

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY
Caption in compliance with D.N.J. LBR 9004-2(c)

FOX ROTHSCHILD LLP

(Formed in the Commonwealth of Pennsylvania)
Michael J. Viscount, Jr., Esq.
Raymond M. Patella, Esq.
1301 Atlantic Avenue, Suite 400
Atlantic City, NJ 08401
(609) 348-4515/fax (609) 348-6834
mviscount@foxrothschild.com
rpatella@foxrothschild.com

WHITE & CASE LLP

John K. Cunningham, Esq. (*pro hac vice* pending)
Richard S. Kebrdle, Esq. (*pro hac vice* pending)
Kevin M. McGill, Esq. (*pro hac vice* pending)
Southeast Financial Center
200 South Biscayne Blvd., Suite 4900
Miami, FL 33131
(305) 371-2700/fax (305) 358-5744
jcunningham@whitecase.com
rkebrdle@whitecase.com
kmcgill@whitecase.com

*Proposed Co-Counsel to the Debtors and
Debtors in Possession*

In re:

REVEL AC, INC., et al.,

Debtors.¹

Chapter 11

Case No. 14-22654 (GMB)

Jointly Administered

**Objection Deadline: July 14, 2014 at
4:00 p.m.**

Hearing Date: July 21, 2014 at 10:00 a.m.

**NOTICE OF DEBTORS' MOTION FOR ENTRY OF AN ORDER
AUTHORIZING AND APPROVING KEY EMPLOYEE INCENTIVE PLAN**

¹ The Debtors in these chapter 11 cases, along with the last four digits of each debtor's federal tax identification number, are: Revel AC, Inc. (3856), Revel AC, LLC (4456), Revel Atlantic City, LLC (9513), Revel Entertainment Group, LLC (2321), NB Acquisition, LLC (9387) and SI LLC (3856). The location of the Debtors' corporate headquarters is 500 Boardwalk, Atlantic City, New Jersey 08401.

PLEASE TAKE NOTICE that on **July 21, 2014 at 10:00 a.m.** or as soon thereafter as counsel may be heard, Revel AC, Inc. and its affiliated debtors and debtors in possession (the “Debtors”), by and through their undersigned proposed counsel, shall move before the Honorable Gloria M. Burns, U.S. Bankruptcy Judge, in the United States Bankruptcy Court, 401 Market Street, Courtroom 4C, Camden, New Jersey 08101, for entry of an order granting their Motion for Entry of an Order Authorizing and Approving Key Employee Incentive Plan (the “Motion”).

PLEASE TAKE FURTHER NOTICE that the Debtors shall rely upon the Motion filed in support of the relief sought and proposed Order. As the issues before the Court are not novel, it is submitted that no brief is necessary pursuant to D.N.J. L.B.R. 9013-2.

PLEASE TAKE FURTHER NOTICE that objections, if any, to the relief requested must be made in writing and in the form prescribed by the Federal Rules of Bankruptcy Procedure and D.N.J. L.B.R. 9013, and must be filed with this Court and served upon and received by proposed counsel to the Debtors at Fox Rothschild LLP, 1301 Atlantic Avenue, Midtown Building, Suite 400, Atlantic City, NJ 08401-7212 (Attn: Michael J. Viscount, Jr., Esquire and Raymond M. Patella, Esquire) and White & Case LLP, Southeast Financial Center 200 South Biscayne Blvd., Suite 4900, Miami, FL 33131 (Attn: John K. Cunningham, Esquire, Richard S. Kebrdle, Esquire and Kevin M. McGill, Esquire)) no later than **July 14, 2014 at 4:00 p.m. EST.**

PLEASE TAKE FURTHER NOTICE that, the Motion shall be deemed uncontested unless responsive papers are file and served as provided in D.N.J. L.B.R. 9013-1, in which event the Court may, in its discretion, grant the requested relief without a hearing.

Dated: June 30, 2014

FOX ROTHSCHILD LLP

By: /s/ Michael J. Viscount, Jr.
Michael J. Viscount, Jr., Esq.
Raymond M. Patella, Esq.
– and –

John K. Cunningham, Esq.
(*pro hac vice* pending)
Richard S. Kebrdle, Esq.
(*pro hac vice* pending)
Kevin M. McGill, Esq.
(*pro hac vice* pending)
WHITE & CASE LLP

*Proposed Co-Counsel to the Debtors and
Debtors in Possession*

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY
Caption in compliance with D.N.J. LBR 9004-2(c)

FOX ROTHSCHILD LLP

(Formed in the Commonwealth of Pennsylvania)

Michael J. Viscount, Jr., Esq.

Raymond M. Patella, Esq.

1301 Atlantic Avenue, Suite 400

Atlantic City, NJ 08401

(609) 348-4515/fax (609) 348-6834

mviscount@foxrothschild.com

rpatella@foxrothschild.com

WHITE & CASE LLP

John K. Cunningham, Esq. (*pro hac vice* pending)

Richard S. Kebrdle, Esq. (*pro hac vice* pending)

Kevin M. McGill, Esq. (*pro hac vice* pending)

Southeast Financial Center

200 South Biscayne Blvd., Suite 4900

Miami, FL 33131

(305) 371-2700/fax (305) 358-5744

jcunningham@whitecase.com

rkebrdle@whitecase.com

kmcgill@whitecase.com

*Proposed Co-Counsel to the Debtors and
Debtors in Possession*

In re:

REVEL AC, INC., et al.,

Debtors.¹

Chapter 11

Case No. 14-22654 (GMB)

Jointly Administered

Objection Deadline: July 14, 2014 at 4:00 p.m. (ET)

Hearing Date: July 21, 2014 at 10:00 a.m. (ET)

**DEBTORS' MOTION FOR ENTRY OF AN ORDER AUTHORIZING
AND APPROVING KEY EMPLOYEE INCENTIVE PLAN**

¹ The Debtors in these chapter 11 cases, along with the last four digits of each debtor's federal tax identification number, are: Revel AC, Inc. (3856), Revel AC, LLC (4456), Revel Atlantic City, LLC (9513), Revel Entertainment Group, LLC (2321), NB Acquisition, LLC (9387) and SI LLC (3856). The location of the Debtors' corporate headquarters is 500 Boardwalk, Atlantic City, New Jersey 08401.

Revel AC, Inc. (“Revel”) 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, 11 U.S.C. §§ 101, et seq. (the “Bankruptcy Code”) for entry of an order, substantially in the form attached hereto as Exhibit “A”, authorizing and approving a key employee incentive plan, substantially in the form attached hereto as Exhibit “B” (the “KEIP”). In support of the Motion, the Debtors respectfully represent as follows:

Background

A. Overview

1. The Debtors own and operate a state of the art resort facility unlike any other in Atlantic City, New Jersey. The Debtors’ facility consists of 6.2 million square feet, located on approximately 20 acres with 820 feet of boardwalk frontage, and features the tallest building in Atlantic City, a sleek 47-story, 710-foot high tower encompassing the Revel Casino Resort. The Debtors’ 130,000 square foot casino features 110 table games and approximately 2,300 slot machines.

2. On June 19, 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 business and manage their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

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

4. Additional background facts on the Debtors, including an overview of the Debtors’ business, information on the Debtors’ debt structure and information on the events

leading up to the Chapter 11 Cases are contained in the Declaration of Shaun Martin in Support of First Day Motions and Applications [Docket No. 5] (the “Martin Declaration”).²

B. Background Facts Specific to the Motion

5. As described in more detail in the Martin Declaration, a combination of factors led the Debtors to file prepackaged chapter 11 cases in March of 2013 (the “2013 Cases”). Despite the extent of the Debtors’ reduction in debt and interest expense realized as a result of the 2013 Cases and the substantial operational improvements implemented since consummation of their plan of reorganization in the 2013 Cases, the Debtors continued to incur significant operating losses through the remainder of 2013. As a result, and pursuant to the terms of certain additional financing the Debtors received from their Secured Lenders in November 2013, the Debtors determined to pursue a strategic transaction to sell or refinance their business and immediately began a marketing process in November 2013.

6. In furtherance of the marketing process and in connection with their efforts to maintain and maximize going concern value in the face of sustained operating losses, the Board of Directors of Revel (the “Board”) approved the KEIP to ensure that key personnel were properly incentivized to obtain the highest price for the Debtors’ assets. The Debtors believe the KEIP (i) provides much needed incentives and assurances to the Debtors’ key employees during a difficult and trying period in the Debtors’ histories, and (ii) incentives such key employees to maximize the value of the Debtors’ business during the sale process and these Chapter 11 Cases. Importantly, the Debtors believe that there is an urgent need to sufficiently incentivize the Debtors’ key employees to take those extraordinary steps, above and beyond their

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Martin Declaration.

typical duties and responsibilities, that are critical to a successful conclusion to these Chapter 11 Cases.

7. In short, achieving a value maximizing sale in these Chapter 11 Cases will depend upon the Debtors' ability to preserve the value of their business during the postpetition marketing and sale process. The preservation of the Debtors' business, in turn, will heavily rely upon the Debtors' ability to continue attracting and retaining customers. Such preservation will be determined by the skill and dedication of the Debtors' key employees covered by the KEIP, including their ability to maintain the Debtors' relationships with the Debtors' vendors, customers and other stakeholders.

8. Finally, the KEIP was negotiated with, and has been agreed to by, the Debtors' postpetition lenders, and has been incorporated in the approved budget (as may be amended from time to time, and subject to adjustment for any waivers granted, the "Approved Budget") attached to the interim order approving the Debtors' postpetition financing.

C. Description of the KEIP

9. Through the KEIP, the Debtors seek to motivate and incentivize five (5) key employees (each, a "KEIP Participant" and, collectively, the "KEIP Participants")³ whose efforts and expertise are integral to preserving the Debtors' business, 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 will serve as an important incentive for such KEIP Participants to go beyond their ordinary duties and obligations (e.g., by

³ The identity of the KEIP Participants and their respective positions are provided in the list of KEIP Participants (the "List of KEIP Participants") attached hereto as Schedule "1" to Exhibit "B". To protect the privacy of the KEIP Participants and avoid any impact on employee morale, the Debtors seek to file and keep under seal the List of KEIP Participants pursuant to the Debtors' Motion for Entry of an Order Authorizing Filing Under Seal of Participant Information in Connection with Debtors' Motion for Entry of an Order Authorizing and Approving Key Employee Incentive Plan filed contemporaneously herewith.

working longer hours, including weekends, and taking on increased responsibility, among other things) and take those important extra steps critical to preserving the value of the Debtors’ business and maximizing the price obtained for the Debtors’ assets. For these reasons, the Debtors respectfully submit that the payments provided by the KEIP (each a “KEIP Payment” and, collectively, the “KEIP Payments”) are in the best interests of the Debtors and their estates.

10. The following chart sets forth a concise summary⁴ of the material terms of the KEIP:

<p>Purpose and General Terms</p>	<p>Provide incentives and rewards to key managers of the Debtors to effectuate the Sale (as defined below) of the Debtors’ assets in order to maximize recovery for the benefit of the Debtors’ estates and creditors.</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 KEIP 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>
<p>Administration</p>	<p>The KEIP shall be administered by the Board.</p>
<p>Eligibility</p>	<p>The KEIP Participants are set forth in the List of KEIP Participants attached hereto as Schedule “1” to Exhibit “B”.</p>

⁴ In the event of any inconsistency between this summary and the terms and conditions of the KEIP, the provisions of the KEIP shall govern and control.

<p>Bonus Opportunities</p>	<p>Each KEIP Participant earns bonus amounts to be determined by the Board, paid from the KEIP Incentive Pool (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> <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.</p>
<p>Release</p>	<p>All payments under the KEIP shall be contingent upon a KEIP Participant executing and not revoking a full release of known and unknown claims such KEIP Participant may have against the Debtors in a form determined appropriate by the Debtors. Such release will include, but not be limited to, (i) any claim against the Debtors with respect to such employee’s employment with the Debtors (other than accrued and unpaid salary, benefits, expense reimbursement, vacation and any indemnification) 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.</p>
<p>KEIP Incentive Pool</p>	<p>Following the closing of a sale of all or substantially all of the Debtors’ assets (the “Sale”), the Debtors shall make KEIP Payments to the KEIP Participants in the collective aggregate amount (the “KEIP Incentive Pool”) of:</p> <ul style="list-style-type: none"> (i) \$175,000, contingent upon achieving Actual Operating Cash Flow (as defined below) equaling or exceeding Budgeted Operating Cash Flow (as defined below) for the period from the Petition Date through and including the Closing Date; <u>plus</u>

	<p>(ii) an additional \$250,000, contingent upon achieving Actual Operating Cash Flow that is at least 2.5% better than Budgeted Operating Cash Flow for the period from the Petition Date through and including the Closing Date; <u>plus</u></p> <p>(iii) an additional \$250,000, contingent upon achieving Actual Operating Cash Flow that is at least 5% better than Budgeted Operating Cash Flow for the period from the Petition Date through and including the Closing Date; <u>plus</u></p> <p>(iv) an additional \$275,000, contingent upon achieving Actual Operating Cash Flow that is at least 7.5% better than Budgeted Operating Cash Flow for the period from the Petition Date through and including the Closing Date; <u>plus</u></p> <p>(v) an additional \$275,000, contingent upon achieving Actual Operating Cash Flow that is at least 10% better than Budgeted Operating Cash Flow for the period from the Petition Date through and including the Closing Date; <u>plus</u></p> <p>(vi) an additional \$300,000, contingent upon achieving Actual Operating Cash Flow that is at least 12.5% better than Budgeted Operating Cash Flow for the period from the Petition Date through and including the Closing Date; <u>plus</u></p> <p>(vii) an additional \$225,000, contingent upon the aggregate amount of cash and credit bid consideration (excluding assumed liabilities) received in the Sale equaling or exceeding \$150 million.</p> <p>The amount of any KEIP Payments awarded to each KEIP Participant shall be determined by the Board in its discretion; <u>provided, however,</u> that the aggregate amount of all KEIP Payments made under this paragraph shall not exceed the aggregate amount set forth above.</p> <p>For purposes of the KEIP, “Budgeted Operating Cash Flow” shall mean, for any given period, the operating cash flow of the Debtors reflected in the Approved Budget, and “Actual Operating Cash Flow” shall mean, for any given period, the Debtors’ actual operating cash flow as calculated by the Board in a manner that (i) is consistent with the income and expense categories included in Budgeted Operating Cash Flow and (ii) excludes, at the Board’s discretion, any non-ordinary, one-time income or expenses.</p>
<p>Termination of Employment</p>	<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,</p>

	<p>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) prior to the Closing Date, the KEIP Participant shall be entitled to receive (i) any KEIP Payments that would have been earned under the KEIP had the KEIP Participant been employed through the Closing Date, <u>divided by</u> (ii) the number of days from the Petition Date through the Closing Date, <u>multiplied by</u> (iii) the number of days from the Petition Date through the Closing Date during which such KEIP Participant was employed by the Debtors.</p>
--	---

Jurisdiction

11. 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.

Relief Requested

12. By this Motion, pursuant to sections 105(a), 363(b)(1) and 503 of the Bankruptcy Code, the Debtors respectfully request entry of an order approving and authorizing the implementation of the KEIP, providing potential performance bonuses to certain of the Debtors' key employees. In addition, the Debtors request that all amounts earned and payable under the KEIP 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.

Basis for Relief

A. Implementation of the KEIP Pursuant to Section 363(b) of the Bankruptcy Code Is a Valid Exercise of the Debtors' Business Judgment

13. The Court may authorize the Debtors to implement the KEIP 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., 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 Montgomery Ward Holding Corp., 242 B.R. 147, 153 (D. Del. 1999) (affirming bankruptcy court approval of key employee retention program and stating 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”); 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”).

14. 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 debtor’s business judgment to propose bonuses for employees who helped propel the debtor successfully through the bankruptcy process).

15. 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 Ashley Stewart Holdings, Inc., No. 14-14383 (MBK) (Bankr. D.N.J. April 23, 2014) (approving key employee incentive plan tied to gross sale proceeds); In re Event Rentals, Inc., No. 14-10282 (PJW) (Bankr. D. Del. March 14, 2014) (approving key employee incentive plan tied to gross sale proceeds and budget milestones); In re Dots, LLC, No. 14-11016

(DHS) (Bankr. D.N.J. March 5, 2014) (approving key employee incentive plan tied to gross sale proceeds); In re RIH Acquisitions NJ, LLC, No. 13-34483 (GMB) (Bankr. D.N.J. Dec. 18, 2013) (approving key employee incentive plan tied to gross sale proceeds); 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 Tarragon Corp., No. 09-10555 (DHS) (Bankr. D.N.J. June 11, 2009) (approving key employee incentive plan); 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).

16. The Debtors submit that authorizing them to provide incentive compensation to the KEIP 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 KEIP Participants, whose experience, skill, diligent work, and knowledge and understanding of the Debtors' business, 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' postpetition marketing and sale efforts. In the event that the relief sought herein is not granted, the Debtors believe that there is a significant risk that the KEIP Participants will not be incentivized to continue to perform and take those extraordinary steps necessary to maximize the value of the Debtors' estates during these Chapter 11 Cases. Any significant deterioration of the "going-concern" value of the Debtors' business would materially and adversely affect the success of the sale process. The Debtors believe the

KEIP proposed in this Motion is reasonable and will provide the KEIP Participants with the appropriate incentives to attain a higher sale price for the Debtors' assets and will enable the Debtors to maximize the value of their assets for the benefit of their estates and creditors.

B. Implementation of the KEIP Does Not Run Afoul of Section 503(c) of the Bankruptcy Code

17. 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. Specifically, 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, however, section 503(c)(1) pertains solely to retention plans of insiders and section 503(c)(2) addresses only the requirements for severance plans. Neither subsection applies to performance-based incentive plans, such as the KEIP, or plans related to non-insiders. See In re Global Home Prods., LLC, 369 B.R. 778, 785 (Bankr. D. Del. 2007).

18. 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. Accordingly, the Debtors believe that section 503(c)(3) of the Bankruptcy Code is the applicable subsection of section 503(c) for this Court to evaluate the relief requested in this Motion.

19. 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) precludes allowance and payment of:

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).

20. The relevant inquiry under section 503(c)(3) is whether the proposed incentive plan is “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).

21. 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 KEIP Should Be Authorized Pursuant to Section 503(c)(3) as a Sound Exercise of the Debtors’ Business Judgment

22. The Debtors submit that the KEIP satisfies 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 KEIP satisfies 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 KEIP is to maximize the value of the Debtors’ assets in connection with a Sale. While all of the Debtors’ employees play a role in the Debtors’ overall financial success, the Debtors limited participation under the KEIP to those key employees critical to the Debtors’ ability to preserve the value of their estates. Moreover, the Debtors submit that the cost and scope of the KEIP is 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 KEIP Constitute Actual and Necessary Costs of Preserving the Debtors’ Estates

23. The payments contemplated under the KEIP 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 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 KEIP. As discussed above, a reasonable relationship exists between the payments contemplated under the KEIP and the preservation of the Debtors’ business. Accordingly, the payments contemplated thereunder constitute actual and necessary costs of the Debtors’ estates under section 503(b) of the Bankruptcy Code.

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

24. 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);

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.”); 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.”).

25. As previously stated, the Debtors strongly and reasonably believe that the KEIP is critical to the success of the Debtors’ Chapter 11 Cases and the overall sale process. 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. The Debtors submit that such payments are necessary to maximize the value of their estates for the benefit of their estates and creditors.

26. The Debtors respectfully submit that the postpetition compensation described in the KEIP is an appropriate exercise of the Debtors’ business judgment, is necessary and in the best interest of the Debtors, their estates and creditors, 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.

Waiver of Memorandum of Law

27. In accordance with Rule 9013-2 of the District of New Jersey Local Bankruptcy Rules, no brief is being filed in support of this Motion because the legal principles involved are not novel or in dispute and are adequately set forth in the Motion.

Notice

28. Notice of this Motion has been provided to the (i) Office of the United States Trustee for the District of New Jersey, (ii) counsel to the First Lien Lenders, (iii) counsel to the Second Lien Lenders, (iv) counsel to the DIP Agent, (v) the Debtors' 30 largest unsecured creditors on a consolidated basis (including counsel if known), (vi) all parties requesting notices pursuant to Bankruptcy Rule 2002, (vii) the Office of the Attorney General for the State of New Jersey, (viii) the New Jersey Division of Gaming Enforcement, (ix) the New Jersey Casino Control Commission, (x) the Office of the Governor for the State of New Jersey, (xi) the United States Attorneys' Office for the District of New Jersey, (xii) the United States Attorney General, (xiii) the Internal Revenue Service and (xiv) the Securities and Exchange Commission. The Debtors submit that no other or further notice need be provided.

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

WHEREFORE, the Debtors respectfully request entry of an order (i) granting the relief requested herein and (ii) granting the Debtors such other and further relief as the Court deems just and proper.

Dated: June 30, 2014
Atlantic City, New Jersey

FOX ROTHSCHILD LLP

By: /s/ Michael J. Viscount, Jr.

Michael J. Viscount, Jr., Esq.
Raymond M. Patella, Esq.
1301 Atlantic Avenue, Suite 400
Atlantic City, NJ 08401
(609) 348-4515/fax (609) 348-6834
mviscount@foxrothschild.com
rpatella@foxrothschild.com

– and –

John K. Cunningham, Esq.
(*pro hac vice* pending)
Richard S. Kebrdle, Esq.
(*pro hac vice* pending)
Kevin M. McGill, Esq.
(*pro hac vice* pending)
WHITE & CASE LLP
Southeast Financial Center
200 South Biscayne Boulevard, Suite 4900
Miami, Florida 33131
(305) 371-2700/fax (305) 358-5744
jcunningham@whitecase.com
rkebrdle@whitecase.com
kmcgill@whitecase.com

*Proposed Co-Counsel to the Debtors and
Debtors in Possession*

Exhibit A

(Proposed Order)

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY
Caption in compliance with D.N.J. LBR 9004-2(c)

FOX ROTHSCHILD LLP

(Formed in the Commonwealth of Pennsylvania)
Michael J. Viscount, Jr., Esq.
Raymond M. Patella, Esq.
1301 Atlantic Avenue, Suite 400
Atlantic City, NJ 08401
(609) 348-4515/fax (609) 348-6834

WHITE & CASE LLP

John K. Cunningham, Esq. (*pro hac vice* pending)
Richard S. Kebrdle, Esq. (*pro hac vice* pending)
Kevin M. McGill, Esq. (*pro hac vice* pending)
Southeast Financial Center
200 South Biscayne Blvd., Suite 4900
Miami, FL 33131
(305) 371-2700/fax (305) 358-5744

*Proposed Co-Counsel to the Debtors and
Debtors in Possession*

In re:

REVEL AC, INC., et al.,

Debtors.¹

Chapter 11

Case No. 14-22654 (GMB)

Jointly Administered

Re: Docket No. ____

**ORDER AUTHORIZING AND APPROVING
KEY EMPLOYEE INCENTIVE PLAN**

The relief set forth on the following pages two (2) through three (3) is hereby ORDERED:

¹ The Debtors in these chapter 11 cases, along with the last four digits of each debtor's federal tax identification number, are: Revel AC, Inc. (3856), Revel AC, LLC (4456), Revel Atlantic City, LLC (9513), Revel Entertainment Group, LLC (2321), NB Acquisition, LLC (9387) and SI LLC (3856). The location of the Debtors' corporate headquarters is 500 Boardwalk, Atlantic City, New Jersey 08401.

(Page 2)

Debtors: Revel AC, Inc., et al.
Case No.: 14-22654 (GMB)
Caption of Order: ORDER AUTHORIZING AND APPROVING KEY EMPLOYEE
INCENTIVE PLAN

Upon the motion (the “Motion”)² of Revel AC, Inc. and its affiliated debtors and debtors in possession (collectively, the “Debtors”) pursuant to sections 105(a), 363(b)(1) and 503 of the Bankruptcy Code, for entry of an order authorizing and approving a key employee incentive plan, in the form attached to the Motion as Exhibit “B” (the “KEIP”); and it appearing that the Court has jurisdiction over this matter; and it appearing that due notice of the Motion as set forth therein is sufficient under the circumstances, and that no other or further notice need be provided; and it further appearing that the relief requested in the Motion is in the best interests of the Debtors and their estates and creditors; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor, it is hereby

ORDERED that the Motion is GRANTED; and it is further

ORDERED that the KEIP, in the form attached to the Motion as Exhibit “B”, is hereby approved, and that the Debtors are authorized, but not directed, to make payments to the KEIP Participants pursuant to the KEIP; and it is further

ORDERED that each KEIP Participant must, prior to receiving any KEIP Payment, execute and deliver to the Debtors (without revocation within any statutorily-authorized period) a general release of known and unknown claims in favor of the Debtors and the Debtors’ affiliated persons and entities in a form consistent with the terms of the KEIP and satisfactory to the Debtors; and it is further

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

(Page 3)

Debtors: Revel AC, Inc., et al.

Case No.: 14-22654 (GMB)

Caption of Order: ORDER AUTHORIZING AND APPROVING KEY EMPLOYEE
INCENTIVE PLAN

ORDERED that all payments under the KEIP made pursuant to this Order shall be deemed allowed administrative expenses of the Debtors' estates under section 503(b) of the Bankruptcy Code; and it is further

ORDERED that the Debtors are authorized to take all actions necessary to implement the relief granted in this Order; and it is further

ORDERED that this Court shall retain jurisdiction to hear and determine all matters arising from or related to implementation of this Order.

Exhibit B

(KEIP)

REVEL AC, INC. AND ITS AFFILIATED DEBTORS

KEY EMPLOYEE INCENTIVE PLAN (the "KEIP")

1. Purpose

The Plan is intended to 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.

2. Definitions

(a) "Actual Operating Cash Flow" means, for any given period, the Debtors' actual operating cash flow as calculated by the Board in a manner that (i) is consistent with the income and expense categories included in Budgeted Operating Cash Flow and (ii) excludes, at the Board's discretion, any non-ordinary, one-time income or expenses.

(b) "Approved Budget" means that certain budget attached to the Interim DIP Order as Exhibit "B", subject to adjustment for any waivers granted, and as may be amended from time to time, in each case with the consent of the DIP Agent and the Required Lenders.

(c) "Bankruptcy Code" means title 11 of the United States Code, 11 U.S.C. §§ 101, et seq.

(d) "Bankruptcy Court" means the United States Bankruptcy Court for the District of New Jersey.

(e) "Board" means the Board of Directors of Revel AC, Inc.

(f) "Budgeted Operating Cash Flow" means, for any given period, the cumulative amount of operating cash flow budgeted for such period in the Approved Budget.

(g) "Cause" shall mean (i) a KEIP Participant's failure to materially perform the duties for which he or she is employed, (ii) a KEIP Participant's willful violation of a material Debtors' policy, (iii) a KEIP Participant's commission of any act or acts of fraud, embezzlement, dishonesty or other willful misconduct, (iv) a KEIP Participant's material breach of any of his or her obligations under any written agreement or covenant with the Debtors, or (v) an act of dishonesty on the part of the KEIP Participant resulting or intended to result, directly or indirectly, in his or her gain for personal enrichment at the expense of the Debtors.

(h) "Chapter 11 Cases" means those certain cases under chapter 11 of the Bankruptcy Code currently pending in the Bankruptcy Court and being jointly administered under Case No. 14-22654 (GMB).

(i) "Closing Date" shall mean the date on which the Sale closes.

- (j) “Code” means the Internal Revenue Code of 1986, as it may be amended from time to time, including regulations and rules thereunder and successor provisions and regulations and rules thereto.
- (k) “Debtors” means the debtors and debtors in possession in the Chapter 11 Cases.
- (l) “DIP Agent” shall be as defined in the Interim DIP Order.
- (m) “DIP Credit Agreement” means that certain debtor in possession credit agreement attached to the Interim DIP Order as Exhibit “A”.
- (n) “DIP Loan” means the Debtors’ debtor in possession financing approved by the Bankruptcy Court on an interim basis pursuant to the Interim DIP Order.
- (o) “Disability” means "disabled" within the meaning of Section 409A of the Code and the regulations issued thereunder.
- (p) “Interim DIP Order” means that certain order entered by the Bankruptcy Court on June 20, 2014 and listed on the Bankruptcy Court’s docket for the Chapter 11 Cases as Docket No. 49.
- (q) “KEIP Incentive Pool” shall be as defined in Section 5 hereof.
- (r) “KEIP Participants” means the individuals identified as participating in this Plan on Schedule 1 attached hereto.
- (s) “Petition Date” means June 19, 2014.
- (t) “Plan” means this Events Rentals, Inc. Key Employee Incentive Plan.
- (u) “Required Lenders” shall be as defined in the DIP Credit Agreement.
- (v) “Sale” means the sale of all or substantially all of the Debtors’ assets.

3. Administration

The Board shall have exclusive authority to interpret, operate, manage and administer the Plan in accordance with its terms and conditions. The Board shall have full discretionary authority in all matters related to the discharge of their respective responsibilities and the exercise of their respective authority under the Plan. All determinations, decisions, actions and interpretations made or taken by the Board with respect to the Plan shall be final, conclusive and binding on all KEIP Participants and all other persons having or claiming to have any right or interest in or under the Plan, provided that the Board shall not be entitled to modify the conditions for eligibility for, or increase the amount of, the KEIP Incentive Pool. The Board may consider such factors as it deems relevant to making or taking such decisions, determinations, actions and interpretations, including the recommendations or advice of any director, officer or employee of the Debtors or an affiliate and such attorneys, consultants and accountants as the Board may select. A KEIP Participant may contest a decision or action by the Board with respect to such KEIP Participant only on the grounds that such decision or action was arbitrary or capricious or

was unlawful, and any review of such decision or action shall be limited to determining whether the Board's decision or action was arbitrary or capricious or was unlawful.

4. Bonus Opportunities

Each KEIP Participant will be eligible to be paid a bonus from the KEIP Incentive Pool described in Section 5.

5. KEIP Incentive Pools

Following the closing of a Sale, the Debtors shall make payments to the KEIP Participants in the collective aggregate amount (the "KEIP Incentive Pool") of:

- (i). \$175,000, contingent upon achieving Actual Operating Cash Flow equaling or exceeding Budgeted Operating Cash Flow for the period from the Petition Date through and including the Closing Date; plus
- (ii). an additional \$250,000, contingent upon achieving Actual Operating Cash Flow that is at least 2.5% better than Budgeted Operating Cash Flow for the period from the Petition Date through and including the Closing Date; plus
- (iii). an additional \$250,000, contingent upon achieving Actual Operating Cash Flow that is at least 5% better than Budgeted Operating Cash Flow for the period from the Petition Date through and including the Closing Date; plus
- (iv). an additional \$275,000, contingent upon achieving Actual Operating Cash Flow that is at least 7.5% better than Budgeted Operating Cash Flow for the period from the Petition Date through and including the Closing Date; plus
- (v). an additional \$275,000, contingent upon achieving Actual Operating Cash Flow that is at least 10% better than Budgeted Operating Cash Flow for the period from the Petition Date through and including the Closing Date; plus
- (vi). an additional \$300,000, contingent upon achieving Actual Operating Cash Flow that is at least 12.5% better than Budgeted Operating Cash Flow for the period from the Petition Date through and including the Closing Date; plus
- (vii). an additional \$225,000, contingent upon the aggregate amount of cash and credit bid consideration (excluding assumed liabilities) received in the Sale equaling or exceeding \$150 million.

The amount of any KEIP Payments awarded to each KEIP Participant shall be determined by the Board in its discretion; provided, however, that the aggregate amount of all KEIP Payments made under this paragraph shall not exceed the aggregate amount set forth above.

6. Timing of Payments. Subject to Section 8, all payments of bonuses under the Plan (including payment to KEIP Participants who become entitled to payments pursuant to Section

7(b) hereof) shall be made in a lump-sum no earlier than fifteen (15) days following the closing of a Sale.

7. Termination of Employment

(a) Subject to Section 7(b), any amount otherwise payable under the Plan will be forfeited in the event a KEIP Participant's employment with the Debtors is terminated for any reason prior to the closing of a Sale.

(b) If a KEIP Participant's employment with the Debtors is terminated without Cause, or due to death or Disability (as determined by the Debtors), prior to the Closing Date, then such KEIP Participant shall be entitled to receive, subject to such KEIP Participant's execution of the release set forth in Section 8 below, (i) any KEIP Payments that would have been earned under the KEIP had the KEIP Participant been employed through the Closing Date, divided by (ii) the number of days from the Petition Date through the Closing Date, multiplied by (iii) the number of days from the Petition Date through the Closing Date during which such KEIP Participant was employed by the Debtors. Notwithstanding the foregoing, no payment will be made to any such KEIP Participant after the date that is two and one half months following the end of the calendar year in which such termination occurs.

8. Release

All payments under the Plan shall be contingent upon a KEIP Participant executing and not revoking a full release of known and unknown claims such KEIP Participant may have against the Debtors in a form determined appropriate by the Debtors. Such release will include, but not be limited to, (i) any claim against the Debtors with respect to such employee's employment with the Debtors (other than accrued and unpaid salary, benefits, expense reimbursement, vacation and any indemnification) 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. Such release must be executed and be non-revocable prior to the date that is fifteen (15) days following the closing of a Sale (the "Release Date"). In the event that such release is not executed by the KEIP Participant or is revoked by the KEIP Participant prior to the Release Date, any payments under this Plan will be forfeited.

9. Section 409A

The Plan 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.

10. Miscellaneous

(a) The Plan shall constitute an unfunded, unsecured liability of the Debtors to make payments in accordance with the provisions of the Plan, and no individual shall have any security interest, ownership interest, or other interest in any assets of the Debtors in connection with the Plan. Neither the establishment of the Plan nor any obligation of the Debtors to make payments

under the Plan shall be deemed to create a trust or a principal-agent relationship. This Plan does not constitute a term or condition of employment and no KEIP Participant shall have any right to receive payments hereunder, except to the extent all conditions relating to the receipt of such payments have been satisfied.

(b) Nothing in the Plan shall be construed or interpreted as giving any KEIP Participant 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.

(c) Amounts payable under the Plan shall not be considered wages, salaries, or compensation under any employee benefit plan, except pursuant to the written terms of the Plan.

(d) The Debtors shall be entitled to withhold from any amount due and payable by the Debtors to any KEIP Participant (or secure payment from such KEIP Participant in lieu of withholding) the amount of any withholding or other tax due from the Debtors with respect to any amount payable to such KEIP Participant under this Plan.

(e) If a KEIP Participant becomes entitled to any payments under the Plan, and if at such time such KEIP Participant has outstanding any debt, obligation, or other liability representing an amount owing to the Debtors (whether or not such liability is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, or equitable), then the Debtors may offset such amount against the amount otherwise distributable to such KEIP Participant to the extent permitted by applicable law.

(f) No person otherwise eligible to receive any payment under the Plan shall have any rights to pledge, assign, transfer, sell, or otherwise dispose of all or any portion of such 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 payments are otherwise payable to him or her in accordance with the Plan, such payments shall be paid as designated by the KEIP Participant by will or by the laws of descent and distribution.

(g) The Plan made and actions taken thereunder shall be governed by and construed in accordance with the laws of the State of New Jersey, without reference to the principles of conflict of laws, except as superseded by applicable federal law.

Schedule 1

(List of KEIP Participants)

[Filed Under Seal]