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

-----X	:	
	:	
In re	:	Chapter 11
	:	
WAYPOINT LEASING	:	Case No. 18-13648 (SMB)
HOLDINGS LTD., et al.,	:	
	:	(Jointly Administered)
Debtors.¹	:	
-----X		

**NOTICE OF HEARING AND MOTION OF
DEBTORS PURSUANT TO 11 U.S.C. §§ 363(b) AND 503(c)(3) FOR
ENTRY OF AN ORDER APPROVING KEY EMPLOYEE INCENTIVE PROGRAM**

PLEASE TAKE NOTICE that a hearing on the annexed *Motion of Debtors Pursuant to 11 U.S.C. §§ 363(b) and 503(c)(3) for Entry of an Order Approving Key Employee Incentive Program*, dated December 23, 2018 (the “**Motion**”) of Waypoint Leasing Holdings Ltd. and certain of its subsidiaries and affiliates, as debtors and debtors in possession (collectively, the “**Debtors**”) in the above-captioned chapter 11 cases, will be held before the Honorable Stuart M. Bernstein, United States Bankruptcy Judge, in Room 723 of the United States Bankruptcy

¹ A list of the Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor’s federal tax identification number, is attached hereto as **Exhibit A**.



Court for the Southern District of New York, One Bowling Green, New York, New York 10004 (the “**Court**”), on **January 17, 2019 at 10:00 a.m. (Eastern Time)**, or as soon thereafter as counsel may be heard (the “**Hearing**”).

PLEASE TAKE FURTHER NOTICE that any responses or objections (the “**Objections**”) to the Motion must be in writing, shall conform to the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules, and shall be filed with the Bankruptcy Court (a) by attorneys practicing in the Bankruptcy Court, including attorneys admitted *pro hac vice*, electronically in accordance with General Order M-399 (which can be found at <http://www.nysb.uscourts.gov/sites/default/files/m399.pdf>), and (b) by all other parties in interest, on a CD-ROM, in text-searchable portable document format (PDF) (with a hard copy delivered directly to Chambers), in accordance with the customary practices of the Bankruptcy Court and General Order M-399, to the extent applicable, and served in accordance with General Order M-399 and the *Final Order Pursuant to 11 U.S.C. § 105(a) and Fed. R. Bankr. P. 1015(c), 2002(m), and 9007 Implementing Certain Notice and Case Management Procedures*, entered on December 21, 2018 [ECF No. 155] (the “**Case Management Order**”) so as to be received no later than **January 10, 2019 at 12:00 p.m. (Eastern Time)** (the “**Objection Deadline**”).

PLEASE TAKE FURTHER NOTICE that notice of this Motion will be provided in accordance with the procedures set forth in the Case Management Order.

PLEASE TAKE FURTHER NOTICE that if no Objections are timely filed and served with respect to Motion, the Debtors may, on or after the Objection Deadline, submit to the

Bankruptcy Court an order substantially in the form of the proposed order annexed to the Motion,
which order may be entered with no further notice or opportunity to be heard.

Dated: December 23, 2018
New York, New York

/s/ Robert J. Lemons

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

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In re	:	Chapter 11
	:	
WAYPOINT LEASING	:	Case No. 18-13648 (SMB)
HOLDINGS LTD., et al.,	:	
	:	(Jointly Administered)
Debtors.¹	:	
-----X		

**MOTION OF DEBTORS PURSUANT TO 11 U.S.C. §§ 363(b) AND 503(c)(3) FOR
ENTRY OF AN ORDER APPROVING KEY EMPLOYEE INCENTIVE PROGRAM**

TO THE HONORABLE STUART M. BERNSTEIN,
UNITED STATES BANKRUPTCY JUDGE:

Waypoint Leasing Holdings Ltd. (“**Holdings**”) and certain of its subsidiaries and affiliates, as debtors and debtors in possession (collectively, the “**Debtors**”) in the above-captioned chapter 11 cases (collectively, the “**Chapter 11 Cases**”), respectfully represent as follows in support of this motion (the “**Motion**”):

¹ A list of the Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor’s federal tax identification number, is attached hereto as **Exhibit A**.

Preliminary Statement

1. The Debtors commenced their chapter 11 cases (the “**Chapter 11 Cases**”) to implement a comprehensive restructuring of their business through a sale of substantially all of the Debtors’ assets pursuant to section 363 of title 11 of the United States Code (the “**Bankruptcy Code**”) that will keep their platform intact and operating without interruption. The Debtors’ sale process also preserves the rights of the Debtors’ secured lenders to credit bid on their collateral. The success of the proposed process, which is designed to preserve and maximize the value of the Debtors’ businesses, however, will turn on the performance and productivity of certain of the Debtors’ senior key employees during these Chapter 11 Cases. Pending the close of a sale or sales of substantially all of the Debtors’ assets (collectively, the “**Sale**”), these employees are key drivers of the Debtors’ ability to meet and exceed operational and financial milestones to maximize value.

2. To ensure that key members of the Debtors’ management team are properly incentivized to work toward a value-maximizing transaction, the Debtors, with the assistance of their professionals, have developed a key employee incentive program (the “**KEIP**”). The participants in the KEIP consist of eight (8) members of the Debtors’ senior management team (collectively, the “**KEIP Participants**”) who are largely responsible for the continuity of the Debtors’ day-to-day operation, and who will be critical to the consummation of the Sale. The KEIP is purely incentive-based, conditioning any award granted under the KEIP (the “**KEIP Awards**”) on meeting challenging financial and growth metrics discussed in further detail below (the “**Performance Metrics**”).

3. The KEIP is critical to motivate the Debtors’ senior management and will enhance enterprise value for the benefit of their economic stakeholders. As discussed below, the Debtors designed the KEIP using analysis from their independent compensation consultant to ensure that the KEIP is reasonable and consistent with compensation paid to similarly-situated

employees at comparable companies. The Debtors established the Performance Metrics considering, among other things, their business plan to ensure that the Performance Metrics are challenging, will require a strong performance by both the company and the KEIP Participants, and subject the KEIP Participants to the risk of receiving no KEIP Awards. The KEIP, including the Performance Metrics, was carefully reviewed, discussed, and approved by the Compensation Committee of Holdings' Board of Directors (the "**Board**" and the "**Compensation Committee**").² The KEIP is reasonable, well within the Debtors' business judgment, and will serve to maximize value consistent with the intent and purpose of chapter 11.

Relief Requested

4. By this Motion, pursuant to sections 363 and 503 of title 11 of the United States Code (the "**Bankruptcy Code**"), the Debtors request entry of an order (i) approving and authorizing the KEIP, (ii) authorizing the Debtors to make payments under the KEIP to the KEIP Participants, and (iii) granting certain related relief.

5. A proposed form of order granting the relief requested herein is annexed hereto as **Exhibit B** (the "**Proposed Order**"). In support of this Motion, the Debtors submit the declarations of William Transier, independent Board member of Holdings and chair of the Compensation Committee, annexed hereto as **Exhibit C** (the "**Transier Declaration**"), and Marty Kuehne, from the Debtors' compensation consultant Seabury Corporate Advisors LLC ("**Seabury**"), annexed hereto as **Exhibit D** (the "**Kuehne Declaration**").

² The Compensation Committee is comprised of one independent director and three additional directors. No KEIP Participants or other employees of the Debtors serve on the Compensation Committee.

Jurisdiction

6. The Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157(a)-(b) and 1334(b) and the *Amended Standing Order of Reference M-431*, dated January 31, 2012 (Preska, C.J.). This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

Background

7. On November 25, 2018 (the “**Petition Date**”), the Debtors each commenced with this Court a voluntary case under chapter 11 of the Bankruptcy Code. The Debtors continue to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner, or statutory committee of creditors has been appointed in these Chapter 11 Cases.

8. The Debtors’ Chapter 11 Cases have been jointly administered for procedural purposes only pursuant to Bankruptcy Rule 1015(b).

9. Additional information regarding the Debtors’ business, capital structure, and the circumstances leading to the commencement of these Chapter 11 Cases is set forth in the *Declaration of Todd K. Wolynski Pursuant to L. Bankr. R. 1007-2* (the “**Wolynski Declaration**”) and the *Declaration of Robert A. Del Genio in Support of First Day Motions and Applications* (the “**Del Genio Declaration**” and, together with the Wolynski Declaration, the “**First Day Declarations**”), which are incorporated herein by reference.

Summary of the KEIP

10. The KEIP is designed to incentivize the Debtors’ senior management team to continue to meet and exceed challenging performance targets during the Chapter 11 Cases. The KEIP establishes monthly performance levels with respect to the following three key Performance Metrics: (a) number of signed leases, which incorporates both new leases and lease extensions,

but excludes leases where there is a minimal or low expectation of lease revenue, (b) lease revenue, which measures the net lease revenue³ expected each month if the company is able to achieve its signed lease targets, and (c) selling, general, and administrative expenses (“**SG&A Expense**”) which is a direct measurement of the Debtors’ administrative and overhead costs. Each of the Performance Metrics is interrelated, and, together, they comprise the key inputs driving profitability.

11. A summary of the key terms of the KEIP is as follows:

- (a) KEIP Participants: the Debtors’ eight (8) most senior executives, who will play significant roles in optimizing the Debtors’ performance to allow them to maximize value and facilitate the Sale.
- (b) Total Program Cost: If KEIP Participants earn KEIP Awards, the aggregate amount of all KEIP Awards will range from \$2,419,000 (“**Threshold KEIP Award Amounts**”), if all threshold Performance Metrics are met but not exceeded, to \$3,628,500 (“**Target KEIP Award Amounts**”), if all target Performance Metrics are met.
- (c) Plan Period: The Performance Metrics will be measured from January 1, 2018 to June 30, 2019 (the “**Plan Period**”). Additionally, the Plan Period shall be deemed to have concluded upon the earlier of (i) June 30, 2019, (ii) the consummation of a sale or sales of substantially all of the Debtors’ assets (other than assets owned directly or indirectly by Waypoint Asset Co 10 Limited or Waypoint Asset Co 11 Limited), and (iii) the effective date of a chapter 11 plan.
- (d) Performance Metrics: Threshold and Target Performance (as defined below) will require the Debtors to meet targets for lease acquisition and lease revenue while managing their SG&A Expenses during the Plan Period as follows:
 - i. Lease Acquisition Performance Metrics. Lease acquisition performance accounts for 1/3 of the total KEIP Awards (“**KEIP Acquisition Awards**”). If KEIP Participants earn

³ The net lease revenue is calculated as follows: “Rental of Flight Equipment” (i.e. lease revenue) as presented in the Debtors’ financial statements, minus (a) non-cash amortization of lease intangibles, lease incentives and deferred leased costs and (b) any lease revenue foregone related to (i) the sale of any aircraft, (ii) the total loss of any aircraft, or (iii) any enforcement of collateral by lenders.

KEIP Acquisition Awards, the total KEIP Acquisition Awards will range from approximately \$806,333 (“**Threshold Acquisition Award Amounts**”), if all KEIP Participants meet but do not exceed the thresholds levels (“**Threshold Lease Acquisition**”), to approximately \$1,209,500 (“**Target Acquisition Award Amounts**”), if all KEIP Participants meet target levels (“**Target Lease Acquisition**”). Threshold Lease Acquisition is 80% of Target Lease Acquisition.

- ii. Lease Revenue Performance Metrics: Lease revenue performance accounts for 1/3 of the total KEIP Awards (“**KEIP Revenue Awards**”). If KEIP Participants earn KEIP Revenue Awards, the total KEIP Revenue Awards will range from approximately \$806,333 (“**Threshold Lease Revenue Award Amounts**”), if all KEIP Participants meet but do not exceed the thresholds levels (“**Threshold Lease Revenue**”), to approximately \$1,209,500 (“**Target Lease Revenue Award Amounts**”), if all KEIP Participants meet target levels (“**Target Lease Revenue**”). Threshold Lease Revenue is approximately 95% of Target Lease Revenue.
- iii. SG&A Expense Performance Metrics: SG&A Expense performance accounts for 1/3 of the total KEIP Awards (“**KEIP SG&A Awards**” and together with the KEIP Acquisition Awards and the KEIP Revenue Awards, the “**KEIP Awards**”). If KEIP Participants earn KEIP SG&A Awards, the total KEIP SG&A Awards will range from approximately \$806,333 (“**Threshold SG&A Award Amounts**”), if all KEIP Participants meet but do not exceed the thresholds levels (“**Threshold SG&A**” and, together with Threshold Lease Acquisition and Threshold Lease Revenue, “**Threshold Performance**”), to approximately \$1,209,500 (“**Target SG&A Award Amounts**”), if all KEIP Participants meet target levels (“**Target SG&A**” and, together with Target Lease Acquisition and Target Lease Revenue, “**Target Performance**”). Threshold SG&A is \$1.5 million more than Target SG&A.⁴
- iv. Partial Achievement of Performance Metrics: The KEIP Awards will each be determined separately. KEIP Participants will be entitled to (x) no KEIP Acquisition Awards if the Debtors fail to meet Threshold Lease Acquisition during the

⁴ The Debtors reserve the right to seek the Court’s authorization to modify the Performance Metrics to account for the sale or disposition of some, but not substantially all, of the Debtors’ assets prior to the end of the Plan Period.

Plan Period, (y) no KEIP Revenue Awards if the Debtors fail to meet Threshold Lease Revenue during the Plan Period, and (z) no KEIP SG&A Awards if the Debtors fail to meet Threshold SG&A during the Plan Period. Additionally, KEIP Participants will be entitled to (x) no Target Acquisition Award Amounts if the Debtors fail to meet Target Lease Acquisition during the Plan Period, (y) no Target Lease Revenue Award Amounts if the Debtors fail to meet Target Lease Revenue during the Plan Period, and (z) no Target SG&A Award Amounts if the Debtors fail to meet Target SG&A during the Plan Period. If the Debtors exceed Target Performance, KEIP Participants will not be entitled to payments in excess of the Target KEIP Award Amounts.

- (e) Expiration of Plan Period Prior to June 30, 2019. If the Plan Period ends prior to June 30, 2019, either due to a sale or sales of all or substantially all of the Debtors' assets (other than assets owned directly or indirectly by Waypoint Asset Co 10 Limited or Waypoint Asset Co 11 Limited) or the occurrence of the effective date of a chapter 11 Plan, then the eligible KEIP Participants shall receive the full Target Acquisition Award Amounts, Target Lease Revenue Award Amounts, and/or Target SG&A Award Amounts, as applicable, if the Debtors have achieved Threshold Lease Acquisition, Threshold Lease Revenue, and/or Threshold SG&A during the Plan Period. The Debtors have established prorated measurements for each of the Performance Metrics for performance periods ending prior to June 30, 2019. KEIP Participants will receive the full Target KEIP Award Amounts for each of the Performance Metrics that achieve the prorated Threshold Performance. Each of the Performance Metrics measurements will be prorated through the month ending before the end of the Plan Period, but Target KEIP Award Amounts shall not be prorated.

Development of the KEIP

12. Historically, in addition to base salary, the Debtors have compensated their employees, including senior management, through short-term incentive programs designed to incentivize employees to meet yearly departmental or company-wide goals and objectives. These yearly short-term incentive programs were an important component of the KEIP Participants' yearly compensation package and in line with industry standards.

13. Beginning on or around June 2018, the Debtors' board and management began discussing the implementation of a short-term incentive program for senior management that would incentivize performance during the out-of-court restructuring negotiations with their creditors. At that time, the Board also approved approximately \$2.6 million in retention payments for fourteen (14) key employees including each of the KEIP Participants, which require the KEIP Participants to stay until June 15, 2019. The Board and Compensation Committee determined that the payment of modest retention payments was necessary to retain key employees during the out-of-court restructuring process.

14. As discussed in the Transier Declaration, during the summer and fall of 2018, as it became more likely that a chapter 11 filing would be necessary to implement the Debtors' proposed Sale, the Board and the Debtors reformulated their discussions to focus on the implementation of a KEIP, rather than a short-term incentive plan. Both the Debtors and the Compensation Committee determined that the implementation of a KEIP would not be duplicative of the earlier summer retention payments because it would be deliberately designed to motivate performance during the Debtors' in-court restructuring process and would also be in lieu of a short-term incentive program for 2018, which would compensate the KEIP Participants for their efforts and motivate the KEIP Participants to continue to meet the company's goals in the midst of a challenging financial situation for the extended 18-month period from January 1, 2018 through June 30, 2019. Recognizing that employee performance will play a critical role in the Debtors' objective of preserving and maximizing the value of their assets during the Chapter 11 Cases, the Board and the Compensation Committee, with the assistance of the Debtors' advisors, undertook a deliberative and iterative process to design an effective and appropriate compensation program, which efforts culminated in the Compensation Committee's approval of the KEIP on

November 28, 2018. As discussed in more detail below, the Debtors and the Compensation Committee determined that the KEIP is necessary to (i) incentivize the KEIP Participants to create value for the benefit of all stakeholders, (ii) compensate the KEIP Participants at a conservative market level, and (iii) ensure that the Debtors' anticipated business needs will be met during the restructuring process.

Selecting KEIP Participants

15. In selecting the pool of KEIP Participants, the Debtors and the Compensation Committee worked to identify those employees whose performance would have the greatest impact on the Debtors' Chapter 11 Cases, as well as those individuals whose job duties had been disproportionately affected by the Chapter 11 Cases, requiring them to undertake additional responsibilities and expend significantly more working hours than contemplated by the normal terms of their employment.

16. The KEIP Participants include the company's (a) Chief Executive Officer, (b) President, Chief Operating Officer & Chief Financial Officer, (c) General Counsel & Chief Administrative Officer, (d) Managing Director, Capital Markets & Treasury, (e) Chief Risk Officer, (f) Global Head of Sales; (g) Senior Vice President, Operations & Technical; and (h) Senior Vice President, Finance. The maximum potential Target KEIP Award Amounts range from 77% to 150%, respectively, of each KEIP Participant's base salary.

17. The eight (8) senior executive level KEIP Participants, individually and collectively, have the decision-making capacity to materially influence the Debtors' financial and operational performance, manage critical relationships with customers and original equipment manufacturers (OEM's), ensuring that the value of the Debtors' enterprise will be maximized for the benefit of all stakeholders. The Compensation Committee determined that these employees'

performance and motivation during the Chapter 11 Cases is essential to avoid disruption of the Debtors' restructuring process, their business operations, and the accompanying negative effect on the Debtors' overall enterprise value.⁵

Setting Performance Metrics

18. The Debtors selected lease acquisition, lease revenue, and SG&A Expense targets as Performance Metrics because these financial metrics are consistent with market practice in the aircraft leasing industry and have a direct impact on the Debtors' profitability and are therefore critical to preserving and maximizing the value of the Debtors' estates. As mentioned above, each of the three Performance Metrics is equally-weighted. Each of these value-driving Performance Metrics is complementary and encourages growth on a cost-effective basis. As set forth below, achieving levels of Threshold and Target Performance will be challenging and will expose KEIP Participants to a meaningful risk that they will not receive KEIP Awards.

19. Both Threshold and Target Performance for each Performance Metric were established considering (a) the Company's business plan for 2018 (the "**Business Plan**"), (b) the company's performance since the beginning of the fiscal year and (c) an appropriate level of stretch performance for each Performance Metric given the difficulty in acquiring new and retaining existing leases in the uncertain environment created by the chapter 11 filing and the continued volatility in the leasing market. Even without the overlay of chapter 11, the Performance Metrics would be challenging to obtain in the current market given the oversupply of helicopters in the

⁵ As set forth in the *Motion of Debtors Pursuant to 11 U.S.C. §§ 105(a), 363, and 507(a) and Fed. R. Bankr. P. 6003 and 6004 for Entry of Interim and Final Orders (I) Authorizing Debtors To (A) Pay Employee Obligations and (B) Continue Employee Benefit Programs, and (II) Authorizing Financial Institutions to Honor and Process Checks and Transfers Related to Such Obligations* [ECF. No. 7], prior to the Petition Date, with the consent of the requisite lenders under each of the Debtors' prepetition secured credit facilities, the Debtors and the non-Debtor affiliates made discretionary bonus payments to twenty-six (26) employees and six (6) employees of non-Debtor affiliates in the aggregate amount of approximately \$1.1 million for calendar year 2018. The KEIP Participants have not received performance bonuses for 2018.

commercial helicopter leasing industry and the lack of recovery in the oil and gas industry in which the many of the company's customers operate. To achieve Target Lease Acquisition, the Debtors must sign or extend forty-five (45) new leases during the Performance Period, while at the same time retaining current lessees during these Chapter 11 Cases. The Threshold and Target Lease Revenue Performance Metrics, in turn, are tied to the Debtors' Threshold and Target Lease Acquisition goals such that if the Debtors are unable to maintain and grow their business as projected, they will not be able to meet their lease revenue goals. Finally, Threshold and Target SG&A Expense set general goals for the KEIP Participants to find ways to control corporate expenses while maintaining and growing their customer base and associated revenue in the midst of these Chapter 11 Cases.

20. Taken together, the Performance Metrics are the key drivers of profitability and growth for the Company and serve the purpose of aligning the KEIP Participants' incentives with those of the Company and its stakeholders. The Performance Metrics reflect ambitious operational goals, which will enable the Debtors to realize their overarching restructuring objective of maximizing value for all stakeholders through a sale transaction.

21. At the request of the Compensation Committee, the Performance Metrics were vetted by the Debtors' professionals, members of their management, and William Transier, the head of the Compensation Committee, and were subsequently ratified by the Compensation Committee, to ensure that the Performance Metrics demand an appropriate "reach" from KEIP Participants to drive outperformance, but not require unrealistic or unattainable goals that would thwart the motivational purpose of the KEIP. Importantly, there is no guarantee that the Debtors will meet the Performance Metrics in their current business environment. KEIP Participants cannot achieve these goals simply by "showing up." Instead, the KEIP Participants will have to

drive the Debtors to control costs while continuing to uphold their operational performance. The additional overlay of the Chapter 11 Cases also introduces a number of risk factors that could cause the Debtors to miss their operational goals, including: (a) increased operational costs associated with (i) parties concerned with doing business with a chapter 11 debtor and (ii) operating a business in chapter 11; (b) challenges in obtaining new customers, leasing new helicopters, or extending current leases as a result of these Chapter 11 Cases; (c) potential difficulties in collecting revenues from current lessees; (d) risk of defaults of current leases; (e) challenges in leasing “used” machines as opposed to new deliveries due to tender requirements for newer machines and/or maintenance costs associated with placing returned aircraft into condition to re-lease; and (f) various external factors including the volatility in global oil and gas prices and delayed tenders, which can impact the ability for the Debtors to place its assets on new lease and/or renew existing leases. Thus, the Performance Metrics are ambitious and will be challenging to attain.

22. Additionally, recognizing that prolonged Chapter 11 Cases would be costly and could potentially result in a decline in the value of the Debtors’ estates, the Debtors and the Compensation Committee also structured the KEIP to incentivize the KEIP Participants to work hard to achieve a speedy Sale or to quickly implement a chapter 11 plan by allowing for full payment of the Target KEIP Award Amounts if the Debtors achieve the requisite prorated threshold Performance Metrics in the month prior to the consummation of a Sale of the effective date of a chapter 11 plan. To facilitate a speedy exit from these Chapter 11 Cases, the KEIP Participants will have to manage a substantially increased workload on top of their normal duties and the additional demands placed on them by these Chapter 11 Cases. Specifically, among other things, the KEIP Participants will have to manage continued diligence requests from potential purchasers, facilitate the assignment of their current leases and other key contracts to the eventual

purchaser, manage a smooth transition of operations to the purchaser, manage the court process, provide information both to the lenders under the Debtors' postpetition financing facility and as required for various pleadings, and complete governmental review processes, all while managing their normal duties and seeking to maintain and grow their current operations.

23. The KEIP was approved by the Compensation Committee on November 28, 2018, approximately eleven months into the Plan Period. The timing of the KEIP's approval resulted from the changing situation for the Debtors which required a pivot from an out-of-court short-term incentive program to a KEIP during a chapter 11 process; the Debtors' consideration and extension of Performance Metrics from twelve (12) to eighteen (18) months; and significant deliberations of the Debtors' management, the Compensation Committee, and its independent compensation consultant to develop the KEIP. By the time this Court approves the KEIP, approximately thirteen months of the Plan Period will have elapsed. In determining the appropriate metrics for the Plan Period, the Debtors considered, among other things, the projections in the Business Plan and the company's performance to date and took into account the additional challenges the Chapter 11 Cases would present to the company in attaining the projected goals over the Plan Period. The KEIP Participants are only eligible to receive KEIP Awards if they meet or exceed Threshold Performance for the entire Plan Period, meaning that the Plan Participants are at risk of being ineligible to receive KEIP Awards if the Debtors do not meet or exceed Threshold Performance over the remainder of the Plan Period. Finally, given the Company's focus on their reorganization and merger and acquisition marketing process in the lead up to these Chapter 11 Cases, the approval of the KEIP twelve (12) months into the performance period is reasonable under the circumstances.

Determining KEIP Award Amounts

24. As described in the Kuehne Declaration, the Debtors determined the size of KEIP Awards (a) to conservatively align KEIP Participants' potential total cash compensation ("TCC") with TCC of similarly-situated employees at peer companies in the aircraft leasing industry and (b) to be consistent with incentive award plans approved in similar chapter 11 cases. As discussed below, even if the KEIP Participants receive the maximum amount of KEIP Awards, their TCC will be well-within norms for similar companies and the KEIP will be well-within the bounds of those approved in other chapter 11 cases.

25. As described above, historically, the Debtors incentivized the KEIP Participants to deliver performance through compensation programs that provided market-based incentive opportunities in addition to the KEIP Participants' base salaries. Prior to the Petition Date, the Debtors, in the ordinary course of their business, utilized a short-term incentive plan for senior management employees to incentivize the plan participants to meet corporate objectives. To ensure that the KEIP is market-based, Seabury, compared the maximum TCC available through the KEIP Participants' base salaries and potential award amounts under the KEIP to total annual cash compensation — including base salary and annual incentive plans — available to similarly situated executives in the Debtors' peer group in the aircraft leasing industry. Seabury selected this data source because it reflects pay practices for the Debtors' relevant labor market for executives. Seabury also reviewed the Target KEIP Awards and Performance Metrics in comparison with the target awards levels and metrics used in other chapter 11 cases. Seabury determined that the proposed KEIP Awards are necessary to better align the Debtors' management members' TCC with their peers' TCC, and that even if the Debtors achieve Target Performance and the KEIP Participants receive the maximum KEIP Awards, the KEIP Participants' TCC still

will be comparable to the 50th percentile of the market, well within the range of market compensation for their industry peers and the compensation provided in other chapter 11 cases. Thus, the KEIP is easily within the range of competitive practice on a total compensation basis relative to company size.

Basis for Relief

**The KEIP Should Be Approved
Pursuant to Section 503(c)(3) of the Bankruptcy Code**

26. For the reasons stated herein, the KEIP is justified by the facts and circumstances of this case.

Sections 503(c)(1) and 503(c)(2) Do Not Apply to the KEIP

27. Sections 503(c)(1) and 503(c)(2) of the Bankruptcy Code govern retention and severance payments to insiders. These sections, however, are not applicable in evaluating the KEIP because the KEIP awards KEIP Participants for performance instead of retention.

28. By its plain language, section 503(c)(1) of the Bankruptcy Code pertains solely to retention payments to insiders, and section 503(c)(2) of the Bankruptcy Code addresses only the requirements for severance payments to insiders. Neither provision, however, applies to performance based incentive plans such as the KEIP. *See, e.g., In re Dana Corp.*, 358 B.R. 567, 576 (Bankr. S.D.N.Y. 2006) (applying section 503(c)(3) of the Bankruptcy Code to evaluate management incentive plan in absence of applicability of sections 503(c)(1) or 503(c)(2)); *In re Musicland Holding Corp.*, No. 06-10064 (SMB) (Bankr. S.D.N.Y. Feb. 1, 2006) (finding that incentive-based compensation under management incentive plan did not violate section 503(c) of the Bankruptcy Code); *In re Alpha Natural Resources, Inc.*, 546 B.R. 348, 355-56 (Bankr. E.D. Va. 2016) (“[T]he analysis under § 503(c) changes when a debtor purports to make a payment not to retain an insider, but primarily to incentivize the insider to achieve certain goals, and] [o]n its

face, § 503(c)(1) does not apply to the KEIP because the payments thereunder are incentive and not purely retentive.”).

29. The KEIP does not provide benefits to the KEIP Participants upon termination of their employment or provide bonuses for retention. *See Dana*, 358 B.R. at 575 (applying section 503(c)(3) of the Bankruptcy Code to evaluate management incentive plan in absence of applicability of sections 503(c)(1) or 503(c)(2) of the Bankruptcy Code). Rather, the KEIP only allots payments based on the successful achievement of certain targeted metrics to the Debtors’ employees who are critical to preserving and maximizing the value of the Debtors’ business. Although the KEIP Participants may be “insiders” within the meaning of the Bankruptcy Code, the KEIP has been crafted with great care to ensure the Performance Metrics directly incentivize participants to meet the objectives set forth therein. Indeed, the KEIP Participants are ineligible to receive KEIP Awards, notwithstanding a Sale or a confirmed and effective plan of reorganization, unless the Debtors meet at least Threshold Lease Acquisition, Threshold Lease Revenue, and/or Threshold SG&A during the Plan Period.

30. Moreover, although the KEIP was not designed with the goal of retaining the KEIP Participants, the fact that the KEIP may encourage the KEIP Participants to remain employed with the Debtors throughout the chapter 11 cases should not bar implementation of the KEIP. Indeed, all successful incentive programs have the indirect benefit of incentivizing an employee to remain with the company. *See In re Alpha Natural Resources, Inc.*, 546 B.R. at 356 (“[A] KEIP that merely has some retentive effect should not be analyzed under § 503(c)(1).”). As discussed above, payouts under the KEIP require a far higher threshold than merely remaining employed and there is no guarantee that the KEIP Participants will receive any payouts.

31. Because the primary purpose of the KEIP is to maximize value for the benefit of the Debtors' estates, the Debtors respectfully submit that sections 503(c)(1) and 503(c)(2) of the Bankruptcy Code do not apply to the KEIP.

The KEIP Satisfies Section 503(c)(3)

32. Section 503(c)(3) of the Bankruptcy Code permits payments to a debtor's employees outside the ordinary course of business if such payments are justified by "the facts and circumstances of the case." 11 U.S.C. § 503(c)(3). In this and other districts, courts have concluded that whether payments to employees are justified by the "facts and circumstances" of a case is to be determined by application of the business judgment rule. *See In re Velo Holdings Inc.*, 472 B.R. 201, 209 (Bankr. S.D.N.Y. 2016) ("[The] facts and circumstances language of 503(c)(3) creates a standard no different than the business judgment standard under section 363(b)."); *Dana*, 358 B.R. at 576-77 (describing six factors that courts may consider when determining whether the structure of a compensation proposal meets the "sound business judgment test" in accordance with section 503(c)(3) of the Bankruptcy Code). Accordingly, the determination of whether an incentive or retention plan is justified by the facts and circumstances of the case and the analysis of whether the approval of such plan is a sound exercise of the debtor's business judgment are the same.

33. Courts within the Second Circuit have generally utilized the factors identified in *Dana* when determining if the structure of a compensation proposal and the process for its development meet the business judgment test. *See, e.g., In re Residential Capital, LLC*, 491 B.R. 73, 85-86 (Bankr. S.D.N.Y. 2013) (applying the *Dana* factors to the debtors' retention plan for non-insiders and approving the plan as an exercise of sound business judgment); *In re Borders Group, Inc.*, 453 B.R. 459, 473-74 (Bankr. S.D.N.Y. 2011) (same). In *Dana*, the bankruptcy court set forth the following six factors for evaluating whether a debtor has satisfied the "sound business

judgment” test for purposes of the approval of a compensation plan under section 503(c)(3) of the Bankruptcy Code:

- Is there a reasonable relationship between the plan proposed and the results to be obtained, i.e., will the key employee stay for as long as it takes for the debtor to reorganize or market its assets, or, in the case of a performance incentive, is the plan calculated to achieve the desired performance?
- Is the cost of the plan reasonable in the context of the debtor’s assets, liabilities and earning potential?
- Is the scope of the plan fair and reasonable; does it apply to all employees; does it discriminate unfairly?
- Is the plan or proposal consistent with industry standards?
- What were the due diligence efforts of the debtor in investigating the need for a plan; analyzing which key employees need to be incentivized; what is available; what is generally applicable in a particular industry?
- Did the debtor receive independent counsel in performing due diligence and in creating and authorizing the incentive compensation?

Dana, 358 B.R. at 576-77. As set forth below, the KEIP satisfies all of these factors.

34. First, the KEIP is structured to achieve the desired performance. The Debtors, in consultation with Seabury, designed the KEIP to motivate and reward the KEIP Participants, who will have the greatest influence upon these Chapter 11 Cases and ability to help maximize value for the Debtors’ estates, as well as to shepherd the Debtors towards an expeditious exit from bankruptcy through a Sale or chapter 11 plan. The Debtors determined that the KEIP Participants are positioned to help drive the Debtors’ lease acquisition, lease revenue, and SG&A Expense performance during the Plan Period. As discussed above, achievement by the Debtors of the Performance Metrics will directly impact their profitability. The KEIP is designed to motivate the KEIP Participants to drive the Debtors to meet these objectives.

35. Second, the cost of the KEIP is reasonable. As discussed above, Seabury engaged in an extensive benchmarking analysis to assist the Debtors with the design of the KEIP.

The costs associated with the KEIP are within the range of market practice as compared to plans proposed and adopted by similarly-situated companies. Specifically, the costs of the KEIP are below the median and average range when compared to total cost of plan at target and average cost per person of plans approved at similarly-situated companies. Accordingly, the costs are reasonable and well-justified given the size of the Debtors' businesses and the value that achievement of the Performance Metrics would bring to the estates.

36. Third, the scope of the KEIP is fair and reasonable. As noted herein, the KEIP is limited to the Debtors' eight (8) most senior executives, who are the employees whose responsibilities rise to the level of influence that their performance should be judged on the overall performance of the Debtors' business. Additionally, the KEIP Participants are the only employees who have been forced to forgo their 2018 performance bonus.

37. Fourth, as discussed above, the KEIP is consistent with industry standards with respect to eligibility, total cost, and performance metrics.

38. Fifth, as discussed above, the KEIP was designed with the advice and consultation of, among others, Seabury, in its capacity as the Debtors' independent compensation consultant, the Debtors' finance team, and the Compensation Committee. As noted above, Seabury analyzed numerous data points to evaluate the KEIP. Additionally, the Debtors' finance team provided significant analysis regarding the Performance Metrics and the impact the achievement of the various thresholds would have on the business. Finally, as discussed in the Transier Declaration, the Compensation Committee and/or its Chair carefully reviewed several iterations of the KEIP, participated in meetings with management and Seabury regarding the parameters of the KEIP, asked extensive questions of the Debtors and their advisors, and requested that certain adjustments be made to the KEIP prior to its approval.

39. Sixth, as discussed at length above, the KEIP was designed with the advice and consultation of the Debtors' compensation consultant, finance team, other financial advisors, and attorneys.

40. Accordingly, the Debtors respectfully submit that the KEIP satisfies section 503(c)(3) of the Bankruptcy Code and should be approved.

Implementation of the KEIP
Is a Valid Exercise of the Debtors' Business Judgment

41. To the extent applicable, the KEIP should also be approved under section 363(b)(1) of the Bankruptcy Code. *See Alpha*, 546 B.R. at 356 ("Incentive payments under a KEIP are governed by the more general provisions of § 363(b)(1) . . .").

42. Section 363(b)(1) provides that "[t]he [debtor], after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). Use of estate property outside the ordinary course of business is entrusted to the sound business judgment of a debtor. *See, e.g., Official Comm. of Unsecured Creditors v. LTV Corp. (In re Chateaugay)*, 973 F.2d 141, 143 (2d Cir. 1992) (affirming the bankruptcy court's approval of debtors' asset sale pursuant to section 363(b) as a reasonable exercise of business judgment); *Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1072 (2d Cir. 1983) (holding that the application of section 363(b) must be supported by "some articulated business justification, other than appeasement of major creditors"); *In re Global Crossing Ltd.*, 295 B.R. 726, 743 (Bankr. S.D.N.Y. 2003) (emphasizing the business judgment rule); *Borders*, 453 B.R. at 473 ("In approving a transaction conducted pursuant to section 363(b)(1), courts consider whether the debtor exercised sound business judgment.").

43. As noted above, the business judgment rule is the standard courts use to evaluate whether a compensation plan meets the "facts and circumstances" standard set forth in

section 503(c)(3) of the Bankruptcy Code. *Borders*, 453 B.R. at 474 (“[T]he legal standard under § 363(b) is no different than section 503(c)(3) . . .”). Accordingly, for the reasons discussed above, the Debtors’ decision to implement the KEIP is a valid exercise of business judgment.

Notice

44. Notice of this Motion has been provided to (i) William K. Harrington, U.S. Department of Justice, Office of the U.S. Trustee, 201 Varick Street, Room 1006, New York, NY 10014 (Attn: Andrea B. Schwartz, Esq.); (ii) the Debtors’ thirty (30) largest unsecured creditors on a consolidated basis; (iii) the Internal Revenue Service; (iv) the United States Attorney’s Office for the Southern District of New York; (v) the attorneys for SunTrust Bank, as administrative agent under that certain *Amended and Restated Credit Agreement*, dated as of November 8, 2013, and that certain *Amended and Restated Credit Agreement*, dated as of April 28, 2017; (vi) the attorneys for Wells Fargo Bank, National Association, as administrative agent under that certain *Credit Agreement*, dated as of April 16, 2014, and that certain *Note Purchase Agreement*, dated as of July 29, 2015; (vii) the attorneys for Airbus Helicopters Financial Services Limited, as agent under that certain *Euro Term Loan Facility Agreement*, dated February 21, 2017; (viii) the attorneys for KeyBank N.A., as administrative agent under that certain *Amended and Restated Credit Agreement*, dated as of March 30, 2018; (ix) the attorneys for the administrative agent under that certain *Credit Agreement*, dated as of August 6, 2014; (x) the attorneys for Bank of Utah, as administrative agent under that certain *Credit Agreement*, dated as of March 23, 2015; (xi) the attorneys for Lombard North Central PLC, as administrative agent under that certain *Credit Agreement*, dated as of March 24, 2016; (xii) the attorneys for Sumitomo Mitsui Banking Corporation, Brussels Branch, as administrative agent under that certain *Credit Agreement*, dated as of August 2, 2017; (xiii) the attorneys for the Steering Committee; (xiv) the attorneys for the Sponsors; (xv) the attorneys for the DIP Agent; and (xvi) any party that has requested notice

pursuant to Bankruptcy Rule 2002 (collectively, the “**Notice Parties**”). The Debtors respectfully submit that no further notice is required.

45. No previous request for the relief sought by this Motion has been made by the Debtors to this or any other Court.

WHEREFORE the Debtors respectfully request entry of the Proposed Order and such other and further relief as the Court may deem just and appropriate.

Dated: December 23, 2018
New York, New York

/s/ Robert J. Lemons

WEIL, GOTSHAL & MANGES LLP

767 Fifth Avenue

New York, New York 10153

Telephone: (212) 310-8000

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Gary T. Holtzer

Robert J. Lemons

Kelly DiBlasi

Matthew P. Goren

*Proposed Attorneys for Debtors
and Debtors in Possession*

EXHIBIT A

Debtors

Debtor	Last 4 Digits of Tax ID Number	Debtor	Last 4 Digits of Tax ID Number
Waypoint Leasing Holdings Ltd.	2899	AE Helicopter (5) Limited	N/A
Waypoint Leasing (Luxembourg) S.à r.l.	7041	AE Helicopter (6) Limited	N/A
Waypoint Leasing (Ireland) Limited	6600	MSN 31141 Trust	N/A
Waypoint Asset Co 10 Limited	2503	MSN 31492 Trust	N/A
MSN 2826 Trust	N/A	MSN 36458 Trust	N/A
MSN 2879 Trust	N/A	MSN 760543 Trust	N/A
Waypoint Asset Co 11 Limited	3073	MSN 760551 Trust	N/A
MSN 2905 Trust	N/A	MSN 760581 Trust	N/A
Waypoint Asset Co 12 Limited	0541	MSN 760628 Trust	N/A
MSN 20042 Trust	N/A	MSN 760631 Trust	N/A
MSN 41202 Trust	N/A	MSN 760682 Trust	N/A
MSN 920280 Trust	N/A	MSN 920022 Trust	N/A
Waypoint Asset Co 1E Limited	6089	MSN 920062 Trust	N/A
Waypoint Asset Euro 1F Limited	7099	MSN 920125 Trust	N/A
MSN 20093 Trust	N/A	MSN 9229 AS	N/A
Waypoint Asset Malta 1A Limited	2966	Waypoint Asset Co 3A Limited	6687
Waypoint Leasing Singapore 1 Pte. Limited	2403	MSN 41371 Trust	N/A
Waypoint Leasing UK 1A Limited	2226	Waypoint Asset Euro 1A Limited	9804
Waypoint Asset Co 14 Limited	1585	MSN 4466 Trust	N/A
Waypoint Asset Co 15 Limited	1776	MSN 4469 Trust	N/A
Waypoint Asset Co 3 Limited	3471	MSN 6655 Trust	N/A

Debtor	Last 4 Digits of Tax ID Number	Debtor	Last 4 Digits of Tax ID Number
MSN 6658 Trust	N/A	Waypoint Asset Funding 6 LLC	4964
Waypoint 760626 Business Trust	N/A	Waypoint Asset Co 7 Limited	9689
MSN 7152 Trust	N/A	Waypoint Asset Euro 7A Limited	2406
MSN 7172 Trust	N/A	Waypoint Asset Co 8 Limited	2532
Waypoint Asset Funding 3 LLC	4960	MSN 31041 Trust	N/A
Waypoint Asset Malta Ltd	5348	MSN 31203 Trust	N/A
Waypoint Leasing Labuan 3A Limited	8120	MSN 31578 Trust	N/A
Waypoint Leasing UK 3A Limited	0702	MSN 760617 Trust	N/A
Waypoint Asset Co 4 Limited	0301	MSN 760624 Trust	N/A
Waypoint Asset Co 5 Limited	7128	MSN 760626 Trust	N/A
MSN 1251 Trust	N/A	MSN 760765 Trust	N/A
MSN 14786 Trust	N/A	MSN 920063 Trust	N/A
MSN 2047 Trust	N/A	MSN 920112 Trust	N/A
MSN 2057 Trust	N/A	Waypoint 206 Trust	N/A
Waypoint Asset Co 5B Limited	2242	Waypoint 407 Trust	N/A
Waypoint Leasing UK 5A Limited	1970	Waypoint Asset Euro 1B Limited	3512
Waypoint Asset Co 6 Limited	8790	Waypoint Asset Euro 1C Limited	1060
MSN 31042 Trust	N/A	MSN 20012 Trust	N/A
MSN 31295 Trust	N/A	MSN 20022 Trust	N/A
MSN 31308 Trust	N/A	MSN 20025 Trust	N/A
MSN 920119 Trust	N/A	MSN 920113 Trust	N/A

Debtor	Last 4 Digits of Tax ID Number	Debtor	Last 4 Digits of Tax ID Number
Waypoint Asset Funding 8 LLC	4776	Waypoint Asset Co Germany Limited	5557
Waypoint Leasing UK 8A Limited	2906	MSN 31046 Trust	N/A
Waypoint Leasing US 8A LLC	8080	MSN 41511 Trust	N/A
Waypoint Asset Co 9 Limited	6340	MSN 760608 Trust	N/A
MSN 20052 Trust	N/A	MSN 89007 Trust	N/A
MSN 31312 Trust	N/A	MSN 920141 Trust	N/A
MSN 41329 Trust	N/A	MSN 920152 Trust	N/A
MSN 760538 Trust	N/A	MSN 920153 Trust	N/A
MSN 760539 Trust	N/A	MSN 920273 Trust	N/A
MSN 760541 Trust	N/A	MSN 920281 Trust	N/A
MSN 760542 Trust	N/A	MSN 9205 Trust	N/A
Waypoint Asset Co 1B Limited	5795	MSN 9229 Trust	N/A
MSN 41272 Trust	N/A	Waypoint Asset Co 1A Limited	1208
Waypoint Asset Co 5A Limited	4148	Waypoint Leasing Labuan 1A Limited	2299
MSN 69052 Trust	N/A	Waypoint Asset Co 1C Limited	0827
Waypoint Asset Euro 9A Limited	2276	Waypoint Asset Co 1D Limited	7018
Waypoint Asset Euro 1E Limited	6050	Waypoint Asset Co 1F Limited	6345
Waypoint Leasing UK 9A Limited	5686	Waypoint Asset Co 1G Limited	6494
Waypoint Asset Sterling 9A Limited	1161	Waypoint Asset Co 1H Limited	7349
Waypoint Asset Company Number 1 (Ireland) Limited	6861	Waypoint Asset Co 1J Limited	7729
Waypoint Asset Euro 1D Limited	1360	MSN 20159 Trust	N/A

Debtor	Last 4 Digits of Tax ID Number	Debtor	Last 4 Digits of Tax ID Number
Waypoint Asset Co 1L Limited	2360	MSN 31431 Trust	N/A
Waypoint Asset Co 1M Limited	5855	MSN 760734 Trust	N/A
Waypoint Asset Co 1N Limited	3701	MSN 920024 Trust	N/A
Waypoint Asset Euro 1G Limited	4786	MSN 920030 Trust	N/A
Waypoint Asset Funding 1 LLC	7392	Waypoint Asset Funding 2 LLC	7783
Waypoint Leasing UK 1B Limited	0592	Waypoint Asset Co 1K Limited	2087
Waypoint Leasing UK 1C Limited	0840	Waypoint Leasing Services LLC	8965
Waypoint Asset Company Number 2 (Ireland) Limited	7847	Waypoint Leasing (Luxembourg) Euro S.à r.l.	8928
Waypoint 2916 Business Trust	N/A		

EXHIBIT B

Proposed Order

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

-----X	
	:
In re	:
	:
WAYPOINT LEASING	:
HOLDINGS LTD., et al.,	:
	:
Debtors. ¹	:
-----X	

Chapter 11
Case No. 18-13648 (SMB)
(Jointly Administered)

**ORDER PURSUANT TO 11 U.S.C. §§ 363(b)
AND 503(c)(3) APPROVING KEY EMPLOYEE INCENTIVE PROGRAM**

Upon the motion (the “**Motion**”),² dated December 23, 2018, of Waypoint Leasing Holdings Ltd. and certain of its subsidiaries and affiliates, as debtors and debtors in possession (collectively, the “**Debtors**”), for entry of an order pursuant to sections 503(c) and 363(b)(1) of the Bankruptcy Code, for entry of an order approving the KEIP, all as more fully described in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 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 relief requested in the Motion having been provided, 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 (the “**Hearing**”); and upon the Transier Declaration

¹ 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.

² Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Motion or in the *Second 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* [ECF No. 156] (the “**Second Interim DIP Order**”), as applicable.

and the Kuehne Declaration, filed contemporaneously with the Motion, and the record of the Hearing; and the Court having held a hearing to consider the relief requested in the Motion (the “**Hearing**”); and the record of 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 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 as set forth herein.
2. Pursuant to sections 503(c) and 363(b)(1) of the Bankruptcy Code, the KEIP is approved.
3. The Debtors are authorized, but not directed, to implement the KEIP and make the payments contemplated thereunder.
4. Notwithstanding anything to the contrary contained herein, any payment to be made or relief or authorization granted hereunder shall be not be inconsistent with, and shall be subject to, the requirements imposed on the Debtors under the Second Interim DIP Order or the final order approving the DIP Facility (collectively the “**DIP Orders**”), the Approved Budget, and the loan and security documents evidencing the DIP Facility (the “**DIP Documents**”).]
5. To the extent there is any conflict between this Order and the DIP Orders, the DIP Documents, or the Budget, the terms of the DIP Order, DIP Documents, or the Approved Budget, as applicable, shall govern.
6. The Debtors are authorized and empowered to take all actions necessary or appropriate to implement the relief granted in this Order.

7. This Court shall retain jurisdiction to hear and determine all matters arising from or related to this Order.

Dated: _____
New York, New York

HONORABLE STUART M. BERNSTEIN
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT C

Transier Declaration

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Gary T. Holtzer
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Kelly DiBlasi
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*Proposed Attorneys for Debtors
and Debtors in Possession*

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

-----X	:	
In re	:	Chapter 11
	:	
WAYPOINT LEASING	:	Case No. 18-13648 (SMB)
HOLDINGS LTD., <i>et al.</i> ,	:	
	:	(Jointly Administered)
Debtors. ¹	:	
-----X		

**DECLARATION OF
WILLIAM TRANSIER IN SUPPORT MOTION
OF DEBTORS PURSUANT TO 11 U.S.C. §§ 363(b) AND 503(c)(3) FOR
ENTRY OF AN ORDER APPROVING KEY EMPLOYEE INCENTIVE PROGRAM**

I, William Transier, pursuant to section 1746 of title 28 of the United States Code, hereby declare that the following is true to the best of my knowledge, information, and belief:

8. I submit this declaration (this “**Declaration**”) in support of the *Motion of Debtors Pursuant to 11 U.S.C. §§ 363(b) and 503(c)(3) for Entry of an Order Approving Key Employee Incentive Program* (the “**Motion**”).²

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

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.

9. Except as otherwise indicated, all statements in this Declaration are based on my personal experience and knowledge, my opinions, my discussions with the Debtors' management and professionals, and my review of the relevant documents. I am authorized to submit this Declaration on behalf of the Debtors. If called to testify, I could and would testify to each of the facts and opinions set forth herein.

Qualifications

10. I am the founder and CEO of Transier Advisors LLC, an independent financial restructuring and advisory firm. I was appointed in June 2018 to serve as (i) an independent director on the board of Waypoint Leasing Holdings Ltd. ("**Holdings**") and (ii) Chair of the compensation committee of Holdings Board of Directors (the "**Board**" and the "**Compensation Committee**")³ to help guide the Debtors restructuring process. I have performed similar roles for other debtors in large, complex chapter 11 cases, including, among others, serving as a director and Chairman of the compensation committee of (a) Helix Energy Solutions Group, Inc. since 2000, (b) Westinghouse Electric Company, LLC from March 2017 to August 2018, (c) Cal Dive International Corporation from 2008 to 2014, (d) Paragon Offshore PLC from 2014 to 2017, and (e) Reliant Energy Inc. from 2002 to 2007.

11. I am knowledgeable and familiar with the Debtors' day-to-day operations, business and financial affairs, books and records, and the circumstances leading to the commencement of these chapter 11 cases.

12. I have reviewed the Motion and believe that it accurately reflects the circumstances leading to the development of the KEIP (as defined below) and the justification and

³ In addition to myself, the Compensation Committee is comprised of three additional directors. No KEIP Participants or other employees of the Debtors serve on the Compensation Committee.

need for relief. I firmly believe – and it is the view of the Compensation Committee – that approval of the KEIP is absolutely essential to preserve and maximize the value of the Debtors’ estates and minimize disruption to the Debtors’ business operations.

Development of the KEIP

13. The Debtors commenced their chapter 11 cases (the “**Chapter 11 Cases**”) to stabilize their businesses and, ultimately, to maximize the value of the Debtors’ estates through a sale or sales of substantially all of the Debtors’ assets (the “**Sale**”). The success of the sale process, which is designed to preserve and maximize the value of the Debtors’ businesses, will turn on the performance and productivity of certain of the Debtors’ key employees. Pending the close of the Sale, these key employees must continue to meet and exceed operational and financial milestones to maximize value.

14. Historically, in addition to base salary, the Debtors have compensated their employees, including senior management, through market based short-term incentive programs designed to incentivize employees to meet yearly departmental or company-wide goals and objectives. Though the Board and the Compensation Committee, on or around June 2018, began discussing the implementation of a short-term incentive program for employees that would incentivize performance during the out-of-court restructuring negotiations with their creditors, it quickly became apparent that the company’s proposed out-of-court sale process would require in-court implementation. Accordingly, in June of 2018, the Board approved approximately \$2.6 million in retention payments for fourteen (14) key employees including each of the KEIP Participants, which require the KEIP Participants to stay until June 15, 2019. The Board and

Compensation Committee determined that the payment of the modest retention payments were necessary to retain key employees during the out-of-court restructuring process.⁴

15. Recognizing that employee performance will play a critical role in the Debtors' objective of preserving and maximizing the value of their assets, the Board and the Compensation Committee, with the assistance of the Debtors' restructuring advisors and Seabury Corporate Advisors LLC ("**Seabury**"), the Debtors' independent compensation consultant, undertook a deliberative process to design an effective and appropriate short-term compensation program. During that time period, the Debtors' management, Seabury, and the Compensation Committee worked on multiple iterations of the short-term incentive program. I participated in five (5) separate meetings and calls regarding the appropriate parameters of the short-term incentive program, and the Compensation Committee met with Seabury and management on October 4th to discuss the short-term incentive program. Shortly thereafter, on October 10, 2018, the Compensation Committee requested, given the increasing likelihood that the Debtors would commence chapter 11 cases during the fall of 2018, that Seabury and management develop a key employee incentive program (the "**KEIP**") rather than a short-term incentive program to motivate employee performance during the upcoming Chapter 11 Cases. During October and November of 2018, the Debtors' management, with the assistance of Seabury and the Compensation Committee, held several meetings and worked on multiple iterations of the KEIP. I participated in two meetings with Seabury and management to discuss the KEIP and requested that certain adjustments be made to the KEIP. On November 28, 2018, the Compensation Committee held

⁴ Prior to the Petition Date, the Board and Compensation Committee also approved discretionary bonus payments to twenty-six (26) employees and six (6) employees of non-Debtor affiliates that are not KEIP Participants in the aggregate amount of approximately \$1.1 million for calendar year 2018. The KEIP Participants have not received performance bonuses for 2018.

one final meeting with Debtors' management, Seabury, and other advisors, after which the Compensation Committee approved the KEIP.

16. The KEIP is purely incentive-based, conditioning any award granted under the KEIP (the "**KEIP Awards**") on meeting challenging financial and growth metrics discussed in further detail below (the "**Performance Metrics**"). Both the Debtors and the Compensation Committee determined that the implementation of a KEIP would not be duplicative of the earlier summer retention payments because it would be deliberately designed to motivate performance during the Debtors' in-court restructuring process and would also be in lieu of a short-term incentive program for 2018, which would compensate the KEIP Participants for their efforts and motivate the KEIP Participants to continue to meet the company's goals in the midst of a challenging financial situation for the extended 18-month period from January 1, 2018 through June 30, 2019.

Selecting KEIP Participants

17. In selecting the pool of KEIP Participants, the Debtors and the Compensation Committee identified those employees whose performance would have a significant impact on the Debtors' Chapter 11 Cases, as well as those individuals whose job duties had been disproportionately affected by the Chapter 11 Cases, requiring them to undertake additional responsibilities and expend significantly more working hours than contemplated by the normal terms of their employment. The participants in the KEIP consist of the following eight (8) members of the Debtors' senior management team: (a) Chief Executive Officer, (b) President, Chief Operating Officer & Chief Financial Officer, (c) General Counsel & Chief Administrative Officer, (d) Managing Director, Capital Markets & Treasury, (e) Chief Risk Officer, (f) Global Head of Sales; (g) Senior Vice President, Operations & Technical; and (h) Senior Vice President,

Finance (collectively, the “**KEIP Participants**”). The KEIP Participants are largely responsible for the continuity of the Debtors’ day-to-day operations and have been and will continue to be critical to the development, negotiation, and completion of a value-maximizing sale transaction.

18. The eight (8) senior executive level KEIP Participants, individually and collectively, have the decision-making capacity to influence the Debtors’ financial and operational performance, manage critical relationships with customers and original equipment manufacturers (OEM’s), ensuring that the value of the Debtors’ enterprise will be preserved and maximized for the benefit of all stakeholders. The Compensation Committee and the Debtors determined that these employees’ performance and motivation at this critical stage of the Chapter 11 Cases is essential to avoid disruption of the Debtors’ restructuring process, their business operations, and the accompanying negative effect on the Debtors’ overall enterprise value.

Setting Performance Metrics

19. The Debtors selected lease acquisition, lease revenue, and SG&A Expense as Performance Metrics because these metrics are interrelated and comprise the key inputs that drive the Debtors’ financial and operating results. The performance levels for each Performance Metric were established considering (a) the Company’s business plan for 2018 (the “**Business Plan**”), (b) the company’s performance since the beginning of the fiscal year and (c) an appropriate level of stretch performance for each Performance Metric given the difficulty in acquiring new and retaining existing leases in the uncertain environment created by the chapter 11 filing and the continued volatility in the leasing market. It is my opinion that achieving the Target Performance Metrics, even without the overlay of chapter 11, would be challenging due to, among other things, the current oversupply of helicopters in the market and the lack of recovery in the oil and gas sector. To achieve Target Performance, the Debtors must sign or extend forty-five (45) new leases

at market rates, while at the same time retaining current lessees during these Chapter 11 Cases and controlling their SG&A Expense. The Debtors formulated the lease acquisition, lease revenue, and SG&A Expense metrics to reflect ambitious revenue and cost management goals and to realize their overarching restructuring objective of maximizing value for all stakeholders through a Sale. I believe that Performance Metrics will be key drivers of the Debtors' value and, thus, utilizing the Performance Metrics with respect to the KEIP is appropriate to ensure that the Debtors maximize their value and is necessary to incentivize the KEIP Participants to drive the Debtors towards satisfying their business objectives. Additionally, achieving levels of Threshold and Target Performance during the Chapter 11 Cases will be challenging and will expose KEIP Participants to a meaningful risk that they will not receive KEIP Awards.

20. Achieving Target Performance requires the Debtors to implement cost-controlling measures while continuing to uphold and improve their operational performance. It is my understanding that a number of risk factors could cause the Debtors to miss their operational goals including: (a) increased operational costs associated with (i) parties concerned with doing business with a chapter 11 debtor and (ii) operating a business in chapter 11; (b) challenges in obtaining new customers, leasing new helicopters, or extending current leases as a result of these Chapter 11 Cases; (c) potential difficulties in collecting revenues from current lessees; (d) risk of defaults of current leases; (e) challenges in leasing "used" machines as opposed to new deliveries due to tender requirements for newer machines and/or maintenance costs associated with placing returned aircraft into condition to re-lease; and (f) various external factors including the volatility in global oil and gas prices and delayed tenders, which can impact the ability for the Debtors to place its assets on new lease and/or renew existing leases. Consequently, I believe it will be

challenging for the KEIP Participants to enable the Debtors to hit Threshold or Target Performance.

21. Additionally, the KEIP is designed to incentivize the KEIP Participants to achieve a speedy exit from these Chapter 11 Cases either through the swift consummation of a Sale or through a chapter 11 plan. Specifically, the KEIP allows for the full payment of the Target KEIP Awards if the Debtors are able to achieve the requisite Threshold Performance Metrics, as pro-rated through the month prior to a Sale or the effective date of a chapter 11 plan. It is my opinion that a quick consummation of a Sale or emerging from the Chapter 11 Cases in the next few months will require a substantial amount of additional work from the KEIP Participants including, among other things, the completion of final diligence to implement a Sale, facilitating the transition of all of the Company's current leases and key contracts to the purchaser, managing a smooth transition of operations to the purchaser, management of the court process, providing information both to the lenders under the Debtors' postpetition financing facility and as required for various pleadings, and completing governmental review processes, all while managing their normal duties and seeking to maintain and grow their current customer base.

22. The KEIP was approved by the Compensation Committee on November 28, 2018, approximately eleven months into the Plan Period (January 1, 2018 to June 30, 2019). The changing situation for the Debtors which required a pivot from an out-of-court short-term incentive program to an important and necessary KEIP during a chapter 11 process; consideration and extension of Performance Metrics from 12 to 18 months; and significant deliberations of the Debtors' management, the Compensation Committee and its independent compensation consultant have resulted in this timing. By the time this Court approves the KEIP, approximately thirteen months of the Plan Period will have elapsed. In determining the appropriate

metrics for the Plan Period, the Debtors considered, among other things, the projections in the Business Plan and the company's performance to date and took into account the additional challenges the Chapter 11 Cases would present to the company in attaining the projected goals over the Plan Period. The Debtors believe it is essential to incentivize the KEIP Participants to achieve the Performance Metrics in order to satisfy their business objectives.

23. KEIP Participants are only eligible to receive KEIP Awards if they meet or exceed Threshold Performance for the entire Plan Period, meaning that the Plan Participants are at risk of being ineligible to receive KEIP Awards if the Debtors do not meet or exceed Threshold Performance over the remainder and arguably the most challenging time during the Plan Period. Given the Company's focus on its out-of-court restructuring process, which included launching a robust merger and acquisition process prior to these Chapter 11 Cases, I believe that the approval of the KEIP twelve (12) months into the performance period is reasonable under the circumstances.

24. I believe the Performance Metrics demand an appropriate "reach" from KEIP Participants to drive outperformance, but do not require unrealistic or unattainable goals that would thwart the motivational purpose of the KEIP. KEIP Participants cannot achieve these goals simply by "showing up." Given the current oversupply in the helicopter leasing market, the KEIP Participants will have to drive the Debtors to obtain additional customers and lease revenue while continuing to uphold their operational performance and control costs. Achieving these goals in the context of the Chapter 11 Cases will be very difficult. The Chapter 11 Cases introduce additional challenge to the Company's efforts to obtain new customers, lease additional helicopters, or extend current helicopter leases with customers that may be wary of transacting with a chapter 11 debtor. The company may also experience difficulty in collecting lease revenue on a timely basis from current customers or see an increase in their SG&A Expenses due to the

Chapter 11 Cases. Accordingly, I believe the Performance Metrics are ambitious and will be challenging to attain. Moreover, I believe the KEIP is reasonable, well within the Debtors' business judgment, critical to motivate the Debtors' work force, and will enhance enterprise value for the benefit of their economic stakeholders.

I, the undersigned, declare under penalty of perjury that the foregoing is true and correct.

Dated: December 23, 2018
New York, New York

/s/ William Transier
By: William Transier
Title: Chair of Compensation Committee and
Independent Director of Waypoint
Leasing Holdings Ltd.

EXHIBIT D

Kuehne Declaration

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

-----X
In re : **Chapter 11**
WAYPOINT LEASING : **Case No. 18-13648 (SMB)**
HOLDINGS LTD., *et al.*, : **(Jointly Administered)**
Debtors.¹ :
-----X

**DECLARATION OF MARTIN R. KUEHNE IN SUPPORT OF
MOTION OF DEBTORS PURSUANT TO 11 U.S.C. §§ 363(B) AND 503(C)(3) FOR
ENTRY OF AN ORDER APPROVING KEY EMPLOYEE INCENTIVE PROGRAM**

I, Martin R. Kuehne, pursuant to section 1746 of title 28 of the United States Code,
hereby declare that the following is true to the best of my knowledge, information and belief:

1. I submit this declaration (this “**Declaration**”) in support of the *Motion of Debtors Pursuant to 11 U.S.C. §§ 363(b) and 503(c)(3) for Entry of an Order Approving Key Employee Incentive Program* (the “**Motion**”).²

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

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.

2. The above captioned debtors and debtors in possession (the “**Debtors**”), through Weil, Gotshal & Manges LLP (proposed counsel to the Debtors) (“**Weil**”), retained Seabury Consulting, now part of Accenture, LLP (“**Seabury Consulting**”) as corporate advisors in June 2018 to, among other things, act as an independent compensation consultant and to begin preparing for a potential chapter 11 restructuring.

3. Except as otherwise indicated, all facts set forth in this Declaration are based upon (a) my personal knowledge of the Debtors’ industry, management team, and current situation, (b) information received from members of the Debtors’ management or their advisors, (c) my review of the relevant documents, and (d) my more than thirty-five years of management consulting experience. I am familiar with the structure of the Debtors’ prepetition compensation programs and the structure of the Debtors’ proposed key employee incentive program (the “**KEIP**”). I have reviewed the Motion and believe that it accurately reflects the circumstances leading to the development of the KEIP and the justification and need for relief. I am authorized to submit this declaration on behalf of the Debtors. If called to testify, I could and would testify to each of the facts and opinions set forth herein.

Professional Background and Qualifications

4. I am a Managing Director in the management consulting practice at Seabury Consulting, where I have been since 2008. I currently lead Seabury Consulting’s Talent & Organization practice within the Accenture Travel group. Prior to joining Seabury Consulting, I was the CEO of Organizational Concepts International (OCI), a human capital consulting firm I founded in 1996 and which was acquired by Seabury in 2008. Before founding OCI, I was in a variety of roles at Northwest Airlines, American Express, and Wells Fargo, including executive compensation, talent management, organizational design, and employee and leadership

development. I receive my bachelor's degree in economics from the University of Minnesota in 1984 and my Master of Art's degree in Human Resources & Industrial Relations from the University of Minnesota in 1988.

5. I have more than thirty-five (35) years of experience designing and implementing executive compensation programs in a variety of industries, including aircraft and helicopter leasing. I have worked with companies in a variety of industries, from start up to Fortune 500, privately held and publicly traded, and am frequently retained by these companies to advise on their compensation strategies, programs, and pay levels. One of my particular areas of expertise is assisting clients with the successful execution of a financial turnaround through the design of programs that align the organization with the go-forward business strategy. I have participated in the development and design of over 50 short- and long-term incentive plans for companies inside and outside of chapter 11, and I have performed numerous comparative studies of employee compensation plans similar to the comparison described below.

6. Since Seabury Consulting was retained, I have familiarized myself with the Debtors' current situation, short- and long-term business plan, management team, and historical and current compensation programs. I have also gathered relevant market data on incentives and retention payments in chapter 11 cases, assisted the Debtors in developing the KEIP, and analyzed whether the KEIP is consistent with typical market practice.

7. Based on my analysis, I have concluded that the payouts proposed under the KEIP are reasonable and consistent with market practice. This conclusion is based upon a comparison (discussed below) of the proposed payouts under the KEIP with market data regarding incentive payments for other companies going through chapter 11. I have also concluded that the

structure of the KEIP, including the performance metrics, are consistent with practices within the aircraft leasing industry.

KEIP Background

8. Historically, the Debtors incentivized the KEIP Participants to deliver performance through compensation programs that provided market-based incentive opportunities in addition to the KEIP Participants' base salaries. Prior to the Petition Date, the Debtors, in the ordinary course of their business, utilized an annual incentive plan for senior management employees to incentivize the plan participants to meet company and individual objectives.

9. As part of the company's out-of-court restructuring initiatives, in June 2018, the Debtors retained Seabury Consulting to review the existing cash-based incentive plan (the Short-term Incentive Plan, or "**STIP**") to ensure the plan was competitive with the external market and aligned with the company's new business plan as well as the interests of the company's stakeholders. The yearly STIP was an important component of the KEIP Participants' yearly compensation package and in line with industry standards. All of the Debtor's employees were eligible to participate in the STIP, including the eight (8) members of the Debtors' senior management team that are participants in the KEIP (collectively, the "**KEIP Participants**").

10. Prior to the adoption and implementation of the revised STIP, and as the necessity of an in-court restructuring appeared more likely, management and the Compensation Committee of the Board asked Seabury Consulting to assist in the design of an effective and appropriate compensation program for the KEIP Participants that would (a) incentivize the KEIP Participants to create value for the benefit of all stakeholders, (b) ensure the plan design, including the performance metrics and target payouts, was consistent with incentive plans practices at other

companies going through chapter 11, and (c) ensure that the Debtors' anticipated business needs and goals will be met during the restructuring process.

11. The KEIP replaced the STIP for the KEIP Participants. Though the KEIP is very similar to the STIP in terms of plan design, the performance metrics in the KEIP are specifically designed to motivate the KEIP Participants to continue to meet the company's goals in the midst of a challenging financial situation. Additionally, the performance period in the KEIP covers an 18-month period to ensure the KEIP will provide incentives throughout the Chapter 11 Cases.

Terms of the Key Employee Incentive Plan

12. The KEIP is designed to align management's incentives with the interests of the Debtors' stakeholders by focusing the attention of the Debtors' senior management on specific, objective metrics that will drive financial performance and achievement of growth goals. These metrics are designed to maximize the value of the Debtors' businesses during a period of great challenge and uncertainty in the aircraft leasing industry and the oil and gas markets that impact the demand for helicopters.

13. As described above, the Debtors have historically provided the members of their senior management team with cash bonuses in addition to their base salary to ensure market competitive total compensation and to align and motivate the management team. The management team was also previously granted equity compensation as a significant component of their total compensation, including RSUs granted in lieu of a portion of their 2016 cash bonuses. The target payouts under the proposed KEIP are consistent with historical target bonuses provided to the senior management team, adjusted to reflect the 18-month Performance Period (as defined below) under the KEIP.

14. The KEIP Participants include the company's (a) Chief Executive Officer, (b) President, Chief Operating Officer & Chief Financial Officer, (c) General Counsel & Chief Administrative Officer, (d) Managing Director, Capital Markets & Treasury, (e) Chief Risk Officer, (f) Global Head of Sales; (g) Senior Vice President, Operations & Technical; and (h) Senior Vice President, Finance. Collectively, the KEIP Participants are largely responsible for maximizing the value of the Debtor's assets during the chapter 11 process and for consummating the proposed sale of substantially all of the Debtor's assets. The KEIP is purely incentive-based, with any payouts tied to achieving challenging financial performance metrics and growth goals during the chapter 11 process.

15. The KEIP provides for payment of cash-based incentive awards (the "**KEIP Awards**") if the KEIP Participants achieve pre-established goals for each of three value-driving metrics: (a) the Debtors' lease revenue "**Lease Revenue**," (b) the number of lease acquisitions "**Lease Acquisitions**," and (c) selling, general and administrative expense ("**SG&A**" and, together with Lease Revenue and Lease Acquisitions, the "**Performance Metrics**"). The Performance Metrics are equally weighted in determining the KEIP Participants' total awards. The Performance Metrics are complementary and consistent with market practices. Typical incentive plan metrics in the aircraft leasing industry include some measure of profitability as well as revenue and goals tied to bringing on new leases. Tying the KEIP Participants' compensation to Lease Revenue, Lease Acquisitions, and SG&A encourages growth on a cost-effective basis and will focus the KEIP Participants' attention on key factors in preserving value for stakeholders, particularly in light of current industry conditions.

16. KEIP Participants' compensation is tied to achieving pre-established levels of "Threshold" and "Target" performance for each of the Performance Metrics (the "**Performance**

Levels”). The Performance Level goals for each Performance Metric were established considering (a) the Company’s business plan for 2018, (b) the company’s performance since the beginning of the fiscal year and (c) an appropriate level of stretch performance for each Performance Metric given the difficulty in acquiring new and retaining existing leases in the uncertain environment created by the chapter 11 filing and the continued volatility in the leasing market.

17. Table 1 shows the Performance Levels for each Performance Metric for the performance period beginning January 1, 2018 and ending June 30, 2019 (the “**Performance Period**”). Payouts for actual performance between the Target and Threshold levels will be interpolated. If the Threshold Performance Levels are not achieved for at least one of the Performance Metrics, no KEIP Awards will be paid.

Table 1: Performance Metrics

Level of Goal Achievement	Performance Goals		
	Lease Revenue	SG&A Expense	# Signed Leases
Threshold	\$148.5M	\$35.5M	36 leases
Target	\$156.3M	\$34.0M	45 leases

18. KEIP Awards will be determined separately for each of the Performance Metrics. For each Performance Metric the aggregate KEIP Awards range from approximately \$806,333, if all KEIP Participants meet but do not exceed the Threshold Performance Levels to approximately \$1,209,500, if all KEIP Participants meet Target Performance Levels. The aggregate amount of all KEIP Awards will range from \$2,419,000, if all Threshold Performance Levels are met but not exceeded, to \$3,628,500, if all Target Performance Levels are met. The

Performance Period is intended to end on June 30, 2019. To further ensure the Plan is aligned with the interests of stakeholders and to motivate the KEIP Participants to achieve a swift exit from these Chapter 11 Cases, the KEIP Participants are eligible to receive KEIP Awards if the Plan ends prior to June 30, 2019, either due to a sale or sales of all or substantially all of the Debtors' assets or the occurrence of the effective date of a chapter 11 plan. The Debtors have established prorated Threshold and Target Performance Levels for each of the Performance Metrics for Performance Periods ending prior to June 30, 2019. KEIP Participants will receive the full Target Award Amounts for each of the Performance Metrics that achieve the prorated Threshold Performance Levels. Each of the Performance Metrics measurements will be prorated through the month ending before the end of the Plan Period, but Target KEIP Award Amounts shall not be prorated.

19. The Threshold KEIP payouts are consistent with historical cash bonus targets for the KEIP Participants and the Target KEIP payouts were set at 150% of the Threshold payouts to take into account that the KEIP is now intended to reward and motivate KEIP Participants for the full 12-month period in the 2018 fiscal year as well as the first 6 months of the 2019 fiscal year. The KEIP payouts are capped at the Target KEIP Award Amounts. The maximum potential Target KEIP Award Amounts range from 77% to 150% of the KEIP Participants' individual base salary.

Reasonableness of the Key Employee Incentive Plan

20. In assessing the reasonableness of the KEIP, Seabury Consulting benchmarked the KEIP against fourteen (14) comparable incentive plans approved during 2016 through 2018 in other chapter 11 cases. As shown in Table 2 below, the average KEIP payout per KEIP Participant at the Target level is between the 25th and 50th percentiles of the average target

payout per participant at the benchmarked companies and the total plan cost as a percentage of total assets is comparable to the 50th percentile for these same companies.

Table 2: Benchmarking of KEIP Payouts

Market Data	# Eligible Employees	Total Cost of Plan at Target (millions)	Average Target Payout per Participant	Total Assets as of Plan Effective Date	Total Plan Cost as a % of Total Assets
25th Percentile	6	\$2.37	\$372,992	\$1,090	0.13 %
50th Percentile	8	\$6.20	\$609,693	\$2,611	0.21 %
75th Percentile	12	\$7.52	\$1,163,636	\$4,900	0.39 %
Proposed KEIP	8	\$3.62	\$453,563	\$1,615	0.22 %

21. The fourteen benchmarked companies include Alpha Natural Resources, Avaya Inc., Breitburn Energy Partners, Claire's Stores, EXCO Resources, iHeartMedia, LINN Energy, Pacific Drilling, Pacific Sunwear, Republic Airways, Rex Energy, Stone Energy, Ultra Petroleum, and Westinghouse. These companies were chosen because they represent incentive plans that were approved by the bankruptcy courts in the last two years. A majority of the benchmarked companies are in the oil and gas industry as this industry makes up a majority of the chapter 11 cases in the last few years and such companies are impacted by the same market drivers (i.e. oil and natural gas commodity prices) as the Debtors.

22. The Debtors set the size of KEIP Awards (a) to be consistent with historical target payouts under the Debtor's annual cash bonus plan and (b) to be comparable to incentive award plans approved in similar chapter 11 cases. To ensure that the KEIP is market-based, Seabury Consulting compared KEIP Participants' base salaries and target cash bonus amounts that the KEIP Awards are based on to total annual compensation, including base salary plus annual incentives, available to similarly situated executives in the Debtors' peer group in the aircraft

leasing industry. The data source for the aircraft leasing industry is a proprietary survey conducted by Seabury Consulting in 2017 that included eight (8) participants with a median number of aircraft equal to 139. Seabury Consulting selected this data source because it reflects pay practices for the Debtors' relevant labor market for executives. Seabury Consulting determined that the proposed KEIP Awards are necessary to better align the Debtors' management members' total cash compensation with their peers' total cash compensation, and that even if the Debtors achieve Target Performance and the KEIP Participants receive the maximum KEIP Awards, the KEIP Participants' total compensation still will be comparable to the market median total compensation for their industry peers.

23. Additionally, Seabury Consulting conducted an analysis of executive incentive plans approved in other chapter 11 cases, evaluating threshold and incentive targets, award amounts and opportunities, and total payouts as a percentage of prepetition assets, and determined that the maximum payouts under the KEIP (if Target Performance is achieved) represent 0.22% of total pre-petition assets, which is comparable to the 50th percentile of the market. Thus, the KEIP is easily within the range of competitive practice relative to company size.

24. Based on my experience and the work I have done on this matter, I believe that the KEIP will motivate and reward the KEIP Participants, who will have the greatest influence upon these Chapter 11 Cases, to maximize value for the Debtors' estates. I believe the cost and scope of the KEIP is consistent with plans approved in similar chapter 11 cases, consistent with market practice, and is reasonable given the facts and circumstances.

I, the undersigned, declare under penalty of perjury that the foregoing is true and correct.

December 23, 2018

/s/ Martin R. Kuehne

Name: Martin R. Kuehne

Title: Managing Director
Seabury Consulting