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

**In re:**

**SPIRIT AIRLINES, INC.,**

**Debtor.<sup>1</sup>**

**Chapter 11**

**Case No. 24-11988 (\_\_\_)**

**MOTION OF THE DEBTOR FOR ENTRY OF INTERIM AND FINAL  
ORDERS (I) PROHIBITING UTILITIES FROM ALTERING, REFUSING, OR  
DISCONTINUING SERVICE, (II) DEEMING UTILITIES ADEQUATELY  
ASSURED OF FUTURE PERFORMANCE, AND (III) ESTABLISHING PROCEDURES  
FOR DETERMINING REQUESTS FOR ADDITIONAL ADEQUATE ASSURANCE**

Spirit Airlines, Inc. (the “**Debtor**” and, together with its affiliates, collectively, the “**Debtors**,”<sup>2</sup> “**Spirit**,” or the “**Company**”), the debtor and debtor in possession in the above-captioned chapter 11 case (the “**Chapter 11 Case**”), hereby files this *Motion of the Debtor for*

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<sup>1</sup> The last four digits of the Debtor’s employer identification number is 7023. The Debtor’s mailing address is 1731 Radiant Drive, Dania Beach, FL 33004.

<sup>2</sup> Capitalized terms used but not immediately or otherwise defined herein shall have the meanings ascribed to them elsewhere herein, in the First Day Declaration, or in the RSA (including the Plan), as applicable. As further described in paragraph 9 of the First Day Declaration, the Debtor expects that its four subsidiaries—Spirit Finance Cayman 1 Ltd., Spirit Finance Cayman 2 Ltd., Spirit Loyalty Cayman Ltd., and Spirit IP Cayman Ltd.—will file their own chapter 11 petitions in the near term, at which time Spirit will request that the Court (a) jointly administer all five chapter 11 cases (collectively, the “**Chapter 11 Cases**”) and (b) extend any relief granted with respect to the First Day Pleadings (including this Motion) to such subsidiaries. Notwithstanding that as of the date hereof there is only one Spirit debtor and only one chapter 11 case, the Debtor may refer herein to all five Spirit entities as “**Debtors**,” solely for ease of reference. Accordingly, and for the avoidance of doubt, the background information herein and the bases for the relief requested herein apply to all five Spirit entities unless otherwise indicated.

*Entry of Interim and Final Orders (I) Prohibiting Utilities From Altering, Refusing, or Discontinuing Service, (II) Deeming Utilities Adequately Assured of Future Performance, and (III) Establishing Procedures for Determining Requests for Additional Adequate Assurance* (this “**Motion**”). This Motion is supported by the *Declaration of Fred Cromer in Support of the Chapter 11 Proceedings and First Day Pleadings* (the “**First Day Declaration**”) filed contemporaneously herewith and incorporated herein by reference. In further support of this Motion, the Debtor respectfully states as follows:

**Relief Requested**

1. By this Motion, and pursuant to sections 105 and 366 of title 11 of the United States Code (the “**Bankruptcy Code**”) and Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), the Debtor seek entry of interim and final orders, substantially in the forms attached hereto as **Exhibit B** and **Exhibit C** (the “**Proposed Orders**”), (a) prohibiting the Utilities (as defined below) from altering, refusing, or discontinuing any Utility Services (as defined below) on account of prepetition amounts outstanding or on account of any perceived inadequacy of the Debtors’ Proposed Adequate Assurance (as defined below), (b) determining that the Debtors’ Proposed Adequate Assurance provides the Utilities with adequate assurance of payment within the meaning of section 366 of the Bankruptcy Code, and (c) approving the Adequate Assurance Procedures (as defined below) for resolving requests by Utilities for additional or different assurances beyond those contemplated in this Motion.

**Jurisdiction and Venue**

2. The United States Bankruptcy Court for the Southern District of New York (the “**Court**”) has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference M-431*, dated January 31, 2012 (Preska, C.J.).

3. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b). The Debtors confirm their consent to the entry of a final order by the Court in connection with this Motion. Venue of the Chapter 11 Cases and related proceedings is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

### **Background**

#### **A. General Background**

4. On November 18, 2024 (the “**Petition Date**”), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Company remains in possession of its property and continues to operate and manage its businesses as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request has been made for the appointment of a trustee or examiner, and no statutory committee has been appointed in the Chapter 11 Cases.

5. Spirit is a leading ultra low-cost carrier committed to delivering value to its guests by offering an enhanced travel experience with flexible, affordable options. Spirit employs over 21,000 direct employees and independent contractors, and serves destinations throughout the United States, Latin America, and the Caribbean with one of the youngest and most fuel-efficient fleets in the United States.

6. Spirit commenced the Chapter 11 Cases to implement a comprehensive financial restructuring that, once effectuated, will eliminate approximately \$800 million of prepetition funded debt and provide the company with \$350 million of new equity capital upon emergence. The terms of the proposed restructuring are set forth in a restructuring support agreement (the “**RSA**”) among Spirit and the Consenting Stakeholders—who collectively hold approximately 80% of the debt to be restructured under the Plan, and over two thirds in amount of each of the Plan’s voting classes. This deleveraging and recapitalization promises to increase Spirit’s financial flexibility and fuel the Company’s ongoing initiatives to provide its Guests with enhanced travel

experiences and greater value. Importantly, the transactions memorialized in the RSA contemplate that Allowed Priority Claims and General Unsecured Claims against the Debtors will be paid in full or otherwise remain unimpaired (*i.e.*, “ride through” the Chapter 11 Cases).

7. Additional information about the events leading up to the Petition Date, the RSA, and the Debtors’ businesses, affairs, capital structure, and prepetition indebtedness can be found in the First Day Declaration.

#### **B. The Utilities and Services Provided**

8. In connection with the operation of their businesses and management of their properties,<sup>3</sup> the Debtors obtain utility services (collectively, “**Utility Services**”), including electricity, natural gas and propane, telephone, water, irrigation, sewage, telecommunications, waste removal and recycling, and other similar services from several utilities (as that term is used in section 366 of the Bankruptcy Code) (collectively, the “**Utilities**”). Attached hereto as **Exhibit A** (as may be supplemented from time to time, the “**Utilities List**”) is a nonexclusive list of Utilities that provide Utility Services to the Debtors as of the Petition Date.<sup>4</sup> The relief requested herein is for all Utilities providing Utility Services to the Debtors and is not limited to those listed on the Utilities List. The Debtors have made an extensive and good-faith effort to identify all Utilities that provide them Utility Services and to include them on the Utilities List. Nonetheless, the

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<sup>3</sup> Schedule 6 to the First Day Declaration contains a list of the facilities and properties from where Spirit operates its businesses. These facilities include airports Spirit serves, office space, hangars, and training facilities, among others.

<sup>4</sup> The inclusion of any entity on, as well as any omission of any entity from, the Utilities List is not an admission by the Debtors that such entity is, or is not, a “utility” within the meaning of section 366 of the Bankruptcy Code, and the Debtors reserve all rights with respect thereto.

Debtors reserve the right to supplement the Utilities List by filing a notice (a “**Supplemental Notice**”) with the Court later if necessary.<sup>5</sup>

9. The Debtors have established a good payment history with the Utilities, making payments on a regular and timely basis. In fact, to the best of the Debtors’ knowledge, there are no material defaults or arrearages with respect to each Debtor’s undisputed Utility Services invoices, other than payment interruptions that may be caused by the commencement of the Chapter 11 Cases. During the first six months of 2024, the Debtors paid an average of approximately \$2,130,000 per month on account of all Utility Services.

*Proposed Adequate Assurance*

10. The Debtors intend to pay all post-petition undisputed obligations owed to the Utilities in a timely manner and expects that they will have sufficient funds available from operations to permit them to do so. However, to ensure that they provide adequate assurance to the Utilities as required under section 366(c) of the Bankruptcy Code, the Debtor proposes to deposit<sup>6</sup> into a segregated account (the “**Utility Deposit Account**”) for the benefit of the Utilities an amount equal to two weeks of Utility Services, calculated as a historical average of the Utility Service spend over the first six months of 2024 (net of any existing deposits currently held by the Utilities) (the “**Adequate Assurance Deposit**”). The aggregate amount of the proposed Adequate Assurance Deposit is approximately \$1,070,000. The Adequate Assurance Deposit will be held

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<sup>5</sup> The Debtor will (a) serve the Supplemental Notice by first-class mail on all Utilities listed therein (to the extent there is any material deviation with respect to such Utility between the Utilities List and the Supplemental Notice) and (b) post the Supplemental Notice on the Debtor’s case information website located at <https://dm.epiq11.com/SpiritGoForward>. After service of any Supplemental Notice, affected Utilities shall have 7 calendar days from the date of service of such Supplemental Notice to file an objection in accordance with the Bankruptcy Rules, the Local Rules, and the Adequate Assurance Procedures.

<sup>6</sup> Section 366(c)(1)(A) of the Bankruptcy Code defines “assurance of payment” to mean, among other things, a cash deposit.

by the Debtors in the Utility Deposit Account for the benefit of the Utilities on the Utilities List during the pendency of the Chapter 11 Cases.

11. The Debtor proposes to deposit the Adequate Assurance Deposit in the Utility Deposit Account within 20 calendar days of entry of the interim Proposed Order. The amount allocated for, and payable to, each Utility shall be equal to the amount set forth on the Utilities List as to each Utility or as otherwise agreed by the Debtors and applicable Utility.

12. The portion of the Adequate Assurance Deposit attributable to each Utility shall be returned to the Debtors, without further Court order, upon the earlier of (a) the reconciliation and payment by the Debtors of the final invoice of such Utility in accordance with applicable non-bankruptcy law following the termination of Utility Services from such Utility, (b) the sale of all or substantially all of the Debtors' assets, (c) the effective date of a chapter 11 plan confirmed in the Chapter 11 Cases, or (d) the date upon which the Chapter 11 Cases are dismissed or converted to cases under chapter 7 of the Bankruptcy Code. If there are any outstanding disputes related to post-petition payments due between any Debtor and the applicable Utility, only the portion of the Adequate Assurance Deposit in excess of any disputed amounts shall be returned to such Debtor without further Court order.

13. The Debtor proposes that each Utility shall be deemed to have adequate assurance of payment within the meaning of section 366 of the Bankruptcy Code based on the Debtor providing the Proposed Adequate Assurance unless and until a Utility requests additional Adequate Assurance in accordance with the Adequate Assurance Procedures and either (a) the Debtors agree to grant additional Adequate Assurance or (b) the Court enters an order granting such request.

14. The Debtor submits that the Adequate Assurance Deposit, in conjunction with the Debtors' ability to pay for Utility Services out of operational cash flow (collectively, the "**Proposed Adequate Assurance**"), constitutes sufficient adequate assurance to each of the Utilities. Nonetheless, if any Utility believes that additional assurance is required, it may request such additional assurance solely pursuant to the following procedures (the "**Adequate Assurance Procedures**"):

- (a) The Debtors or their advisors will provide a copy of this Motion, the interim Proposed Order, and the final Proposed Order to each of the Utilities listed on the Utilities List within three business days after entry of the interim order by the Court.
- (b) If a Utility is not satisfied with the Proposed Adequate Assurance, it must serve a written request (a "**Request**") upon proposed counsel to the Debtors, Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, NY 10017, Attn: Marshall S. Huebner, Darren S. Klein, Christopher S. Robertson, and Moshe Melcer.
- (c) Each Request must set forth (i) the location(s) for which Utility Services are provided, (ii) the account number(s) for such location(s), (iii) the outstanding balance for each account, and (iv) an explanation of why the Utility believes that the Proposed Adequate Assurance is not sufficient adequate assurance of future payment.
- (d) If a Debtor determines, in its sole discretion, that a Request or any consensual agreement reached in connection therewith is reasonable, such Debtor, without further order of the Court, may enter into agreements granting additional adequate assurance to the Utility serving such Request and, in connection with such agreements, provide the Utility with additional adequate assurance of payment, including cash deposits, prepayments, or other forms of security, with notice within 15 calendar days following entry into such agreement to the Office of the United States Trustee for the District of New York (the "**U.S. Trustee**") and counsel to any official committee appointed in the Chapter 11 Cases.
- (e) If a Debtor determines that a Request is unreasonable, then it shall, within 30 calendar days after receipt of such Request, or such longer period as may be agreed to between such Debtor and the Utility, file a motion (a "**Determination Motion**") pursuant to section 366(c)(3) of the Bankruptcy Code seeking a determination from the Court that the Proposed Adequate Assurance, plus any additional consideration offered by such Debtor, constitutes adequate assurance of payment. Pending notice and a hearing on the Determination Motion, the Utility that is the subject of the unresolved Request may not alter, refuse, or discontinue services to such Debtor.
- (f) If an undisputed amount relating to Utility Services provided post-petition by a Utility is unpaid, and remains unpaid beyond any applicable grace period, such Utility may

request a disbursement from the Utility Deposit Account in such undisputed unpaid amount by giving notice to (i) proposed counsel to the Debtors, Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, NY 10017, Attn: Marshall S. Huebner, Darren S. Klein, Christopher S. Robertson, and Moshe Melcer, Esq., (ii) counsel to the Ad Hoc Group of Senior Secured Noteholders, Akin Gump Strauss Hauer & Feld LLP, One Bryant Park, New York, NY 10036, Attn: Michael S. Stamer and Jason Rubin, (iii) the U.S. Trustee, 1 Bowling Green, New York, NY 10014, Attn: Shara Cornell (shara.cornell@usdoj.gov), Annie Wells (annie.wells@usdoj.gov), and Eric Bradford (eric.bradford@usdoj.gov), and (iv) counsel to any official committee of unsecured creditors appointed in the Chapter 11 Cases (collectively, the “**Utility Notice Parties**”). Such Debtor shall honor such request within 15 business days after the date the request is received by such Debtor, subject to the ability of such Debtor and any such requesting Utility to resolve any dispute regarding such request without further order of the Court. To the extent a Utility receives a disbursement from the Utility Deposit Account in accordance with this provision, the Debtors shall subsequently replenish the Utility Deposit Account in the amount so disbursed.

- (g) Absent compliance with the procedures set forth in this Motion and any order entered by the Court, the Debtors’ Utilities are prohibited from altering, refusing, or discontinuing service on account of any unpaid prepetition charges and are deemed to have received adequate assurance of payment in compliance with section 366 of the Bankruptcy Code.

#### **Basis for Relief**

15. To operate their businesses and preserve and maximize the value of their estates, the Debtors must, among other things, ensure the uninterrupted operation of their businesses and all properties, which depends on reliable delivery of power and other Utility Services. The Debtors could not manage or operate their businesses, or preserve the value of their estates, without continuous Utility Services. Should any Utility alter, refuse, or discontinue service, even for a brief period, the Debtors’ operations could be severely disrupted. The impact of this disruption on Spirit’s business operations and revenue would be extremely harmful and could jeopardize the value of the Debtors’ estates.

16. The relief requested herein would help ensure the Debtors’ continued and uninterrupted operations. Furthermore, the relief requested herein provides the Utilities with fair and orderly procedures for addressing requests for additional or different adequate assurance.



Without the Adequate Assurance Procedures, the Debtors could be forced to address numerous requests by the Utilities in a disorganized manner at a critical period in the Chapter 11 Cases and during a time when the Debtors' efforts could be more productively focused on continued operations, to preserve and maximize the value of their estates.

17. Section 366 of the Bankruptcy Code protects a debtor against the immediate termination of utility services after commencing its chapter 11 case. Under that section, a utility may not, during the first 20 days of a bankruptcy case, alter, refuse, or discontinue services to, or discriminate against, a debtor solely on the basis of the commencement of the case or the failure of the debtor to pay a prepetition debt. 11 U.S.C. § 366.<sup>7</sup> A utility may, however, alter, refuse, or discontinue service following such 20-day period, if the debtor has not furnished "adequate assurance of payment" for post-petition utility service obligations within the 20-day period. *Id.* Additionally, following a 30-day period after the commencement of a chapter 11 case, a utility may alter, refuse, or discontinue service if the debtor does not provide "adequate assurance" of payment for post-petition services in a form "satisfactory" to the utility, subject to the Court's review and approval following notice and a hearing. *Id.* The Bankruptcy Code restricts the factors a court may consider when determining whether an assurance of payment is adequate. Specifically, courts may not consider (a) the absence of a security deposit before a debtor's petition date, (b) the timeliness of a debtor's payments prior to the commencement of a debtor's chapter

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<sup>7</sup> Section 366 of the Bankruptcy Code applies to entities that are traditionally viewed as utilities, such as those that provide electricity, telephone service, or water, and to any entity that supplies services that cannot be readily obtained or replaced elsewhere, or can be obtained elsewhere with only through "crippling inconvenience." *See In re Darby*, 470 F.3d 573, 575 (5th Cir. 2006); *see also* 3 Collier on Bankruptcy ¶ 366.05 (16th 2024) ("[T]he fact that a regulated monopoly does not exist does not preclude a service from being considered a 'utility.'"). Despite the wide latitude afforded in determining those entities that constitute utilities under section 366 of the Bankruptcy Code, some of the companies listed on the Utilities List may also provide goods or services to the Debtors in a capacity other than that of a utility. With respect to any such goods or services, such companies are not entitled to adequate assurance under section 366 of the Bankruptcy Code. Moreover, the Debtors reserve the right to take, and are not foreclosed from taking, the position that any of the entities listed on the Utilities List are not utilities within the meaning of section 366 of the Bankruptcy Code.

11 case, or (c) the availability of an administrative expense priority when determining the amount of a deposit. *Id.*

18. While the Bankruptcy Code provides guidance as to the required nature of adequate assurance, a court retains the discretion to determine the amount of adequate assurance necessary or to change the fundamental requirement that assurance of payment must simply be adequate. *Compare* 11 U.S.C. § 366(b) (“On request of a party in interest and after notice and a hearing, the court may order reasonable modification of the amount of the deposit or other security necessary to provide adequate assurance of payment.”), *with* 11 U.S.C. § 366(c)(3)(A) (“On request of a party in interest and after notice and a hearing, the court may order modification of the amount of an assurance of payment under paragraph (2).”).

19. Courts construing section 366 of the Bankruptcy Code have long recognized that, in determining adequate assurance, a court is not required to give a utility the equivalent of a guaranty of payment, but must only determine that the utility is not subject to an unreasonable risk of nonpayment for post-petition services. *See In re Santa Clara Cir. W., Inc.*, 27 B.R. 680, 685 (Bankr. D. Utah 1982) (“[A]dequate assurance of payment does not mean guaranty of payment; but the Court must find that the utility is not subject to an unreasonable risk of future loss.” (*quoting In re George C. Frye Co.*, 7 B.R. 856, 858 (Bankr. D. Me. 1980))); *Va. Elec. & Power Co. v. Caldor, Inc.*, 117 F.3d 646, 650 (2d Cir. 1997) (“[A] bankruptcy court’s authority to ‘modify’ the level of the ‘deposit or other security,’ provided for under § 366(b), includes the power to require no ‘deposit or other security’ where none is necessary to provide a utility supplier with ‘adequate assurance of payment.’”); *In re Cir. City Stores, Inc.*, No. 08-35653, 2009 WL 4755253, at \*4 (Bankr. E.D. Va. Dec. 3, 2009) (“A debtor need not provide utility companies an absolute guarantee of payment.” (citing *In re Adelphia Bus. Sols, Inc.*, 280 B.R. 63, 80 (Bankr. S.D.N.Y.

2002))))); accord *In re Great Atl. & Pac. Tea Co., Inc.*, 2011 WL 5546954, at \*3 (S.D.N.Y. Nov. 14, 2011); *In re Crystal Cathedral Ministries* 454 B.R. 124, 131 (C.D. Cal. 2011); *In re New Rochelle Tel. Corp.*, 397 B.R. 633, 639 (Bankr. E.D.N.Y. 2008); *In re Steinebach*, 303 B.R. 634, 641 (Bankr. D. Ariz. 2004). Historically, whether a utility is subject to an unreasonable risk of nonpayment must be determined from the facts and circumstances of each case. See *In re Santa Clara Cirs. W.*, 27 B.R. at 685; *In re Adelphia Bus. Sols., Inc.*, 280 B.R. at 80 (citing *In re Keydata Corp.*, 12 B.R. 156, 158 (B.A.P. 1<sup>st</sup> Cir. 1981); *In re Utica Floor Maint., Inc.*, 25 B.R. 1010, 1016 (N.D.N.Y. 1982)); *In re Great Atl. & Pac. Tea Co. Inc.*, 2011 WL 5546954, at \*3. While section 366(c) of the Bankruptcy Code limits the factors a court may consider, determinations of adequate assurance remain within the Court's discretion. See *Id.*, at \*21 (“[T]he Bankruptcy Court had the discretion to choose among reasonable proposals.”).

20. In addition, section 105(a) of the Bankruptcy Code provides that the Court “may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a).

21. The Debtors believe that the Proposed Adequate Assurance and the Adequate Assurance Procedures are reasonable, satisfy the requirements of section 366 of the Bankruptcy Code, and are necessary for the Debtors to carry out their reorganization efforts. The Debtors anticipate having sufficient resources to pay, and intend to pay, any and all valid post-petition obligations for Utility Services in a timely manner. In addition, the Debtors' reliance on Utility Services for the operation of their businesses, and the preservation and maximization of their estates' value, provides them with a powerful incentive to stay current on their utility obligations. These factors, which the Court may (and should) consider when determining the amount of any adequate assurance payments, justify a finding that no adequate assurance payments are required

in the Chapter 11 Cases. Indeed, the Debtor respectfully submits that the Proposed Adequate Assurance is more than sufficient to assure the Utilities of future payment. In fact, courts in this jurisdiction routinely grant relief similar to that requested herein. *See, e.g., In re 2U, Inc.*, No. 24-11279 (MEW) (Bankr. S.D.N.Y. Sept. 5, 2024) [ECF No. 156]; *In re Acorda Therapeutics, Inc.*, No. 24-22284 (DSJ) (Bankr. S.D.N.Y. April 26, 2024) [ECF No. 106]; *In re GOL Linhas Aéreas Inteligentes S.A.*, No. 24-10118 (MG) (Bankr. S.D.N.Y. Jan. 29, 2024) [ECF No. 69]. The Debtor submits that the circumstances described herein warrant similar relief.

### **Debtors' Reservation of Rights**

22. Nothing contained herein is intended or should be construed as, or deemed to constitute, an agreement or admission as to the amount, priority, character, or validity of any claim against any Debtor on any grounds, a waiver or impairment of any Debtor's rights to dispute any claim on any grounds, or an assumption or rejection of any agreement, contract, or lease under section 365 of the Bankruptcy Code. Each Debtor expressly reserves its rights to contest any claims related to Utility Services under applicable bankruptcy and non-bankruptcy law. Likewise, if the Court grants the relief sought herein, any payment or transfer made pursuant to the Court's order is not intended, and should not be construed, as an admission as to the amount, priority, character, or validity of any claim or a waiver of any Debtor's rights to subsequently dispute such claim.

### **Satisfaction of Bankruptcy Rule 6003 and Waiver of Bankruptcy Rule 6004**

23. To the extent necessary, the Debtor respectfully submits that this Motion satisfies Bankruptcy Rule 6003(b), which provides that, "[e]xcept to the extent that relief is necessary to avoid immediate and irreparable harm, the court shall not, within 21 days after the filing of the petition, issue an order granting ... a motion to use, sell, lease, or otherwise incur an obligation regarding property of the estate, including a motion to pay all or part of a claim that arose before

the filing of the petition ....” Fed. R. Bankr. P. 6003. As set forth in this Motion and the First Day Declaration, the Debtors believe that (a) an orderly transition into chapter 11 is critical to preserve and maximize the value of the Debtors’ estates and (b) any delay in granting the relief requested herein could cause immediate and irreparable harm. Accordingly, the Debtor submits that the relief requested herein satisfies Bankruptcy Rule 6003.

24. To implement successfully the relief sought herein, the Debtor requests that the Court find that notice of the Motion is adequate under Bankruptcy Rule 6004(a) under the circumstances. The Debtor also requests that, to the extent applicable to the relief requested in this Motion, the Court waive the stay imposed by Bankruptcy Rule 6004(h), which provides that “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6004(h). As described above, the relief requested in this Motion is necessary for Spirit to operate its businesses without interruption and to preserve and maximize value for its estates and parties in interest. Accordingly, the Debtor respectfully submits that ample cause exists to justify the (a) finding that the notice requirements under Bankruptcy Rule 6004(a) have been satisfied and (b) waiving of the 14-day stay imposed by Bankruptcy Rule 6004(h), as the exigent nature of the relief sought herein justifies immediate relief.

#### **Notice**

25. Notice of this Motion will be provided to the following parties (or their counsel) (collectively, the “**Notice Parties**”): (a) the Office of the United States Trustee for the Southern District of New York; (b) those creditors holding the 20 largest unsecured claims against the Debtor’s estate; (c) the Securities and Exchange Commission; (d) the Internal Revenue Service; (e) the United States Attorney’s Office for the Southern District of New York; (f) the state

attorneys general for states in which the Debtor conducts business; (g) the Department of Transportation; (h) the Consenting Stakeholders; (i) the Prepetition Agents/Trustees; (j) the DIP Secured Parties; and (k) any other party that is identified on Spirit's master service list,<sup>8</sup> is entitled to notice under Rule 9013-1(b) of the Local Bankruptcy Rules for the Southern District of New York (the "**Local Rules**"), or has requested notice pursuant to Bankruptcy Rule 2002. A copy of this Motion and any order entered in respect thereto will also be made available on the Debtors' case information website located at <https://dm.epiq11.com/SpiritGoForward>. Based on the urgency of the circumstances surrounding this Motion and the nature of the relief requested herein, the Debtor respectfully submits that no other or further notice is required.

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<sup>8</sup> Accessible by visiting <https://dm.epiq11.com/SpiritGoForward>.

WHEREFORE, the Debtor respectfully requests that the Court enter the Proposed Orders, substantially in the forms attached hereto as **Exhibit B** and **Exhibit C**, granting the relief requested herein and such other and further relief as the Court deems just and proper.

Dated: November 18, 2024  
New York, New York

DAVIS POLK & WARDWELL LLP

/s/ Darren S. Klein  
450 Lexington Avenue  
New York, NY 10017  
Tel.: (212) 450-4000  
Marshall S. Huebner  
Darren S. Klein  
Christopher S. Robertson  
Moshe Melcer

*Proposed Counsel to the Debtor and Debtor in Possession*

**Exhibit A**

**Utilities List**



| Utility Provider                       | Account Number(s)   | Service (s)        | Mailing Address   | Proposed Adequate Assurance |
|--|---|--------------------|---|-----------------------------|
| Appraver LLC                           | C111561   | Telecom Services   | 1101 Gulf Breeze Parkway<br>Suite 200<br>Gulf Breeze, FL 32561-4858 | \$ 605                      |
| Arinc                                  | 121245; 122610; 123735; 123846; 124747  | Telecom Services   | 2551 Riva Rd<br>Annapolis, MD 21401-7461                            | \$ 116,002                  |
| Asri Aviation Spectrum Resources Inc   | R0830   | Telecom Services   | 180 Admiral Cochrane Dr #300<br>Annapolis, MD 21401                 | \$ 1,071                    |
| AT&T                                   | 1717867280605; 330165475; 4042090655001;<br>8310006302667; 8310007382515;<br>8310007414074; 8310007442618 | Telecom Services   | 208 S. Akard St.<br>Dallas, TX 75202                                | \$ 6,832                    |
| AT&T Mobility                          | 7294026   | Telecom Services   | 1025 Lenox Park Blvd NE<br>Atlanta, GA 30319-5309                   | \$ 13,803                   |
| Atl Communications                     | AUD05   | Telecom Services   | 30 N Gould St Ste 26740<br>Sheridan, WY 82801-6317                  | \$ 155                      |
| Atlantic City Electric                 | 55029759127   | Electric           | 10 S. Dearborn St., 54th Floor<br>Chicago, IL 60603                 | \$ 335                      |
| Bex Voice Data Communications          | SPIRITAIRBEX  | Telecom Services   | 19119 Rogers Road<br>Odessa, FL 33556                               | \$ 1,161                    |
| Boingo Wireless, Inc                   | 449004  | Telecom Services   | 10960 Wilshire Blvd Fl 23<br>Los Angeles, CA 90024-3809             | \$ 325                      |
| Centurylink                            | 309869479; 311345096; 87754219;<br>205328838; 5-CKK7GTGR; 5-HCKSGQSG;<br>5-VSC0HFBF; 5-ZKPLSFQG           | Telecom Services   | 100 CenturyLink Drive<br>Monroe, LA 71203                           | \$ 2,922                    |
| Cirion Technologies Latin America, LLC | 100013730; 5CG2SQGPT  | Telecom Services   | 801 Brickell Ave Ste 2400<br>Miami, FL 33131-4943                   | \$ 2,392                    |
| City Of Austin                         | SPIRITAUSTINB   | Telecom Services   | 3600 Presidential Blvd, Ste 411<br>Austin, TX 78719                 | \$ 43                       |
| City of Houston, Utilities             | 430230001223, 430132311217,<br>430191131183, 43023000122, 43013231121                                     | Natural Gas, Water | 611 Walker St.,<br>Houston, TX 77002                                | \$ 2,998                    |
| City Of Philadelphia Airport System    | 21110   | Telecom Services   | 9800 Ashton Road<br>Philadelphia, PA 19114                          | \$ 525                      |
| City Of Phoenix                        | 6605416   | Telecom Services   | Phoenix City Hall<br>200 W. Washington Street<br>Phoenix, AZ 85003  | \$ 102                      |
| Clearly IP Inc                         | ClearlyIPSpiritAirlines   | Telecom Services   | 3255 W Highview Dr<br>Appleton, WI 54914-5708                       | \$ 406                      |
| Cogent Communications                  | SPIRITAI00005; SPIRITAI90001  | Telecom Services   | 2450 N Street, NW<br>Washington, DC 20037                           | \$ 2,413                    |

|  |  |                  |   |           |
|--|--|------------------|---|-----------|
| Columbus Regional Airport Authority    | 827  | Telecom Services | 4600 International Gateway<br>Columbus, OH 43219          | \$ 834    |
| Comcast                                | 708714482; 8495752511140710;<br>8495752511193230; 8495752511253030;<br>8495752511272460; 8495752511283000;<br>8495752621576710; 931108708; 934526595   | Telecom Services | 1701 JFK Boulevard<br>Philadelphia, PA 19103              | \$ 12,078 |
| Comed Commonwealth Edison Co           | 4164386000, 2967812000, 2577169069,<br>0066091263  | Electric         | 10 S Dearborn St 52nd Fl<br>Chicago, IL 60603-2300        | \$ 1,795  |
| Crown Castle Fiber LLC                 | 501554   | Telecom Services | 8020 Katy Fwy<br>Houston, TX 77024-1908                   | \$ 1,776  |
| Crystal Springs                        | 968486623008530, 19469443430234  | Water            | 2151 Delaware Ave, # B,<br>Santa Cruz, CA 95060           | \$ 195    |
| Directv                                | 010603145, 057815048, 014037130  | Satellite        | 2260 E. Imperial Hwy.,<br>El Segundo, CA 90245            | \$ 313    |
| DTE Energy                             | 9100 217 3739 0, 9100217379390,<br>10021737390   | Electric         | One Energy Plaza<br>1189 WCB<br>Detroit, MI 48226-1221    | \$ 3,219  |
| Efax Corporate                         | 192826   | Telecom Services | 6922 Hollywood Blvd Ste 500<br>Los Angeles, CA 90028-6125 | \$ 343    |
| Equinix Inc                            | 351378   | Telecom Services | 1 Lagoon Dr Ste 400<br>Redwood City, CA 94065-1564        | \$ 38,732 |
| Florida Power & Light Company          | 87370-28186, 86924-51100, 7371894523,<br>6446215128, 1743971101, 84623-21368,<br>50578-34243, 56809-57338, 58579-27577,<br>93937-03005, 71596-20116, 63216-17224,<br>64690-71309, 6321617224, 0487671596,<br>5680957338, 7159620116, 6469071309,<br>9393703005, 6603911360, 8737028186,<br>4300455575, 8692451100, 7317894523,<br>7193901365, 5622511367, 9975675100,<br>5857927577, 8462321368, 585792757,<br>5057834243, 6469071300, 8737028185, 43004 | Electric         | General Mail Facility<br>Miami, FL 33188-0001             | \$ 53,459 |
| Gexa Energy, LP                        | 2903097-3  | Electric         | 601 Travis St<br>Houston, TX 77002-3252                   | \$ 5,467  |
| Granite Telecommunications             | 4719869  | Telecom Services | 100 Newport Avenue Ext<br>Quincy, MA 02171-1759           | \$ 8,853  |
| Greater Orlando Aviation Authority     | 273  | Telecom Services | 1 Jeff Fuqua Blvd,<br>Orlando, FL 32827                   | \$ 4,589  |
| Hillsborough County Aviation Authority | 54011854   | Telecom Services | 4100 George J. Bean Pkwy<br>Tampa, FL 33607               | \$ 194    |

|  |   |                  |   |            |
|--|---|------------------|---|------------|
| Houston Airport System                   | 005672LD  | Telecom Services | Houston Airport System<br>2800 North Terminal Road<br>Houston, TX 77032 | \$ 318     |
| Lee County Port Authority                | 70  | Telecom Services | 11000 Terminal Access Road<br>Suite 8671<br>Fort Myers, FL 33913-8899   | \$ 91      |
| Level 3 Communications LLC               | TBD   | Telecom Services | 1025 Eldorado Boulevard<br>Broomfield, CO 80021                         | \$ 174,487 |
| Loopup LLC                               | 9160018258603   | Telecom Services | 282 2nd St Suite 200<br>San Francisco, CA 94105-3122                    | \$ 1,337   |
| Louis Armstrong New Orleans Intl Airport | SPIRIT19  | Telecom Services | 1 Terminal Drive<br>Kenner, LA 70062                                    | \$ 632     |
| Lumen - Centurylink                      | 205328838, 5-CKK7GTGR, 5-HCKSGQSG, 5-VSC0HFBF, 5-ZKPLSFQG           | Telecom Services | 100 CenturyLink Drive<br>Monroe, LA 71201                               | \$ 1,147   |
| Maryland Aviation Administration         | 900016899   | Telecom Services | 7050 Friendship Road.<br>BWI Airport, MD 21240                          | \$ 103     |
| Masergy Cloud Communications Inc         | 434895  | Telecom Services | W Century Blvd<br>Los Angeles, CA 90045-6454                            | \$ 41,233  |
| Masergy Communications                   | MC002736  | Telecom Services | 2740 N. Dallas Parkway Suite#260<br>Plano, TX 75093                     | \$ 92,376  |
| Memphis-Shelby County Airport Authority  | C001927   | Telecom Services | Winchester Rd<br>Memphis, TN 38116-3856                                 | \$ 70      |
| Metropolitan Telecommunications          | 1005230220004   | Telecom Services | 55 Water Street<br>New York, NY 10041                                   | \$ 1,358   |
| Miami Dade Aviation Department           | 1205400003821   | Telecom Services | 2100 NW 42nd Ave.,<br>Miami, FL 33142                                   | \$ 2,772   |
| Nec Corporation of America               | DFW16274  | Telecom Services | 6535 N State Highway 161<br>Irving, TX 75039                            | \$ 820     |
| Nettracer, Inc.                          | TBD   | Cloud Services   | 2675 Paces Ferry Road<br>Suite 240<br>Atlanta, GA 30339                 | \$ 5,613   |
| Network Innovations, LLC                 | 2023097005  | Telecom Services | 350 N Orleans St Ste 1300N<br>Chicago, IL 60654-1975                    | \$ 759     |
| Nicor Gas                                | 79433239690   | Natural Gas      | 1844 Ferry Road.<br>Naperville, IL 60563-9600                           | \$ 266     |
| NV Energy, Inc.                          | 3000345697423918642,<br>3000345697422982417,<br>3000345697422441455 | Electric         | 6226 W. Sahara Ave.<br>Las Vegas, NV 89146                              | \$ 677     |
| Orlando Utilities Commission             | 1200290273, 1200290273  | Electric, Water  | 100 W Anderson Street<br>Orlando, FL 32802                              | \$ 3,522   |

|                                  |  |                  |   |            |
|----------------------------------|--|------------------|---|------------|
| Raleigh-Durham Airport Authority | TS6061   | Telecom Services | 1000 Trade Drive<br>RDU Airport, NC 27623                             | \$ 160     |
| Republic Service of Florida LP   | 3-0695-1063220, 3-0690-0004993, 3-0695-0023214, 3-0264-0038932, 3-0853-0165799, 3-0695-0012808, 3-0050-0013259, 3-0695-0019673 | Waste            | 8619 Western Way<br>Jacksonville, FL 32256                            | \$ 8,196   |
| Royal Waste Services, Inc.       | 2131100  | Waste            | 18740 Hollis Ave<br>Hollis, NY 11423-2808                             | \$ 3,248   |
| Sacramento County Airport System | 371900003446   | Telecom Services | 6901 Airport Blvd<br>Sacramento, CA 95837-1110                        | \$ -       |
| Sita Global                      | 18072BV; 18072SC; 18072US  | Telecom Services | Leopold III, 2 Avenue des Olympiades,<br>B-1140 Brussels Belgium      | \$ 68,314  |
| Smart City Wireless Solutions    | SmartCity  | Telecom Services | 5795 W. Badura Ave., Suite 110,<br>Las Vegas, NV 89118                | \$ 1,384   |
| Smartnet Limitless               | 338  | Telecom Services | 3080 Kronprindsens Gade<br>Suite 200<br>St. Thomas, VI 00802          | \$ 99      |
| South Jersey Gas                 | 5590645741, 559065741  | Natural Gas      | South Jersey Gas<br>One South Jersey Place<br>Atlantic City, NJ 08401 | \$ 500     |
| Southwest Gas Corporation        | 910000305745   | Natural Gas      | 8360 S Durango Dr<br>Las Vegas, NV 89113                              | \$ 145     |
| Teco-Tampa Electric Company      | 221009221716   | Electric         | One Verizon Way,<br>Basking Ridge, NJ 07920                           | \$ 87      |
| T-Mobile USA, Inc.               | 982115325  | Telecom Services | 12920 SE 38th Street<br>Bellevue, WA 98006                            | \$ 808     |
| Verizon                          | 2503876160001; 3545909860001;<br>4503062580001   | Telecom Services | One Verizon Way,<br>Basking Ridge, NJ 07920                           | \$ 2,362   |
| Verizon Business                 | 05069520; 05069531; 05082125; 05201596;<br>3DF28635; 9150191871X25; 92880888   | Telecom Services | One Verizon Way,<br>Basking Ridge, NJ 07920                           | \$ 9,562   |
| Verizon Wireless                 | 620826097-00001; 620826097-00009   | Telecom Services | One Verizon Way,<br>Basking Ridge, NJ 07920                           | \$ 349,939 |
| Waste Management of Michigan     | 25-35529-43007, 21-53586-33001, 9-85722-73004, 27-65607-33007, 18-92626-83006, 27-58244-13005, 23-86110-73003                  | Waste            | 48797 Alpha Drive Suite 15<br>Wixom, MI 48393                         | \$ 10,389  |

**Exhibit B**

**Proposed Interim Order**

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

**In re:**

**SPIRIT AIRLINES, INC.,**

**Debtor.<sup>1</sup>**

**Chapter 11**

**Case No. 24-11988 (\_\_\_)**

**INTERIM ORDER (I) PROHIBITING UTILITIES FROM ALTERING, REFUSING, OR  
DISCONTINUING SERVICE, (II) DEEMING UTILITIES ADEQUATELY ASSURED  
OF FUTURE PERFORMANCE, AND (III) ESTABLISHING PROCEDURES FOR  
DETERMINING REQUESTS FOR ADDITIONAL ADEQUATE ASSURANCE**

Upon the motion (the “**Motion**”)<sup>2</sup> of Spirit Airlines, Inc. (the “**Debtor**”), the debtor and debtor in possession in the above-captioned Chapter 11 Case, for entry of interim and final orders, pursuant to sections 105 and 366 of the Bankruptcy Code and Bankruptcy Rules 6003 and 6004, (a) prohibiting the Utilities from altering, refusing, or discontinuing any Utility Services on account of prepetition amounts outstanding or on account of any perceived inadequacy of the Debtors’ Proposed Adequate Assurance, (b) determining that the Debtors’ Proposed Adequate Assurance provides the Utilities with adequate assurance of payment within the meaning of section 366 of the Bankruptcy Code, and (c) approving the Adequate Assurance Procedures for resolving requests by Utilities for additional or different assurances beyond those contemplated in the Motion, as more fully described in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. § 1334 and the *Amended Standing Order of Reference M-431*, dated January 31, 2012 (Preska, C.J.); and the Court having found that

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<sup>1</sup> The last four digits of the Debtor’s employer identification number is 7023. The Debtor’s mailing address is 1731 Radiant Drive, Dania Beach, FL 33004.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

this is a core proceeding pursuant to 28 U.S.C. § 157; and the Court having found that it may enter a final order consistent with Article III of the United States Constitution; and the Court having found that venue of the Chapter 11 Case and related proceedings being proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to the Notice Parties, such notice having been adequate and appropriate under the circumstances, and it appearing that no other or further notice need be provided; and the Court having reviewed and considered the Motion and the First Day Declaration; and the Court having held a hearing to consider the relief requested in the Motion on an interim basis (the “**Hearing**”); and the Court having determined that the legal and factual bases set forth in the Motion and the First Day Declaration and at the Hearing establish just cause for the relief granted herein; and the Court having found that the relief requested in the Motion is in the best interests of the Debtor, its creditors, its estate, and all other parties in interest; and the Court having determined that the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtor and its estate as contemplated by Bankruptcy Rule 6003; and all objections and reservations of rights filed or asserted in respect of the Motion, if any, having been withdrawn, resolved, or overruled with prejudice; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is granted on an interim basis and as set forth herein (this “**Interim Order**”).
2. The Adequate Assurance Deposit (the “**Proposed Adequate Assurance**”),  
(a) demonstrates the Debtor’s ability to pay for future Utility Services in the ordinary course of business and (b) constitutes adequate assurance to the Utilities.

3. Absent compliance with this Interim Order, the Debtor's Utilities are prohibited from altering, refusing, or discontinuing Utility Services on account of any prepetition amounts outstanding or on account of any perceived inadequacy of the Proposed Adequate Assurance, and are deemed to have received adequate assurance of payment in compliance with section 366 of the Bankruptcy Code.

4. The Debtor is authorized, but not directed, to pay on a timely basis, in accordance with their prepetition practices, all undisputed invoices for Utility Services rendered by the Utilities to the Debtor after the Petition Date.

5. The Debtor shall deposit the Adequate Assurance Deposit in the Utility Deposit Account within 20 calendar days of entry of this Interim Order. Each Utility shall be entitled to the funds in the Adequate Assurance Deposit attributable to such Utility as indicated in the column labeled "Proposed Adequate Assurance" on the Utilities List.

6. The Debtor's Utilities are prohibited from requiring additional adequate assurance of payment other than in accordance with the following Adequate Assurance Procedures:

- (a) The Debtor will provide, or will cause to be provided, a copy of the Motion and this Interim Order (to the extent not already provided) to each of the Utilities listed on the Utilities List within three business days after the Court's entry of this Interim Order.
- (b) If a Utility is not satisfied with the Proposed Adequate Assurance, it must serve a written request (a "**Request**") upon proposed counsel to the Debtor, Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, NY 10017, Attn: Marshall S. Huebner, Darren S. Klein, Christopher S. Robertson, and Moshe Melcer (the "**Debtor Notice Parties**").
- (c) Each Request must set forth (i) the location(s) for which Utility Services are provided, (ii) the account number(s) for such location(s), (iii) the outstanding balance for each account, and (iv) an explanation of why the Utility believes that the Proposed Adequate Assurance is not sufficient adequate assurance of future payment.
- (d) If the Debtor determines, in its sole discretion, that a Request or any consensual agreement reached in connection therewith is reasonable, the Debtor, without further order of the Court, may enter into agreements granting additional adequate assurance to the Utility serving such Request and, in connection with such agreements, provide



- the Utility with additional adequate assurance of payment, including payments on prepetition amounts owing, cash deposits, prepayments, or other forms of security, with notice within 15 calendar days following entry into such agreement to the U.S. Trustee and counsel to any statutory committee appointed in the Chapter 11 Cases.
- (e) If the Debtor determines that a Request is unreasonable, then it shall, within 30 calendar days after receipt of such Request, or such longer period as may be agreed to between the Debtor and the Utility, file a motion (a “**Determination Motion**”) pursuant to section 366(c)(3) of the Bankruptcy Code seeking a determination from the Court that the Proposed Adequate Assurance, plus any additional consideration offered by the Debtor, constitutes adequate assurance of payment. Pending notice and a hearing on the Determination Motion, the Utility that is the subject of the unresolved Request may not alter, refuse, or discontinue services to the Debtor.
  - (f) If an undisputed amount relating to Utility Services provided post-petition by a Utility is unpaid, and remains unpaid beyond any applicable grace period, such Utility may request a disbursement from the Utility Deposit Account in such undisputed unpaid amount by giving notice to (i) the Debtor Notice Parties, (ii) counsel to the Ad Hoc Group of Senior Secured Noteholders, Akin Gump Strauss Hauer & Feld LLP, One Bryant Park, New York, NY 10036, Attn: Michael S. Stamer and Jason Rubin, (iii) the U.S. Trustee, 1 Bowling Green, New York, NY 10014, Attn: Shara Cornell (shara.cornell@usdoj.gov), Annie Wells (annie.wells@usdoj.gov), and Eric Bradford (eric.bradford@usdoj.gov), and (iv) counsel to any official committee of unsecured creditors appointed in the Chapter 11 Cases. The Debtor shall honor such request within 15 business days after receipt thereof, subject to the ability of the Debtor and any such requesting Utility to resolve any dispute regarding such request without further order of the Court. To the extent a Utility receives a disbursement from the Utility Deposit Account in accordance with this provision, the Debtor shall subsequently replenish the Utility Deposit Account in the amount so disbursed.

7. The Debtor is authorized to amend the Utilities List, in its sole discretion, to add any subsequently identified Utility. This Interim Order and the Adequate Assurance Procedures shall apply all Utilities, regardless of whether or when such Utility is included on the Utilities List. The Debtor shall serve a copy of the Motion and this Interim Order (or subsequent final order as applicable) on any Utility that is subsequently added to the Utilities List. Such subsequently added Utility that objects to this Interim Order shall have 20 calendar days from the date of service of this Interim Order to file an objection in accordance with the Bankruptcy Rules, the Local Rules, and the Adequate Assurance Procedures. Any Utility that does not object to this Order within such time is deemed to have accepted the Adequate Assurance Deposit.

8. The Debtor shall increase the amount of the Adequate Assurance Deposit in the event an additional Utility is added to the Utilities List by an amount equal to two weeks of Utility Service provided by such additional Utility, calculated using the historical average for such payments over the first six months of 2024.

9. Each Utility is deemed to have adequate assurance of payment within the meaning of section 366 of the Bankruptcy Code based on the Debtor providing the Proposed Adequate Assurance unless and until a Utility requests additional Adequate Assurance in accordance with the Adequate Assurance Procedures and either (a) the Debtor agrees to grant additional Adequate Assurance or (b) the Court enters an order granting such request.

10. The portion of the Adequate Assurance Deposit attributable to each Utility shall be returned to the Debtor, without further Court order, upon the earlier of (a) the reconciliation and payment by the Debtor of the final invoice of such Utility in accordance with applicable non-bankruptcy law following the termination of Utility Services from such Utility, (b) the sale of all or substantially all of the Debtor's assets, (c) the effective date of a chapter 11 plan confirmed in the Chapter 11 Case, or (d) the date upon which the Chapter 11 Case is dismissed or converted to a case under chapter 7 of the Bankruptcy Code. If there are any outstanding disputes related to post-petition payments due between the Debtor and the applicable Utility, only the portion of the Adequate Assurance Deposit in excess of any disputed amounts shall be returned to the Debtor without further Court order.

11. The Debtor may amend the Utilities List to delete a Utility only if it has provided two-weeks' advance notice to such Utility and has not received any objection from such Utility. If an objection is received and the Debtor and the Utility are unable to resolve such objection, the

Debtor shall request a hearing before the Court at the next omnibus hearing date or such other date that the Debtor and the Utility may agree upon.

12. Nothing herein constitutes a finding that any entity is or is not a Utility hereunder or a utility under section 366 of the Bankruptcy Code, whether or not such entity is included in the Utilities List.

13. The Debtor shall (a) serve a copy of this Interim Order upon each of the Utilities identified on the Utilities List and (b) post this Interim Order on the Debtor's case information website located at <https://dm.epiq11.com/SpiritGoForward>.

14. The Debtor shall (a) file a copy of any Supplemental Notice, (b) serve the Supplemental Notice by first-class mail on all Utilities listed therein (to the extent there is any material deviation with respect to such Utility between the Utilities List and the Supplemental Notice), and (c) post the Supplemental Notice on the Debtor's case information website located at <https://dm.epiq11.com/SpiritGoForward>. Following service of any Supplemental Notice, affected Utilities shall have 7 calendar days from the date of service of such Supplemental Notice to file an objection in accordance with the Bankruptcy Rules, the Local Rules, and the Adequate Assurance Procedures.

15. Any Utility that does not make a Request or otherwise comply with this Interim Order is prohibited from altering, refusing, or discontinuing Utility Services, including as a result of the Debtor's failure to pay charges for prepetition Utility Services or to provide adequate assurance of payment in addition to the Proposed Adequate Assurance.

16. A final hearing to consider the relief requested in the Motion shall be held on \_\_\_\_\_, 2024 at \_\_\_\_\_.m. (prevailing Eastern Time) and any objections or responses to the

Motion shall be filed and served on the Notice Parties so as to be actually received on or prior to \_\_\_\_\_, 2024 at 12:00 p.m. (prevailing Eastern Time).

17. Nothing in this Interim Order or any action taken by the Debtor in furtherance of the implementation hereof shall be deemed to constitute an assumption or rejection of any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code, and all of the Debtor's rights with respect to such matters are expressly reserved.

18. Notwithstanding the relief granted herein and any actions taken hereunder, nothing contained herein shall (a) create, nor is it intended to create, any rights in favor of, or enhance the status of any claim held by, any person or entity or (b) be deemed to convert the priority of any claim from a prepetition claim into an administrative expense claim.

19. Nothing in this Interim Order nor the Debtor's payment of claims pursuant to this Interim Order shall be construed as or deemed to constitute (a) an agreement or admission by the Debtor as to the amount, priority, character, or validity of any claim against the Debtor on any grounds, (b) a grant of third-party beneficiary status or bestowal of any additional rights on any third party, (c) a waiver or impairment of any rights, claims, or defenses of the Debtor's or any party in interest's rights to dispute the amount, priority, character, or validity of any claim on any grounds, whether under bankruptcy or non-bankruptcy law, (d) a promise by the Debtor to pay any claim, (e) an implication or admission by the Debtor that such claim is payable pursuant to this Interim Order, or (f) a waiver of the Debtor's or any party in interest's right to contest any Lien or Interest and efforts to exercise associated remedies during the Chapter 11 Case.

20. Notwithstanding Bankruptcy Rule 6004, this Interim Order shall be effective and enforceable immediately upon its entry.

21. The Debtor is authorized to take any action it deems necessary or appropriate to implement and effectuate the terms of, and the relief granted in, this Interim Order without seeking further order of the Court.

22. The Court retains jurisdiction over any matter arising from or related to the implementation, interpretation, and enforcement of this Interim Order.

Dated: \_\_\_\_\_, 2024  
New York, New York

\_\_\_\_\_  
UNITED STATES BANKRUPTCY JUDGE

**Exhibit C**

**Proposed Final Order**

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

**In re:**

**SPIRIT AIRLINES, INC., *et al.*,**

**Debtors.<sup>1</sup>**

**Chapter 11**

**Case No. 24-11988 ( )**

**(Joint Administration Requested)**

**FINAL ORDER (I) PROHIBITING UTILITIES FROM ALTERING, REFUSING, OR  
DISCONTINUING SERVICE, (II) DEEMING UTILITIES ADEQUATELY ASSURED  
OF FUTURE PERFORMANCE, AND (III) ESTABLISHING PROCEDURES FOR  
DETERMINING REQUESTS FOR ADDITIONAL ADEQUATE ASSURANCE**

Upon the motion (the “**Motion**”)<sup>2</sup> of Spirit Airlines, Inc. and its affiliates (collectively, the “**Debtors**”), each of which is a debtor and debtor in possession in the above-captioned Chapter 11 Cases, for entry of interim and final orders, pursuant to sections 105 and 366 of the Bankruptcy Code and Bankruptcy Rules 6003 and 6004, (a) prohibiting the Utilities from altering, refusing, or discontinuing any Utility Services on account of prepetition amounts outstanding or on account of any perceived inadequacy of the Debtors’ Proposed Adequate Assurance, (b) determining that the Debtors’ Proposed Adequate Assurance provides the Utilities with adequate assurance of payment within the meaning of section 366 of the Bankruptcy Code, and (c) approving the Adequate Assurance Procedures for resolving requests by Utilities for additional or different assurances beyond those contemplated in the Motion, as more fully described in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. § 1334 and the *Amended Standing Order of Reference M-431*, dated January 31, 2012 (Preska,

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<sup>1</sup> The Debtors’ names and last four digits of their respective employer identification numbers are as follows: Spirit Airlines Inc. (7023); Spirit Finance Cayman 1 Ltd. (7020); Spirit Finance Cayman 2 Ltd. (7362); Spirit IP Cayman Ltd. (4732); and Spirit Loyalty Cayman Ltd. (4752). The Debtors’ mailing address is 1731 Radiant Drive, Dania Beach, FL 33004.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

C.J.); and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157; and the Court having found that it may enter a final order consistent with Article III of the United States Constitution; and the Court having found that venue of the Chapter 11 Cases and related proceedings being proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to the Notice Parties, such notice having been adequate and appropriate under the circumstances, and it appearing that no other or further notice need be provided; and the Court having reviewed and considered the Motion and the First Day Declaration; and the Court having held a hearing, if necessary, to consider the relief requested in the Motion on a final basis (the “**Hearing**”); and the Court having determined that the legal and factual bases set forth in the Motion and the First Day Declaration and at the Hearing, if any, establish just cause for the relief granted herein; and the Court having found that the relief requested in the Motion is in the best interests of the Debtors, their creditors, their estates, and all other parties in interest; and all objections and reservations of rights filed or asserted in respect of the Motion, if any, having been withdrawn, resolved, or overruled with prejudice; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is granted on a final basis and as set forth herein (this “**Order**”).
2. The Adequate Assurance Deposit (the “**Proposed Adequate Assurance**”),  
(a) demonstrates the Debtor’s ability to pay for future Utility Services in the ordinary course of business and (b) constitutes adequate assurance to the Utilities.
3. Absent compliance with this Order, the Debtors’ Utilities are prohibited from altering, refusing, or discontinuing Utility Services on account of any prepetition amounts



outstanding or on account of any perceived inadequacy of the Proposed Adequate Assurance, and are deemed to have received adequate assurance of payment in compliance with section 366 of the Bankruptcy Code.

4. The Debtors are authorized, but not directed, to pay on a timely basis, in accordance with their prepetition practices, all undisputed invoices for Utility Services rendered by the Utilities to the Debtors after the Petition Date.

5. Each Utility shall be entitled to the funds in the Adequate Assurance Deposit attributable to such Utility as indicated in the column labeled “Proposed Adequate Assurance” on the Utilities List.

6. The Debtors’ Utilities are prohibited from requiring additional adequate assurance of payment other than in accordance with the following Adequate Assurance Procedures:

- (a) The Debtors will provide, or will cause to be provided, a copy of the Motion and this Order (to the extent not already provided) to each of the Utilities listed on the Utilities List within three business days after the Court’s entry of this Order.
- (b) If a Utility is not satisfied with the Proposed Adequate Assurance, it must serve a written request (a “**Request**”) upon proposed counsel to the Debtors, Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, NY 10017, Attn: Marshall S. Huebner, Darren S. Klein, Christopher S. Robertson, and Moshe Melcer (the “**Debtor Notice Parties**”).
- (c) Each Request must set forth (i) the location(s) for which Utility Services are provided, (ii) the account number(s) for such location(s), (iii) the outstanding balance for each account, and (iv) an explanation of why the Utility believes that the Proposed Adequate Assurance is not sufficient adequate assurance of future payment.
- (d) If a Debtor determines, in its sole discretion, that a Request or any consensual agreement reached in connection therewith is reasonable, such Debtor, without further order of the Court, may enter into agreements granting additional adequate assurance to the Utility serving such Request and, in connection with such agreements, provide the Utility with additional adequate assurance of payment, including payments on prepetition amounts owing, cash deposits, prepayments, or other forms of security, with notice within 15 calendar days following entry into such agreement to the U.S. Trustee and counsel to any statutory committee appointed in the Chapter 11 Cases.

- (e) If a Debtor determines that a Request is unreasonable, then it shall, within 30 calendar days after receipt of such Request, or such longer period as may be agreed to between such Debtor and the Utility, file a motion (a “**Determination Motion**”) pursuant to section 366(c)(3) of the Bankruptcy Code seeking a determination from the Court that the Proposed Adequate Assurance, plus any additional consideration offered by such Debtor, constitutes adequate assurance of payment. Pending notice and a hearing on the Determination Motion, the Utility that is the subject of the unresolved Request may not alter, refuse, or discontinue services to such Debtor.
- (f) If an undisputed amount relating to Utility Services provided post-petition by a Utility is unpaid, and remains unpaid beyond any applicable grace period, such Utility may request a disbursement from the Utility Deposit Account in such undisputed unpaid amount by giving notice to (i) the Debtor Notice Parties, (ii) counsel to the Ad Hoc Group of Senior Secured Noteholders, Akin Gump Strauss Hauer & Feld LLP, One Bryant Park, New York, NY 10036, Attn: Michael S. Stamer and Jason Rubin, (iii) the U.S. Trustee, 1 Bowling Green, New York, NY 10014, Attn: Shara Cornell (shara.cornell@usdoj.gov), Annie Wells (annie.wells@usdoj.gov), and Eric Bradford (eric.bradford@usdoj.gov), and (iv) counsel to any official committee of unsecured creditors appointed in the Chapter 11 Cases. Such Debtor shall honor such request within 15 business days after receipt thereof, subject to the ability of such Debtor and any such requesting Utility to resolve any dispute regarding such request without further order of the Court. To the extent a Utility receives a disbursement from the Utility Deposit Account in accordance with this provision, the Debtors shall subsequently replenish the Utility Deposit Account in the amount so disbursed.

7. The Debtors are authorized to amend the Utilities List, in their sole discretion, to add any subsequently identified Utility. This Order and the Adequate Assurance Procedures shall apply all Utilities, regardless of whether or when such Utility is included on the Utilities List. The Debtors shall serve a copy of the Motion and this Order (or subsequent final order as applicable) on any Utility that is subsequently added to the Utilities List. Such subsequently added Utility that objects to this Order shall have 20 calendar days from the date of service of this Order to file an objection in accordance with the Bankruptcy Rules, the Local Rules, and the Adequate Assurance Procedures. Any Utility that does not object to this Order within such time is deemed to have accepted the Adequate Assurance Deposit.

8. The Debtors shall increase the amount of the Adequate Assurance Deposit in the event an additional Utility is added to the Utilities List by an amount equal to two weeks of Utility

Service provided by such additional Utility, calculated using the historical average for such payments over the first six months of 2024.

9. Each Utility is deemed to have adequate assurance of payment within the meaning of section 366 of the Bankruptcy Code based on the Debtors providing the Proposed Adequate Assurance unless and until a Utility requests additional Adequate Assurance in accordance with the Adequate Assurance Procedures and either (a) the Debtors agree to grant additional Adequate Assurance or (b) the Court enters an order granting such request.

10. The portion of the Adequate Assurance Deposit attributable to each Utility shall be returned to the Debtors, without further Court order, upon the earlier of (a) the reconciliation and payment by the Debtors of the final invoice of such Utility in accordance with applicable non-bankruptcy law following the termination of Utility Services from such Utility, (b) the sale of all or substantially all of the Debtors' assets, (c) the effective date of a chapter 11 plan confirmed in the Chapter 11 Cases, or (d) the date upon which the Chapter 11 Cases are dismissed or converted to cases under chapter 7 of the Bankruptcy Code. If there are any outstanding disputes related to post-petition payments due between any Debtor and the applicable Utility, only the portion of the Adequate Assurance Deposit in excess of any disputed amounts shall be returned to such Debtor without further Court order.

11. The Debtors may amend the Utilities List to delete a Utility only if they have provided two-weeks' advance notice to such Utility and have not received any objection from such Utility. If an objection is received and the Debtors and the Utility are unable to resolve such objection, the Debtors shall request a hearing before the Court at the next omnibus hearing date or such other date that the Debtors and the Utility may agree upon.

12. Nothing herein constitutes a finding that any entity is or is not a Utility hereunder or a utility under section 366 of the Bankruptcy Code, whether or not such entity is included in the Utilities List.

13. The Debtors shall (a) serve a copy of this Order upon each of the Utilities identified on the Utilities List and (b) post this Order on the Debtors' case information website located at <https://dm.epiq11.com/SpiritGoForward>.

14. The Debtors shall (a) file a copy of any Supplemental Notice, (b) serve the Supplemental Notice by first-class mail on all Utilities listed therein (to the extent there is any material deviation with respect to such Utility between the Utilities List and the Supplemental Notice), and (c) post the Supplemental Notice on the Debtors' case information website located at <https://dm.epiq11.com/SpiritGoForward>. Following service of any Supplemental Notice, affected Utilities shall have 7 calendar days from the date of service of such Supplemental Notice to file an objection in accordance with the Bankruptcy Rules, the Local Rules, and the Adequate Assurance Procedures.

15. Any Utility that does not make a Request or otherwise comply with this Order is prohibited from altering, refusing, or discontinuing Utility Services, including as a result of the Debtors' failure to pay charges for prepetition Utility Services or to provide adequate assurance of payment in addition to the Proposed Adequate Assurance.

16. Nothing in this Order or any action taken by any Debtor in furtherance of the implementation hereof shall be deemed to constitute an assumption or rejection of any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code, and all of the Debtors' rights with respect to such matters are expressly reserved.

17. Notwithstanding the relief granted herein and any actions taken hereunder, nothing contained herein shall (a) create, nor is it intended to create, any rights in favor of, or enhance the status of any claim held by, any person or entity or (b) be deemed to convert the priority of any claim from a prepetition claim into an administrative expense claim.

18. Nothing in this Order nor any Debtor's payment of claims pursuant to this Order shall be construed as or deemed to constitute (a) an agreement or admission by any Debtor as to the amount, priority, character, or validity of any claim against any Debtor on any grounds, (b) a grant of third-party beneficiary status or bestowal of any additional rights on any third party, (c) a waiver or impairment of any rights, claims, or defenses of any Debtor's or any party in interest's rights to dispute the amount, priority, character, or validity of any claim on any grounds, whether under bankruptcy or non-bankruptcy law, (d) a promise by any Debtor to pay any claim, (e) an implication or admission by any Debtor that such claim is payable pursuant to this Order, or (f) a waiver of any Debtor's or any party in interest's right to contest any Lien or Interest and efforts to exercise associated remedies during the Chapter 11 Cases.

19. Notwithstanding Bankruptcy Rule 6004, this Order shall be effective and enforceable immediately upon its entry.

20. The Debtors are authorized to take any action they deem necessary or appropriate to implement and effectuate the terms of, and the relief granted in, this Order without seeking further order of the Court.

21. The Court retains jurisdiction over any matter arising from or related to the implementation, interpretation, and enforcement of this Order.

Dated: \_\_\_\_\_, 2024  
New York, New York

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UNITED STATES BANKRUPTCY JUDGE