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

In re:

WAYPOINT LEASING HOLDINGS LTD., *et al.*,

Debtors.

Chapter 11

Case No. No. 18-13648 (SMB)

(Jointly Administered)

**LIMITED OBJECTION OF AIRBUS HELICOPTERS S.A.S AND
AIRBUS HELICOPTERS DEUTSCHLAND GMBH TO THE DEBTORS'
SUPPLEMENTAL NOTICE OF ASSUMPTION,
ASSIGNMENT AND CURE AMOUNT WITH RESPECT TO EXECUTORY
CONTRACTS AND UNEXPIRED LEASES OF DEBTORS**

Airbus Helicopters S.A.S. and Airbus Helicopters Deutschland GmbH (collectively, “**AH**”), hereby submit this limited objection (the “**Objection**”) to the Debtors’ *Supplemental Notice of Assumption, Assignment and Cure Amount With Respect to Executory Contracts and Unexpired Leases of Debtors* [Docket No. 299] (the “**Notice of Assumption**”), and respectfully state as follows:

Background

1. On November 25, 2018 (the “Petition Date”), the Debtors each commenced a voluntary case under chapter 11 of the Bankruptcy Code.

2. On December 10, 2018, the Debtors filed 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* [Docket No. 64] (the “**Bidding Procedures Motion**”).

3. Among other things, the Bidding Procedures Motion sought authority to pursue a sale process for substantially all of the Debtor's assets. In connection with the Debtors' sale process, the Debtors entered into a Stock and Asset Purchase Agreement with Macquarie Rotorcraft Leasing Holdings Limited”).

4. On December 27, 2018, the Debtors filed the *Notice of Assumption, Assignment, and Cure Amount with Respect to Executory Contracts and Unexpired leases of Debtors*, (the “**Cure Notice**”), notifying counterparties that the Debtors were seeking to assume and assign certain Contracts, annexed to the Cure Notice as Schedule 1, to Macquarie Rotorcraft Leasing Holdings Limited (“**Macquarie**,” and such schedule, the “**Assumed Macquarie Contract Schedule**”) and identifying associated Cure Costs. As set forth in the Cure Notice, Contracts could be added or removed from the Assumed Macquarie Contract Schedule by the Debtors filing a supplemental notice.

5. On January 23, 2019, the Debtors filed the *Notice and Identities of Successful Credit Bidders* [Docket No. 297] (the “**Credit Bid Notice**”), announcing that the Credit Bids received by (i) Wells Fargo, National Association, as WAC Facility Agent for the WAC 2 Lenders (the “**WAC 2 Credit Bid**”); (ii) Lombard North Central plc as WAC Facility Agent for

the WAC 9 Lenders (the “**WAC 9 Credit Bid**”); and (iii) Sumitomo Mitsui Banking Corporation and Sumitomo Mitsui Banking Corporation Europe Limited as WAC Facility Agents for the WAC 12 Lenders (the “**WAC 12 Credit Bid**”), was each deemed to be a Successful Credit Bid in accordance with the Bidding Procedures, subject to certain conditions set forth in the Credit Bid Notice.

7. On January 25, 2019, Debtors filed the Supplemental Cure Notice of contracts and unexpired leases being added to the Assumed Macquarie Contract Schedule (“**Supplemental Notice**”) of contracts that may be assumed and assigned to Macquarie. [Docket No. 299].

8. The Contracts annexed to the Supplemental Notice as Schedule 1 (the “**Supplemental Macquarie Contracts**”) are contracts the Debtor states it may assume and assign to Macquarie. Schedule 1 at rows 513 to 518 lists six (6) Airbus Helicopter contracts, including (1) Framework Agreement No.H135/H145/H175-2017, between Waypoint Asset Co 5 Limited and Waypoint Asset Co. 4 Limited and Airbus Helicopters and Airbus Helicopters Deutschland GmbH; (2) Storage Framework Agreements between Waypoint Asset Co 5 Limited and Airbus Helicopters Deutschland GmbH; and (3) Storage Framework Agreement Amendments Nos. 17, 18 and 19 to Agreement to EC145.183 Dated 15 October 2014 (collectively the “Assumed Airbus Helicopter Contracts”).

9. The Cure Costs are the only amounts proposed to be paid upon the assumption and assignment of the Supplemental Macquarie Contracts. The Cure Costs listed for the Assumed Airbus Helicopter Contracts aggregate to \$7,726,793.61. Airbus disputes the Cure Costs listed on Schedule 1 row 513 to 518.

10. The Assumed Airbus Helicopter Contract are priced exclusively in Euros, not US Dollars. The aggregate costs to cure outstanding defaults under the Assumed Airbus Helicopter

Contracts as of February 4, 2018 were Euro 7,893,965,75. As of February 4, 2019, the exchange rate was (1.1443 USD/Euro). As of February 4, 2019, the February 1, 2019 cost to cure outstanding defaults under the Assumed Airbus Helicopter Contracts was USD 9,033,064.

11. The Supplemental Notice provides that any executory contract listed on Schedule 1 is being added to the Assumed Macquarie Schedule and therefore may be assumed and assigned to Macquarie, and to the extent, any party objects to the applicable Cure Cost of any Supplemental Macquarie Contract, it is required to file an objection by February 5, 2019 at 5:00 p.m. (ET).

Objection

12. Prior to the Petition Date, certain of the Debtors, Waypoint Asset Co. 5 Limited and Waypoint Asset Co. 4 Limited and Airbus Helicopters S.A.S. and Airbus Helicopters Deutschland GmbH entered into a Framework Agreement No. H135/H145/H175 and related agreements.

13. In addition, Waypoint Asset Co. Limited entered into certain agreements for storage with Airbus Helicopters Deutschland GmbH as more fully identified in entries 514 to 518 of the Supplemental Notice.

14. Section 365 of the Bankruptcy Code permits a debtor to assume or reject an unexpired lease in its discretion. However, an executory contract may only be assumed if the debtor satisfies certain statutory conditions, including curing all monetary defaults. 11 U.S.C. § 365(b)(1)(A). *ReGen Capital I, Inc. v. Halperin (In re 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. *See also In re Ionosphere Clubs, Inc.*, 85 F.3d 992, 999 (2d Cir.1996) (“Congress’s intent

in imposing these conditions on the ability of the debtor to assume the contract was to insure that the contracting parties receive the full benefit of their bargain if they are forced to continue performance.”).

15. While AH has no objection to the assumption and related assignment of the contracts to the Macquarie upon payment of the appropriate cure amount, AH hereby objects to the proposed cure amounts listed in the Supplemental Notice for some of the contracts listed therein. Set forth on Exhibit A are the amounts and entries which are disputed as of the date of this Objection.

16. The Assumed Airbus Helicopter Contract are priced exclusively in Euros, not US Dollars. The aggregate costs to cure outstanding defaults under the Assumed Airbus Helicopter Contracts as of February 1, 2018 were Euro 7,893,965,75. As of February 4, 2019, the exchange rate was (1.1443 USD/Euro). As of February 4, 2019, the February 1, 2019 cost to cure outstanding defaults under the Assumed Airbus Helicopter Contracts was USD 9,033,064.

17. AH also objects to the proposed assumption of the agreements to the extent that the Debtors fail to satisfy any amounts that may become due and owing prior to the assumption of the agreements in connection with the closing of the sale to Macquarie.

18. AH also objects to the extent the Debtors seek to assume contracts without assuming all related agreements and contracts or any integrated agreement. “When the debtor assumes the lease or the contract under § 365, it must assume both the benefits and the burdens of the contract. Neither the debtor nor the bankruptcy court may excise material obligations owing to the non-debtor contracting party.” *Empire State Bldg. Co. v. New York Skyline, Inc. (In re New York Skyline, Inc.)*, 432 B.R. 66, 77 (Bankr.S.D.N.Y.2010). This principle also applies when the agreement between the parties consists of several related agreements that all form part of the same

integrated transaction. *In re Physiotherapy Holdings, Inc.*, 538 B.R. 225, 234 (D. Del. 2015) (several separate agreements constitute one integrated agreement for the purpose of assumption under section 365).

19. Here, the agreements are part of a complex framework agreement between the Debtors and AH for the manufacture of aircraft.

20. Therefore, any order approving the assumption of the agreements must make clear that each related operative document to which a Debtor is a party that is integral to such transaction, whether explicitly listed in the schedule of unexpired leases or not, shall be assumed by the Debtors according to the terms of the agreement.

21. AH expressly reserves the right to make such other and further objections as may be appropriate, including the right to amend, modify and supplement this Objection. In addition, nothing set forth herein shall be construed as a waiver, release, discharge or disallowance of any and all administrative and pre-petition claims against the Debtors.

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WHEREFORE, AH respectfully request that the Court (i) deny the proposed assumption of the AH agreements unless the Debtors cure all monetary defaults as of the date of assumption and (ii) grant such other and further relief as it deems just and proper.

Dated: February 5, 2019
New York, New York

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Exhibit A

No.	Contract Category	Contract Description	Debtor(s)	Counterparties	Proposed Cure Cost (USD)
513	Purchase Agreement	Framework Agreement N° H135/ H145 / H175 - 2017 December 08, 2017 (Which supersedes the original Purchase Agreements and the Contract Amendments with respect to the H135 and H145	Waypoint Asset Co 5 Limited Waypoint Asset Co 4 Limited	Airbus Helicopters and Airbus Helicopters Deutschland	\$7,270,229.95 Disputed
514	Storage	Storage Framework Agreement - Agreed to store by email only with reference to storage agreement	Waypoint Asset Co 5 Limited	Airbus Helicopters Deutschland GmbH	\$109,095.95 Disputed
515	Storage	Storage Framework Agreement - No formal agreement	Waypoint Asset Co 5 Limited	Airbus Helicopters Deutschland GmbH	\$13,604.40 Disputed
516	Storage	Storage Framework Agreement - Amendment No. 17 to Agreement to EC145.182 Dated 15 October 2014 (original contract Purchase Agreement no EC145.182 on 15 October 2014)	Waypoint Asset Co 5 Limited	Airbus Helicopters Deutschland GmbH	\$108,302.36 Disputed
517	Storage	Storage Framework Agreement - Amendment No. 18 to Agreement to EC145.182 Dated 15 October 2014 (original contract Purchase Agreement no EC145.182 on 15 October 2014)	Waypoint Asset Co 5 Limited	Airbus Helicopters Deutschland GmbH	\$117,258.59 Disputed
518	Storage	Storage Framework Agreement - Amendment No. 19 to Agreement to EC145.182 Dated 15 October 2014 (original contract Purchase Agreement no EC145.182 on 15 October 2014)	Waypoint Asset Co 5 Limited	Airbus Helicopters Deutschland GmbH	\$108,302.36 Disputed