewise any payment made pursuant to this Order is not intended to be and shall not be

construed as an admission to the validity, priority, or amount of any claim or a waiver of the Debtors' rights to dispute such claim subsequently; and it is further

ORDERED that notwithstanding entry of this Order, nothing herein shall create, nor is intended to create, any rights in favor of or enhance the status of any claim held by, any party; and it is further

ORDERED that nothing in the Motion or this Order shall be deemed to authorize Republic to accelerate any payments not otherwise due prior to the date of the hearing to consider entry of an order granting the relief requested in the Motion on a final basis (the "Final Hearing"); and it is further

ORDERED that Fed. R. Bankr. P. 6003(b) has been satisfied; and it is further

ORDERED that the requirements set forth in Fed. R. Bankr. P. 6004(a) are waived; and it is further

ORDERED that pursuant to Fed. R. Bankr. P. 6004(h), the terms and provisions of this Order shall be effective and enforceable immediately upon its entry; and it is further

ORDERED that within three (3) business days after entry of this Order, Republic shall serve a copy hereof on each of the Notice Parties; and it is further

ORDERED that the Final Hearing on the Motion shall be held on _____, **2016** at __:___.m. (**Eastern Time**), and any objections or responses to the Motion and entry of an order granting the relief requested on a final basis shall be in writing, filed with the Court in accordance with local rules and orders of the Court, and served upon (i) the proposed attorneys for the Debtors, Zirinsky Law Partners PLLC, 375 Park Avenue, Suite 2607, New York, New York (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 Ramsey Chamie, Esq. (ramsey.chamie@hugheshubbard.com)) and (ii) the Notice Parties, in each case so as to be received no later than at **4:00 p.m. (Eastern Time) on _____, 2016**; and it is further

ORDERED that this Order is effective only from the date of entry through this Court's disposition of the Motion on a final basis at or after the Final Hearing; provided, that the Court's ultimate disposition of the Motion on the final basis shall not impair or otherwise affect any action taken pursuant to this Order; and it is further

ORDERED that Republic is authorized to take all steps necessary to carry out this Order; and it is further

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

Dated: New York, New York
_____, 2016

United States Bankruptcy Judge

Schedule 1

Banks and Other Financial Institutions

Entity	Bank	Acct Last 4	Type	Cur.
Republic Airways Holdings Inc.	Bank of America	9785	Operating	USD
Republic Airways Holdings Inc.	Bank of America	1560	Accounts Payable	USD
Republic Airways Holdings Inc.	Bank of America	9670	Manual Payroll	USD
Republic Airways Holdings Inc.	Bank of America	7605	LC Restricted Cash	USD
Republic Airways Holdings Inc.	Bank of America	3476	Securities Custody	USD
Republic Airline Inc.	Bank of America	2600	Operating	USD
Republic Airline Inc.	Bank of America	1586	Accounts Payable	USD
Republic Airline Inc.	Bank of America	3160	Manual Payroll	USD
Shuttle America Corporation	Bank of America	3814	Operating	USD
Shuttle America Corporation	Bank of America	7108	Accounts Payable	USD
Shuttle America Corporation	Bank of America	9819	Manual Payroll	USD
Shuttle America Corporation	Bank of America (Canada)	8207	Operating	CAD
Shuttle America Corporation (Chautauqua)	Bank of America	4556	Operating	USD
Midwest Air Group, Inc.	Bank of America	9120	Operating	USD
Republic Airline Inc.	JPMorgan	1038	Operating	USD
Republic Airways Holdings Inc.	JPMorgan	1038	Operating	USD
Shuttle America Corporation	JPMorgan	6755	Operating	USD
Republic Airways Services, Inc.	JPMorgan	3380	Operating	USD
Republic Airways Holdings Inc.	JPMorgan	0690	Investments Clearing	
Republic Airline Inc.	US Bank	7576	ACH	USD
Shuttle America Corporation	US Bank	7865	ACH	USD
Republic Airways Holdings Inc.	Deutsche Bank	0741	Irrevocable Trust	USD
Republic Airways Holdings Inc.	Key Bank	0496	Operating	USD
Republic Airways Holdings Inc.	Key Bank	4121	Accounts Payable	USD
Republic Airways Holdings Inc.	Key Bank	4139	Manual Payroll	USD
Republic Airline Inc.	Key Bank	0520	Operating	USD
Republic Airline Inc.	Key Bank	4105	Accounts Payable	USD
Republic Airline Inc.	Key Bank	4113	Manual Payroll	USD
Shuttle America Corporation	Key Bank	0553	Operating	USD
Shuttle America Corporation	Key Bank	4147	Accounts Payable	USD
Shuttle America Corporation	Key Bank	4154	Manual Payroll	USD
Shuttle America Corporation	Key Bank	0835	Operating	CAD
Midwest Air Group, Inc.	Key Bank	0587	Operating	USD