

**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.	:	
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**ORDER PURSUANT TO 11 U.S.C. §§ 327 AND 328 AND FED. R.
BANKR. P. 2014 AND 2016 AUTHORIZING DEBTORS TO RETAIN KCC
AS ADMINISTRATIVE AGENT *NUNC PRO TUNC* TO PETITION DATE**

Upon the application (the “**Section 327(a) Application**”),¹ dated December 23, 2018 [ECF No. 163], of Waypoint Leasing Holdings Ltd. and certain of its subsidiaries and affiliates, as debtors and debtors in possession (collectively, the “**Debtors**”), pursuant to sections 327(a) and 328 of title 11 of the United States Code (the “**Bankruptcy Code**”), Rules 2014 and 2016 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Rules 2014-1 and 2016-1 of the Local Bankruptcy Rules of the Southern District of New York (the “**Local Rules**”), for entry of an order authorizing the employment and retention of Kurtzman Carson Consultants LLC (“**KCC**”) as administrative agent, effective *nunc pro tunc* to the Petition Date, in accordance with the terms and conditions set forth in that certain *KCC Agreement for Services*, dated June 21, 2018, by and among the Debtors and KCC (the “**Engagement Agreement**”), all as more fully set forth in the Section 327(a) Application and the Declaration of Robert Jordan, attached to the Section 327(a) Application as **Exhibit D** (the “**Jordan Declaration**”); and the Court having jurisdiction to consider the Section 327(a) Application and the relief requested

¹ Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Section 327(a) Application.



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 Section 327(a) Application and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and due and proper notice of the Section 327(a) Application having been provided to the Notice Parties; and such notice having been adequate and appropriate under the circumstances, and it appearing that no other or further notice need be provided; and the Court having reviewed the Section 327(a) Application; and the attorneys for the Debtors having filed a declaration pursuant to 28 U.S.C. § 1746 indicating that no objection to the Section 327(a) Application had been filed [ECF No. 209]; and the Court having determined that the legal and factual bases set forth in the Section 327(a) Application establish just cause for the relief granted herein; and it appearing that the relief requested in the Section 327(a) Application 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 Section 327(a) Application is granted to the extent set forth herein.
2. The Debtors are authorized, pursuant to sections 327(a) and 328(a) of the Bankruptcy Code, Bankruptcy Rules 2014(a) and 2016, and Local Rules 2014-1 and 2016-1, to employ and retain KCC as their Administrative Agent in accordance with the terms and conditions set forth in the Section 327(a) Application and the Engagement Agreement (as modified by this Order), incorporated herein by reference, effective *nunc pro tunc* to the Petition Date.
3. KCC does not hold or represent any interest adverse to the Debtors' estate with respect to the matters upon which it is to be employed and is a "disinterested person" as that term is defined in section 101(14) of the Bankruptcy Code.

4. The terms of the Engagement Agreement are approved in all respects except as limited or modified herein.

5. The compensation provisions of the Engagement Agreement are reasonable terms and conditions of employment as required under Section 328(a) of the Bankruptcy Code, and are hereby approved pursuant to section 328(a) of the Bankruptcy Code, and KCC's fees and expenses shall be compensated and reimbursed pursuant to section 328(a) of the Bankruptcy Code in accordance with the terms of, and at the times specified by, the Engagement Agreement.

6. The Debtors are authorized to compensate KCC in accordance with the terms of the Engagement Agreement upon the receipt of reasonably detailed invoices setting forth the services provided by KCC and the rates charged for each, and to reimburse KCC for all reasonable and necessary expenses it may incur, upon the presentation of appropriate documentation, without the need for KCC to file fee applications or otherwise seek Court approval for the compensation of its services and reimbursement of its expenses.

7. Solely with respect to the Professional Services, KCC shall file fee applications for final allowance of compensation and reimbursement of expenses pursuant to the procedures set forth in sections 330 and 331 of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, any guidelines established by the Office of the United States Trustee for Region 2 (the "**U.S. Trustee**"), and any other applicable procedures and orders of this Court.

8. KCC shall maintain records of all services showing dates, categories of services, fees charged and expenses incurred, and shall serve monthly invoices on the Debtors, the U.S. Trustee, counsel for the Debtors, counsel for any official committee monitoring the expenses of the Debtors, and any party-in-interest who specifically requests service of the monthly invoice.

9. KCC may apply its retainer to all prepetition invoices, which retainer shall be replenished to the original retainer amount, and thereafter, KCC may hold its retainer under the Engagement Agreement during the Chapter 11 Cases as security for the payment of fees and expenses incurred under the Engagement Agreement.

10. The Debtors shall indemnify KCC under the terms of the Engagement Agreement, as modified pursuant to this Order.

11. All requests by KCC for the payment of indemnification as set forth in the Engagement Agreement shall be made by means of an application to this Court and shall be subject to review by this Court to ensure that payment of such indemnity conforms to the terms of the Engagement Agreement and is reasonable under the circumstances of the litigation or settlement in respect of which indemnity is sought; *provided, however*, that in no event shall KCC be indemnified in the case of its own bad-faith, self-dealing, breach of fiduciary duty (if any), gross negligence, or willful misconduct.

12. In the event that KCC seeks reimbursement from the Debtors for attorneys' fees and expenses in connection with the payment of an indemnity claim pursuant to the Engagement Agreement, the invoices and supporting time records for the attorneys' fees and expenses shall be included in KCC's applications, both interim and final, but determined by this Court after notice and a hearing.

13. Notwithstanding anything contained in the Engagement Agreement to the contrary, KCC's liability during the Chapter 11 Cases shall neither be limited to (a) the total amount billed or billable to the Debtors for the portion of the particular work that gave rise to the loss or damage, nor (b) the total amount billed to the Debtors and paid to KCC for the services contemplated under the Engagement Agreement.

14. The Debtors and KCC are authorized to take all action necessary to effectuate the relief granted in this Order.

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

16. In the event of any inconsistency between the Engagement Agreement, the Section 327 (a) Application, and this Order, this Order shall govern.

Dated: **January 8, 2019**
New York, New York

/s/ STUART M. BERNSTEIN
UNITED STATES BANKRUPTCY JUDGE