

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re)	
)	Chapter 11
)	
Event Rentals, Inc., <i>et al.</i> , ¹)	Case No. 14-10282 (PJW)
)	(Jointly Administered)
Debtors.)	
)	
)	Objection Deadline: March 7, 2014 at 4:00 p.m.
)	Hearing Date: March 14, 2014 at 10:00 a.m.
)	
)	Related Document: Docket No. 32

**NOTICE OF MOTION AND HEARING REGARDING MOTION OF EVENT
RENTALS, INC. AND ITS AFFILIATED DEBTORS PURSUANT TO SECTIONS
105(a), 363(b), AND 503 OF THE BANKRUPTCY CODE FOR ENTRY OF AN ORDER
AUTHORIZING AND APPROVING (I) KEY EMPLOYEE INCENTIVE PLAN AND
(II) KEY EMPLOYEE RETENTION PLAN**

PLEASE TAKE NOTICE that on February 15, 2014, Event Rentals, Inc. and its affiliated debtors (the “Debtors”), filed the **Motion of Event Rentals, Inc. and Its Affiliated Debtors Pursuant to Sections 105(a), 363(b), and 503 of the Bankruptcy Code for Entry of an Order Authorizing and Approving (I) Key Employee Incentive Plan and (II) Key Employee Retention Plan** [Docket No. 32] (the “Motion”). A copy of the Motion is attached hereto as **Exhibit A**.

PLEASE TAKE FURTHER NOTICE that a hearing on the Motion will be held on **March 14, 2014 at 10:00 a.m. (Prevailing Eastern Time)** before The Honorable Peter J. Walsh at the United States Bankruptcy Court for the District of Delaware, 824 North Market

¹ The Debtors and the last four digits of their respective taxpayer identification numbers are: Classic Midwest, Inc. (9934); Classic Northeast, Inc. (9871); Classic Panache, Inc. (1237); Classic Party Rentals, Inc. (3911); Classic Party Rentals LP (0583); Classic/Prime, Inc. (7149); Classic Southeast, Inc. (0700); DBO Acquisition Corp. (1923); DUBO Acquisition Corp. (8795); Event Rentals, Inc. (9443); Grand Events & Party Rentals, Inc. (7940); Special Event Holding, Inc. (5659); and Unique Tabletop Rentals, Inc. (4327). The list of the Debtors’ alternate names is located on the docket for Case No. 14-10282 [Docket No. 3] and is also available at <http://kccllc.net/CPR>.



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Street, 6th Floor, Courtroom 2, Wilmington, Delaware 19801. Only objections made in writing and timely filed will be considered by the Bankruptcy Court at such hearing.

PLEASE TAKE FURTHER NOTICE that responses or objections to the Motion, if any, are to be filed on or before **March 7, 2014 at 4:00 p.m. (Prevailing Eastern Time)**. At the same time, you must serve a copy of the objection or response on the undersigned attorneys.

PLEASE TAKE FURTHER NOTICE THAT IF NO OBJECTIONS TO THE MOTION ARE TIMELY FILED AND RECEIVED IN ACCORDANCE WITH THE ABOVE PROCEDURES, AN ORDER MAY BE ENTERED GRANTING THE RELIEF REQUESTED IN THE MOTION ON A FINAL BASIS WITHOUT FURTHER NOTICE OR A HEARING.

Dated: February 21, 2014
Wilmington, Delaware

FOX ROTHSCHILD LLP

/s/ L. John Bird
Jeffrey M. Schlerf (No. 3047)
John H. Strock (No. 4965)
L. John Bird (No. 5310)
919 North Market Street, Suite 1600
Wilmington, DE 19801
Telephone: (302) 654-7444
Facsimile: (302) 656-8920

– and –

WHITE & CASE LLP
John K. Cunningham (admitted *pro hac vice*)
200 South Biscayne Boulevard, 49th Floor
Miami, FL 33131
Telephone: (305) 371-2700
Facsimile: (305) 358-5744

– and –

Craig H. Averch (admitted *pro hac vice*)
633 West Fifth Street, Suite 1900
Los Angeles, CA 90071
Telephone: (213) 620-7700
Facsimile: (213) 452-2329

*Proposed Attorneys for the Debtors and Debtors in
Possession*

EXHIBIT A

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re

Event Rentals, Inc., *et al.*,¹

Debtors.

Chapter 11

Case No. 14-10282 (PJW)

Joint Administration Requested

Objection Deadline: To Be Determined

Hearing Date: To Be Determined

**MOTION OF EVENT RENTALS, INC. AND ITS AFFILIATED DEBTORS
PURSUANT TO SECTIONS 105(a), 363(b), AND 503 OF THE BANKRUPTCY
CODE FOR ENTRY OF AN ORDER AUTHORIZING AND APPROVING (I) KEY
EMPLOYEE INCENTIVE PLAN AND (II) KEY EMPLOYEE RETENTION PLAN**

Event Rentals, Inc. (“Event Rentals”) and its affiliated debtors and debtors in possession (collectively, the “Debtors”) in the above-captioned chapter 11 cases (the “Chapter 11 Cases”), hereby file this motion (the “Motion”) pursuant to sections 105(a), 363(b)(1), and 503 of title 11 of the United States Code (the “Bankruptcy Code”) for entry of an order, substantially in the form attached hereto as Exhibit A authorizing and approving (i) a key employee incentive plan (the “KEIP”), and (ii) a key employee retention plan (the “KERP” and, together with the KEIP, the “Employee Bonus Plans”). In support of the Motion, the Debtors respectfully represent as follows:

¹ The Debtors and the last four digits of their respective taxpayer identification numbers are: Classic Midwest, Inc. (9934); Classic Northeast, Inc. (9871); Classic Panache, Inc. (1237); Classic Party Rentals, Inc. (3911); Classic Party Rentals LP (0583); Classic/Prime, Inc. (7149); Classic Southeast, Inc. (0700); DBO Acquisition Corp. (1923); DUBO Acquisition Corp. (8795); Event Rentals, Inc. (9443); Grand Events & Party Rentals, Inc. (7940); Special Event Holding, Inc. (5659); and Unique Tabletop Rentals, Inc. (4327). The list of the Debtors’ alternate names is located on the docket for Case No. 14-10282 [D.I. 3] and is also available at <http://kccllc.net/CPR>.
ACTIVE 24761311v1 02/15/2014

I. BACKGROUND

A. General Background

1. On February 13, 2014 (the “Petition Date”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code, thereby commencing these Chapter 11 Cases. The Debtors continue to operate their businesses as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

2. To date, no committee has been appointed by the Office of the United States Trustee in these Chapter 11 Cases.

3. The Debtors are the nation’s largest provider of event rental products and related services, with 39 locations across 22 markets. The Debtors have the largest offering of event equipment, value-added event services, and temporary structure assets, and provide services for over 145,000 events for approximately 55,000 customers annually. The Debtors employ approximately 2,500 employees throughout the year and have total annual revenues of approximately \$235 million.

4. Additional background facts on the Debtors, including an overview of the Debtors’ businesses, information concerning the Debtors’ corporate structure, information concerning the Debtors’ debt structure, and information on the events leading up to the Chapter 11 Cases is contained in the *Declaration of Jeffrey M. Black in Support of First Day Motions and Applications* filed concurrently herewith (the “CEO Declaration”).²

B. Background Facts Specific to the Motion

5. As described in more detail in the CEO Declaration, the global financial crisis that began in fiscal year 2009 had a pronounced negative impact on the Debtors’ profitability. As a

² Where the context requires, each capitalized term used but not otherwise defined herein shall have the meaning ascribed to such term in the CEO Declaration.

result, the Debtors were unable to service their significant debt burden while also making the capital investments vital to remaining competitive in their market. From 2009 through 2013, the Debtors used a variety of measures to maintain short-term financial stability, including multiple investments by the Debtors' sponsors and an out-of-court financial restructuring in November 2011. However, by August 2013, the Debtors had concluded that the survival of their businesses depended upon a refinancing of the Debtors' senior secured debt obligations (the "Prepetition Secured Obligations") or an alternative transaction.

6. Accordingly, the Debtors began their marketing process during the fall of 2013. In furtherance of this process, and as the Debtors neared a liquidity level unable to support them outside of bankruptcy, in January 2014 the Board of Directors of parent Debtor Special Event Holding, Inc. ("Special Event") approved the Employee Bonus Plans in an effort to successfully conclude the Debtors' prepetition marketing process within the limited time remaining. The Debtors believed that the Employee Bonus Plans would (i) provide much needed incentives and assurances to the Debtors' key employees during a difficult and trying period in the Debtors' histories and (ii) assure potential purchasers that the value of the Debtors' businesses would be preserved throughout the Debtors' sale process, both prior to and during these Chapter 11 Cases. Importantly, and with respect to the KEIP in particular, the Debtors believed that there was an urgent need to sufficiently incentivize the Debtors' key employees to take extraordinary steps, above and beyond their typical duties and responsibilities, to ensure that the Debtors found a potential purchaser with which to negotiate a third-party stalking horse bid in preparation for these Chapter 11 Cases.

7. Following the approval of the Employee Bonus Plans, the Debtors' prepetition marketing efforts proved successful, due in no small part to the incredible effort of those key

employees covered by such plans. In late January and early February 2014, the Debtors engaged in extensive arms' length negotiations with their prepetition senior secured lenders (the "Prepetition Secured Lenders") over an asset purchase agreement (the "APA") and a potential stalking horse bid including a credit bid of \$124 million of the Prepetition Secured Obligations (the "Stalking Horse Bid"), each of which would be a crucial component of the Debtors' proposed sale of substantially all of the Debtors' assets (the "Sale"). Shortly after the filing of these Chapter 11 Cases, the Debtors ultimately reached a deal with the Prepetition Secured Lenders over the APA and the Stalking Horse Bid, representing a significant achievement in the Debtors' prepetition marketing efforts and providing the foundation for these Chapter 11 Cases (and the postpetition continuation of the Debtors' marketing process) to be successful. These achievements reflect the material enhancement to the value of the Debtors' estates provided by the Employee Bonus Plans, and demonstrate the positive impact such plans will continue to have on the success of the Debtors' postpetition marketing process and the eventual outcome of these Chapter 11 Cases.

8. Further, the Stalking Horse Bid is contingent upon, among other things, the occurrence or non-occurrence, as applicable, of certain events prior to the closing of the Sale. In order to ensure that the Stalking Horse Bid maximizes the value of the Debtors' estates in these Chapter 11 Cases, it is imperative that the Debtors' businesses are preserved during the course of the Debtors' sale process. The preservation of the Debtors' businesses, which heavily rely upon the Debtors' reputation in the market, is critical to the success of these Chapter 11 Cases. Such preservation will be determined by the skill and dedication of the Debtors' managers and key employees covered by the Employee Bonus Plans, and those employees' ability to maintain the Debtors' relationships with their customers.

9. Importantly, the Employee Incentive Plans were negotiated with, and have been agreed to by, the Debtors' postpetition lenders (the "DIP Lenders") in connection with negotiations over the Debtors' proposed debtor in possession financing ("DIP Financing") and the approved budget (the "Approved Budget") accompanying such DIP Financing.³

C. Description of the KEIP

10. Through the KEIP, the Debtors seek to motivate and incentivize fourteen (14) employees, who are both insiders and non-insiders (each, a "KEIP Participant" and, collectively, the "KEIP Participants"),⁴ whose efforts and expertise are integral to preserving the Debtors' businesses, a meaningful continuation of the Debtors' marketing process, and the Debtors' efforts towards a competitive auction. The terms of the KEIP provide for potential performance bonuses that have served, and will continue to serve, as an important incentive for such KEIP Participants to go beyond their ordinary duties and obligations, and take those important extra steps that will preserve the value of the Debtors' businesses and maximize the price obtained for the Debtors' assets. For these reasons, the payments provided in the KEIP (the "KEIP Payments") are in the best interests of the Debtors and their estates.

11. A definitive written copy of the KEIP, which copy shall be subject to the review and approval of the administrative agent under the DIP Facility (the "DIP Agent") and the DIP Lenders constituting "Required Lenders" under the DIP Facility (the "Required DIP Lenders"),

³ The Prepetition Secured Lenders have also agreed, subject to entry of a final order on the DIP Financing and the Debtors' use of cash collateral, and solely in the event of a third party cash Sale transaction, to subordinate their claims and liens to the payments required by the Employee Benefit Plans, and certain other wind-down amounts, as specified more fully in the form of order attached to the Debtors' motion seeking approval of the DIP Financing. In the event of a credit bid Sale, the payments required by the Employee Benefit Plans shall be funded as specified in the form of APA attached to the Debtors' motion seeking approval of bid procedures in connection with the Sale.

⁴ To protect the privacy of the KEIP Participants and avoid any impact on employee morale, the identity of the KEIP Participants, along with their positions, salaries and KEIP allocation percentages will be provided only to the Court, the Office of the United States Trustee, the Debtors' postpetition lenders and the Official Committee of Unsecured Creditors.

shall be filed by the Debtors in advance of the hearing on the Motion. The provisions of the KEIP shall include, without limitation, the following:

Purpose and General Terms	<p>Provide incentives and rewards to key managers of the Debtors to effectuate the sale of the Debtors' assets in order to maximize recovery for the benefit of the Debtors' estates and creditor consistencies.</p> <p>The KEIP is intended to comply with, or satisfy an applicable exemption from, Section 409A of the Internal Revenue Code of 1986, as amended, and the Plan shall be administered and interpreted in accordance with such intention.</p> <p>Neither the establishment of the KEIP nor any obligation of the Debtors to make KEIP Payments under the KEIP shall be deemed to create a trust. The KEIP shall constitute an unfunded, unsecured liability of the Debtors to make payments in accordance with the provisions of the KEIP, and no individual shall have any security or other interest in any assets of the Debtors in connection with the KEIP.</p> <p>Nothing in the KEIP shall be construed or interpreted as giving any employee of the Debtors the right to be employed or retained by the Debtors for any period or otherwise or impair the right of the Debtors to control their employees or to terminate the services of any employee at any time. The KEIP shall not create any rights of future participation in such plan.</p>
Administration	Board of Directors of Special Event (the " <u>Board</u> ").
Eligibility	The KEIP Participants are divided into two groups, one consisting of twelve (12) employees (" <u>Group A</u> ") and one consisting of two (2) employees (" <u>Group B</u> ").
Bonus Opportunities	<p>Each KEIP Participant earns bonus amounts to be determined by the Board, paid from the KEIP Incentive Pools (as defined below). Amounts payable under the KEIP shall not be considered wages, salaries, or compensation under any employee benefit plan, except pursuant to the written terms of the KEIP. All legally required taxes will be withheld from any amounts payable under the KEIP at time of payment.</p> <p>If a KEIP Participant becomes entitled to any KEIP Payments under the KEIP, and if at such time such KEIP Participant has outstanding any debt, obligation, or other liability representing an amount owing to the Debtors, then the Debtors may offset such amount against the amount otherwise distributable to such KEIP Participant under the KEIP to the extent permitted by applicable law.</p>

	No person otherwise eligible to receive any KEIP Payments under the KEIP shall have any rights to pledge, assign, transfer, or otherwise dispose of all or any portion of such KEIP Payments, either directly or by operation of law, including, without limitation, by execution, levy, garnishment, attachment, pledge, or bankruptcy. If a KEIP Participant is not living at the time any KEIP Payments are otherwise payable to him or her in accordance with the KEIP, such KEIP Payments shall be paid as designated by the KEIP Participant by will or by the laws of descent and distribution.
Release	Each KEIP Participant shall, in exchange for accepting the bonus opportunity described herein, execute and deliver to the Debtors a release, which shall include a release by such employee of all known and unknown claims such employee may have against the Debtors, including, but not limited to, (i) any claim against the Debtors with respect to such employee's employment with the Debtors and (ii) if applicable, any claim, right, or interest to any previously unpaid amounts earned or accrued with respect to any previous plans, agreements, or policies related to retention, severance, bonuses, or incentives.
KEIP Incentive Pools	<p>Upon the closing of the Sale (whether on the Stalking Horse Bid or otherwise), the Debtors shall make KEIP Payments to the KEIP Participants in Group A in the collective aggregate amount (the "<u>Group A Incentive Pool</u>") of:</p> <ul style="list-style-type: none"> (i) \$281,250, contingent upon the Debtors achieving the cumulative cash receipts forecast in the Approved Budget; <i>plus</i> (ii) \$281,250, contingent upon the Debtors achieving a DIP Financing balance at the closing of the Sale at or below the balance forecast in the Approved Budget; <i>provided, however</i>, that to the extent the Debtors are in arrears on postpetition payables at the closing of the Sale, the amount of such arrearages shall be deemed added to the DIP Financing balance for purposes of this calculation; <i>plus</i> (iii) \$187,500, contingent upon the aggregate amount of cash and credit bid consideration (excluding assumed liabilities) received in the Sale equaling or exceeding \$124 million; <i>plus</i> (iv) 1% of the aggregate amount of cash and credit bid consideration (excluding assumed liabilities) received in the Sale in excess of \$124 million but less than or equal to \$134 million; <i>plus</i> (v) 2% of the aggregate amount of cash and credit bid consideration (excluding assumed liabilities) received in the Sale in excess of \$134 million. <p>The amount of any KEIP Payments awarded to each KEIP Participant</p>

	<p>in Group A shall be determined by the Board in accordance with the allocation percentages set forth in the KEIP; <i>provided, however</i>, that the aggregate amount of all KEIP Payments made under this paragraph shall not exceed the aggregate amount set forth above.</p> <p>Upon the closing of the Sale (whether on the Stalking Horse Bid or otherwise), the Debtors shall make KEIP Payments to the KEIP Participants in Group B in the collective aggregate amount of \$60,000 (the “<u>Group B Incentive Pool</u>” and, together with the Group A Incentive Pool, the “<u>KEIP Incentive Pools</u>”). The amount of any KEIP Payments awarded to each KEIP Participant in Group B shall be determined by the Board in accordance with the allocation percentages set forth in the KEIP; <i>provided, however</i>, that the aggregate amount of all KEIP Payments made under this paragraph shall not exceed the aggregate amount set forth above.</p>
Termination of Employment	<p>Any KEIP Payments otherwise payable under the KEIP are forfeited if: (i) a KEIP Participant resigns his or her employment with the Debtors for any reason prior to the date such amount would otherwise be payable under the KEIP, or (ii) the Debtors terminate the KEIP Participant’s employment for cause, as determined by the Debtors, prior to such date.</p> <p>If a KEIP Participant is terminated without cause, or due to death or disability (as determined by the Debtors) within ten (10) days prior to the date that any of the KEIP Payments become due pursuant to the KEIP, the KEIP Participant shall be entitled to receive any KEIP Payments that would have become due under the KEIP had the KEIP Participant been employed through such ten (10) day period.</p>

D. Description of the KERP

12. Through the KERP, the Debtors seek to retain and motivate the key field management and sales professionals essential to the preservation of the Debtors’ business operations and the Debtors’ obligations as debtors in possession as the Debtors endeavor to maximize the value of their estates through a successful sale process. The KERP participants will include approximately thirteen (13) employees, none of which are insiders (each, a “KERP Participant”, collectively, the “KERP Participants” and, together with the KEIP Participants, the

“Plan Participants”).⁵ The KERP utilizes a retention pool of approximately \$260,000, funded by the Debtors’ postpetition lenders, and provides for each KERP Participant to receive a retention bonus equal to between 7% and 22% of such KERP Participant’s annual base pay (collectively, the “KERP Payments”). Importantly, the KERP Payments will be made only to those KERP Participants who remain employees of the Debtors and in good standing until the closing of the Sale.

13. In light of the value, size, and complexity of the Debtors’ businesses, the exponential impact the KERP Participants have on those businesses, as well as the issues that have already arisen and will continue to arise during these Chapter 11 Cases, the Debtors submit that their request for authority to implement the KERP is reasonable and necessary in the best interests of the Debtors’ estates.

14. A definitive written copy of the KERP, which copy shall be subject to the review and approval of the DIP Agent and the Required DIP Lenders, shall be filed by the Debtors in advance of the hearing on the Motion. The provisions of the KERP shall include, without limitation, the following:

Purpose and General Terms	<p>Retain and motivate the key field management and sales professionals essential to the preservation of the Debtors’ business operations and the Debtors’ obligations as debtors in possession as the Debtors endeavor to maximize the value of their estates through a successful sale process</p> <p>The KERP is intended to comply with, or satisfy an applicable exemption from, Section 409A of the Internal Revenue Code of 1986, as amended, and the Plan shall be administered and interpreted in</p>
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⁵ To protect the privacy of the KERP Participants, avoid any impact on employee morale, and to prevent the disclosure of the Debtors’ proprietary employee lists, the identity of the KERP Participants, their positions and salaries, as well as the KERP Payments for each KERP Participant, will be provided only to the Court, the Office of the United States Trustee, the Debtors’ postpetition lenders and the Official Committee of Unsecured Creditors, once one is appointed.

	<p>accordance with such intention.</p> <p>Neither the establishment of the KERP nor any obligation of the Debtors to make KERP Payments under the KERP shall be deemed to create a trust. The KERP shall constitute an unfunded, unsecured liability of the Debtors to make payments in accordance with the provisions of the KERP, and no individual shall have any security or other interest in any assets of the Debtors in connection with the KERP.</p> <p>Nothing in the KERP shall be construed or interpreted as giving any employee of the Debtors the right to be employed or retained by the Debtors for any period or otherwise or impair the right of the Debtors to control their employees or to terminate the services of any employee at any time. The KERP shall not create any rights of future participation in such plan.</p>
Administration	Board of Directors of Special Event (the “ <u>Board</u> ”).
Eligibility	The KERP Participants include thirteen (13) key employees of the Debtors, none of which are insiders.
Bonus Opportunities	<p>Each KERP Participant earns bonus amounts to be determined by the Board, paid from the KERP Incentive Pool (as defined below). Amounts payable under the KERP shall not be considered wages, salaries, or compensation under any employee benefit plan, except pursuant to the written terms of the KERP. All legally required taxes will be withheld from any amounts payable under the KERP at time of payment.</p> <p>If a KERP Participant becomes entitled to any KERP Payments under the KERP, and if at such time such KERP Participant has outstanding any debt, obligation, or other liability representing an amount owing to the Debtors, then the Debtors may offset such amount against the amount otherwise distributable to such KERP Participant under the KERP to the extent permitted by applicable law.</p> <p>No person otherwise eligible to receive any KERP Payments under the KERP shall have any rights to pledge, assign, transfer, or otherwise dispose of all or any portion of such KERP Payments, either directly or by operation of law, including, without limitation, by execution, levy, garnishment, attachment, pledge, or bankruptcy. If a KERP Participant is not living at the time any KERP Payments are otherwise payable to him or her in accordance with the KERP, such KERP Payments shall be paid as designated by the KERP Participant by will or by the laws of descent and distribution.</p>
Release	Each KERP Participant shall, in exchange for accepting the bonus opportunity described herein, execute and deliver to the Debtors a release, which shall include a release by such employee of all known and unknown claims such employee may have against the Debtors,

	including, but not limited to, (i) any claim against the Debtors with respect to such employee's employment with the Debtors and (ii) if applicable, any claim, right, or interest to any previously unpaid amounts earned or accrued with respect to any previous plans, agreements, or policies related to retention, severance, bonuses, or incentives.
KERP Incentive Pools	Upon the closing of the Sale (whether on the Stalking Horse Bid or otherwise), the Debtors shall make KERP Payments to the KERP Participants in the collective aggregate amount (the " <u>KERP Incentive Pool</u> ") of \$260,000. The amount of any KERP Payments awarded to each KERP Participant shall be determined by the Board in accordance with the allocation percentages set forth in the KERP; <i>provided, however</i> , that the aggregate amount of all KERP Payments made under this paragraph shall not exceed the aggregate amount set forth above.
Termination of Employment	<p>Any KERP Payments otherwise payable under the KERP are forfeited if: (i) a KERP Participant resigns his or her employment with the Debtors for any reason prior to the date such amount would otherwise be payable under the KERP, or (ii) the Debtors terminate the KERP Participant's employment for cause, as determined by the Debtors, prior to such date.</p> <p>If a KERP Participant is terminated without cause, or due to death or disability (as determined by the Debtors) within ten (10) days prior to the date that any of the KERP Payments become due pursuant to the KERP, the KERP Participant shall be entitled to receive any KERP Payments that would have become due under the KERP had the KERP Participant been employed through such ten (10) day period.</p>

II. JURISDICTION

15. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. 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.

III. RELIEF REQUESTED

16. By the Motion, pursuant to sections 105(a), 363(b)(1), and 503, the Debtors request entry of an order, substantially in the form attached hereto as Exhibit A approving and authorizing the implementation of (i) the KEIP, providing potential performance bonuses to certain of the Debtors' employees, including insiders and non-insiders, and (ii) the KERP,

providing retention bonuses to certain of the Debtors' employees, consisting of non-insiders only. In addition, the Debtors request that all amounts earned and payable under the Employee Bonus Plans be afforded administrative expense priority under sections 503(a) and 507(a)(2) of the Bankruptcy Code for all purposes in these Chapter 11 Cases.

IV. BASIS FOR RELIEF REQUESTED

A. Implementation of the Employee Bonus Plans Pursuant to Sections 363(b) of the Bankruptcy Code Is a Valid Exercise of the Debtors' Business Judgment

17. The Court may authorize the Debtors to implement the Employee Bonus Plans under section 363(b)(1) of the Bankruptcy Code. Section 363(b)(1) provides that "[t]he trustee, 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). The use, sale, or lease of property of the estate, other than in the ordinary course of business, is authorized when a "sound business purpose" justifies such action. *See, e.g., In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999) (affirming bankruptcy court approval of key employee retention program, stated that "in determining whether to authorize the use, sale, or lease of property of the estate under [section 363(b)], courts require the debtors to show that a sound business purpose justifies such actions"); *Myers v. Martin (In re Martin)*, 91 F.3d 389, 395 (3d Cir. 1996) (noting that under normal circumstances, courts defer to a trustee's judgment concerning use of property under §363(b) when there is a legitimate business justification); *In re Chateaugay Corp.*, 973 F.2d 141, 143 (2d Cir. 1992) (holding that in reviewing a section 363(b) application, the court must find from the evidence presented before him, a good business reason to grant such application); *In re Ionosphere Clubs, Inc.*, 100 B.R. 670, 674 (Bankr. S.D.N.Y. 1989) (noting that the standard for determining a section 363(b) motion is a "good business reason").

18. Courts have found that a debtor's use of reasonable bonuses and other incentives to motivate employees is a valid exercise of a debtor's business judgment. *See, e.g., In re Am. W. Airlines, Inc.*, 171 B.R. 674, 678 (Bankr. D. Ariz. 1994) (finding that it is the proper use of a debtors' business judgment to propose bonuses for employees who helped propel the debtor successfully through the bankruptcy process).

19. Even since the 2005 amendments to the Bankruptcy Code, courts have approved employee bonus programs tied to performance targets as valid exercises of business judgment. *See, e.g., In re Vertis Holdings, Inc.*, No. 12-12821 (CSS) (Bankr. D. Del. Nov. 27, 2012) (approving key employee incentive plan); *In re Trident Microsystems, Inc.*, No. 12-10069 (Bankr. D. Del. Jan. 30, 2012); *In re Midway Games Inc.*, No. 09-10465 (KG) (Bankr. D. Del. Feb. 12, 2009) (approving a key employee retention plan tied to sale price); *In re Muzak Holdings LLC*, No. 09-10422 (KJC) (Bankr. D. Del. Feb. 10, 2009) (approving \$1.75 million key employee incentive plan for senior managers); *Am. Home Mortgage Holdings, Inc.*, No. 07-11047 (CSS) (Bankr. D. Del. Nov. 28, 2007) (approving incentive pay to certain members of the Debtors' senior management); *In re Riverstone Networks, Inc.*, No. 06-10110 (CSS) (Bankr. D. Del. Apr. 3, 2006) (approving \$1.4 million incentive plan for the debtors' management subject to certain parties' reservation of rights). Courts have also approved employee retention programs providing reasonable retention bonuses to non-insiders as valid exercises of business judgment. *See, e.g., In re Synagro Techs., Inc.*, No. 13-11041 (BLS) (Bankr. D. Del. Apr. 24, 2013) (approving non-insider key employee retention plan); *In re AI23 Systems, Inc.*, No. 12-12859 (KJC) (Bankr. D. Del. Oct. 16, 2012) (same).

20. The Debtors submit that authorizing them to provide incentive compensation to the KEIP Participants and reasonable retention bonuses to the KERP Participants will

accomplish a similarly sound business purpose. The Debtors have determined that the costs associated with such additional postpetition compensation are more than justified by the benefits the Debtors will realize by creating appropriate incentives for the Plan Participants, whose experience, skill, diligent work, and knowledge and understanding of the Debtors' businesses, operations, customer relationships, and infrastructure are critical for the Debtors to maintain their current revenue and profitability levels, each of which is crucial to the Debtors' efforts to consummate the sale of the Debtors' assets. In the event that the relief sought herein is not granted, the Debtors believe that there is a significant risk that the Plan Participants will not be incentivized to continue to perform and take those extraordinary steps necessary to preserve the value of the Debtors' estates during these Chapter 11 Cases. Any significant deterioration of the "going-concern" value of the Debtors' businesses would materially and adversely affect the success of the sale process. The KEIP proposed in this Motion will provide KEIP Participants with the appropriate incentives to attain a higher sale price for the Debtors' assets and the KERP will ensure the critical retention of the KERP Participants. Together, the Employee Bonus Plans will enable the Debtors to maximize the value of their assets for the benefit of their estates and creditors.

B. Implementation of the Employee Bonus Plans Does not Run Afoul of Section 503(c) of the Bankruptcy Code

21. Section 503(c) of the Bankruptcy Code imposes certain restrictions on the compensation that a debtor can pay to its executives and other employees in bankruptcy. Section 503(c)(1) applies to payments that are meant to induce insiders to "remain with the [debtor's] business" by requiring, among other things, that a debtor demonstrate that the insider (a) has a bona fide job offer from another business and (b) is "essential to the survival of the business."

11 U.S.C. §503(c)(1)(A) and (B). Section 503(c)(1) also limits the amount of retention payments

that can be made to “insiders.” *See id.* Likewise, section 503(c)(2) permits severance payments to “insiders” only if they are part of a program applicable to all employees and are less than ten times the mean of severance payments made to nonmanagement employees during that calendar year. 11 U.S.C. § 503(c)(2). By the statute’s plain language, section 503(c)(1) pertains solely to retention plans of insiders and section 503(c)(2) addresses only the requirements for severance plans, neither which subsection applies to performance-based incentive plans, such as the KEIP, or plans related to non-insiders, such as the KERP. *See In re Global Home Prods., LLC*, 369 B.R. 778, 785 (Bankr. D. Del. 2007).

22. Although some of the KEIP Participants may be deemed “insiders” within the meaning of the Bankruptcy Code, the KEIP has been crafted with great care to ensure that it directly incentivizes all KEIP Participants to meet certain performance objectives and is not primarily designed to retain the KEIP Participants. Even if the KEIP has the indirect effect of reducing the Debtors’ attrition rate among the KEIP Participants, such reduction in attrition does not convert the KEIP into a “retention” plan, as the retentive nature of the KEIP is heavily outweighed by the incentive nature of such plan. The KERP, which in contrast is designed to be a retention plan, is for the sole benefit of non-insiders. Accordingly, the Debtors believe that section 503(c)(3) of the Bankruptcy Code is the applicable section for this Court to evaluate the relief requested in the Motion with respect to both the KEIP and the KERP.

23. Section 503(c)(3) of the Bankruptcy Code limits the payment of obligations outside of the ordinary course of business that are not covered by sections 503(c)(1) or (2). Specifically, section 503(c)(3) provides as follows:

[there shall neither be allowed, nor paid-] (3) other transfers or obligations that are outside the ordinary course of business and not justified by the facts and circumstances of the case, including transfers made to, or obligations incurred for the benefit of,

officers, managers, or consultants hired after the date of the filing of the petition.

11 U.S.C. § 503(c)(3).

24. The relevant inquiry under section 503(c)(3) is whether the proposed plans are “justified by the facts and circumstances” of the case. 11 U.S.C. § 503(c)(3). Courts have generally used a form of the “business judgment” standard to determine whether incentive programs and the payments thereunder meet the section 503(c)(3) “facts and circumstances” standard. *See, e.g., In re Dura Auto. Sys., Inc.*, No. 06-11202, Hr’g Tr. 40:17-41:2 (Bankr. D. Del. Apr. 25, 2007); (section 503(c)(3) “mean[s] something above the business judgment standard but maybe not much farther above it”); *In re Nobex Corp.*, No. 05-20050 (MJW), Hr’g Tr. 86:11-87:2 (Bankr. D. Del. January 12, 2006) (Section 503(c)(3) of the Bankruptcy Code is “meant to provide a standard . . . for any other transfers or obligations outside the ordinary course of business. . . . [T]he standard under [section 503(c)(3)] for any transfers or obligations made outside the ordinary course of business are those that are justified by the facts and circumstances of the case. . . . I find it quite frankly nothing more than a reiteration of the standard under [section] 363 . . . that is, based on the business judgment of the debtor, the court always considered the facts and circumstances of the case to determine whether it was justified.”); *In re Werner Holding Co. (DE), Inc.*, No. 06-10578 (KJC) (Bankr. D. Del. July 20, 2006, Aug. 22, 2006, and Dec. 20, 2006) (ordering various relief requested in connection with debtors’ incentive bonus plans pursuant to sections 363(b) and 503(c) of the Bankruptcy Code); *In re Riverstone Networks, Inc.*, No. 06-10110 (CSS) (Bankr. D. Del. Mar. 28, 2006) (same); *In re Pliant Corporation*, No. 06-10001 (MFW) (Bankr. D. Del. Mar. 14, 2006) (same).

25. In applying section 503(c)(3), the Court in *In re Dana Corp.*, 358 B.R. 567 (Bankr. S.D.N.Y. 2006), noted that the “test in section 503(c)(3) appears to be no more stringent

a test than the one courts must apply in approving an administrative expense under section 503(b)(1)(A) . . . [a]n expense must be an actual, necessary cost or expense of preserving the estate.” *Dana*, 358 B.R. at 576. The Court then went on to consider the following factors in determining whether the debtor had satisfied the “sound business judgment” test: (i) whether a reasonable relationship existed between the proposed plan and the desired results; (ii) whether the cost of the plan was reasonable in light of the overall facts of the case; (iii) whether the scope of the plan was fair and reasonable; (iv) whether the plan was consistent with industry standards; (v) whether the debtor had put forth sufficient due diligence efforts in formulating the plan; and (vi) whether the debtor received sufficient independent counsel in performing any due diligence and formulating the plan. *See id.* at 576-77.

1. The Employee Bonus Plans Should Be Authorized Pursuant to Section 503(c)(3) as a Sound Exercise of the Debtors’ Business Judgment

26. The Debtors submit that the Employee Bonus Plans satisfy the requirements of section 503(c)(3) of the Bankruptcy Code. As discussed above, Courts have applied the “sound business judgment” test to determine whether incentive programs and the payments thereunder meet the section 503(c)(3) “facts and circumstances” standard. The Debtors’ approval of the Employee Bonus Plans satisfy the “sound business judgment” test as articulated by the Court in *Dana*, 38 B.R. at 576. The Debtors’ overall goal with respect to the Employee Bonus Plans is to maximize the value of the Debtors’ assets. While all of the Debtors’ employees play a role in the Debtors’ overall financial success, the Debtors have limited participation under the Employee Bonus Plans to critical employees, *i.e.*, those employees who are most influential in the Debtors’ ability to preserve the value of the Debtors’ estates. Moreover, the Debtors submit that the cost and scope of the plans are reasonable in light of the overall facts and circumstances of these Chapter 11 Cases and consistent with industry standards.

2. The Payments Contemplated under the Employee Bonus Plans Constitute Actual and Necessary Costs of Preserving the Debtors' Estates

27. The payments contemplated under the Employee Bonus Plans constitute actual and necessary costs and expenses of preserving the Debtors' estates. The KEIP is a performance-based plan intended to motivate participants to achieve certain targeted results. The KERF is a narrowly tailored retention plan intended to provide for the continued employment of those non-insider employees critical to the stability and profitability of the Debtors' businesses. The Debtors' ability to maximize recovery for the Debtors' estates and creditors is dependent on the effects sought by the Debtors in the implementation of the Employee Bonus Plans. As discussed above, a reasonable relationship exists between the payments contemplated under the Employee Bonus Plans and the preservation of the Debtors' businesses. Accordingly, the payments contemplated thereunder constitute actual and necessary costs of the Debtors' estates under section 503(b) of the Bankruptcy Code.

C. The Employee Bonus Plans May Additionally Be Authorized Pursuant to Section 105(a) of the Bankruptcy Code

28. Section 105(a) of the Bankruptcy Code allows the Court to "issue any order, process, or judgment that is necessary to carry out the provisions of [the Bankruptcy Code]." 11 U.S.C. § 105(1). *See also U.S. v. Energy Res. Co.*, 495 U.S. 545, 549 (1990); *Adelphia Comm'cns Corp. v. Am. Channel (In re Adelphia Comm'cns Corp.)*, 345 B.R. 69, 85 (Bankr. S.D.N.Y. 2006) ("Section 105(a) provides broad equitable power for a Bankruptcy Court to maintain its own jurisdiction and to facilitate the reorganization process."); *Gillman v. Cont'l Airlines (In re Cont'l Airlines)*, 203 F.3d 203, 211 (3d Cir. 2000) ("Section 105(a) of the Bankruptcy Code supplements courts' specifically enumerated bankruptcy powers by authorizing orders necessary or appropriate to carry out provisions of the Bankruptcy Code.")

29. As previously stated, the Debtors strongly and reasonably believe that the Employee Bonus Plans are critical to the success of the Debtors' Chapter 11 Cases and the overall sale process. With respect to the KEIP, such payments are essential to appropriately incentivize and reward the KEIP Participants for all of their efforts throughout these Chapter 11 Cases, to maintain the morale of the KEIP Participants, and to ensure the KEIP Participants' continued focus on the sale of the Debtors' assets. With respect to the KERP, such payments seek to avoid the drastic negative impact that would result from losing any of the KERP Participants during these Chapter 11 Cases. The Debtors submit that such payments are necessary to maximize value of their estates for the benefit of their creditors.

30. The Debtors respectfully submit that the postpetition compensation described in the Employee Bonus Plans is an appropriate exercise of the Debtors' business judgment, is necessary and in the best interest of the Debtors, their creditors, and their estates, and should be approved under sections 105(a) and 363(b) of the Bankruptcy Code and allowed as administrative expenses under 503(b) of the Bankruptcy Code.

V. NOTICE

31. Notice of this Motion will be provided to the Office of the United States Trustee for the District of Delaware, counsel to the Prepetition Secured Lenders, the Debtors' 30 largest unsecured creditors on a consolidated basis (including counsel, if known), and all parties requesting notices pursuant to Bankruptcy Rule 2002. The Debtors submit that no other or further notice need be provided.

32. No previous motion for the relief sought herein has been made to this or any other court.

WHEREFORE, the Debtors respectfully request that the Court (a) enter an order substantially in the form attached hereto as Exhibit A; and (b) grant such additional relief as the Court deems just and proper.

Dated: February 15, 2014
Wilmington, Delaware

FOX ROTHSCHILD LLP

By: /s/John H. Strock

Jeffrey M. Schlerf (No. 3047)
John H. Strock (No. 4965)
L. John Bird (No. 5310)
919 North Market Street
Suite 1600
Wilmington, Delaware 19801
Telephone: (302) 654-7444

—and—

John K. Cunningham
(*pro hac vice* pending)
WHITE & CASE LLP
Southeast Financial Center
200 South Biscayne Boulevard
49th Floor
Miami, Florida 33131
Telephone: (305)-371-2700

—and—

Craig H. Averch
(*pro hac vice* pending)
WHITE & CASE LLP
633 West Fifth Street
Suite 1900
Los Angeles, California 90071
Telephone: (213) 620-7700
*Proposed Attorneys for the Debtors
and Debtors in Possession*

CERTIFICATE OF SERVICE

I, L. John Bird, hereby certify that on the 21st day of February, 2014, I caused copies of the **Notice of Motion and Hearing Regarding Motion of Event Rentals, Inc. and Its Affiliated Debtors Pursuant to Sections 105(a), 363(b), and 503 of the Bankruptcy Code for Entry of an Order Authorizing and Approving (I) Key Employee Incentive Plan and (II) Key Employee Retention Plan** to be served upon the parties listed on the service list attached hereto *via* hand delivery.

/s/ L. John Bird

L. John Bird (No. 5310)

Jeffrey M. Schlerf, Esq.
L. John Bird, Esq.
Fox Rothschild LLP
919 N. Market Street, Suite 1600
Wilmington, DE 19801

VIA HAND DELIVERY

Office of the US Attorney General
Joseph R. Biden III
Carvel State Office Building
820 N French St.
Wilmington, DE 19801

VIA HAND DELIVERY

Office of the United States Trustee Delaware
David Buchbinder
844 King St., Ste. 2207
Lockbox 35
Wilmington, DE 19899-0035

VIA HAND DELIVERY

John T. Carroll, III
Cozen O'Connor
1201 N. Market Street, Suite 1001
Wilmington, DE 19801

VIA HAND DELIVERY

US Attorney for Delaware
Charles Oberly c/o Ellen Slights
1007 Orange St., Ste. 700
PO Box 2046
Wilmington, DE 19899-2046

VIA HAND DELIVERY

Delaware Dept of Justice
Attn: Bankruptcy Dept
820 N French St., 6th Fl.
Wilmington, DE 19801

VIA HAND DELIVERY

Michael R. Nestor, Esq.
Margaret Whiteman Greecher, Esq.
Young Conaway Stargatt & Taylor, LLP
Rodney Square
1000 North King Street
Wilmington, DE 19801

VIA HAND DELIVERY

Carl N. Kunz, III, Esq.
Morris James LLP
500 Delaware Avenue, Suite 1500
Wilmington, DE 19801-1494

VIA HAND DELIVERY