

**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.¹	:	
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**FINAL 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**”),² 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 owed to 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 value of the Debtors’ business (the “**Other Critical Vendors**” and, together with the Lien

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 *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.



Claimants, the “**Essential Vendors**” and the prepetition claims of the Essential Vendors, the “**Essential Vendor Claims**”); (ii) confirm 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) authorize 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 relief requested in the Motion and the Interim Order (as defined herein) having been provided in accordance with the *Interim 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 12, 2018 [ECF No. 86] as set forth in the affidavits of service filed at ECF Nos. 28 and 99, respectively; 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 on December 10, 2018 to consider the relief requested in the Motion on an interim basis (the “**Interim Hearing**”); and the Court having entered an order granting the relief requested in the Motion on an interim basis [ECF No. 82] (the “**Interim Order**”); and the attorneys for the Debtors having filed a declaration pursuant to 28 U.S.C. § 1746 indicating that no objection to the Motion had been filed [ECF No. 105]; and upon the First Day Declarations, filed contemporaneously with the Motion, and the record of the Interim 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 on a final 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), and 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 Final Order and in the Motion, in an aggregate amount not to exceed \$5,800,000.
3. The Debtors are further 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 Final Order and in the Motion, in an aggregate amount not to exceed \$200,000.
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 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 business 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. Notwithstanding anything to the contrary contained herein, any payments made or to be made by the Debtors under this Final Order, and any authorization contained in this Final Order, shall be in compliance with, and shall be subject to the Interim DIP Order, as may be modified from time to time, and the documentation in respect of the Debtors' DIP Facility.

11. Applicable banks and financial institutions are authorized, but not directed, at the Debtors' 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.

12. 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.

13. Nothing contained in the Motion or this Final Order, nor any payment made pursuant to the authority granted by this Final 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.

14. 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.

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

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

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

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

Dated: **December 19, 2018**
New York, New York

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