KRAMER LEVIN NAFTALIS & FRANKEL LLP
Amy Caton
P. Bradley O'Neill
1177 Avenue of the Americas
New York, New York 10036
Telephone: (212) 715-9100
Facsimile: (212) 715-8000

Attorneys for The Bank of New York Mellon Trust Company, N.A. and Law Debenture Trust Company of New York, as Indenture Trustees

EMMET, MARVIN & MARTIN, LLP
Edward P. Zujkowski
Mordecai Geisler
120 Broadway, 32nd Floor
New York, NY 10271
Telephone: (212) 238-3000
Facsimile: (212) 238-3100

Attorneys for The Bank of New York Mellon Trust Company, N.A., as Indenture Trustee

DEWEY & LeBOEUF LLP
Mohsin N. Khambati
180 North Stetson Avenue, Suite 3700
Chicago, IL 60601
Telephone: (312) 794-8000
Facsimile: (312) 794-8100

Attorneys for Law Debenture Trust Company of New York, as Indenture Trustee

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	
	:	Chapter 11
AMR CORPORATION, *et al.*,	:	Case No. 11-15463 (SHL)
	:	
Debtors.	:	(Jointly Administered)
	:	

LIMITED OBJECTION OF THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A. AND LAW DEBENTURE TRUST COMPANY OF NEW YORK, AS INDENTURE TRUSTEES, TO MOTION OF DEBTORS FOR ENTRY OF ORDER PURSUANT TO 11 U.S.C. § 365(d)(4) EXTENDING TIME TO ASSUME OR REJECT UNEXPIRED LEASES OF NONRESIDENTIAL REAL PROPERTY

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

The Bank of New York Mellon Trust Company, N.A. (the "**BNY Mellon**") and Law Debenture Trust Company of New York ("**Law Debenture**" and together with the BNY Mellon, the "**Indenture Trustees**"), as Indenture Trustees under certain indentures governing certain airport revenue bonds, hereby file this limited objection (the "**Objection**") to the motion (the "**Motion**") of American Airlines Inc. ("**American**"), AMR Corporation ("**AMR**") and their affiliated debtors (collectively, the "**Debtors**") for entry of an order pursuant to section 365(d)(4) of title 11 of the United States Code (the "**Bankruptcy Code**") extending the Debtors' time to assume or reject unexpired leases of non-residential real property. In support of the Objection, the Indenture Trustees respectfully represent as follows:

Preliminary Statement

The Indenture Trustees object to the Motion on the limited grounds that it fails to apprise the Indenture Trustees as to whether certain agreements in which they have an interest are covered by the relief sought therein. The Motion purports in one paragraph to request authority to extend the section 365(d)(4) deadline with respect to all unexpired leases of non-residential real property, yet in another paragraph suggests that perhaps the leases as to which the deadline is extended are only those listed on the exhibit attached to the Motion. The Indenture Trustees understand, based on communications with the Debtors, that the exhibit is an "illustrative" list and that it is the Debtors' intent to extend the section 365(d)(4) deadline with respect to all unexpired leases of non-residential real property, whether scheduled or not.

This clarification does not address the Indenture Trustees' unique concerns with the Motion, however. The Indenture Trustees have an interest in certain agreements relating to bonds issued to finance construction or improvements at certain airports as to which there may

be a divergence of opinion as to whether they are real property leases or financing agreements – a question that will be resolved at some future date. As to some of these agreements, the Debtors have thus far been making current payments (thereby implying that the Debtors believe them to be real property leases); as to others, they have not been making payments (implying their belief that they are not leases). Thus, the Motion, by containing a catch-all provision, may in fact be asking the Court to extend the section 365(d)(4) deadline as to these agreements under which the Debtors are not making current payments. As to each of the agreements in which the Indenture Trustees have an interest, they are entitled to know which are covered by the relief sought in the Motion, and if the Debtors have determined whether to assume, reject or recharacterize such agreements.

If the Indenture Trustees are not provided with the information they request, they may later discover that the Debtors are taking a position that an agreement they believed the Debtors had considered a financing arrangement is now argued to be a lease agreement under which the Trustees had potential remedies they could have enforced. While the Trustees may disagree with the Debtors' positions as to certain agreements, they have a right to know if the Debtors consider an agreement to be a lease (subject to recharacterization on or before June 26), and whether it is subject to the Motion. The consequences of a lack of clarity on these points are that the Indenture Trustees may lose their opportunity to timely enforce important rights and remedies. The Court should not permit the Debtors to impose such uncertainty on their creditors and should instead require that, as to any agreement as to which specific inquiry is made, the Debtors affirmatively state their intentions. The agreements as to which the Indenture Trustees request clarity (a list of which has already been provided to the Debtors) are set forth on **Exhibit A** hereto.

Background

A. General Background

1. On November 29, 2011 (the "**Petition Date**"), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code. The Debtors are operating their business and managing their properties as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

B. The Bonds

2. As relevant to this Objection, BNY Mellon is Indenture Trustee for $2.3 billion and Law Debenture is Indenture Trustee for $155 million of airport revenue bonds (the "**Bonds**"), which were issued in connection with the financing of certain construction projects involving various airport facilities at which the Debtors conduct operations. The Bonds are the following:

a. 1990/1994 JFK Bonds (BNY Mellon)

- $83.93 million in Series 1990 bonds
- $83.085 million in Series 1994 bonds

b. 2002/2005 JFK Bonds (BNY Mellon)

- $120 million in Series 2002A bonds
- $380 million in Series 2002B bonds
- $800 million in Series 2005 bonds

c. LAX Bonds (BNY Mellon)

- $15.72 million in Series 2002A bonds
- $26.74 million in Series 2002B bonds
- $254.615 million in Series 2002C bonds

d. Tulsa Bonds (BNY Mellon)[1]

- $27.5 million in Series 1992 bonds
- $97.71 million in Series 1995 bonds
- $112.355 million in Series 2000A bonds
- $63 million in Series 2000B bonds
- $27.5 million in Series 2001A bonds
- $125.205 million in Series 2001B bonds

e. Chicago Bonds (BNY Mellon)

- $108.675 million in Series 2007 bonds

f. EWR Bonds (BNY Mellon)

- $17.855 million in Series 1991 bonds

g. Puerto Rico Bonds (Law Debenture)

- $39.81 million in Series 1993 A bonds
- $115.6 million in Series 1996 A bonds

3. The structure of each bond issuance differs, but they share some common features. In general, each series of Bonds was issued by a government issuer that then loaned the proceeds to American to construct, improve and/or demolish certain terminal and/or maintenance facilities at the applicable airport. The facilities are generally owned by the government issuer (or another governmental unit) and are leased to American. Rental payments, or other payments, due under such agreements are used to make debt service payments on the Bonds.

4. The agreements governing the relationship between American and the various government issuers bear different names. Some of them are denominated "leases," others "use" agreements, and others "facilities" agreements.

[1] Upon information and belief approximately $215 million of the Tulsa bonds are currently held by American.

5. In light of the structures of the various transactions, it is possible that the Debtors may take the position that one or more of them are financings rather than leases. Indeed, the Debtors' actions since the Petition Date suggest that they may already have formed certain views as to the status of the agreements.

6. Specifically, the Debtors have, thus far, made current rental payments with respect to the 1990, 2002 and 2005 JFK Bonds, the LAX Bonds, and the Tulsa Bonds.[2] They have not, however, made payments with respect to the 1994 JFK Bonds, the Chicago Bonds, the Newark Bonds, or the Puerto Rico Bonds. It would appear, therefore, that the Debtors may consider the Chicago, Newark, Puerto Rico and 1994 JFK structures to be financings rather than leases.[3]

C. The Motion

7. By the Motion, the Debtors request that "the Court extend the initial 120-day period to assume or reject their unexpired leases of nonresidential real property . . . ."

---

[2] While American has made payments on the 2002 and 2005 JFK Bonds and the LAX Bonds, it has explicitly reserved its rights to seek to recharacterize the leases. For instance, the February 1, 2012 rental payment with respect to the JFK Bonds was accompanied by the following reservation of rights:

> American reserves all rights in connection with the payments made pursuant to that certain Amended and Restated Sublease, dated as of November 1, 2005, between the New York City Industrial Development Agency and American, as amended (the 'Sublease'), and any other related agreements. Acceptance of payments thereunder from the recipient shall not be deemed an admission by American concerning the legal characterization or nature of American's obligations, and American does not waive (and expressly reserves) its right to seek to recharacterize any or a portion of the obligations under the Sublease and any related documents, take any other action, or to exercise any other right with respect to the Sublease and any related documents.

[3] At least one of the agreements under which the Debtors have failed to make post-petition payments is termed a "lease": the "Lease Agreement" dated as of August 1, 1994, between the New York City Industrial Development Agency and American. Unless and until this "Lease Agreement" is determined not to be a lease, the Debtors' failure to make current payments may mean that they are not in compliance with section 365(d)(3) of the Bankruptcy Code. The Bank of New York is considering all appropriate remedies available to it in respect of this agreement. In addition, the Debtors have not yet made certain payments of legal fees required under the transaction documents relating to the 2002 and 2005 JFK Bonds, the LAX Bonds, and the Tulsa Bonds. The Bank of New York is attempting to address these issues with the Debtors.

Motion ¶ 4. The use of the broad language "their unexpired leases" suggests that the Debtors are seeking authority to extend the 120-day period with respect to any and all such leases.

8. In paragraph 5 of the Motion, however, the Debtors state that a "list of all or substantially all of the lessors and the respective Unexpired Leases" is attached as Exhibit A to the Motion. This language at least implies that a failure to list a lease on Exhibit A may mean that the Debtors do not intend to seek an extension of the 120-day period with respect to such lease.

9. Based on communications with the Debtors, the Indenture Trustees understand that the Debtors intend that the Motion apply to any and all of their unexpired leases of non-residential real property, regardless of whether such leases are listed on the Debtors' Exhibit A. However, the Debtors reserve the right to exercise their own broad discretion in determining what agreements actually fall into this category.

10. In addition, the Debtors have refused to clarify whether they believe that certain agreements in which the Indenture Trustees have an interest are in fact "leases" covered by the Motion. A list of such agreements was provided to the Debtors on March 9, 2012 (the day after the Debtors filed the Motion) and again on March 12. A list of the relevant agreements is attached hereto as **Exhibit A**.

Objection

11. In determining whether to grant a motion to extend the period in which a debtor must assume or reject a lease of non-residential real property, a Court should weigh a number of different considerations, including:

- Whether the debtor is paying for the use of the property;
- Whether the debtor's continued occupation could damage the lessor beyond the compensation available under the Bankruptcy Code;

- Whether the lease is the debtor's primary asset; and
- Whether the debtor has had sufficient time to formulate a plan of reorganization.

South Street Seaport Ltd. P'Ship v. Burger Boys, Inc., 94 F.3d 755, 761 (2d Cir. 1996).

12. Many, if not all, of the factors that courts consider necessarily involve a consideration of the particular lease at issue. It goes without saying, for instance, that a court cannot evaluate whether the debtor is paying for the use of a property without considering that particular property as opposed to the general circumstances of the debtor's bankruptcy. The analysis of whether to approve an extension, in other words, is lease-specific. And, indeed, at least one court's decision to approve an extension of time pursuant to section 365(d)(4) has been overturned because the court failed to look beyond the general circumstances of the debtor's case to the particular facts of the lease at issue. *See Escondido Mission Village L.P. v. Best Products Co.*, 137 B.R. 114, 117 (S.D.N.Y. 1992).

13. Here, the Debtors would prefer to take the position that they are seeking to extend the time period to assume or reject any and all leases, and thereby preserve the option to argue in the future that a particular agreement was or was not covered by the Motion. Under the above-cited case law, however, they cannot do so – nor, as a matter of fairness, should they be allowed to. First, the Court cannot possibly evaluate the Debtors' Motion without knowing whether certain agreements are intended to be covered by the Motion. It cannot apply the *Burger Boys* factors without knowing the subject(s) to which they must be applied.

14. Second, it would be manifestly unfair to the Indenture Trustees to be left in a state of limbo without knowing whether an agreement to which they are an interested party remains in full force and effect or instead has been rejected. Upon rejection, the Indenture Trustees enjoy certain rights and remedies under the governing transaction documents and

applicable law. The danger of the Debtors' Motion is that, by seeking to hide the ball, the Indenture Trustees may not know what actions they should take to protect the rights of the holders of the Bonds until their interests have been harmed. And again, the Debtors are not currently making payments with respect to a number of these agreements. While the non-payment of rent is not the only factor in determining whether to grant the Debtors' motion, it is a factor that the Court should consider.

15. Finally, the relief that the Indenture Trustees are seeking is not burdensome to the Debtors. The Debtors have clearly made some determinations to date as to which agreements they may consider to be leases (subject to potential recharacterization) and which they consider financings (again, subject to potential recharacterization) – as evidenced by their failure to make payments due under some of the agreements. The Indenture Trustees are asking for nothing more than for the Debtors to state with specificity which of the agreements in which the Indenture Trustees have an interest are subject to the Motion.[4] The Trustees note that under Rule 6006 of the Federal Rules of Bankruptcy Procedure the Debtors will be required to submit a specific list of agreements they intend to assume or reject on or before June 26 (assuming an extension of the section 365(d)(4) deadline is granted).[5] Given the uncertainties that typically have surrounded these types of transactions in the past, there is little burden on the Debtors in requiring them to make this disclosure now.

[4] The Indenture Trustees have asked the Debtors to add the agreements in which the Trustees have an interest to the Debtors' Schedule A if those agreements are subject to the Motion, and have informed the Debtors that they have no objection to the Debtors' specifically preserving their rights to recharacterize such transactions as financings – a reservation of rights that the Indenture Trustees hereby make as well.

[5] Rule 6006 requires, among other things, that an omnibus motion to assume or reject executory contracts or unexpired leases "list parties alphabetically and identify the corresponding contract or lease" and "be limited to no more than 100 executory contracts or unexpired leases."

16. If the Court does not require such disclosure, any Order should include a broad reservation of rights, applicable to all parties in interest, providing that neither the listing of, nor the failure to list, an agreement on the Debtors' Exhibit A shall constitute an acknowledgment or determination that the agreement is in fact a lease or is not a lease, and that nothing in the Order shall prejudice the rights of any party in interest with respect to any agreement that is listed, or not listed, on the Debtors' Exhibit A.

WHEREFORE, the Indenture Trustees respectfully request that the Court deny the Motion unless the Debtors specify which of the agreements listed on Exhibit A are covered by the relief sought in the Motion.

Dated: New York, New York
March 15, 2012

KRAMER LEVIN NAFTALIS & FRANKEL LLP

By: /s/ Amy Caton

Amy Caton
P. Bradley O'Neill
1177 Avenue of the Americas
New York, New York 10036
Telephone: (212) 715-9100
Facsimile: (212) 715-8000

-*AND*-

EMMET, MARVIN & MARTIN, LLP

Edward P. Zujkowski
Mordecai Geisler
120 Broadway
32nd Floor
New York, NY 10271
Telephone: (212) 238-3000
Facsimile: (212) 238-3100

-*AND*-

DEWEY & LeBOEUF LLP
Mohsin N. Khambati
180 North Stetson Avenue, Suite 3700
Chicago, IL 60601
Telephone: (312) 794-8000
Facsimile: (312) 794-8100

EXHIBIT A

"Agreements"

JFK International Airport

The "Amended and Restated Agreement of Lease", dated as of December 22, 2000, between The Port Authority of New York and New Jersey and American Airlines (as amended)

The "Amended and Restated Company Sublease Agreement", dated November 1, 2005, between the New York City Industrial Development Agency (the "IDA") and American Airlines

The "Amended and Restated IDA Lease Agreement", dated November 1, 2005, between the IDA and American Airlines

The "Lease Agreement", dated as of August 1, 1990, between the IDA and American Airlines

The "Company Lease", dated as of August 1, 1990, between the IDA and American Airlines

The "Lease Agreement", dated as of August 1, 1994, between the IDA and American Airlines

The "Company Lease Agreement", dated as of August 1, 1994, between the IDA and American Airlines

LAX International Airport

The "Amended and Restated Facilities Sublease and Agreement", dated as of January 1, 2002, between Regional Airports Improvement Corporation and American Airlines

Chicago O'Hare International Airport

The "Special Facility Use Agreement", dated June 1, 2007, between the City of Chicago and American Airlines

Newark International Airport

The "Loan Agreement", dated as of November 1, 1991, between the New Jersey Economic Development Authority and American

Tulsa International Airport

The "Sublease", dated as of June 24, 1958, between the Trustees of Tulsa Municipal Airport Trust and American Airlines (as amended)

Luis Munoz Marin International Airport (Puerto Rico)

The “Special Facilities Agreement”, dated as of June 1, 1993, between Puerto Rico Ports Authority and American Airlines

The “Special Facilities Agreement”, dated as of May 1, 1996, between Puerto Rico Ports Authority and American Airlines