

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

In re:

INSIGHT TERMINAL SOLUTIONS, LLC et al.¹

Debtors.

Chapter 11

Case No. 19-32231

(Jointly Administered)

Judge Joan A. Lloyd

**FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND ORDER CONFIRMING AUTUMN WIND LENDING,
LLC'S CHAPTER 11 PLAN OF REORGANIZATION FOR THE
BANKRUPTCY ESTATE OF DEBTOR INSIGHT TERMINAL
SOLUTIONS, LLC PURSUANT TO BANKRUPTCY CODE SECTION 1121(c)(2)**

Autumn Wind Lending, LLC's Chapter 11 Plan of Reorganization for the Bankruptcy Estate of Debtor Insight Terminal Solutions, LLC Pursuant to Bankruptcy Code Section 1121(c)(2) [Docket No. 245] (as modified, amended, or supplemented from time to time, the "Plan"), having been filed with the Bankruptcy Court by Autumn Wind Lending, LLC ("AWL"); and the *Disclosure Statement for Autumn Wind Lending, LLC's Chapter 11 Plan of Reorganization for the Bankruptcy Estate of Debtor Insight Terminal Solutions, LLC Pursuant to Bankruptcy Code Section 1121(c)(2)* [Docket No. 245-1] (as modified, amended, or supplemented from time to time, the "Disclosure Statement"), having been filed with this Court; and the Disclosure Statement, and appropriate ballots for voting on the Plan having been approved, and transmitted to Holders² of Claims against the Debtor, pursuant to that certain order approving the Disclosure Statement as

¹ The Debtors in these chapter 11 cases are Insight Terminal Solutions, LLC (Case No. 19-32231) and Insight Terminal Holdings, LLC (Case No. 19-32232). The Court has ordered the joint administration of these chapter 11 cases. The docket in this Case No. 19-32231 should be consulted for all matters affecting the above listed cases.

² Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Plan, the Disclosure Statement, or the Bankruptcy Code (*each as defined herein*), as applicable. The rules of construction set forth in Article 1.B. of the Plan apply.

containing “adequate information” within the meaning of section 1125 of title 11 of the United States Code, 11 U.S.C. § 101 *et seq.* (the “Bankruptcy Code”), and authorizing the service and solicitation of acceptances and rejections of the Plan, establishing related deadlines and procedures, and setting August 11, 2020 as the Confirmation Hearing (the “Disclosure Statement Order”) [Docket No. 255]; and the Plan Supplement having been filed on July 27, 2020 [Docket No. 265]; and the affidavits of service filed in respect of the Disclosure Statement Order, the Disclosure Statement, the Plan and the Confirmation Hearing Notice (“Affidavits of Service”) each having been filed; and the Debtors having filed the Debtors’ *Memorandum of Law in Support of Autumn Wind Lending, LLC’s Chapter 11 Plan of Reorganization for the Bankruptcy Estate of Debtor Insight Terminal Solutions, LLC Pursuant to Bankruptcy Code Section 1121(c)(2)* [Docket No. 319] (the “Confirmation Memorandum”; and the *Declaration of Robert M. Hirsh Regarding Analysis of Ballots for Accepting or Rejecting Autumn Wind Lending, LLC’s Chapter 11 Plan of Reorganization for the Bankruptcy Estate of Debtor Insight Terminal Solutions, LLC Pursuant to Bankruptcy Code Section 1121(c)(2)* [Docket No. 346] (the “Voting Report”) having been filed with this Court prior to the Confirmation Hearing which was adjourned by the Court, pursuant to an order entered on October 20, 2020 [Docket No. 362], to November 3 and 4, 2020 (the “Confirmation Hearing”) after due and sufficient notice was given to Holders of Claims against, and Equity Interests in, the Debtor and other parties-in-interest in accordance with the Disclosure Statement Order, the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and the local rules of the Court (the “Local Rules”), in each case as established by the affidavits of service filed with this Court prior to the Confirmation Hearing (collectively, the “Notice Affidavit”); and upon all of the proceedings held before this Court and after full consideration of: (i) each of the objections to the Confirmation of the Plan filed with this

Court and not subsequently withdrawn, settled, or deemed moot (the “Objections”); (ii) the Plan Supplement; (iii) the Confirmation Memorandum; (iv) the Voting Report; (v) testimony proffered or presented in support of Confirmation; (vi) the declarations and/or affidavits filed with this Court; and (vii) all other documents comprising the record in these cases, the arguments and representations of counsel, and the evidence proffered and/or adduced in support of Confirmation; and after due deliberation thereon; and good cause appearing therefor; the Court makes and issues the following findings of fact, conclusions of law, and Order.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. On July 17, 2019 (the “Petition Date”), each of the Debtors filed with this Court a voluntary petition for relief under chapter 11 of the Bankruptcy Code, thereby commencing these cases (the “Chapter 11 Cases”). The Debtors continue to manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

B. These Chapter 11 Cases are jointly administered for procedural purposes only pursuant to Rule 1015(b) of the Bankruptcy Rules.

C. VENUE, CORE PROCEEDING; EXCLUSIVE JURISDICTION. On the Petition Date, the Debtors commenced these Chapter 11 Cases by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code. The Debtors were qualified and are qualified to be debtors under section 109(d) of the Bankruptcy Code. Venue was proper as of the Petition Date and continues to be proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409. Confirmation of the Plan is a core proceeding under 28 U.S.C. § 157(b)(2). The Court has jurisdiction over these Chapter 11 Cases pursuant to 28 U.S.C. §§ 157 and 1334, and the Court has exclusive jurisdiction to determine whether the Plan complies with the applicable provisions of the Bankruptcy Code and should be confirmed.

D. JUDICIAL NOTICE. The Court takes judicial notice of the docket in these Chapter 11 Cases maintained by the Clerk of the Court, including, without limitation, all pleadings and other documents filed, all orders entered, and the transcripts of, and all evidence and arguments made, proffered, or adduced at the hearings held before the Court during these Chapter 11 Cases.

E. BURDEN OF PROOF. AWL, as proponent of the Plan, has the burden of proving the elements under sections 1129(a) and (b) of the Bankruptcy Code by a preponderance of the evidence, and has met that burden as further found and determined herein.

F. SOLICITATION AND NOTICE. On July 9, 2020, the Court entered the Disclosure Statement Order. The Disclosure Statement Order, among other things, approved the Disclosure Statement as containing “adequate information” of a kind and in sufficient detail to enable hypothetical, reasonable investors typical of the Debtors’ creditors to make an informed judgment whether to accept or reject the Plan. Pursuant to the Disclosure Statement Order, the Debtors served the Notice of the Confirmation Hearing (as defined in the Disclosure Statement Order), Plan, Disclosure Statement, and a ballot (collectively, the “Plan Packages”) upon: (i) all scheduled Holders of Claims against the Debtor, and (ii) those parties that requested service under Bankruptcy Rule 2002. The Plan Packages were served in compliance with the Bankruptcy Code, the Bankruptcy Rules, and the Disclosure Statement Order. As described in the Disclosure Statement Order, and as evidenced by the Voting Report, and the certificates of service filed in connection therewith, (i) the service of the Plan Packages was adequate and sufficient under the circumstances of these Chapter 11 Cases; and (ii) adequate and sufficient notice of the Confirmation Hearing and other requirements, deadlines, hearings, and matters described in the Disclosure Statement Order was timely provided in compliance with the Bankruptcy Code and

Bankruptcy Rules, and provided due process and an opportunity to appear and be heard to all parties-in-interest.

G. VOTING. The Disclosure Statement Order fixed August 4, 2020, at 4:00 p.m. (EDT) as the Ballot Receipt Deadline. Votes to accept or reject the Plan have been solicited and tabulated fairly, in good faith, and in a manner consistent with the Bankruptcy Code, the Bankruptcy Rules, the Disclosure Statement, and Disclosure Statement Order. As set forth in the Voting Report, the Plan has been accepted, within the meaning of section 1126(c) of the Bankruptcy Code, by Class 2, which is impaired and entitled to vote on the Plan. Classes 1 and 3 are unimpaired and are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code and are, therefore, not entitled to vote. Classes 4 and 5 receive no distribution under the Plan and are, therefore, conclusively presumed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code (the “Deemed Rejecting Classes”).

H. PLAN SUPPLEMENT. The Plan Supplement complies with the Bankruptcy Code and the terms of the Plan, and the filing and notice of the documents included in the Plan Supplement are adequate and proper in accordance with the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, the Disclosure Statement Order, and the facts and circumstances of the Chapter 11 Cases. No other or further notice is or will be required with respect to the Plan Supplement. All documents included in the Plan Supplement are integral to, part of, and incorporated by reference into the Plan. Subject to the terms of the Plan, compliance with the Bankruptcy Code and the Bankruptcy Rules, AWL reserves the right to alter, amend, update, or modify the Plan Supplement before the Effective Date.

I. SATISFACTION OF CONFIRMATION REQUIREMENTS. The Plan satisfies the requirements for confirmation set forth in sections 1129(a) and (b) of the Bankruptcy Code, as set forth below:

- (a) 11 U.S.C. § 1129(a)(1): The Plan complies with all applicable provisions of the Bankruptcy Code, including sections 1122 and 1123 of the Bankruptcy Code.
 - (i) 11 U.S.C. § 1122: Each Claim or Equity Interest placed in a particular Class under the Plan is substantially similar to the other claims or interests in that Class. In addition, valid business, legal, and factual reasons exist for the separate classification of each of the classes of Claims and Equity Interests created under the Plan, and there is no unfair discrimination between or among holders of Claims and Interests.
 - (ii) 11 U.S.C. § 1123: Pursuant to sections 1122(a) and 1123(a)(1) of the Bankruptcy Code, Articles II and III of the Plan classify Claims and Interests into five (5) different Classes (except for Administrative Claims, Priority Tax Claims, United States Trustee statutory fees, and Other Priority Claims that are not classified). Pursuant to sections 1123(a)(2) and 1123(a)(3) of the Bankruptcy Code, Article III of the Plan specifies all Claims and Interests that are not impaired and specifies the treatment of all Claims and Interests that are impaired. Article III identifies Classes 1 and 3 as unimpaired, and identifies Classes 2, 4, and 5 as impaired. Pursuant to section 1123(a)(4) of the Bankruptcy Code, the Plan also provides the same treatment for each Claim or Interest within a particular Class. Pursuant to section 1125(a)(5) of the Bankruptcy Code, the Plan provides adequate means for the Plan's implementation, as set forth in Article VI of the Plan. AWL will have, immediately upon the effectiveness of the Plan, sufficient cash available to make all payments that are required to be made on the Effective Date pursuant to the terms of the Plan.
- (b) 11 U.S.C. § 1129(a)(2): As required by 11 U.S.C. § 1129(a)(2) of the Bankruptcy Code, AWL, as proponent of the Plan, has complied with all applicable provisions of the Bankruptcy Code, including, without limitation, 11 U.S.C. §§ 1125 and 1126 and Bankruptcy Rules 3017, 3018 and 3019. In particular, the solicitation of votes to accept or reject the Plan was (i) in compliance with all applicable non-bankruptcy laws, rules, and regulations governing the adequacy of disclosure in connection with such solicitation, and (ii) solicited after disclosure to Holders of Claims and Interests. AWL has further complied with all the provisions of the Bankruptcy Code and the Bankruptcy Rules governing notice of the

Confirmation Hearing, approval of the Disclosure Statement and all other matters considered by the Court in the Chapter 11 Cases. The record in the Chapter 11 Cases further discloses that AWL complied, in good faith, with the orders of the Court entered during the pendency of the case and that AWL has not violated any such orders.

- (c) 11 U.S.C. § 1129(a)(3): AWL proposed the Plan in good faith and not by any means forbidden by law. No person filed a valid objection to confirmation of the Plan on the grounds that the Plan was not proposed in good faith or by any means forbidden by law. Accordingly, pursuant to Bankruptcy Rule 3020(b)(2), the Court may determine compliance with section 1129(a)(3) of the Bankruptcy Code without receiving evidence on such issues. The Court has examined the totality of the circumstances surrounding the formulation of the Plan and the evidence submitted in connection with the Confirmation Hearing. The Plan is in the best interests of Holders of Claims, as evidenced by acceptance, or payment or full, of all Allowed Claims, except Subordinated Claims. The Plan was proposed with the legitimate and honest purpose of maximizing the value of the Debtor's Estate and to effectuate a distribution of such value to Creditors. Further, based on the evidentiary record adduced at the Confirmation Hearing and the Court's findings and conclusions based thereon, the principal purpose of the Plan is not the avoidance of taxes or the avoidance of section 5 of the Securities Act of 1933 (15 U.S.C. § 77(e), as amended). Accordingly, the provisions of section 1129(d) of the Bankruptcy Code are met. Therefore, the Plan has been proposed in good faith, as such term is used in section 1129(a)(3) of the Bankruptcy Code.
- (d) 11 U.S.C. § 1129(a)(4): The Plan appropriately provides for Court approval of all payments for services in connection with the Debtor's Chapter 11 Case and therefore satisfies section 1129(a)(4) of the Bankruptcy Code.
- (e) 11 U.S.C. § 1129(a)(5): The Plan provides for, upon the Effective Date, that the Debtor's members, managers, and officers shall be deemed to have resigned and shall be replaced by the new member and the new non-member manager. The Plan provides that Vikas Tandon will serve as the sole New Non-Member Manager and that AWL will be the sole member of the Reorganized Debtor. Accordingly, AWL satisfied the requirements of this provision.
- (f) 11 U.S.C. § 1129(a)(6): No governmental regulatory commission has jurisdiction over the rates of the Debtor or Reorganized Debtor. Section 1129(a)(6) is inapplicable to confirmation of the Plan.
- (g) 11 U.S.C. § 1129(a)(7): With respect to each Impaired Class of Claims or Interests of the Debtor, each Holder of a Claim or Interest in such Class has accepted the Plan or will receive or retain under the Plan on account of such Claim or Interest property of a value, as of the Effective Date, that is not

less than the amount such Holder would receive or retain if the Debtor was liquidated on the Effective Date under chapter 7 of the Bankruptcy Code. A conversion of the Chapter 11 Cases to chapter 7 would likely be accompanied by a decrease in the amount of recovery that Holders of Allowed Claims would receive on account of their claims as a result of the elimination of the Cash Contribution, as well as the accrual of commissions and additional administrative fees and expenses during a chapter 7 case. Further, a chapter 7 liquidation would result in delay in distributions to Holders of Allowed Claims. Thus, the Plan provides a superior recovery to each Holder of a Claim or Interest than conversion of the Debtor's Chapter 11 Case, and accordingly, the Plan is in the best interests of Holders of Claims or Interests under section 1129(a)(7) of the Bankruptcy Code.

- (h) 11 U.S.C. § 1129(a)(8) / 11 U.S.C. § 1129(b): Classes 1 and 3 are Unimpaired under the Plan and are deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Nevertheless, because the Plan has not been accepted by the Deemed Rejecting Classes, the Debtors seek confirmation under section 1129(b), solely with respect to the Deemed Rejecting Classes, rather than section 1129(a)(8) of the Bankruptcy Code. Although section 1129(a)(8) has not been satisfied with respect to the Deemed Rejecting Classes, the Plan is confirmable because the Plan does not discriminate unfairly and is fair and equitable with respect to the Deemed Rejecting Classes and thus satisfies section 1129(b) of the Bankruptcy Code with respect to such Classes as described further below. As a result, the requirements of section 1129(b) of the Bankruptcy Code are satisfied.
- (i) 11 U.S.C. § 1129(a)(9): The treatment of Allowed Administrative Claims, Allowed Professional Fee Claims, and Allowed Priority Tax Claims, under Article II of the Plan, satisfies the requirements of, and complies in all respects with, section 1129(a)(9) of the Bankruptcy Code.
- (j) 11 U.S.C. § 1129(a)(10): The Plan satisfies the requirements of section 1129(a)(10) of the Bankruptcy Code. As evidenced by the Voting Report, the Voting Classes voted to accept the Plan by the requisite numbers and amounts of Claims, determined without including any acceptance of the Plan by any insider (as that term is defined in section 101(31) of the Bankruptcy Code), specified under the Bankruptcy Code.
- (k) 11 U.S.C. § 1129(a)(11): The Plan satisfies section 1129(a)(11) of the Bankruptcy Code. The evidence supporting the Plan proffered or adduced by AWL at or before the Confirmation Hearing: (a) is reasonable, persuasive, credible, and accurate as of the dates such evidence was prepared, presented, or proffered; (b) has not been controverted by other persuasive evidence; (c) establishes that the Plan is feasible and Confirmation of the Plan is not likely to be followed by liquidation or the

need for further financial reorganization; and (d) establishes that AWL will have sufficient funds available to meet its obligations under the Plan.

- (l) 11 U.S.C. § 1129(a)(12): The Plan satisfies the requirements of section 1129(a)(12) of the Bankruptcy Code. Article IX.E of the Plan provides for the payment of all fees due and payable under 28 U.S.C. § 1930 by AWL or the Reorganized Debtor, as applicable.
- (m) 11 U.S.C. § 1129(a)(13): The requirements of section 1129(a)(13) of the Bankruptcy Code are not applicable to the Plan because the Debtor is not obligated to fund any retiree benefits within the meaning of this statute.
- (n) 11 U.S.C. § 1129(a)(14) and (15): These statutes apply only to individual debtors and thus are inapplicable to confirmation of the Plan.
- (o) 11 U.S.C. § 1129(a)(16): The requirements of section 1129(a)(16) of the Bankruptcy Code are not applicable to confirmation of the Plan because the Debtor is not a nonprofit entity or trust.
- (p) “Cram Down” Requirements – Section 1129(b)(1) and (2): The Plan satisfies the requirements of section 1129(b) of the Bankruptcy Code. Notwithstanding the fact that the Deemed Rejecting Classes have not accepted the Plan, the Plan may be confirmed pursuant to section 1129(b)(1) of the Bankruptcy Code. First, all of the requirements of section 1129(a) of the Bankruptcy Code other than section 1129(a)(8) have been met. Second, the Plan is fair and equitable with respect to the Deemed Rejecting Classes. The Plan has been prepared in good faith, is reasonable, and meets the requirements that no Holder of any Claim or Interest that is junior to each such Claim will receive or retain any property under the Plan on account of such junior Claim or Interest, and no Holder of a Claim or Interest in a Class senior to such Classes is receiving more than payment in full on account of its Claim or Interest. Accordingly, the Plan is fair and equitable towards all Holders of Claims and Interests in the Deemed Rejecting Classes. Third, the Plan does not discriminate unfairly with respect to the Deemed Rejecting Classes because similarly situated Claim and Interest Holders will receive substantially similar treatment on account of their Claims or Interests, as applicable, in such class. Therefore, the Plan may be confirmed despite the fact that not all impaired Classes have voted to accept the Plan.
- (q) 11 U.S.C. § 1129(c): The Plan is the only plan filed in these Chapter 11 Cases that satisfies sections 1129(a) and (b) and, accordingly, section 1129(c) of the Bankruptcy Code is inapplicable to these Chapter 11 Cases.
- (r) 11 U.S.C. § 1129(d): The principal purpose of the Plan is not the avoidance of taxes or the avoidance of the application of section 5 of the Securities Act of 1933.

- (s) 11 U.S.C. § 1129(e): The Chapter 11 Cases are not small business cases and, accordingly, section 1129(e) of the Bankruptcy Code does not apply to the Chapter 11 Cases.
- (t) 11 U.S.C. § 1125(e): AWL has acted in “good faith” within the meaning of section 1125(e) of the Bankruptcy Code and in compliance with the applicable provisions of the Bankruptcy Code and Bankruptcy Rules in connection with all of its respective activities relating to support and consummation of the Plan, including the solicitation and receipt of acceptances of the Plan, and are entitled to the protections afforded by section 1125(e) of the Bankruptcy Code.

J. SATISFACTION OF CONFIRMATION REQUIREMENTS. Based upon the foregoing, the Plan satisfies the requirements for confirmation set forth in section 1129 of the Bankruptcy Code.

K. LIKELIHOOD OF SATISFACTION OF CONDITIONS PRECEDENT TO THE EFFECTIVE DATE. Each of the conditions precedent to the Effective Date, as set forth in Article VIII of the Plan, has been or is reasonably likely to be satisfied or, as applicable, waived in accordance with Article VIII of the Plan.

L. IMPLEMENTATION. All documents necessary to implement the transactions contemplated by the Plan, including those contained or summarized in the Plan Supplement, and all other relevant and necessary documents have been negotiated in good faith and at arm’s length, are in the best interests of the Debtor’s Estate, and shall, upon completion of documentation and execution, be valid, binding, and enforceable agreements and shall not be in conflict with any federal, state, or local law. AWL and the Reorganized Debtor are authorized to take any action reasonably necessary or appropriate to consummate such agreements and the transactions contemplated thereby.

M. EXECUTORY CONTRACTS AND UNEXPIRED LEASES. AWL’s and the Reorganized Debtor’s decision to assume and to reject certain Executory Contracts or Unexpired Leases, as provided in Article IV of the Plan and in the Plan Supplement, are reasonable exercises of AWL’s and the Reorganized Debtor’s business judgment. AWL and the Reorganized Debtor have

demonstrated adequate assurance of future performance of the Executory Contracts and Unexpired Leases within the meaning of section 365(b)(1)(C) of the Bankruptcy Code.

N. GOOD FAITH. AWL, the Released Parties, and the Releasing Parties have been and will be acting in good faith if they proceed to: (a) consummate the Plan and the agreements, settlements, transactions, and transfers contemplated thereby; and (b) take the actions authorized and directed by this Confirmation Order.

ORDER

NOW, THEREFORE, BASED UPON ALL OF THE FOREGOING, IT HEREBY IS ORDERED THAT:

1. **FINDINGS OF FACT AND CONCLUSIONS OF LAW**. The above-referenced findings of fact and conclusions of law are hereby incorporated by reference as though fully set forth herein and constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable herein by Bankruptcy Rule 9014. To the extent that any finding of fact is determined to be a conclusion of law, it is deemed so, and vice versa.

2. **SOLICITATION**. To the extent applicable, the solicitation of votes on the Plan complied with sections 1125 and 1126 of the Bankruptcy Code, Bankruptcy Rules 3017 and 3018, all other provisions of the Bankruptcy Code, and all other applicable rules, laws, and regulations, and was appropriate and satisfactory and is approved in all respects.

3. **BALLOTS**. The forms of ballots are in compliance with Bankruptcy Rule 3018(c), the Disclosure Statement Order, and the Bankruptcy Code.

4. **NOTICE OF CONFIRMATION HEARING**. The Notice of Confirmation Hearing was appropriate and satisfactory and is approved in all respects, and was in compliance with all applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules.

5. **CONFIRMATION.** The Plan and all exhibits thereto, including, without limitation, the documents contained in the Plan Supplement, are approved in their entirety and confirmed under section 1129 of the Bankruptcy Code. The terms of the Plan, including the Plan Supplement, are incorporated by reference into and are an integral part of this Confirmation Order.

6. **OBJECTIONS.** Any objections to confirmation of the Plan that have not been withdrawn or resolved by stipulation are hereby overruled.

a. **SATISFACTION OF BAY BRIDGE CLAIMS.** On the Effective Date, AWL shall pay Bay Bridge Exports, LLC ("Bay Bridge"), in Cash, in satisfaction of all of Bay Bridge's Claims, Interests, and objections, all amounts due to Bay Bridge by the Debtors pursuant to the Court's order allowing the Debtors to borrow post-petition financing, which appear as Docket Numbers 102, 108, 167, 173, and 238, in the agreed upon amount of \$2,143,463.89, as of October 30, 2020, with an additional *per diem* of \$522.30.

b. **AGREEMENT WITH OBOT.** On the Effective Date, AWL shall pay Oakland Bulk and Oversized Terminal, LLC ("OBOT"), in Cash, the amount of \$4,800,000.00, representing, as agreed upon by OBOT and AWL, the amount necessary for AWL to assume the Army Gateway Redevelopment Sublease for West Gateway dated as of September 24, 2018, between OBOT, as sub-landlord, and ITS, as subtenant (the "Sublease"), and which amount will be applied towards the outstanding Rent amounts as set forth in that certain Notice of Unmatured Event of Default, dated October 5, 2020. OBOT reserves the right to receive payment of additional Rent that has come due under the Sublease, including, without limitation, the Base

Rent (both Master Lease and Sublease) which OBOT (without waiving) has not invoiced for given the dispute with the City of Oakland, such reserved amounts to be determined subsequent to the assumption of the Sublease by the Reorganized Debtor.

7. **PROVISIONS OF PLAN AND ORDER NON-SEVERABLE AND MUTUALLY DEPENDENT.** The provisions of the Plan and this Order, including the findings of fact and conclusions of law set forth herein, are (a) non-severable and mutually dependent; (b) valid and enforceable pursuant to their terms; and (c) integral to the Plan and this Confirmation Order, respectively, and may not be deleted or modified except in accordance with Article XI.A of the Plan.

8. **RECORD CLOSED.** The record of the Confirmation Hearing is closed.

9. **BINDING EFFECT AND VALIDITY.** The provisions of the Plan and this Order shall bind every Holder of a Claim against or Interest in any Debtor and inure to the benefit of and be binding on such Holder's respective successors and assigns, regardless of whether the Claim or Interest of such Holder is impaired under this Plan and whether such Holder has accepted this Plan.

10. **PLAN CLASSIFICATION CONTROLLING.** The classification of Claims and Interests for purposes of distributions to be made under the Plan shall be governed solely by the terms of the Plan. The classifications set forth on the ballots tendered to or returned by the Holders of Claims in connection with voting on the Plan (a) were set forth on the Ballots solely for the purposes of voting to accept or reject the Plan; (b) do not necessarily represent, and in no event shall be deemed to modify or otherwise affect, the actual classification of such Claims under the Plan for distribution purposes; (c) may not be relied upon by and creditors as representing the actual classification of such Claims under the Plan for distribution purposes; and (d) shall not be

binding on the Debtor, the Reorganized Debtor, AWL, or the Holders of Claims and Interests for purposes other than voting on the Plan.

11. **CONTINUED CORPORATE EXISTENCE OF THE REORGANIZED DEBTOR.** On and after the Effective Date, the Reorganized Debtor will continue to exist as a separate corporation and shall retain all of the powers of corporations under applicable non-bankruptcy law, and without prejudice to any right to amend its charter, dissolve, merge, or convert into another form of business entity, or to alter or terminate its existence. Except as otherwise provided in the Plan, on and after the Effective Date, all property comprising the Estate (including Litigation Claims, but excluding property that has been abandoned pursuant to an order of the Bankruptcy Court) shall vest in the Reorganized Debtor free and clear of all Claims, Liens, charges, interests, and encumbrances. As of and following the Effective Date, the Reorganized Debtor may operate its business and use, acquire, and dispose of property and settle and compromise Claims, Interests, or Litigation Claims without supervision of the Bankruptcy Court, free of any restrictions of the Bankruptcy Code or Bankruptcy Rules, other than those restrictions expressly imposed by the Plan or this Confirmation Order.

12. **PROHIBITION AS TO THE ISSUANCE OF NONVOTING EQUITY SECURITIES.** Pursuant to section 1123(a)(6) of the Bankruptcy Code, the Debtor shall be prohibited from the issuance of nonvoting equity securities.

13. **U.S. TRUSTEE FEES AND POST-CONFIRMATION REPORTS.** Notwithstanding anything to the contrary contained in the Plan, all fees payable through the Effective Date pursuant to 28 U.S.C. § 1930 shall be paid on the Effective Date, or as soon as practicable thereafter. The Reorganized Debtor is responsible for paying any post-Effective Date fees under 28 U.S.C. § 1930(a)(6) and filing quarterly post-confirmation reports until the Bankruptcy Court enters a final

decree, which Reorganized Debtor will seek as soon as feasible after distributions under the Plan have commenced. Notice of application for a final decree need be given only to those holders of Claims and Interests and other parties that, after the Effective Date, specifically request such notice.

14. **RETAINED CAUSES OF ACTION OF THE DEBTORS.** Except as otherwise provided in the Plan, all Litigation Claims other than Avoidance Actions are retained and reserved for the Reorganized Debtor, which is designated as the Estate's representative under Bankruptcy Code section 1123(b)(3)(B) for purposes of the Litigation Claims other than Avoidance Actions. The Reorganized Debtor shall have the sole authority to prosecute, defend, compromise, settle, and otherwise deal with any Litigation Claims other than Avoidance Actions, and does so in its capacity as a representative of the Estate in accordance with Bankruptcy Code section 1123(b)(3)(B). The Reorganized Debtor shall have sole discretion to determine in its business judgment which Litigation Claims to pursue, which to settle, and the terms and conditions of those settlements. In pursuing any claim, right, or Litigation Claim, the Reorganized Debtor shall be entitled to the extensions provided under section 108 of the Bankruptcy Code. Except as otherwise provided in the Plan, all Litigation Claims shall survive confirmation and the commencement or prosecution of Litigation Claims shall not be barred or limited by any estoppel, whether judicial, equitable, or otherwise.

15. **EXECUTORY CONTRACTS AND UNEXPIRED LEASES.** On the Effective Date, except as otherwise provided in the Plan, each Executory Contract and Unexpired Lease shall be deemed rejected pursuant to sections 365 and 1123 of the Bankruptcy Code as of the Effective Date, unless any such Executory Contract or Unexpired Lease: (1) is identified on the Schedule of Assumed Executory Contracts and Unexpired Leases; (2) was assumed or rejected previously by the Debtor;

(3) expired or terminated pursuant to its own terms before the Effective Date; (4) is the subject of a motion to assume pending on the Confirmation Date; or (5) is the subject of a motion pending on the Confirmation Date to assume an Executory Contract or Unexpired Lease pursuant to which the requested effective date of such rejection is after the Effective Date. All assumed Executory Contracts and Unexpired Leases shall remain in full force and effect for the benefit of the Reorganized Debtor, and be enforceable by the Reorganized Debtor in accordance with their terms, notwithstanding any provision in such assumed Executory Contract or Unexpired Lease that prohibits, restricts, or conditions such assumption, assignment, or transfer. Any provision in the assumed Executory Contracts and Unexpired Leases that purports to declare a breach or default based in whole or in part on commencement or continuance of this Chapter 11 Case or any successor cases shall be deemed unenforceable. To the extent any provision in any Executory Contract or Unexpired Lease assumed pursuant to the Plan (including, without limitation, any “change of control” provision) restricts or prevents, or purports to restrict or prevent, or is breached or deemed breached by, the Reorganized Debtor’s assumption of such Executory Contract or Unexpired Lease, then such provision will be deemed unenforceable such that the transactions contemplated by the Plan will not entitle the non-debtor party thereto to terminate such Executory Contract or Unexpired Lease or to exercise any other default-related rights with respect thereto. Each Executory Contract or Unexpired Lease assumed pursuant to the Plan or by Bankruptcy Court order but not assigned to a third party before the Effective Date shall re-vest in and be fully enforceable by the Reorganized Debtor in accordance with its terms, except as such terms may have been modified by a court order or by applicable law.

16. **CLAIM FILING PROCEDURES AND BAR DATE.** The Claim Filing Procedures and Bar Date, attached to the Plan as Exhibit A, is approved. All Claims incurred prior to the

Confirmation Date, including Administrative Claims, shall file a Claim in accordance with the Claim Filing Procedures and Bar Date. Any such Claim that is not filed in accordance with the Claim Filing Procedures and Bar Date shall be forever barred. Pursuant to the Claim Filing Procedures and Bar Date, all Persons and entities including, without limitation, individuals, partnerships, corporations, joint ventures, and trusts, including, without limitation, Governmental Units, that assert a Claim (as defined in section 101(5) of the Bankruptcy Code) against the Debtor which arose before the Confirmation Date, including Administrative Claims, shall submit a written proof of such Claim so that it is actually received by the Clerk of the Bankruptcy Court on or before 4:00 p.m., prevailing Eastern Time, thirty-five (35) days from the Confirmation Date.

17. **CLAIMS ON ACCOUNT OF THE REJECTION OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES.** Each non-Debtor counterparty to an Executory Contract or Unexpired Lease not identified on the Schedule of Assumed Executory Contracts and Unexpired Leases must file a proof of claim asserting any Rejection Damages Claim on or before the Rejection Bar Date. Any Person with a Rejection Damages Claim is required to file a proof of claim asserting a Rejection Damages Claim and failure to do so on or before the Rejection Bar Date shall result in any Rejection Damages Claim being disallowed in accordance with section 502 of the Bankruptcy Code and forever barred, estopped, and enjoined from assertion and any such Rejection Damages Claim shall not be enforceable against the Reorganized Debtor, and any Claim arising out of the rejection of the Executory Contract or Unexpired Lease shall be deemed fully satisfied, released, and discharged, notwithstanding a proof of claim to the contrary.

18. **EFFECTUATION OF THE PLAN.** The Debtor, its Estate, the Reorganized Debtor, and AWL are authorized to execute and deliver any and all documents and instruments and take any and all actions necessary or desirable to implement the Plan and this Order and to effect any other

transactions contemplated therein or thereby. To effectuate the Plan and such transactions, the officers or responsible representatives of the Debtor, its Estate, the Reorganized Debtor, and AWL are authorized - without further notice or application to or order of the Court - to execute, deliver, file, or record such agreements or documents, and to take such other actions as any such individual may determine to be necessary or desirable to effectuate the Plan and such transactions, regardless of whether such actions or documents are specifically referred to in the Plan or this Order. To the extent that, under applicable non-bankruptcy law, any of these actions otherwise would require the consent or approval of the shareholders or boards of directors of the Debtor, this Order constitutes such consent and approval.

19. **TREATMENT IS IN FULL SATISFACTION.** Except as otherwise agreed in writing and approved by the Court, the treatment set forth in the Plan for each Class of Claims and Interests is in full and complete satisfaction of the legal, contractual, and equitable rights (including any liens) that each Person holding a Claim or an Interest may have in or against the Debtor, its Estate, the Reorganized Debtor, or their respective property. This treatment supersedes and replaces any agreements or rights those Persons may have in or against the Debtor, its Estate, the Reorganized Debtor, or their respective property.

20. **RELEASES AND EXCULPATION.** The releases and exculpation provisions contained in the Plan, including, but not limited to, those provided in Article VII of the Plan, are hereby authorized, approved, and binding on all Persons described therein.

21. **DISCHARGE OF INJUNCTION.** Pursuant to Article VII.E of the Plan, except as otherwise expressly provided in the Plan or this Order, from and after the Effective Date, all Persons are, to the fullest extent provided under section 524 and other applicable provisions of the Bankruptcy Code, permanently enjoined from (i) commencing, conducting, or continuing in any

manner, directly or indirectly, any suit, action, or other proceeding of any kind (including, any proceeding in a judicial, arbitral, administrative, or other forum) against or affecting, directly or indirectly, the Reorganized Debtor, or the Estate, or any direct or indirect transferee of any property of, or direct or indirect successor in interest to the Reorganized Debtor or any property of any such transferee or successor; (ii) enforcing, levying, attaching (including, any prejudgment attachment), collecting, or otherwise recovering in any manner or by any means, whether directly or indirectly, any judgment, award, decree, or order against the Reorganized Debtor, the Estate or its property, or any direct or indirect transferee of any property of, or direct or indirect successor in interest to, the Reorganized Debtor or the Estate or any property of any such transferee or successor; (iv) creating, perfecting, or otherwise enforcing in any manner, directly or indirectly, any encumbrance of any kind against the Reorganized Debtor, the Estate, or any of its property, or any direct or indirect transferee of any property of, or successor in interest to, the Reorganized Debtor or the Estate or any property of any such transferee or successor; (v) acting or proceeding in any manner, in any place whatsoever, that does not conform to or comply with the provisions of this Plan to the full extent permitted by applicable law; or (vi) commencing or continuing, in any manner or in any place, any action that does not comply with or is inconsistent with the provisions of the Plan, provided that nothing contained herein shall preclude such Persons who have held, hold, or may hold Claims against the Reorganized Debtor or the Estate from exercising their rights, or obtaining benefits, pursuant to and consistent with the terms of this Plan, the Confirmation Order, or any other agreement or instrument entered into or effectuated in connection with the consummation of the Plan. All injunctions or stays provided for in the Chapter 11 Cases under section 105 or section 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the Effective Date.

22. **BINDING NATURE OF THE PLAN.** Pursuant to Article VII.A of the Plan, on the Effective Date, and effective as of the Effective Date, the Plan shall bind, and shall be deemed binding upon, every Holder of a Claim against or Interest in any Debtor and inure to the benefit of and be binding on such Holder's respective successors and assigns, regardless of whether the Claim or Interest of such Holder is impaired under this Plan and whether such Holder has accepted this Plan.

23. **NOTICE OF ENTRY OF CONFIRMATION ORDER AND EFFECTIVE DATE.** In accordance with Bankruptcy Rules 2002 and 3020(c), as soon as reasonably practicable on or after the Effective Date, AWL or the Reorganized Debtor shall provide notice of the entry of this Confirmation Order and of the occurrence of the Effective Date by serving a Notice of Effective Date, on all known creditors, equity security holders, the U.S. Trustee, and other parties-in-interest in these Chapter 11 Cases. The notice described herein is adequate and appropriate under the particular circumstances and no other or further notice is necessary or required. The Notice of Effective Date shall constitute sufficient notice of the entry of this Confirmation Order to such filing and recording officers and shall be a recordable instrument notwithstanding any contrary provision of applicable non-bankruptcy law.

24. **REVERSAL OR MODIFICATION OF CONFIRMATION ORDER.** Except as otherwise provided in this Confirmation Order, if any or all of the provisions of this Confirmation Order are hereafter reversed, modified, vacated, or stayed by subsequent order of the Bankruptcy Court, or any other court of competent jurisdiction, such reversal, stay, modification, or vacatur shall not affect the validity or enforceability of any act, obligation, indebtedness, liability, priority, or lien incurred or undertaken by the Debtor, the Reorganized Debtor, or AWL, as applicable, prior to the date that the Reorganized Debtor or AWL received actual written notice of the effective date of

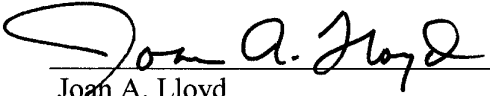
such reversal, stay, modification, or vacatur. Notwithstanding any such reversal, stay, modification, or vacatur of this Confirmation Order, any such act, obligation, indebtedness, liability, priority, or Lien incurred or undertaken pursuant to, or in reliance on, this Confirmation Order prior to the date that the Reorganized Debtor or AWL received actual written notice of the effective date of such reversal, stay, modification, or vacatur shall be governed in all respects by the original provisions of this Confirmation Order and the Plan, or any amendments or modifications thereto, in each case in effect immediately prior to the date that the Reorganized Debtor or AWL received such actual written notice.

25. **INCONSISTENCY.** In the event of any inconsistency between the Plan and this Order, this Order shall govern.

26. **PRESERVATION OF DEFENSES.** All defenses existing as of the Effective Day shall be transferred to, and preserved in favor, of the Reorganized Debtor and AWL.

27. **RETENTION OF JURISDICTION.** The Court shall retain jurisdiction as provided in Article IX of the Plan.

28. **STAY OF CONFIRMATION ORDER WAIVED.** The 14-day stay otherwise applicable to this Order under Federal Rule of Bankruptcy Procedure 3020(e) shall be waived and entry of this Order shall be effective immediately.



Joan A. Lloyd
United States Bankruptcy Judge
Dated: November 3, 2020

Prepared by:

/s/ Robert M. Hirsh

Robert M. Hirsh (admitted *pro hac vice*)

Lowenstein Sandler LLP

1251 Avenue of the Americas

17th Floor

New York, NY 10020

Telephone: (212) 262-6700

rhirsh@lowenstein.com

Counsel for Autumn Wind Lending, LLC