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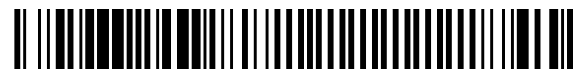
UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	**Chapter 11 Case No.**
GENERAL GROWTH PROPERTIES, INC., et al.,	:	**09 – 11977 (ALG)**
	:	**(Jointly Administered)**
Debtors.	:	

DEBTORS' MOTION PURSUANT TO SECTIONS 105(a), 363, AND 503 OF THE BANKRUPTCY CODE FOR AN ORDER APPROVING (I) AMENDMENT AND CONTINUATION OF THE DEBTORS' MODIFIED CASH VALUE ADDED PLAN, AND (II) IMPLEMENTATION OF A KEY EMPLOYEE INCENTIVE PLAN

TO THE HONORABLE ALLAN L. GROPPER,
UNITED STATES BANKRUPTCY JUDGE:

South Street Seaport Limited Partnership, its parent, General Growth Properties, Inc. ("**GGP**"), and their debtor affiliates, as debtors and debtors in possession (collectively,



"**General Growth**" or the "**Debtors**"),[1] submit this motion (the "**Motion**") and respectfully represent as follows:

I.

PRELIMINARY STATEMENT[2]

1. In the fall of 2008, the Debtors retained new senior management to focus on restructuring their business and maximizing their enterprise value. Thereafter, the Debtors began to consider changing their compensation structure to incentivize employees and align their employees' goals with those of the reorganization. To aid in this review, the Debtors retained Hewitt Associates LLC ("**Hewitt**"), an employee compensation consulting firm, to provide guidance regarding, among other things, market competitiveness and prevalent incentive plan designs. Following consideration of Hewitt's review of comparable programs, historical employee compensation data, and various performance metrics, as well as extensive negotiations with the Creditors' Committee, the Debtors developed the modifications described herein to the prepetition Cash Value Added Compensation Incentive Plan (the "**CVA Plan**") and the Key Employee Incentive Plan (the "**KEIP**" and, collectively with the CVA Plan, the "**Employee Incentive Programs**") to incentivize their employees and drive performance. The Employee Incentive Programs were designed to tie an employee's incentive award with operating performance, as well as, where applicable, value creation based on stakeholder recoveries. The Creditors' Committee has indicated its support for approval of the Employee Incentive Programs. Accordingly, by this Motion, the Debtors seek authority to amend the CVA Plan and adopt the KEIP.

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[1] A list of the Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, is field with the Court at Docket No. 592 and is also available for free online at www.kccllc.net/GeneralGrowth.

[2] Capitalized terms used but not defined in this Preliminary Statement shall have the meaning ascribed in this Motion.

II.

JURISDICTION

2. This Court has subject matter jurisdiction to consider and determine this matter pursuant to 28 U.S.C. § 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.

CHAPTER 11 BACKGROUND

3. Commencing on April 16, 2009 (the "**Commencement Date**") and continuing thereafter, the Debtors each commenced a voluntary case under chapter 11 of title 11 of the United States Code (the "**Bankruptcy Code**"). The Debtors' chapter 11 cases have been consolidated for procedural purposes only and are being jointly administered pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"). The Debtors are authorized to continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

4. On April 24, 2009, the United States Trustee for the Southern District of New York (the "**U.S. Trustee**") appointed an official committee of unsecured creditors (the "**Creditors' Committee**"). On September 8, 2009, the U.S. Trustee appointed an official committee of equity security holders.

5. Additional information regarding the Debtors' business, capital structure, and the circumstances leading to these chapter 11 cases is contained in the Declaration of Adam S. Metz (Docket No. 12) and the Declaration of James A. Mesterharm Pursuant to Local Bankruptcy Rule 1007-2 in Support of First Day Motions (Docket No. 13).

IV.

RELIEF REQUESTED

6. The Debtors request, pursuant to sections 105(a), 363, and 503(c) of the Bankruptcy Code, entry of an order, annexed hereto as **Exhibit "A"**, authorizing the Debtors to (i) amend and continue the CVA Plan and (ii) implement the KEIP.

V.

THE DEBTORS' INCENTIVE COMPENSATION PROGRAMS

A. The Debtors' Prepetition Incentive Compensation Practices

1. The Prepetition CVA Plan

7. As first described in the *Debtors' Motion for Entry of Interim and Final Orders pursuant to sections 105(a), 363(b), 507(a)(4) and 507(a)(5) of the Bankruptcy Code Authorizing, but not Directing, Them to (I) Pay Prepetition Wages, Salaries, Employee Benefits and Other Compensation, (II) Maintain Employee Benefits Programs and Pay Related Administrative Obligations, and (III) Authorize Applicable Banks and Other Financial Institutions to Receive, Process, Honor and Pay All Checks Presented for Payment and to Honor All Funds Transfer Requests* (Docket No. 7) (the "**First Day Employee Wage Motion**"), the Debtors initially adopted the Cash Value Added Compensation Incentive Plan in 1998, as later amended in 2007.

8. For the past eleven years, the CVA Plan has been a significant and ongoing important part of employee compensation. Traditionally, payments to employees under the CVA Plan constitute an average of approximately 10-15% of an employee's total compensation. The Debtors have made payments to participating employees every year under the CVA Plan since its adoption. Payments to employees under the CVA Plan were historically paid following the end of the calendar year performance period (e.g., in January 2008, employees

received their CVA Plan payments based on their performance in calendar year 2007). While the prepetition formula for calculating payments under the CVA Plan was used for making CVA Plan payments for all plan years through 2007, following consultation with certain prepetition lenders of GGP, a modified formula was used to calculate reduced payments for 2008.

9. As set forth in the First Day Employee Wage Motion and as amplified at subsequent hearings, prior to the Commencement Date, the Debtors were engaged in a review of the performance metrics to be used under the CVA Plan for 2009 compensation. Subject to their business judgment, and in the ordinary course of their business, the Debtors' expressed their intent to continue the CVA Plan, with those modifications necessary to appropriately compensate employees, incentivize employees' performance, and meet the needs of the business during the chapter 11 process.

10. As stated at the May 8, 2009 final hearing on the First Day Employee Wage Motion, the incentive compensation due under the CVA Plan for employee service in 2009 will not become payable until 2010, thus no amounts were outstanding as of the Commencement Date. See May 8, 2009 Hr'g Tr. 49:11-16 (Docket No. 499). Moreover, the Debtors agreed to confer with the Creditors' Committee prior to making any payments under the CVA Plan. Id. at 49:15, 50:1-11.

2. Long-Term Incentive Compensation

11. In addition to any cash compensation paid to an employee pursuant to the CVA Plan, the Debtors, prior to the Commencement Date and in the ordinary course of their business, provided long-term compensation in the form of equity to certain of their management-level and executive employees (including, without limitation, executive officers, corporate department heads, and regional managers of shopping center properties). Such equity-based

compensation was granted in several ways, including pursuant to separate incentive stock plans tied to the cash component of the CVA Plan, pursuant to additional discretionary awards, or pursuant to a separate employment contract.

3. Executive Officer Compensation

12. In the fall of 2008, the Board of Directors (the "**Board**") determined to replace senior management, including, among others, the Chief Executive Officer ("**CEO**") and the President.[3] The Compensation Committee (the "**Compensation Committee**") retained Pearl Meyer, an executive compensation consulting firm, to develop a compensation package for a CEO and President. With the guidance of its consultants, the Compensation Committee developed a package designed to attract the strong talent needed at General Growth and to fall within the median and 75th percentile of compensation in the turnaround market. The package included: (a) base salary, (b) quarterly payments, (c) discretionary compensation, and (d) equity grants. The Board offered the positions of CEO and President to two of its members, Adam Metz and Thomas Nolan,[4] respectively, subject to execution of employment agreements reflecting the compensation package. The Board determined that Messrs. Metz and Nolan had the necessary skills and talents to create and implement General Growth's turnaround strategy.

B. Deliberation and Negotiation Process regarding Development of the Incentive -Based Employee Compensation Programs.

13. As the metrics for the CVA Plan are ordinarily set by no later than the end of the first quarter of the calendar year, beginning in January 2009, the Compensation Committee

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[3] The Board also determined to replace the Chief Financial Officer (the "**CFO**"). The Board continues its search for such a replacement. In the interim, Ed Hoyt is serving as GGP's Interim Chief Financial Officer.

[4] In addition to his service as President of GGP, Mr. Nolan was appointed Chief Operating Officer ("**COO**") of GGP in March 2009. However, the terms of his employment with the company did not change as a result of this additional assumption of responsibility by Mr. Nolan.

and management initiated discussions regarding the structure for the 2009 CVA Plan. At the same time, General Growth was engaged in substantial negotiations with various members of its creditor constituencies regarding a potential out of court restructuring of its debt obligations and was primarily focused on its restructuring efforts (whether in or out of chapter 11). As a result of General Growth's entry into chapter 11, the decision was made to defer consideration of the structure of the CVA Plan to a later date. Following the initial phase of the Debtors' chapter 11 cases, the Board, management and the Compensation Committee turned their attention to developing metrics for the 2009 CVA Plan.

14. As the CVA Plan has been a critical part of the Debtors' employee compensation structure for over eleven years, the Board was keenly aware of the need to communicate to employees information regarding their compensation for 2009 and to assure employees that they would have the ability to earn market competitive performance pay during General Growth's restructuring. Accordingly, after interviewing three firms, the Debtors retained Hewitt to assist with three principal tasks:

(a) determining whether continuation of the CVA Plan and/or implementation of a key employee incentive program was necessary to provide market competitive compensation;

(b) preparing a comparative analysis to assist in analyzing the need for incentive plans and the appropriate levels of compensation of any such plans; and

(c) developing the terms and conditions of any such plans.[5]

Since Hewitt's retention, the Debtors have worked with Hewitt to develop incentive compensation plans that would appropriately link employee efforts to operating performance and the Debtors' successful reorganization in chapter 11. As a result of its research and review,

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[5] Hewitt's retention was approved by the Court pursuant to an order entered on August 20, 2009 (Docket No. 1397).

Hewitt concluded that most companies comparable to General Growth had short-term and long-term compensation plans, and that many comparable reorganizing chapter 11 debtors also adopted key employee incentive programs in the context of their restructuring. As further detailed below, Hewitt recommended continuation of the CVA Plan, subject to certain amendments (the "**Modified CVA Plan**") and adoption of the KEIP, both of which were approved by the Compensation Committee and the Board.

15. After receiving Hewitt's recommendations and proposals on the Modified CVA Plan and the KEIP, Debtors' management presented these recommendations to the Compensation Committee, which authorized management to continue to develop the plans in consultation with the Creditors' Committee. On June 11, 2009, the Debtors met with a subcommittee of the Creditors' Committee, as well as certain of its legal and financial professionals, to discuss the terms of the Modified CVA Plan and the KEIP. Thereafter, continuous dialog ensued with the Creditors' Committee, which ultimately resulted in an agreement in principle being reached between the Debtors and the Creditors' Committee on or about September 4, 2009, with documentation substantially agreed upon at the time of the filing of this Motion.

C. The Employee Incentive Compensation Programs.

16. It is critical that the Debtors restore their compensation packages to reasonable market levels if they are to preserve the correlating incentives for key personnel to perform at their highest levels. To do so in light of their current circumstances, the Debtors have modified the CVA Plan and developed a KEIP so that the Employee Incentive Programs align more closely with their current goals. Both the CVA Plan and the KEIP are designed to provide meaningful award opportunities tied to meaningful objective performance goals. Without the

Employee Incentive Programs, employees' total direct compensation potential will remain substantially below market and the effect on their incentives will be devastating, particularly given the substantial increased duties the employees are called upon to perform in furtherance of the Debtors' restructuring efforts.

17. Significantly, the pool of funds available for distribution under the proposed Employee Incentive Programs are established based on performance criteria, and such criteria was the subject of negotiation and agreement with the Creditors' Committee. Consequently, if none of the minimum performance goals are satisfied with respect to NOI, EBITDA, POR Recovery Value, Market-Based Recovery Value (as such terms are defined below) or timing of emergence from chapter 11 (the "**Emergence Date**"), then there is no payout under the applicable Employee Incentive Program. Implementing the Employee Incentive Programs is essential to create strong incentives based on meaningful defined financial goals that will motivate the Debtors' employees and executives to work hard and to undertake and deliver on important tasks to enhance the value of the Debtors' estates. The Employee Incentive Programs, therefore, are integral to the Debtors' financial performance and successful emergence from bankruptcy.

1. The Modified CVA Plan

a. Development of the Modified CVA Plan

18. In evaluating the appropriateness of the current CVA Plan, Hewitt began with a review of General Growth's peers' practices as well as the practices of other large chapter 11 debtors. Hewitt concluded that continuation of some form of the CVA Plan was an essential part of employee compensation. Specifically, without the CVA Plan, Hewitt concluded that General Growth would fall well below the market median for compensation paid to its employees.

b. ***Key Terms of Modified CVA Plan***

19. The key terms of the Modified CVA Plan are as follows:

(a) Eligibility: All full time employees of the Debtors, other than leasing representatives, will be eligible to participate in the Modified CVA Plan; provided, however, that the CEO and President & COO shall only be eligible to participate in 2010.

(b) Target Opportunity/Elimination of Equity Grant: Participating employees will be assigned a target opportunity equal to a percentage of their base salary (excluding the CEO, President and COO, and to the extent retained, the new CFO, these percentages range between 1% and 100% of base salary, with an average of 11%), subject to adjustment based on the individual employee's performance, as payment under the Modified CVA Plan ("**CVA Target Opportunity**"). While most eligible employees' CVA Target Opportunity will be set at prepetition levels and will be consistent with historic target opportunities, with respect to 716 management level employees, their CVA Target Opportunity will be increased by 25% to reflect the equity grants that they were previously entitled to receive. However, the CVA Target Opportunity will not be increased for those employees who are participating in the KEIP.

(c) Form of Payout: Cash

(d) Performance Period: For both 2009 and 2010, the twelve month period ending December 31, 2009 and December 31, 2010, respectively.

(e) Performance Metrics:

(i) For non-KEIP participants, an eligible employee's performance will be based on a combination of net operating income ("**NOI**") and individual performance metrics. "NOI" means the aggregate operating revenues of the Debtors' real estate properties and master planned communities less the aggregate property and related expenses of such properties and communities (excluding interest, depreciation, amortization, reorganization and extraordinary expenses, and impairment charges). The target NOI for 2009 is $2.326 billion. The target NOI for 2010 will be set by the Compensation Committee in the ordinary course following consultation with management; provided, however, that, once the Compensation Committee has set a proposed target, the Debtors shall

provide notice of the proposed target to the Creditors' Committee, with all relevant supporting information. If the Debtors and the Creditors' Committee reach an agreement on the target within fifteen business days after delivery, then such agreed target will be adopted as the target NOI for 2010 without the necessity of further order of the Court. If, however, the Debtors and the Creditors' Committee are unable to reach an agreement on the proposed target by the conclusion of the notice period, then the Debtors may seek Court approval of the proposed target.

(ii) For KEIP participants (inclusive of, beginning in fiscal year 2010, the CEO and President & COO), performance will be based on EBITDA, which is defined as NOI plus property management revenue less corporate overhead (excluding restructuring costs) and capitalized costs ("**EBITDA**"). The target EBITDA for 2009 is $2.116 billion. The target EBITDA for 2010 will be set by the Compensation Committee in the ordinary course following consultation with management; provided, however, that, once the Compensation Committee has set a proposed target, the Debtors shall provide notice of the proposed target to the Creditors' Committee, with all relevant supporting information. If the Debtors and the Creditors' Committee reach an agreement on the target within fifteen business days after delivery, then such agreed target will be adopted as the target EBITDA for 2010 without the necessity of further order of the Court. If, however, the Debtors and the Creditors' Committee are unable to reach an agreement on the proposed target by the conclusion of the notice period, then the Debtors may seek Court approval of the proposed target.

(iii) Payout levels: The following payout curve, using a graduated scale, will be utilized for calculating payments under the Modified CVA Plan:

	General Growth Properties, et al.	
	Performance Level (EBITDA or NOI, as applicable)	**Payout Percentage of CVA Target Opportunity**
Maximum	109% and above	200% of Target
Target	100%	100% of Target

Low Performance	92%	11.1% of Target
Threshold	91% or below	No Payout

(f) Computing Payout Levels: Payout levels will be interpolated based on the payout curve between threshold and target for the applicable performance metric (NOI or EBITDA) and between target and maximum for the applicable metric.

(g) Allocation of Incentive Pool: The distribution of the incentive pool will be as follows: (1) (a) those officers of the Debtors appointed to the Debtors' executive committee from time to time (including the CFO), and (b) those other managing employees designated by the CEO and COO, are paid at the attained EBITDA level for all employees participating in the KEIP, unless adjusted by the CEO and/or COO based on individual performance; and (2) all other participants shall be paid their portion of the incentive pool based on their applicable performance objective (either EBITDA for all employees participating in the KEIP or NOI for all employees not participating in the KEIP) pursuant to administrative procedures approved by the CEO, which may include adjustment of such amount based on the participant's individual performance.

For purposes of calculating the annual incentive pool distributions. a participants' CVA Target Opportunity may not be increased nor decreased by more than 50% by reason of the participant's individual performance.

(h) Timing of Payout: Incentive payouts under the Modified CVA will be paid as soon as practicable following the end of the applicable performance period.

(i) Performance Period Terminations: A participating employee who terminates prior to conclusion of the performance period (i.e., prior to December 31, 2009) will not be eligible to receive a CVA Plan incentive award.

2. The KEIP

a. *Development of the KEIP*

20. Given that the compensation structure does not currently include equity grants in light of the pending chapter 11 cases, Hewitt also reviewed and considered whether the

Debtors needed to implement a long term incentive plan in addition to the Modified CVA Plan. Similar to its review of the CVA Plan, Hewitt reviewed the incentive compensation practices of General Growth, comparable companies, and other reorganizing chapter 11 debtors, including whether incentive pay was linked to stakeholder recoveries. Hewitt concluded that, from a market perspective, General Growth's competitors had both short and long term incentive programs for their key employees. Accordingly, to remain competitive and ensure the alignment of key employees and stakeholders in the restructuring, Hewitt recommended that the Debtors implement the KEIP.

21. The KEIP payout formula is based on plan recoveries to all unsecured creditors (excluding intercompany claims of these entities) (the "**Parent Level Debt**") and third-party equity holders of General Growth Properties, Inc., GGP Limited Partnership, GGPLP L.L.C., and The Rouse Company Limited Partnership (collectively, the "**Parent Level Debt and Equity**"). The payout opportunity increases as recoveries increase and, therefore, maximizes enterprise value creation.

b. ***Key Terms of the KEIP***

22. The key terms of the KEIP are as follows:

(a) Eligible Employees: Forty-six (46) of General Growth's active executives will be eligible to participate in the KEIP.[6] These 46 participants were chosen either because they are essential to the Debtor' operations or integral to the bankruptcy reorganization process.

(b) Target levels: Eligible executives will be assigned a target opportunity equal to a percentage of their base salary (between 30% and 225% of base salary reflecting market appropriate targets) ("**KEIP Target Opportunity**").

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[6] To the extent that the Debtors hire a new CFO, such executive will also become eligible to participate in the KEIP, thus increasing the number of participants to forty-seven (47).

(c) Plan Recovery Performance Metrics: The KEIP is primarily based on performance metrics tied to distributions to holders of the Parent Level Debt and Equity. The KEIP performance metrics are the POR Recovery Value and the Market-Based Recovery Value (as such terms are defined below and, collectively, the "**Plan Recovery Metrics**"), which are then applied, 40% using the POR Recovery Value and 60% using the Market-Based Recovery Value, to each executive's KEIP Target Opportunity based on the payout curve to calculate each executive's award. The performance metrics include minimum, target, and high performance levels with no maximum.

(i) POR Recovery Value is calculated by dividing (a) the aggregate value of all consideration distributed or to be distributed to the holders of the Parent Level Debt and Equity pursuant to a confirmed chapter 11 plan, by (b) the aggregate allowed claim amount and estimated claim amount, as of the Emergence Date, of the Parent Level Debt ("**POR Recovery Value**").

(ii) Market-Based Recovery Value is calculated by dividing (a) the sum of the following forms of consideration distributed to holders of Parent Level Debt and Equity pursuant to a confirmed chapter 11 plan: (i) the volume-weighted average price of the publicly traded equity securities during the ten trading days prior to and the ten trading days following the 90th day after the Emergence Date (the "**Trading Period**"), (ii) the aggregate public market value for publicly traded debt securities during the Trading Period, (iii) for non-publicly traded debt securities for which trading prices or price quotes are available, the aggregate market value of such debt securities (iv) for non-publicly traded debt securities for which trading prices or price quotes are unavailable and non-publicly traded equity securities, the value of such securities as determined by an independent third party, (v) to the extent applicable, the value ascribed to any trust certificates issued by the Debtors based on the value reflected in the confirmation order, chapter 11 plan or related disclosure statement, and (vi) the face amount of cash and cash equivalents; by (b) the aggregate allowed claim amount and estimated claim amount, as of the Emergence Date, of the Parent Level Debt ("**Market-Based Recovery Value**").

(d) Payout Levels: The following payout curve, using a graduated scale, will determine cumulative award amounts:

	Recovery Percentage Under Plan Calculated Using POR Recovery Value & Market-Based Recovery Value	Plan Recovery Performance Metric Payout Percent
Threshold	45% or below	0%
Low Performance	46%	5%
Target	65%	100%
High Performance 1	85%	200%
High Performance 2	95%	300%
High Performance 3	105%	400%
Uncapped	↓	↓

(e) Computing Payout Levels for Plan Recovery Metrics: Payout levels based on the Plan Recovery Metrics will be interpolated between threshold and target and between target and high performance based upon the payout curve. Payouts can be paid above the high performance level, if performance warrants such additional amounts. The payout curve continues above high performance.

(f) Maximum Payout at Target: If the target is achieved, then the aggregate payout based on the Plan Recovery Metrics shall not exceed $15.2 million.

(g) Emergence Performance Metric: In addition to the Plan Recovery Metrics based on distributions (POR Recovery Value and Market-Based Recovery Value), there is an emergence incentive pool specifically designed to incentivize employees to expeditiously emerge from chapter 11, as follows:

Emergence Date	Pool
June 30, 2010 or earlier	$10 million
July 1, 2010 to September 30, 2010	$5 million
October 1, 2010 or later	$0

(h) Computing Payout Levels for the Emergence Performance Metric: Payout levels based on the emergence incentive pool will be determined in the discretion of the pre-Confirmation Date Compensation Committee to one or more of the executives participating in the KEIP; provided, however, that the entire amount of the emergence incentive pool will be paid out within three business days after the Emergence Date.

(i) Form of Payout: Cash.

(j) Timing of Payout:

(i) The payments calculated based on the POR Recovery Value will be paid within three business days after the Emergence Date.

(ii) The payments calculated based on the Market-Based Recovery Value will be paid within three business days following the Trading Period.

(k) Vesting and Performance Period Termination: Each participating executive shall have a right to the full amount earned or awarded under the KEIP if (a) such executive is employed on the business day immediately prior to the Emergence Date, or (b) their employment is terminated without cause or by death or disability on or after confirmation of the chapter 11 plan (the "**Confirmation Date**"), but prior to the Emergence Date. If an executive is terminated without cause, or by death or disability prior to the Confirmation Date, then the executive shall be entitled to a pro-rata amount of their POR Recovery Value Award and Market-Based Recovery Value award based on a fraction, (y) the numerator of which is number of days employed from April 16, 2009 until the date of termination, and (z) the denominator of which is the number of days from April 16, 2009 until the business day immediately prior to the Emergence Date.

c. *Participation of CEO and President & COO*

23. The CEO and the President & COO will participate in the KEIP and the 2010 CVA Plan. For 2009, the CEO and President & COO will remain at their contractual levels, thus entitled to receive their base salary, applicable quarterly compensation (including, following approval of this Motion, the May and August 2009 payments that they previously deferred pending negotiations with the Creditors' Committee), any discretionary compensation

as determined by the Board, and a pro rata share of their quarterly compensation for the period of November and December 2009. To the extent that the Board approves any discretionary compensation for the CEO and the President & COO for 2009, any such amounts shall be offset against any amounts they may earn under the KEIP. For 2010, the CEO and President & COO will participate in the Modified CVA Plan, with their CVA Target Opportunity set at $2 million and $1.6 million respectively.

3. Estimated Cost of Implementing the Target Modified CVA Plan and the KEIP.

24. Excluding the emergence incentive pool and assuming that the applicable targets are achieved under each of the Modified CVA Plan (where targets are based on EBITDA or NOI) and the KEIP (where targets are based on the Plan Recovery Metrics), the estimated costs to the estates are set forth in the chart below. The amounts listed in the following chart have been calculated on an annualized basis from April 2009 to April 2010 for all participants other than the CEO and President & COO. Due to the fact that the CEO and President & COO are only participating in the CVA Plan in 2010, the amount included for them is annualized from January 2010 to December 2010. Moreover, the aggregate amount earned and payable to the CEO and President & COO under the KEIP shall be reduced on a dollar-for-dollar basis by the amount of any discretionary compensation paid to such individuals under their employment agreements. As a result, the chart below has been calculated assuming that the full amounts have been paid as discretionary compensation, thus, reducing their KEIP awards.

Employee Population	Count	Annualized CVA Plan	Annualized KEIP	Total Annualized Incentive if Target Achieved
Top 12 Executives	12	$6.9 million	$4.7 million	$11.6 million
Other Senior Executives	35	$4.0 million	$2.0 million	$6.0 million
Managerial Employees	706	$23.5 million	N/A	$23.5 million
Other Participants	2,122	$6.5 million	N/A	$6.5 million
Total:	**2,875**	**$40.8 million**	**$6.7 million**	**$47.5 million**
Total as a % of target NOI				2.04%
Total as a % of incremental value (20%)				3.66%
Total as a % of total value (40%)				1.83%

VI.

ARGUMENT

A. Implementation Of The Employee Incentive Compensation Programs Is A Sound Exercise Of The Debtors' Business Judgment, In The Best Interests Of These Estates, And Satisfies The Requirements Of Section 503(c) Of The Bankruptcy Code

25. Implementation of the Employee Incentive Compensation Programs is a sound exercise of the Debtors' reasoned business judgment and is in the best interests of these estates and all stakeholders in this reorganization. The Debtors respectfully submit that the Modified CVA Plan is an ordinary course transaction and that court approval is not required in order to implement its terms. However, out of an abundance of caution and in response to the request of the Creditors' Committee, the Debtors request authority to both amend the CVA Plan and adopt the KEIP based on their business judgment that these programs are necessary and

appropriate means to incentivize employees and drive performance during these chapter 11 cases.

1. The Modified CVA Plan is an Ordinary Course Transaction and Should Be Authorized As Such.

26. Given that the Modified CVA Plan retains the essential characteristics of the CVA Plan – a plan that has been in place for over eleven years and is comparable to similar plans of General Growths' competitors – the Debtors' implementation of the Modified CVA Plan is within the ordinary course of its business. Section 363(c) of the Bankruptcy Code provides that a "trustee may enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing[.]" 11 U.S.C. §363(c). The standard for determining whether a transaction is ordinary course is well settled, as courts generally use a two-part test to determine whether a transaction falls within the ordinary course of business, thereby permitting a debtor to enter into a transaction without court approval. The first step is the horizontal dimension test, which looks at whether "from an industry-wide perspective, the transaction is of the sort commonly undertaken by companies in that industry." In re Roth American, Inc., 975 F.2d 949, 953 (3d Cir. 1992). The second test – the vertical dimension test – focuses on the debtor's "pre-petition business practices and conduct, although a court must also consider the changing circumstances inherent in the hypothetical creditor's expectations." Id. at 953. This Court has previously held that both dimensions must be satisfied for a transaction to qualify as "ordinary course" under 363(c)(1). In re Leslie Fay Companies, Inc., 168 B.R. 294 (Bankr. S.D.N.Y. 1994).

27. Recently, the Bankruptcy Court for the District of Delaware provided a detailed account of what facts it analyzed to come to the determination that a debtor's alteration of a short term compensation plan was within the ordinary course. In In re Nellson

Neutraceutical, Inc., 369 B.R. 787, the debtor reviewed whether a short term compensation plan was standard in the industry by examining 20 comparable companies, "based upon revenue, EBITDA and products." Id. at 797-8 (Bankr. D. Del. 2007). The debtor then compared its own short term compensation plans with those of the comparable companies. Id. After the debtor showed that a majority of the companies had plans substantially similar to those of the debtor, the court held that the debtor's plan satisfied the horizontal dimension. Id. In addition, because the debtor presented evidence that its proposed modifications were consistent with its prepetition practices, the court concluded that the debtor's modified compensation plan also satisfied the vertical dimension test. Id. See also In re Dana Corp., 358 B.R. 567, 579 (Bankr. S.D.N.Y. 2006) (finding that, because debtors' postpetition short term incentive plan was a "refinement" of its prepetition short term incentive plan, which had been a "common component" of the debtors' compensation practices historically, that the debtor's proposed postpetition modifications were within the ordinary course) and In re Global Home Products, LLC, 369 B.R. 778, 2007 WL 689747 (Bankr. D. Del. 2007) (same).

28. Similarly here, the Debtors submit that the Modified CVA Plan, which is based on a short term incentive plan that has been in place for over eleven years, is an ordinary course transaction. From a horizontal perspective, Hewitt reviewed the Debtors' comparable competitors and concluded that substantially all of these companies have an annual or short-term incentive plan and that this is also true for the comparable, reorganizing chapter 11 debtors. From a vertical analysis, because the Modified CVA Plan seeks to essentially continue the pre-existing CVA Plan on generally the same terms as those maintained prepetition, the Modified CVA Plan remains consistent with the Debtors' practices and is simply a refinement of those practices given the bankruptcy proceedings.

29. Moreover, the Modified CVA Plan is a sound exercise of the Debtors' business judgment. The Modified CVA Plan has a strong financial focus, which is consistent with the Debtors' current circumstances and prior years metrics. Under the Modified CVA Plan, the annual payout is highly performance oriented, and the incentives support a short-term motivational focus. Accordingly, as the Modified CVA Plan is an ordinary course transaction within the Debtors' reasoned business judgment, the Debtors respectfully submit that approval of the Modified CVA Plan is unnecessary, however, at the request of the Creditors' Committee, the Debtors request authorization to implement the Modified CVA Plan.

2. Irrespective of Whether the Modified CVA Plan is an Ordinary Course Transaction, Both Employee Incentive Programs Should be Approved as a Valid Exercise of the Debtors' Reasoned Business Judgment.

30. Even if this Court were to find that the Modified CVA Plan is outside the Debtors' ordinary course of business, both Employee Incentive Programs represent a valid exercise of General Growth's business judgment and are in the best interests of the Debtors' estates and the interests of all stakeholders in these chapter 11 cases.

31. Where a debtor's proposed use or sale of estate property is outside the ordinary course, section 363(b)(1) of the Bankruptcy Code authorizes the debtor in possession to take such non-ordinary course actions after notice and a hearing. 11 U.S.C. § 363(b)(1). To approve the use of estate property under section 363(b)(1) of the Bankruptcy Code, the Second Circuit requires a debtor to show that the decision to use the property outside of the ordinary course of business was based on the debtor's business judgment. See In re Chateaugay Corp., 973 F.2d 141, 143 (2d Cir. 1992) (holding that a judge determining a 363(b) application must find a good business reason to grant such application); see also In re Lionel Corp., 722 F.2d 1063, 1070 (2d Cir. 1983) (requiring "some articulated business justification" to approve the use,

sale or lease of property outside the ordinary course of business); In re Ionosphere Clubs, Inc., 100 B.R. 670, 675 (Bankr. S.D.N.Y. 1989) (noting that the standard for determining a section 363(b) motion is "a good business reason"); In re Global Crossing Ltd., 295 B.R. 726, 743 (Bankr. S.D.N.Y. 2003).

32. The business judgment rule shields a debtor's management's decisions from judicial second guessing. In re Johns-Manville Corp., 60 B.R. 612, 615-16 (Bankr. S.D.N.Y. 1986) rev'd on other grounds 801 F.2d 60 (2d Cir. 1986) (a "presumption of reasonableness attaches to a Debtor's management decisions" and courts will generally not entertain objections to the debtor's conduct after a reasonable basis is set forth). Once a debtor articulates a valid business justification, the law vests the debtor's decision to use property outside of the ordinary course of business with a strong presumption that "in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action was in the best interests of the company." In re Integrated Res., Inc., 147 B.R. 650, 656 (S.D.N.Y. 1992) (citations and internal quotations omitted), appeal dismissed, 3 F.3d 49 (2d Cir. 1993). Thus, if a debtor's actions satisfy the business judgment rule, then the transaction in question should be approved under section 363(b)(1) of the Bankruptcy Code.

33. In considering whether a proposed key employee incentive compensation plan (such as the KEIP and, to the extent the Court were to find that the Modified CVA Plan is outside the Debtors' ordinary course of business, the Modified CVA Plan) meets the "sound business judgment" test, courts consider, among others, the following factors:

(a) Whether there is a reasonable relationship between the plan proposed and the results to be obtained, i.e., in the case of a performance incentive plan, is the plan calculated to achieve the desired performance;

(b) Whether the cost of the plan is reasonable in the context of the debtor's assets, liabilities and earning potential;

(c) Whether the scope of the plan is fair and reasonable, does it apply to all employees, and does it discriminate unfairly;

(d) Whether the plan or proposal is consistent with industry standards;

(e) The due diligence efforts of the debtor including with respect to investigating the need for a plan, analyzing which key employees need to be incentivized, determining what is available and reviewing what is generally applicable in a particular industry; and

(f) Whether the debtor received independent counsel in performing due diligence and in creating and authorizing the incentive compensation.

In re Dana Corp., 358 B.R. 567, 576-77 (Bankr. S.D.N.Y. 2006).

34. For both the KEIP and the Modified CVA Plan, an analysis of the Dana factors establishes that both of the Employee Incentive Programs should be approved as an exercise of the Debtors' sound business judgment. First, there is a reasonable relationship between the plan proposed and the results to be obtained. Achievement of any payouts under plans is tied to company performance and/or stakeholder recoveries in these cases. Therefore, the plans seek to properly incentivize employees to perform at the highest levels during the restructuring as their incentive pay is directly related to the successful reorganization and emergence of the Debtors from chapter 11. Second, the cost of the plans are reasonable in the context of the Debtor's assets, liabilities and earning potential. Third, the scope of the plans are fair and reasonable. The KEIP is to be applied to all top 47 employees who are either essential to the business or the reorganization. The KEIP does not single out only those employees who have direct reporting obligations to the Board, but also seeks to incentivize a larger group of key managers and employees who have been deemed essential to the reorganization or business operations. Fourth, both plans are consistent with industry standards. Fifth, as set forth above, the Debtors undertook significant due diligence efforts in investigating the need for a plan and analyzing plans for comparable companies. Sixth, General Growth received independent advice

from Hewitt in performing due diligence and in developing the Modified CVA and the KEIP so as to ensure that the plans were impartial, fair and consistent with industry standards. Moreover, the Modified CVA and the KEIP are the result of extensive negotiations and, ultimately, an agreement with the Creditors' Committee. The KEIP is necessary to ensure that the participating key employees' long term goals are aligned with those of the Debtors. The KEIP, together with the Modified CVA Plan, provides executives total direct compensation at approximately market median, which is an appropriate competitiveness level for these executives.

35. This and other courts have recognized that programs such as the KEIP can be a highly efficient means of maximizing value for a debtor's estate and, accordingly, have approved similar incentive programs. See In re Chemtura Corp., Case No. 09-11233 (REG) (Bankr. S.D.N.Y. July 28, 2009) (approving debtors' proposed emergence incentive plan and certain prepetition bonus programs); In re Tronox Incorporated, Case No. 09-10156 (ALG) (Bankr. S.D.N.Y. June 3, 2009) (approving key incentive plan for both insiders and non-insiders that was based on achievement of certain reorganization based targets or asset sales); In re Fortunoff Holdings, LLC, Case No. 09-10497 (RDD) (Bankr. S.D.N.Y. Apr. 17, 2009) (approving wind down incentive plan); Dana, 358 B.R. at 584 (approving management incentive plan); In re PlusFunds Group, Inc., No. 06-10402 (JMP) (Bankr. S.D.N.Y. Apr. 19, 2006) (granting debtor's request to implement a sale-related incentive plan for six senior managers, payable upon a successful sale of substantially all of the debtor's assets as a going concern); In re Musicland Holding Corp., Case No. 06-10064 (SMB) (Bankr. S.D.N.Y. Feb. 1, 2006) (approving continuation of management incentive plan); In re Kimball Hill, Inc., No. 08-10095 (SPS) (Bankr. N.D. Ill. Dec. 17, 2008) (approving management incentive plan in connection with the wind-down of the debtors' operations); In re Leiner Health Prods. Inc., No. 08-10446 (KJC)

(Bankr. D. Del. Apr. 14, 2008) (approving asset sale incentive plan for senior management); In re Dura Automotive Systems, Inc., No. 06-11202 (KJC) (Bankr. D. Del. June 28, 2007) (approving sale-related incentive payments to senior management); Dura, (Bankr. D. Del. May 8, 2007) (approving cash payments under the debtors' key management incentive plan for progress made in the debtors' operational restructuring initiatives); In re Riverstone Networks, Inc., No. 06-10110 (CSS) (Bankr. D. Del. Mar. 28, 2006) (approving an employee bonus program providing for cash payments upon successful completion of certain individual and company performance goals); In re Pliant Corp., No. 06-10001 (MFW) (Bankr. D. Del. Mar. 14, 2006) (approving management incentive compensation plan providing for cash awards for achievement of reorganization-related performance goals); In re Nobex Corp., No. 05-20050 (MFW) (Bankr. D. Del. Jan. 19, 2006) (approving sale-related incentive payments to certain employees, with amount of payments tied to sale price achieved). Accordingly, entry of the proposed order is appropriate and in the best interest of these estates.

3. The KEIP Satisfies the Requirements of Section 503(c) of the Bankruptcy Code.

36. Certain of the participants in the KEIP are "insiders" within the meaning of section 101(31) of the Bankruptcy Code and, therefore, the KEIP implicates section 503(c) of the Bankruptcy Code. Section 503(c) of the Bankruptcy Code contains three subsections: section 503(c)(1) of the Bankruptcy Code contains a general prohibition of retention plans, section 503(c)(2) of the Bankruptcy Code places limitations on severance payments and section 503(c)(3) of the Bankruptcy Code sets forth standards governing other transfers to managers. The Debtors submit that neither sections 503(c)(1) nor 503(c)(2) of the Bankruptcy Code are applicable to evaluating the KEIP. In addition, while section 503(c)(3) of the Bankruptcy may be applicable to the KEIP, as described below, that section mirrors section 363(b) of the

Bankruptcy Code. Thus, the Debtors submit that the standard for evaluating the KEIP pursuant to section 503(c)(3) of the Bankruptcy Code is the same as the standard pursuant to section 363(b) of the Bankruptcy Code, as discussed below.

a. The KEIP is Neither a Retention nor Severance Plan.

37. By the statute's plain language, section 503(c)(1) of the Bankruptcy Code pertains solely to retention plans and section 503(c)(2) of the Bankruptcy Code addresses only the requirements for severance plans. Neither provision applies to performance-based incentive plans. See, e.g., In re Nobex, (Bankr. D. Del. Jan. 12, 2006), Hr'g Tr. at 67 (section 503(c)(1) of the Bankruptcy Code does not apply to incentive programs); In re Werner Holding Co., Inc., Case No. 06-10578 (KJC) (Bankr. D. Del. Dec. 20, 2006, Dec. 27, 2006) (ordering relief requested in connection with debtors' incentive plans pursuant to sections 363(b) and 503(c) of the Bankruptcy Code); Musicland (Bankr. S.D.N.Y. Feb. 1, 2006) (debtor continuing to provide incentive based compensation under management incentive plan did not violate section 503(c) of the Bankruptcy Code); Dana, 358 B.R. at 576 (applying section 503(c)(3) of the Bankruptcy Code to evaluate management incentive plan in absence of applicability of sections 503(c)(1) or 501(c)(2) of the Bankruptcy Code); In re Calpine Corp., No. 05-60200 (Bankr. S.D.N.Y. Apr. 26, 2006), Hr'g Tr. at 84-85 (sections 503(c)(1) and 503(c)(2) of the Bankruptcy Code do not apply to incentive programs).

38. The KEIP contains neither retention nor severance components. Rather, the KEIP provides only for targeted incentive payments. These incentive payments are based upon the Plan Recovery Metrics and the timing of emergence from chapter 11. Furthermore, there is no guarantee that participating key employees will receive any payment pursuant to the KEIP. If the Debtors do not achieve the targets, then no payments are made under the KEIP.

Therefore, the Debtors respectfully submit that sections 503(c)(1) and 503(c)(2) of the Bankruptcy Code do not apply to this Motion

b. The KEIP Meets the Requirements of Section 503(c)(3) of the Bankruptcy Code.

39. Section 503(c)(3) of the Bankruptcy Code does not preclude the KEIP. This "catch all" provision of the 2005 amendments to compensation procedures in chapter 11 cases prohibits transfers made to officers, managers, consultants and others that are both outside the ordinary course of business and not justified by the facts and circumstances of the case. 4 COLLIER ON BANKRUPTCY ¶ 503.17 (15th ed. rev. 2009). Courts that have analyzed the prohibition on "other transfers" to certain categories of employees set forth in section 503(c)(3) of the Bankruptcy Code have applied the same standard under that section as they do under section 363(b) of the Bankruptcy Code: namely, whether the decision to use estate property outside of the ordinary course of business is based on the debtor's business judgment. See Dana, 358 B.R. at 576, citing Nobex, 2006 Bankr. LEXIS 417 (Bankr. D. Del. Jan. 19, 2006) (the test for evaluating a compensation proposal under section 503(c)(3) of the Bankruptcy Code is the "sound business judgment" test); see also Nobex, (Bankr. D. Del. Jan. 12, 2006), Hr'g Tr. at 86-87 (concluding that the standard under section 503(c)(3) of the Bankruptcy Code was "quite frankly nothing more than a reiteration of the standard under [section] 363 [of the Bankruptcy Code]…the business judgment of the debtor").

40. Implementing the KEIP has a sound business purpose: (a) to maximize value for all parties in interest in these chapter 11 cases and (b) to motivate the participating employees through the remainder of these chapter 11 cases by rewarding them for outstanding performance related directly to EBITDA, creditor recoveries and the timing of emerging from chapter 11. Thus, the KEIP satisfies section 503(c)(3) of the Bankruptcy Code because, as

discussed above, the implementation of the KEIP is a proper exercise of the Debtors' business judgment and is justified by the facts and circumstances of these chapter 11 cases.

B. The Court Should Waive the Stay Period Required By Rule 6004(h) of the Federal Rules of Bankruptcy Procedure

41. Pursuant to Rule 6004(h) of the Bankruptcy Rules, unless the court orders otherwise, all orders authorizing the use of property pursuant to section 363 of the Bankruptcy Code are automatically stayed for 10 days after entry of the order. Fed. R. Bankr. P. 6004(h). In light of the present circumstances, waiver of Rule 6004(h) is appropriate.

42. Importantly, the Debtors employees have been waiting for implementation of the Modified CVA Plan since January. Any further delay will decrease employee morale and could result in underperformance. Accordingly, the Debtors respectfully request that any order approving the Motion should be effective immediately by providing that the 10-day stay under Bankruptcy Rules 6004(h) is waived.

VII.

MOTION PRACTICE

43. This Motion includes citations to the applicable rules and statutory authorities upon which the relief requested herein is predicated, and a discussion of their application to this Motion. Accordingly, the Debtors submit that this Motion satisfies Rule 9013-1(a) of the Local Bankruptcy Rules for the Southern District of New York.

VIII.

NOTICE

44. No trustee or examiner has been appointed in these chapter 11 cases. The Debtors have served notice of this Motion on: (i) the Office of the U.S. Trustee, Attn: Greg M. Zipes; (ii) Attorneys for the Creditors' Committee, Akin Gump Strauss Hauer & Feld LLP, Attn:

Michael S. Stamer and James Savin; (iii) Proposed Attorneys for the Equity Committee, Saul Ewing LLP, Attn: John Jerome; and (iv) parties entitled to receive notice in these chapter 11 cases pursuant to Bankruptcy Rule 2002. The Debtors submit that no other or further notice need be provided.

WHEREFORE the Debtors respectfully request that the Court grant the relief requested herein and such other and further relief as it deems just and proper.

Dated: October 2, 2009
New York, New York

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Debtors and Debtors in Possession

Exhibit A

Proposed Order

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	Chapter 11 Case No.
GENERAL GROWTH PROPERTIES, INC., et al.,	:	09 – 11977 (ALG)
	:	(Jointly Administered)
Debtors.	:	

ORDER AUTHORIZING DEBTORS, PURSUANT TO SECTIONS 105(a), 363, AND 503(c)(3) OF THE BANKRUPTCY CODE, TO (I) AMEND AND CONTINUE THEIR CASH VALUE ADDED PLAN AND (II) IMPLEMENT A KEY EMPLOYEE INCENTIVE PLAN

Upon the motion (the "**Motion**")[1] of South Street Seaport Limited Partnership, its parent, General Growth Properties, Inc. ("**GGP**"), and their debtor affiliates, as debtors and debtors in possession (collectively, the "**Debtors**") for entry of an order (the "**Order**"), pursuant to Sections 105(a), 363,, and 503(c)(3) of the Bankruptcy Code, for an Order Approving (I) Amendment and Continuation of the Debtors' Cash Value Added Plan and (II) Implementation of a Key Employee Incentive Plan; and it appearing that the relief requested is in the best interests of General Growth, these estates and all parties in interest; the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); venue being proper before this court pursuant to 28 U.S.C. §§ 1408 and 1409; notice of the Motion having been adequate and appropriate under the circumstances; and after due deliberation and sufficient cause appearing therefor, it is hereby ORDERED:

1. The Motion is granted to the extent provided herein;

[1] Capitalized terms used but not defined herein shall have the meaning ascribed to them in the Motion.

2. The Debtors' Modified CVA Plan and KEIP, each as more fully described in the Motion and all supporting documents, are approved in all respects;

3. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

4. Notwithstanding the possible applicability of Bankruptcy Rules 6004(h), 7062 and 9014 or otherwise, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

5. The Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

New York, New York
Date: ______________, 2009

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THE HONORABLE ALLAN L. GROPPER
UNITED STATES BANKRUPTCY JUDGE