

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

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**In re** : **Chapter 11**  
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**WAYPOINT LEASING** : **Case No. 18-13648 (SMB)**  
**HOLDINGS LTD., et al.,** :  
:  
: **(Jointly Administered)**  
**Debtors.**<sup>1</sup> :  
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**INTERIM ORDER PURSUANT TO 11 U.S.C. §§ 105(a), 363(b), 503(b), AND  
507(a) (I) AUTHORIZING DEBTORS TO PAY PREPETITION OBLIGATIONS  
OWED TO LIEN CLAIMANTS AND OTHER CRITICAL VENDORS;  
AND (II) CONFIRMING ADMINISTRATIVE STATUS FOR GOODS AND SERVICES  
DELIVERED TO THE DEBTORS POSTPETITION**

Upon the motion (the “**Motion**”),<sup>2</sup> dated November 25, 2018 [ECF No. 11] of Waypoint Leasing Holdings Ltd. and certain of its subsidiaries and affiliates, as debtors and debtors in possession (collectively, the “**Debtors**”), pursuant to sections 105(a), 363(b), 503(b), and 507(a) of title 11 of the United States Code (the “**Bankruptcy Code**”) for entry of interim and final orders, authorizing, but not directing, the Debtors, in the ordinary course of business, to (i) pay prepetition obligations to owed certain vendors, suppliers, service providers, and other similar parties and entities that (a) could, on account of their prepetition claims, potentially assert liens against the Debtors’ property on account of outstanding prepetition obligations of the Debtors (collectively, the “**Lien Claimants**”), or (b) are otherwise critical to maintaining the going concern

<sup>1</sup> The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor’s federal tax identification number, as applicable, are set forth on Exhibit A to the Motion.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Motion or in the *Interim Order Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 364, 507, and 552, Fed. R. Bankr. P. 2002, 4001, 6003, 6004, and 9014, and L. Bankr. R. 2002-1, 4001-2, 9013-1, 9014-1, and 9014-2 (I) Authorizing the Debtors to (A) Obtain Senior Secured Priming Superpriority Postpetition Financing, (B) Grant Liens and Superpriority Administrative Expense Status, and (C) Utilize Cash Collateral; (II) Granting Adequate Protection; (III) Scheduling a Final Hearing; and (IV) Granting Related Relief* (the “**Interim DIP Order**”), as applicable.



value of the Debtors' businesses (the "**Other Critical Vendors** " and, together with the Lien Claimants, the "**Essential Vendors**" and the prepetition claims of the Essential Vendors, the "**Essential Vendor Claims**"); and (ii) confirming administrative priority status to all undisputed obligations of the Debtors owing to third party vendors and suppliers arising from the postpetition delivery of goods ordered prior to the Petition Date; and (iii) authorizing the Debtors to pay such obligations in the ordinary course of business, all as more fully set forth in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein 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.); and consideration of the Motion and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and due and proper notice of the Motion having been provided to the Notice Parties; and 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 the Motion; and the Court having held a hearing to consider the relief requested in the Motion on an interim basis (the "**Hearing**"); and upon the First Day Declarations, filed contemporaneously with the Motion, and the record of the Hearing; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and it appearing that the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors and their estates as contemplated by Bankruptcy Rule 6003, and is in the best interests of the Debtors, their estates, creditors, and all parties in interest; 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 to the extent set forth herein.

2. The Debtors are authorized, but not directed, pursuant to sections 105(a), 363(b), 503(b)(9), 507(a), of the Bankruptcy Code, in the reasonable exercise of their business judgment, to make payments to Lien Claimants, including, without limitation, Shippers, Warehousemen, and MRO Service Providers upon such terms and in the manner provided in this Interim Order and in the Motion; *provided*, that prior to a final hearing to consider the relief requested in the Motion (the “**Final Hearing**”) the amount paid with respect to prepetition claims of Lien Claimants shall not exceed the aggregate amount of \$4,200,000.

3. The Debtors are authorized, but not directed, pursuant to sections 105(a), 363(b), 503(b)(9), and 507(a) of the Bankruptcy Code, in the reasonable exercise of their business judgment, to pay claims of Other Critical Vendors upon such terms and in the manner provided in this Interim Order and the Motion; *provided*, that prior to the Final Hearing, the amount paid with respect to the claims of Other Critical Vendors shall not exceed the aggregate amount of \$100,000.

4. The Debtors are authorized to enter into Vendor Agreements when the Debtors determine, in the exercise of their reasonable business judgment, that it is appropriate to do so.

5. The Debtors may, in their discretion, declare that a Vendor Agreement with an Essential Vendor has terminated on the date the Debtors deliver notice, as the case may be, that such Essential Vendor has not complied with the terms and provisions of such Vendor Agreement; provided that the Vendor Agreement may be reinstated if:

- a. Such determination is subsequently reversed by the Court for good cause shown that the determination was materially incorrect after notice and a hearing following a motion from the Essential Vendor;
- b. The underlying default under the Vendor Agreement was fully cured by the Essential Vendor not later than five (5) business days after the date when the initial default occurred; or

- c. The Debtors, in their discretion, reach an agreement with the Essential Vendor.

6. If an Essential Vendor fails to comply with any terms of the Vendor Agreement then the Debtors may, in their discretion, and without further order of the Court, declare that: (i) the payment of the Essential Vendor Claim, as the case may be, is a voidable postpetition transfer pursuant to section 549(a) of the Bankruptcy Code that the Debtors may recover from the Essential Vendor in cash or in goods (including by setoff against postpetition obligations); or (ii) the Essential Vendor shall immediately return the Debtors' payment of the Essential Vendor Claim without giving effect to alleged setoff rights, recoupment rights, adjustments, or offsets of any type whatsoever, and the Essential Vendor Claim shall be reinstated in an amount that will restore the Debtors and the Essential Vendor to their original positions as if the Vendor Agreement had never been entered into and the payment of the Essential Vendor Claim had not been made.

7. The Debtors shall maintain a matrix summarizing (i) the name of each Essential Vendor paid; (ii) the amount paid to each Essential Vendor on account of its Essential Vendor Claim; and (iii) the type of goods or services provided by that Essential Vendor. This matrix will be provided upon request, to the United States Trustee (the "**U.S. Trustee**"), and, on a weekly basis (or such other agreed upon time period) to the professionals retained by any official committee of unsecured creditors appointed in these Chapter 11 Cases; provided, that the professionals for any such committee shall keep the matrix confidential and shall not disclose any of the information in the matrix to anyone, including, but not limited to, any member of any statutory committee of creditors, without the prior written consent of the Debtors.

8. The undisputed obligations of the Debtors arising under the Prepetition Purchase Orders for goods or services delivered to the Debtors after the Petition Date shall be

afforded administrative expense priority status pursuant to section 503(b)(1)(A) of the Bankruptcy Code.

9. Pursuant to section 363(c)(1) of the Bankruptcy Code, the Debtors are authorized to pay in the ordinary course of their businesses all undisputed obligations arising from the postpetition delivery or shipment by Vendors of goods or provision of services under Prepetition Purchase Orders consistent with their customary practice.

10. Nothing in the Motion or this Interim Order shall be deemed to authorize the Debtors to accelerate any payments not otherwise due prior to the date of the Final Hearing.

11. Notwithstanding anything to the contrary contained herein, any payments made or to be made by the Debtors under this Interim Order, and any authorization contained in this Interim Order, shall be in compliance with, and shall be subject to the Interim DIP Order, and the documentation in respect of the Debtors' DIP Facility.

12. Applicable banks and financial institutions are authorized, but not directed, at the Debtor's request, to receive, process, honor and pay, to the extent of funds on deposit, any and all checks issued or to be issued or electronic fund transfers requested or to be requested by the Debtor relating to the Essential Vendor Claims.

13. The Debtors are authorized, but not directed, to issue new postpetition checks, or effect new electronic fund transfers, on account of the Essential Vendor Claims to replace any prepetition checks or electronic fund transfer requests that may be lost, dishonored, or rejected as a result of the commencement of the Chapter 11 Cases.

14. Nothing contained in the Motion or this Interim Order, nor any payment made pursuant to the authority granted by this Interim Order, is intended to be or shall be construed as (i) an admission as to the validity of any claim against the Debtors, (ii) a waiver of the Debtors'

or any appropriate party in interest's rights to dispute the amount of, basis for, or validity of any claim against the Debtors, (iii) a waiver of any claims or causes of action which may exist against any creditor or interest holder, or (iv) an approval, assumption, adoption, or rejection of any agreement, contract, lease, program, or policy between the Debtors and any third party under section 365 of the Bankruptcy Code.

15. Nothing herein shall create, nor is intended to create, any rights in favor of or enhance the status of any claim held by any party.

16. The requirements of Bankruptcy Rule 6003(b) have been satisfied.

17. Under the circumstances of these Chapter 11 Cases, notice of the Motion is adequate under Bankruptcy Rule 6004(a).

18. Notwithstanding Bankruptcy Rule 6004(h), this Interim Order shall be immediately effective and enforceable upon its entry.

19. The Debtors are authorized to take all action necessary to effectuate the relief granted in this Interim Order.

20. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, and/or enforcement of this Interim Order.

21. The Final Hearing shall be held on **December 20, 2018, at 10:00 a.m. (Prevailing Eastern Time)** and any objections or responses to the Motion shall be in writing, filed with the Court, and served upon the Notice Parties so as to be actually received on or prior to **12:00 p.m. (Prevailing Eastern Time) on December 17, 2018.**

Dated: **December 12, 2018**  
New York, New York

/s/ STUART M. BERNSTEIN  
HONORABLE STUART M. BERNSTEIN  
UNITED STATES BANKRUPTCY JUDGE