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*Attorneys for AgustaWestland
Malaysia Sdn. Bhd.*

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

----- X	
In re:	: Chapter 11
	: :
WAYPOINT LEASING HOLDINGS LTD., <i>et al.</i> ,	: Case No. 18-13648 (SMB)
	: :
Debtors.	: Jointly Administered
----- X	

**LIMITED OBJECTION OF AGUSTAWESTLAND MALAYSIA SDN. BHD. TO THE
SUPPLEMENTAL NOTICE OF ASSUMPTION, ASSIGNMENT AND CURE AMOUNT
WITH RESPECT TO EXECUTORY CONTRACTS
AND UNEXPIRED LEASES OF DEBTORS**

AgustaWestland Malaysia Sdn. Bhd. (“AWM”), by and through its undersigned counsel, submits this limited objection (the “Limited Objection”) to the *Supplemental Notice of Assumption, Assignment and Cure Amount with Respect to Executory Contracts and Unexpired Leases of Debtors* [ECF No. 299] (the “Supplemental Notice”) filed by the above-captioned debtors (collectively, the “Debtors”). In support of the Limited Objection, AWM respectfully states as follows:

Background

1. On November 25, 2018 (the “Petition Date”), the Debtors each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”).

2. On December 21, 2018, this Court entered an order (the “Bidding Procedures Order”) approving 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.* [ECF No. 159.]

3. Pursuant to the Bidding Procedures Order, the Debtors have proposed assuming and assigning various contracts to Macquarie Rotorcraft Leasing Holdings Limited (“Macquarie”), the proposed stalking horse purchaser for substantially all of the Debtors’ assets.

4. On December 27, 2018, the Debtors filed a *Notice of Assumption, Assignment, and Cure Amount with Respect to Executory Contracts and Unexpired Leases of Debtors*, which provided an initial list of contracts proposed to be assumed and assigned to Macquarie. [ECF No. 180.] On January 25, 2018, the Debtors filed the Supplemental Notice, which, in relevant part, added certain contracts to the initial list of proposed assignments to Macquarie.

5. Among the newly added contracts in the Supplemental Notice are three (3) contracts to which AWM is identified as a counterparty (collectively, the “AWM Contracts”): (i) an operating lease agreement (the “Operating Lease Agreement”) with Waypoint Leasing Labuan 1A Limited (“Waypoint Labuan”), with a proposed cure of \$0.00; (ii) an AW139 Stand-By Full Components Plan (the “AWM/08/18 Contract”) with Waypoint Asset Company Number 1 (Ireland) Limited (“WAC No. 1”), with a proposed cure of \$256,500.00; and (iii) a second

AW139 Stand-By Full Components Plan (the "AWM/07/18 Contract") with WAC No. 1, with a proposed cure of \$298,809.30.¹

Limited Objection

6. Section 365 of the Bankruptcy Code sets forth the requirements for a debtor's assumption of executory contracts and unexpired leases. 11 U.S.C. § 365(a). Importantly, in the event there is a default under an executory contract or unexpired lease, the Bankruptcy Code prohibits the assumption of such agreement unless certain conditions are satisfied, including the cure of *all* monetary defaults. *See* 11 U.S.C. § 365(b)(1); *In re Ionosphere Clubs, Inc.*, 85 F.3d 992, 999 (2d Cir. 1996). The purpose of this requirement is to bring the subject contract "back into compliance with its terms" and provide the non-debtor party with the benefit of its bargain. *ReGen Capital I, Inc. v. Halperin (In re U.S. Wireless Data, Inc.)*, 547 F.3d 484, 489 (2d Cir. 2008) ("It is particularly important for a bankruptcy court to know to what degree a debtor is in default on an executory contract because a debtor cannot assume such a contract unless the debtor satisfies several statutory conditions designed to make the non-debtor contracting party whole.").

7. By way of this Limited Objection, AWM seeks to clarify the circumstances surrounding the AWM Contracts and the resulting amounts owed to AWM under those contracts, and to avoid any uncertainty going forward.² It is AWM's intention to confer with the Debtors on the points raised herein with an eye to reaching a consensual resolution.

¹ These contracts are listed in Schedule J of the Supplemental Notice as numbers 1, 377, and 378, respectively.

² The general description herein of contracts to which AWM is a party, or that otherwise affect AWM, including, but not limited to, the AWM Contracts and the Amendments, is not intended to be a substitute or modify any of the terms of said contracts. In the event of any inconsistency or ambiguity between the description or summary herein and the contract or agreement, the terms of such contract or agreement shall control.

Operating Lease Agreement

8. Based on the information provided in Schedule 1 of the Supplemental Notice, AWM is not able to identify with certainty the operating lease agreement between AWM and Waypoint Labuan that the Debtors propose to assume and assign. AWM believes that the Debtors may be referring to a lease, pertaining to an aircraft identified as MSN 49029, which expired before the Petition Date in 2017. In fact, on information and belief, there are no unexpired agreements between AWM and Waypoint Labuan as of the Petition Date. Because Section 365 of the Bankruptcy Code does not permit the assumption of an expired lease, AWM objects to the assumption of any lease between the parties on that basis. *See, e.g., In re Stoltz*, 197 F.3d 625, 629 (2d Cir. 1999); *In re Neville*, 118 B.R. 14, 18 (Bankr. E.D.N.Y. 1990) (“Once a lease has been terminated, the Bankruptcy Court does not have the power to revive it even through its equitable powers.”).

9. Alternatively, to the extent that (i) the lease identified in the Supplemental Notice is the same as that identified above (*i.e.*, MSN 49029), and (ii) the Debtors dispute that it is expired or that the lease is otherwise assumable, AWM asserts that outstanding invoices in connection with that lease, in the aggregate amount of \$6,665.28, must be cured prior to the assumption of that lease. Copies of the invoices are attached hereto as **Exhibit A**.

AWM/07/18 and AWM/08/18 Contracts

10. In December of 2017, WAC No. 1 entered into a lease agreement with a third-party lessee (“Capstone”) for the lease of an AW139 helicopter (S/N 31798). In January of 2018, WAC No. 1 entered into a second lease agreement with Capstone for the lease of another AW139 helicopter (S/N 31414).

11. In June of 2018, WAC No. 1 and AWM entered into the AWM/07/18 Contract through which AWM provides support (*e.g.*, repair, overhaul and replacement spare parts) covering the AW139 helicopter (S/N 31798). In August of 2018, WAC No. 1 and AWM entered into the AWM/08/18 Contract through which AWM provides support (*e.g.*, repair, overhaul and replacement spare parts) covering the AW139 helicopter (S/N 31414).

12. In January of 2019, WAC No. 1, Capstone, and a sub-lessee entered into certain amendments to the AWM/07/18 and AWM/08/18 Contracts (collectively, the “Amendments”). In relevant part, the Amendments provide (with the exception described below) that Capstone, as lessee of the subject helicopters, is now responsible to pay directly to AWM all outstanding amounts due under the past and future invoices relevant to the flying hours flown under the AWM/07/18 and AWM/08/18 Contracts, thereby relieving WAC No. 1 of those obligations.

13. Pursuant to the Amendments, the only obligations currently due and owing to AWM from WAC No. 1 are the outstanding entry fee installments under the AWM/08/18 Contract totaling \$256,500.00 (the “Entry Fee”). This sum appears on the Statement of Account attached hereto as **Exhibit B**, which shows the full amounts due and owing under both the AWM/07/18 and AWM/08/18 Contracts.

14. Accordingly, AWM does not object to the proposed cure amount of \$256,500.00 for the Entry Fee as specified in Schedule 1 of the Supplemental Notice. Based on the Amendments, AWM believes that Schedule 1 of the Supplemental Notice incorrectly states the proposed cure amount for the AWM/07/18 Contract as \$298,809.30. It is incorrect only for the reason that it identifies an obligation for which Capstone, a third-party, has now affirmatively and definitively taken direct responsibility under the Amendments. *See supra* ¶ 12. AWM has

no reason to believe that the Amendments are not effective. Thus, for the sole purpose of the Supplemental Notice the correct cure amount for the AWM/07/18 Contract should be \$0.00.

15. On the other hand, if the Amendments are deemed not valid or effective for any reason whatsoever, AWM respectfully submits that the full amounts identified on Exhibit B, as well any and all future invoices due and owing to AWM as of the date of the assumption of the applicable contract, *must* be cured and paid by the Debtors.

16. AWM reserves its rights under the AWM Contracts and the Amendments, and nothing set forth herein shall be construed as a waiver, release, discharge, or disallowance of any and all administrative and/or pre-petition claims against the Debtors. AWM further reserves the right to amend, modify and/or supplement this Limited Objection and to assert such other and further objections as may be appropriate.

WHEREFORE, AWM respectfully requests that the Court (i) deny the proposed assumption and assignment of the AWM Contracts except on the conditions described above, and (ii) grant such other and further relief as it deems just and proper.

New York, New York
Dated: February 5, 2019

OTTERBOURG P.C.

By: /s/ Melanie L. Cyganowski
Melanie L. Cyganowski, Esq.
230 Park Avenue
New York, NY 10169
Telephone: (212) 661-9100
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*Attorneys for AgustaWestland
Malaysia Sdn. Bhd.*

EXHIBIT A



AgustaWestland Malaysia Sdn. Bhd. (784659-A)

GST Reg No: 000546578432
Old Cargo Complex, SAAS Airport,
47200 Subang, Selangor Darul Ehsan, Malaysia.
Phone (603) 7842-3026 Fax (603) 7842-3029

Tax Invoice

Plant: Regional Logistic Centre
AgustaWestland Malaysia Sdn. Bhd
Old Cargo Complex, SAAS Airport
47200 SUBANG, SELANGOR DARUL EHSAN
MALAYSIA

Tax Invoice 1100004990		Date 30.11.2017		Customer Waypoint Leasing Labuan 1A Limited Tiara Labuan, Jalan Tanjung Batu, 87000 LABUAN MALAYSIA		Shipped to	
Our Order YA50008287		Code 50008287		VAT number			
Customer Contract				Terms of Payment 30 days Billing Date		Beneficiary Name AgustaWestland Malaysia Sdn Bhd CITIBANK BERHAD 165 Jalan Ampang 50450 Kuala Lumpur, Malaysia	Account N. [REDACTED] Swift Code : CITIMYKL
						Currency USD	
REF./ITEM	DELIVERED P/N	DESCRIPTION	U.M.	QUANTITY	UNIT PRICE	DISC. %	TOTAL VALUE
771080285 10	8G9560V00231 (SR) S/N: 2000040(037)	FWD RIGHT FLOAT	N	1,000	1.572,00		1.572,00
							1.572,00
Total Excl. GST							1.572,00
GST						6,00 %	94,32
Total Incl. GST							1.666,32
MATERIAL OF YOUR PROPERTY BEING RETURNED							
****Below Information is for the purpose of GST****							
Total Excl. GST (MYR @ /0,24368) 6.451,08 MYR							
GST (MYR @ /0,24368) 387,07 MYR							
Total Incl. GST (MYR @ /0,24368) 6.838,15 MYR							
Shipment		Package		Gross Weight		Net Weight	
				0,000		0,000	
Dimensions						Page N.	
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Tax Invoice

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47200 SUBANG, SELANGOR DARUL EHSAN
MALAYSIA

Tax Invoice 1100004991		Date 30.11.2017		Customer Waypoint Leasing Labuan 1A Limited Tiara Labuan, Jalan Tanjung Batu, 87000 LABUAN MALAYSIA			Shipped to			
Our Order YA50008287		Code 50008287		VAT number						
Customer Contract				Terms of Payment 30 days Billing Date		Beneficiary Name AgustaWestland Malaysia Sdn Bhd CITIBANK BERHAD 165 Jalan Ampang 50450 Kuala Lumpur, Malaysia		Account N. : ██████████ Swift Code : CITIMYKL		Currency USD
REF./ITEM	DELIVERED P/N	DESCRIPTION	U.M.	QUANTITY	UNIT PRICE	DISC. %	TOTAL VALUE			
771080286 10	8G9560V00131 (SR) S/N: 2000043(037)	FWD LEFT FLOAT	N	1,000	1,572.00		1,572.00			
		Total Excl. GST					1,572.00			
		GST			6.00 %		94.32			
		Total Incl. GST					1,666.32			
MATERIAL OF YOUR PROPERTY BEING RETURNED										
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GST (MYR @ /0,24368) 387,07 MYR										
Total Incl. GST (MYR @ /0,24368) 6,838,15 MYR										
Shipment		Package		Gross Weight		Net Weight		Dimensions		Page N.
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Tax Invoice

Plant: Regional Logistic Centre
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Old Cargo Complex, SAAS Airport
47200 SUBANG, SELANGOR DARUL EHSAN
MALAYSIA

Tax Invoice 1100004992		Date 30.11.2017		Customer Waypoint Leasing Labuan 1A Limited Tiara Labuan, Jalan Tanjung Batu, 87000 LABUAN MALAYSIA			Shipped to			
Our Order YA50008287		Code 50008287		VAT number						
Customer Contract				Terms of Payment 30 days Billing Date		Beneficiary Name AgustaWestland Malaysia Sdn Bhd CITIBANK BERHAD 165 Jalan Ampang 50450 Kuala Lumpur, Malaysia		Account N: [REDACTED] Swift Code : CITIMYKL		Currency USD
REF./ITEM	DELIVERED P/N	DESCRIPTION	U.M.	QUANTITY	UNIT PRICE	DISC. %	TOTAL VALUE			
771080287 10	8G9560V00431 (SR) S/N : 2000069(060)	AFT RIGHT FLOAT	N	1,000	1,572.00		1,572.00			
		Total Excl. GST					1,572.00			
		GST			6.00 %		94.32			
		Total Incl. GST					1,666.32			
MATERIAL OF YOUR PROPERTY BEING RETURNED										
****Below Information is for the purpose of GST****										
Total Excl. GST (MYR @ /0,24368) 6,451.08 MYR										
GST (MYR @ /0,24368) 387,07 MYR										
Total Incl. GST (MYR @ /0,24368) 6,838.15 MYR										
Shipment		Package		Gross Weight		Net Weight		Dimensions		Page N.
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MALAYSIA

Tax Invoice 1100004993		Date 30.11.2017		Customer Waypoint Leasing Labuan 1A Limited Tiara Labuan, Jalan Tanjung Batu, 87000 LABUAN MALAYSIA			Shipped to			
Our Order YA50008287		Code 50008287		VAT number						
Customer Contract				Terms of Payment 30 days Billing Date		Beneficiary Name AgustaWestland Malaysia Sdn Bhd CITIBANK BERHAD 165 Jalan Ampang 50450 Kuala Lumpur, Malaysia		Account N. [REDACTED] Swift Code : CITIMYKL Currency USD		
REF./ITEM	DELIVERED P/N	DESCRIPTION	U.M.	QUANTITY	UNIT PRICE	DISC. %	TOTAL VALUE			
771080288 10	8G9560V00331 (SR) 2000035(036)	AFT LEFT FLOAT	N	1,000	1,572.00		1,572.00			
		Total Excl. GST					1,572.00			
		GST			6.00 %		94.32			
		Total Incl. GST					1,666.32			
MATERIAL OF YOUR PROPERTY BEING RETURNED										
****Below Information is for the purpose of GST****										
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GST (MYR @ /0.24368) 387.07 MYR										
Total Incl. GST (MYR @ /0.24368) 6,838.15 MYR										
Shipment		Package		Gross Weight		Net Weight		Dimensions		Page N.
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EXHIBIT B



WAYPOINT ASSET COMPANY NUMBER 1 (50008323)
8 RIVERPOINT, BISHOPS QUAY
LIMERICK
V94WC6A
IRELAND

Date : 07.01.2019

Contact Person: WP Account Payables
E-mail Address: [WP.Account.Payables <ap@waypointleasing.com>](mailto:WP.Account.Payables%20ap@waypointleasing.com)

STATEMENT OF ACCOUNT AS AT 31.12.2018

Reference	Document Number	Document Date	Amount in doc. curr.	Document currency	Remarks
230439075	1300015452	08.10.2018	50,413.80	USD	Waypoint>YA60035-10>Apr Till Sept 2018
230439079	1300015453	08.10.2018	298,809.30	USD	Waypoint>YA60036-10>Apr Till Sept 2018
230444820	1300015691	14.11.2018	16,695.10	USD	Waypoint>YA60035-10>Oct 2018
230444827	1300015692	14.11.2018	33,487.10	USD	Waypoint>YA60036-10>Oct 2018
230449057	1300015958	12.12.2018	256,500.00	USD	Waypoint>Entry Fee for S/N 31414>2nd till 4th Instalment
230449109	1300015959	12.12.2019	11,532.60	USD	Waypoint>YA60035-10>Nov 2018
230449110	1300015960	12.12.2020	54,337.60	USD	Waypoint>YA60036-10>Nov 2018
230452231	1300016236	31.12.2018	12,725.70	USD	Waypoint>YA60035-10>Dec 2018
230452232	1300016237	31.12.2018	37,130.00	USD	Waypoint>YA60036-10>Dec 2018
Total Amount Outstanding As At 31.12.2018			771,631.20	USD	

SUMMARY - AMOUNT DUE	Amount in doc. curr.	Document currency
Total Spares/ Tools/ Others As At 31.12.2018	771,631.20	USD
GRAND TOTAL AS AT 31.12.2018	771,631.20	USD

AgustaWestland Malaysia Sdn Bhd
Lot 1&2, Helicopter Center, Sultan Abdul Aziz Shah Airport,
47200 Subang, Selangor, Malaysia.
Tel: 603-7831 0010 Fax: 603- 7734 6149

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Tel +39 06 324731 - Fax +39 06 3208621