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

	)	<b>Chapter 11</b>
	)	
<b>In re:</b>	)	<b>Case No. 18-13648</b>
	)	
<b>WAYPOINT LEASING HOLDINGS, LTD,</b>	)	<b>Jointly Administered</b>
<b>et al.,</b>	)	
	)	<b>Related Docket No. 180</b>
<b>Debtors.</b>	)	
	)	

**OBJECTION AND RESERVATION OF RIGHTS OF  
OHI FINANCE II S.A., OMNI HELICOPTERS INTERNATIONAL, S.A.,  
AND OMNI TAXI AEREO, S.A. REGARDING  
SALES AND ASSUMPTION/ASSIGNMENTS OF LEASES**

OHI Finance II, S.A., Omni Helicopters International, S.A., and Omni Taxi Aereo, S.A. (collectively, “OHI”), by and through its undersigned counsel, submits this objection and reservation of rights (the “Objection”) regarding (1) the *Motion of Debtors for Entry of Orders Approving: (I) (A) Bidding Procedures, (B) Bid Protections, (C) Form and Manner of Notice of Auction, Sale Transaction, and Sale Hearing, and (D) Procedures for the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; and (II) (A) Sale of Substantially All of the Debtors’ Assets Free and Clear of Liens, Claims, Encumbrances, and Other Interests, (B) Assumption and Assignment of Certain Executory Contracts and Unexpired*

*Leases, and (C) Related Relief* (the “Motion”) [Doc. No. 64]; (2) *Notice of Assumption, Assignment and Cure Amount with Respect to Executory Contracts and Unexpired Leases of Debtors* (the “Notice”) [Doc. No. 180], and (2) the *Supplemental Notice of Assumption, Assignment And Cure Amount With Respect To Executory Contracts And Unexpired Leases Of Debtors* (the “Supplemental Notice”, and together with the Notice, the “Cure Notice”) [Doc. No. 299], filed by the above-captioned debtors (together, the “Debtors”).

In support of this Objection, Omni incorporates in its entirety the legal arguments and discussion contained in the *Limited Objection and Reservation of Rights of OHI Finance II S.A., Omni Helicopters International, S.A., and Omni Taxi Aereo, S.A. Regarding Proposed Cure Amount and Related Items* (the “Initial Objection”) [Doc. No. 281], and respectfully states as follows:<sup>1</sup>

## **BACKGROUND**

### **The Lease Documents**

1. Based on information contained in the Motion, the Cure Notice, and based on discussions with Debtors’ restructuring counsel, the following helicopter lease documents are relevant to this Objection (each a “Lease” and, together the “Leases”):<sup>2</sup>

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<sup>1</sup> OHI’s counsel contacted Debtors’ restructuring counsel prior to filing this Objection. OHI will continue to work in good faith in an effort to resolve the issues raised in this Objection.

<sup>2</sup> OHI understands that additional notices may be filed adding and removing purported executory contracts and unexpired leases. OHI has been working with Debtors’ restructuring counsel to ensure OHI has the most up-to-date information in this regard.

<b><u>Helicopter Serial</u></b>	<b><u>Lease Documents</u><sup>3</sup></b>	<b><u>Purported Successful Bidder</u></b>
Sikorsky S-76C+ Serial No. 760542	<ul style="list-style-type: none"> <li>• Helicopter Operating Lease Agreement (September 6, 2016)</li> <li>• Security Deposit Side Letter (December 15, 2016)</li> <li>• Purchase Option Side Letter (December 15, 2016)</li> </ul>	WAC 9 Streamlined Credit Bidder
Sikorsky S-76C+ Serial No. 760541	<ul style="list-style-type: none"> <li>• Helicopter Operating Lease Agreement (June 24, 2016)</li> <li>• Helicopter Operating Sublease Agreement (June 24, 2016)</li> <li>• Security Deposit Side Letter (December 15, 2016)</li> <li>• Purchase Option Side Letter (December 15, 2016)</li> </ul>	WAC 9 Streamlined Credit Bidder
Sikorsky S-76C+ Serial No. 760539	<ul style="list-style-type: none"> <li>• Helicopter Operating Lease Agreement (December 12, 2016)</li> <li>• Security Deposit Side Letter (December 15, 2016)</li> <li>• Purchase Option Side Letter (December 15, 2016)</li> </ul>	WAC 9 Streamlined Credit Bidder
Sikorsky S-76C+, Serial No. 760538	<ul style="list-style-type: none"> <li>• Helicopter Operating Lease Agreement (December 12, 2016)</li> <li>• Helicopter Operating Sublease Agreement (December 12, 2016)</li> <li>• Security Deposit Side Letter (December 15, 2016)</li> <li>• Purchase Option Side Letter (December 15, 2016)</li> </ul>	WAC 9 Streamlined Credit Bidder

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<sup>3</sup> The documents listed are not intended to be an exhaustive list of the relevant documents, and OHI will supplement as necessary.

Sikorsky S-76C++ Serial No. 760734	<ul style="list-style-type: none"> <li>• Amendment and Restatement Agreement to Aircraft Operating Lease Originally Dated March 17, 2017 (December 19, 2017)</li> <li>• Helicopter Operating Sublease Agreement (March 30, 2017)</li> </ul>	WAC 2 Credit Bidder
Sikorsky S-92A Serial No. 920119	<ul style="list-style-type: none"> <li>• Helicopter Operating Lease Agreement (March 17, 2017)</li> <li>• Helicopter Operating Sublease Agreement (March 30, 2017)</li> </ul>	Macquarie Bidder
Leonardo AW189 Serial No. 89007	<ul style="list-style-type: none"> <li>• Helicopter Operating Lease Agreement (November 3, 2017)</li> <li>• Helicopter Operating Sublease Agreement (November 3, 2017)</li> </ul>	Macquarie Bidder
Leonardo AW139 Serial No. 41511	<ul style="list-style-type: none"> <li>• Helicopter Operating Lease Agreement (August 31, 2018)</li> <li>• Helicopter Operating Sublease Agreement (September 27, 2018)</li> </ul>	Macquarie Bidder
Airbus EC225, Serial No. 2905	<ul style="list-style-type: none"> <li>• Helicopter Operating Lease Agreement (November 11, 2016)</li> <li>• Security Deposit Side Letter (November 11, 2016)</li> <li>• Side Letter (November 25, 2016)</li> <li>• Netting Letter (October 3, 2018)</li> </ul>	No Disposition At This Time

2. As set forth in the Initial Objection, under the terms of certain of the Leases, OHI was required to remit security deposits (collectively, the “Security Deposits”) to the Debtors. If

there is no default or event of default during the term, the Security Deposits must be returned to OHI within five business days of the date on which the parties satisfy the terms of the Lease. In addition, certain Leases also have security deposit side letters (the “Side Letters”). Under the Side Letters, if the lessor or owner participant transfers or assigns its interests in the helicopters, the Debtor, as owner participant, must procure that “(i) its obligations and rights are novated and assigned to the New Owner Participant, and (ii) the Security Deposit is transferred to the New Owner Participant.”

3. OHI and Waypoint Asset Company Number 1 (Ireland) Limited also entered into an Additional Helicopter Security Deposit Side Letter dated October 29, 2015, under which OHI paid a separate Security Deposit in the amount of \$2,000,000 in exchange for the parties’ agreement to enter into four new operating lease agreements in the future (the “Future Leases Agreement”). Under the terms of the Future Leases Agreement, Waypoint agreed to return the Security Deposit on the earlier of “(i) the date of execution of the relevant [new operating lease agreement] and (ii) three months following the date of the binding term sheet if Waypoint fails to sign a [new operating lease agreement] on the commercial terms set out in the binding term sheet and such failure is due to Waypoint’s bad faith.” No less than \$1,500,000 remains outstanding for this Security Deposit associated with the Future Leases Agreement.

4. As of the Petition Date, and as further detailed in the Initial Objection, the total amount of Security Deposits being held by the Debtors was no less than approximately \$3,674,576.

#### **The Successful Bids For The Debtors’ Assets**

5. According to the *Notice Of Identities Of Successful Credit Bidders* (the “Bidder Notice”) [Doc. No. 297], there are three credit bids in addition to the Macquarie bid for the

Debtors' assets: (i) the WAC 2 Credit Bid; (ii) the WAC 9 Credit Bid; and (iii) the WAC 12 Credit Bid.

6. After review of the Cure Notice and discussion with Debtors' counsel, Omni understands that the Macquarie Bid, the WAC 2 Credit Bid, and the WAC 9 Credit Bid, are applicable to the Leases identified above.

The Macquarie Bid

7. The three Leases associated with helicopter serial numbers 920119, 89007, and 41511 relate to the Macquarie Bid. Of these, the Leases associated with 89007 and 41511 have Security Deposits in the amount of \$684,576 and \$170,000, respectively. If there is no default or event of default during the term of these Leases, the Security Deposits must be returned to OHI within five business days of the date on which the parties satisfy the terms of the applicable Lease.

8. OHI has no objection to Macquarie taking an assignment of the Leases, so long as:

- **The sale order approving the Macquarie asset purchase agreement contains a provision(s) that Macquarie will refund the Security Deposits under the terms of the Leases (this is especially important as OHI presumes that Debtors will not be providing Macquarie with the Security Deposits OHI gave to Debtors);**
- **All documents comprising the Leases listed above are assumed and assigned;<sup>4</sup> and**
- **The sale order contains a provision(s) stating that nothing in the bankruptcy case, any sale order, nor the asset purchase agreement should change the provisions of the Leases, including, without limitation, any change in the governing law concerning the Leases or any forum-selection clauses under the Leases.**

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<sup>4</sup> OHI understands that all documents comprising a particular Lease will be assumed/assigned or part of an equity purchase. In other words, a prevailing party could not take a lease without a side letter nor a purchase option, as applicable.

9. OHI has had preliminary discussions with Debtors' counsel and Macquarie regarding these matters.

The WAC 2 Credit Bid

10. The Lease associated with helicopter serial number 760734 relates to the WAC 2 Credit Bid. On information and belief, there is no Security Deposit associated with this Lease.

11. OHI has no objection to the sale transaction so long as:

- **The sale order contains a provision(s) stating that nothing in the bankruptcy case, any sale order, nor the asset purchase agreement should change the provisions of the Leases, including, without limitation, any change in the governing law concerning the Leases or any forum-selection clauses under the Leases; and**
- **All documents comprising the Leases listed above are assumed and assigned, or in the case of an equity transfer, stay with the entity whose equity is being purchased.<sup>5</sup>**

The WAC 9 Credit Bid

12. The four Leases associated with helicopter serial numbers 760542, 760541, 760539, and 760538 relate to the WAC 9 Credit Bid, which is considered a Streamlined Credit Bid. Each one of these Leases has a \$130,000 Security Deposit.

13. In regards to the Leases, if there is no default or event of default during the term of these Leases, the Security Deposits must be returned to OHI within five business days of the date on which the parties satisfy the terms of the applicable Lease. Each one of these Leases also includes a Side Letter that requires the applicable Debtor to transfer the Security Deposit to the assignee upon an assignment. Under the terms of the Leases and Side Letters, a change of control through the sale of equity interests triggers the Security Deposit transfer provisions. The Side Letters state that the Security Deposits must be transferred to the New Owner Participant "in the

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<sup>5</sup>

See footnote 3 above.

event that the Owner Participant assigns or transfers all or any part of its rights and title with respect of the Helicopter to another entity...” Section 17.1 of the Leases—the provision governing assignments and transfers—authorizes the Lessor (or Owner Participant) to “transfer the Helicopter and/or assign or transfer all or any part of its rights and obligations under this Agreement... including in connection with... a merger, reorganization, consolidation, acquisition or a change in control event or otherwise.” The Side Letters incorporate the provisions of the Leases, and therefore, a change in control event is an assignment or transfer for purposes of the Security Deposit transfer provisions.

14. On information and belief, the Future Leases Agreement also relates to the WAC 9 Credit Bid.

15. OHI has no objection to the sale transaction so long as:

- **The sale order contains a provision(s) stating that the Security Deposits for each Lease have been transferred to the successful bidder and/or are available to satisfy the terms of the Leases regarding the Security Deposits;**
- **The sale order approving the transaction contains a provision(s) that the Security Deposits will be refunded under the terms of the Leases;**
- **All documents comprising the Leases listed above are assumed and assigned, or in the case of an equity transfer, stay with the entity whose equity is being purchased;<sup>6</sup>**
- **All rights of OHI under the Future Leases Agreement, including with respect to the \$1,500,000 remaining Security Deposits, are preserved for the benefit of OHI; and**
- **The sale order contains a provision(s) stating that nothing in the bankruptcy case, the sale order, nor the asset purchase agreement should change the provisions of the Leases or the Future Leases Agreement, including, without limitation, any change in the governing**

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<sup>6</sup>

See footnote 3 above.



**law concerning the Leases or any forum-selection clauses under the Leases.**

**The Lease For Helicopter 2905**

16. The Lease for helicopter 2905 required OHI to remit a Security Deposit in the aggregate amount of \$600,000 at the inception of the Lease. A Side Letter also required that OHI remit an additional \$600,000, which the lessor is required to periodically refund in the following increments: (a) \$200,000 on September 14, 2017, (b) \$200,000 on June 14, 2018, and (c) \$200,000 on March 14, 2019. On information and belief, the first two refunds have been made to OHI and only the March 14 payment remains.

17. On information and belief, there is no planned disposition of this Lease at this time. OHI reserves all rights with respect to this Lease while OHI and Debtors determine the disposition of this Lease.

**RESERVATION OF RIGHTS**

18. OHI reserves all rights regarding the Leases and the Future Leases Agreement, and further reserves the right to supplement, modify, and/or amend this Objection in any way as and when it deems necessary or appropriate, including, without limitation, to assert other amounts owed with respect to the Leases and Future Leases Agreement.

**NOTICE**

19. This Limited Objection has been served automatically through the Court's ECF system and on the Objection Notice Parties, as set forth in the Bidding Procedures Order.

**CONCLUSION**

**WHEREFORE**, OHI respectfully requests that the Court condition any approval of the applicable sale/equity transactions on the inclusion of appropriate language in order(s) to protect

OHI's rights as outlined above, and grant OHI such other and further relief as the Court may deem just and proper.

Dated: February 1, 2019

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