

ORIGINAL

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

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<i>In re</i>	:	<b>Chapter 11</b>
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<b>MAGNA ENTERTAINMENT CORP., et al.,</b>	:	<b>Case No. 09-10720 (MFW)</b>
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	:	
<b>Debtors.</b>	:	<b>Jointly Administered</b>
	:	<b>Re: Docket No. 1399</b>
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**ORDER AUTHORIZING THE DEBTORS,  
PURSUANT TO SECTIONS 105(A), 363(B), AND 503(C)(3) OF THE  
BANKRUPTCY CODE, TO IMPLEMENT A KEY EMPLOYEE INCENTIVE PLAN**

Upon the motion, dated October 30, 2009 (the "Motion"),<sup>1</sup> of Magna Entertainment Corp. ("Magna Entertainment") and its affiliated debtors, as debtors in possession (collectively, the "Debtors"),<sup>2</sup> for an order, pursuant to sections 105(a), 363(b), and 503(c)(3) of the Bankruptcy Code, approving the implementation of the Key Employee Incentive Plan; and the Bankruptcy Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before the

<sup>1</sup> All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.

<sup>2</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, if applicable, are: (i) Magna Entertainment Corp., 8374; (ii) The Santa Anita Companies, Inc., 6180; (iii) Los Angeles Turf Club, Incorporated, 6200; (iv) Pacific Racing Association, 5367; (v) MEC Land Holdings (California) Inc., 7410; (vi) Gulfstream Park Racing Association Inc., 6292; (vii) GPRA Thoroughbred Training Center, Inc., 2326; (viii) MEC Dixon, Inc., 7005; (ix) MEC Holdings (USA) Inc., 8494; (x) Sunshine Meadows Racing, Inc., 4288; (xi) Thistledown, Inc., 5742; (xii) MEC Maryland Investments, Inc., 4637; (xiii) 30000 Maryland Investments LLC, 1704, (xiv) Remington Park, Inc., 2024; (xv) GPRA Commercial Enterprises Inc., 6156; (xvi) Pimlico Racing Association, Inc., 4527; (xvii) The Maryland Jockey Club of Baltimore City, Inc., 3840; (xviii) Laurel Racing Association Limited Partnership, 0504; (xix) Laurel Racing Assoc., Inc., 0505; (xx) Prince George's Racing, Inc., 6493; (xxi) Southern Maryland Racing, Inc., 9850; (xxii) Southern Maryland Agricultural Association, 9661; (xxiii) Maryland Jockey Club, Inc., 3124; (xxiv) AmTote International, Inc., 1143; (xxv) MEC Pennsylvania Racing Services, Inc., 9924; and (xxvi) MEC Lone Star, LP, 0489.



Bankruptcy Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to the parties listed therein, and it appearing that no other or further notice need be provided; and the Bankruptcy Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and it appearing that the relief requested in the Motion is in the best interests of the Debtors, their estates and creditors; and upon all of the proceedings had before the Bankruptcy Court and after due deliberation and sufficient cause appearing therefor,

**IT IS HEREBY ORDERED THAT:**

1. The Motion is granted.
2. The Key Employee Incentive Plan, attached as Exhibit "A" to the Motion, is approved in all respects. (as redacted)
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. The Bankruptcy Court shall retain jurisdiction with respect to all matters arising from or related to this Order.

Dated: November 18, 2009  
Wilmington, Delaware

  
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THE HONORABLE MARY F. WALRATH  
UNITED STATES BANKRUPTCY JUDGE

**MAGNA ENTERTAINMENT CORP.  
KEY EMPLOYEE INCENTIVE PLAN**

**ARTICLE 1. Establishment and Purpose**

**1.1 Establishment.** Magna Entertainment Corp., (the “**Company**”) hereby adopts the Magna Entertainment Corp. Key Employee Incentive Plan (the “**Plan**”), effective as of October 30, 2009 (the “**Effective Date**”), subject to Bankruptcy Court (as defined in Article 2 hereof) approval.

**1.2 Purpose.** The purpose of the Plan is to provide incentive compensation to five key employees of the Company (the “**Participants**”) upon the achievement of certain goals deemed by the Company to be critical in maximizing the value of the Company and its assets. This Plan is designed to induce the Participants to increase their contribution to the Company, with a focus on consummation of a sale of the Assets (as defined in Article 2 hereof) and confirmation of a Plan of Reorganization (as defined in Article 2 hereof) which reorganizes substantially all of the remaining assets of the Debtors. The Participants have been required to undertake significant responsibilities related to the sale of the Assets. The continued efforts required of the Participants to achieve the goals of the Plan will extend well beyond their ordinary course responsibilities and their entitlement to payments under the Plan will occur only upon successful achievement of such goals.

**ARTICLE 2. Definitions<sup>1</sup>**

**2.1** “**Assets**” means the Pool III Assets.

**2.2** “**Asset Sale**” means consummation of the sale of each of the Pool III Assets.

**2.3** “**Asset Sale Award**” shall mean that award payable upon achievement of the Asset Sale Condition during each Second Performance Period, as applicable for each Pool III Asset.

**2.4** “**Awards**” means, collectively, the Proceeds Condition Award and the Asset Sale Award.

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<sup>1</sup> Defined terms not otherwise defined herein shall have the meanings ascribed to such terms in that certain Second Amended and Restated Debtor-in-Possession Credit Agreement (the “DIP Agreement”), dated as of October 9, 2009, by and among the Company and MID Islandi Sf. In the event that the DIP Agreement is amended or the date by which the Proceeds Condition must be satisfied is extended therein, the First Performance Period, as defined herein, shall be similarly extended.

↳ upon the agreement of MID Islandi Sf,

**2.5 “Bankruptcy Code”** means chapter 11 of title 11 of the United States Code, as amended from time to time.

**2.6 “Bankruptcy Court”** means the United States Bankruptcy Court for the District of Delaware.

**2.7 “Base Salary”** means a Participant’s annual rate of base salary or wages (excluding bonuses, contributions to or benefits under an employee benefit plan, fringe benefits, and other such forms of compensation) in effect as of the dates payments under the Plan are made or the last day of employment if a Participant’s employment is terminated and such Participant is entitled to an Award pursuant to Article 6 hereof. Base Salary shall include any elective contributions that are paid through a reduction in a Participant’s base salary and which are not includible in the Participant’s gross income under Sections 125 or 402(e)(3) of the Code.

**2.8 “Beneficiary”** means the beneficiary or beneficiaries designated in accordance with Article 7 hereof to receive the amount, if any, payable under the Plan upon the death of a Participant.

**2.9 “Board”** means the Board of Directors of Magna Entertainment Corp.

**2.10 “Cause”** means (a) the conviction of the Participant for commission of a felony or misdemeanor under Federal law or the law of the state in which such action occurred, (b) dishonesty in the course of fulfilling the Participant’s employment duties, or (c) willful and deliberate failure on the part of the Participant to perform his employment duties in any material respect, except that in the case of a Participant who has an employment agreement with the Company, “Cause” shall be determined in accordance with such agreement.

**2.11 “Code”** means the United States Internal Revenue Code of 1986, as amended from time to time, and any successor thereto.

**2.12 “Debtors”** mean the following entities: Magna Entertainment Corp., The Santa Anita Companies, Inc., Los Angeles Turf Club, Incorporated, Pacific Racing Association, MEC Land Holdings (California) Inc., Gulfstream Park Racing Association Inc., GPRA Thoroughbred Training Center, Inc., MEC Dixon, Inc., MEC Holdings (USA) Inc., Sunshine Meadows Racing, Inc., Thistledown, Inc., MEC Maryland Investments, Inc., 30000 Maryland Investments LLC, Remington Park, Inc., GPRA Commercial Enterprises Inc., Pimlico Racing Association, Inc., The Maryland Jockey Club of Baltimore City, Inc., Laurel Racing Association Limited Partnership, Laurel Racing Assoc., Inc., Prince George’s Racing, Inc., Southern Maryland Racing, Inc., Southern Maryland Agricultural Association, Maryland Jockey Club, Inc., AmTote International, Inc., MEC Pennsylvania Racing Services, Inc., and MEC Lone Star, LP.

**2.13 “Disability”** means complete and permanent inability by reason of illness or accident to perform the duties of the occupation for which a Participant was employed

by an Employer when such disability commenced. All determinations as to the date and extent of disability of a Participant shall be made by the Committee in its sole discretion, upon the basis of such evidence, including independent medical reports and data, as the Committee deems necessary and desirable, and all such determinations of the Committee shall be final.

**2.14 “Exchange Act”** means the Securities Exchange Act of 1934, as amended from time to time, and any successor thereto.

**2.15 “First Performance Period”** means the period between the Effective Date of the Plan and November 30, 2009.

**2.16 “Participants”** shall have the meaning set forth in Article 4 hereof.

**2.17 “Performance Objectives”** shall have the meaning set forth in Section 5.1 hereof.

**2.18 “Person”** means an individual, a partnership, a corporation, a limited liability company, an association, a joint stock company, a trust, a joint venture, an unincorporated organization or a governmental entity (or any department, agency, or political subdivision thereof).

**2.19 “Plan Confirmation”** means confirmation of a Chapter 11 Plan by the Bankruptcy Court in accordance with section 1129 of the Bankruptcy Code.

**2.20 “Proceeds Condition Award”** shall mean that award payable upon achievement of the Proceeds Condition during the First Performance Period.

**2.21 “Chapter 11 Plan”** means a plan permitted pursuant to chapter 11 of the Bankruptcy Code.

**2.22 “Second Performance Periods”** means each period between the Effective Date of the Plan and each Asset Sale of the Pool III Assets.

**2.23 “Target Incentive Award”** shall have the meaning set forth in Section 5.2 hereof.

**2.24 “Third Performance Period”** means the period between the Effective Date of the Plan and March 31, 2010.

### **ARTICLE 3. Administration**

The Plan shall be administered by the Board. The Board's powers and authorities include, but are not limited to (a) approving the Awards granted under the Plan, (b) interpreting the Plan's provisions, (c) determining whether and to what degree the Performance Objectives have been achieved, and (d) administering the Plan in a manner consistent with its purpose. All actions taken and all interpretations and determinations

made by the Board shall be final and binding upon the Participants, the Company, and all other interested individuals.

#### **ARTICLE 4. Eligibility and Participation**

The Participants include Blake Tohana, William G. Ford, Scott Fischer, S. Jane Lynn, and Mary Lyn Seymour. Each Participant is eligible to participate in the Performance Objectives. The Board shall be authorized to designate additional employees of the Debtors to become Participants in the Plan from time to time, including individuals who are or become employees of the Debtors following the Effective Date of this Plan who are deemed by the Board to be essential to the Company's operations or integral to the bankruptcy reorganization process.

#### **ARTICLE 5. Awards**

**5.1 Performance Objectives.** The Performance Objectives shall be achievement of (a) the Proceeds Condition during the First Performance Period, (b) each of the Asset Sales during the Second Performance Periods (c) and all of the Asset Sales during the Third Performance Period. The Performance Objectives have been approved by the Board.

**5.2 Allocation of Target Incentive Award.** Upon adoption of the Plan, the Target Incentive Award for each Participant shall be fifty (50%) of each Participant's Base Salary at the end of each performance period as follows: one-third (1/3) of the Target Incentive Award shall be allocated to the Proceeds Condition Award, and two-third (2/3) to the Asset Sale Awards, in the aggregate, and each of the Awards shall be evaluated independently. The Board may, in its sole discretion, increase or decrease the Target Incentive Award of any Participant whose position, duties, and/or responsibilities with the Company materially changes following the Effective Date in an amount consistent with such change in position, duties, and/or responsibilities; provided, however, that the Target Incentive Awards, in the aggregate, shall not exceed \$600,000.00.

#### **5.3 Proceeds Condition Award.**

(a) **Distribution of the Proceeds Condition Award.** The Proceeds Condition Award shall be paid in cash within thirty (30) days following the end of the First Performance Period if the Proceeds Condition is achieved during the First Performance Period.

(b) **Condition for the Proceeds Condition Award.** Each Participant shall be entitled to receive the Proceeds Condition Award, if any, if the Participant is employed by the Company until the end of the First Performance Period.

#### **5.4 Asset Sale Award.**

(a) **Distribution of the Asset Sale Award.** The aggregate Asset Sale Award shall be equally allocated to the Asset Sale of each of the Pool III Assets and such portion of the Asset Sale Award will be paid in cash within thirty (30) days following (1) the end of the applicable Second Performance Period during which the Asset Sale was achieved or (2) if applicable, the Third Performance Period.

(b) **Condition for Asset Sale Award.** Each Participant shall be entitled to receive the Asset Sale Award if the Participant is employed by the Company upon the later to occur of (1) when a Sale Order is entered for the applicable Pool III Asset and (2) Plan Confirmation and (i) if the Asset Sale meets the following target amount: (w) \$ [REDACTED] for the Maryland Jockey Club, (x) \$ [REDACTED] for Santa Anita Park, (y) \$ [REDACTED] for Gulfstream Park, and (z) \$ [REDACTED] for Golden Gate Fields; or (ii) upon consultation with the Creditors' Committee, if Sale Orders for all of the Pool III have been entered prior to the expiration of the Third Performance Period and, in the aggregate, the Asset Sales are equal to or greater than \$ [REDACTED]. For avoidance of doubt, each Participant shall be entitled to receive the Asset Sale Award even if such Participant is not employed by the Company at the expiration of the applicable Second Performance Period.

#### **ARTICLE 6. Involuntary Termination**

If a Participant's employment is terminated by the Company without Cause, or due to death or disability of the Participant prior to the end of the Third Performance Period, such Participant shall be entitled to receive the Target Incentive Award earned to such date, plus, in the event of Plan Confirmation on or prior to March 31, 2010, the Plan Confirmation Award allocable thereto.

#### **ARTICLE 7. Designation of Beneficiaries**

**7.1 Designation and Change of Designation.** Each Participant may file with the Company a written designation of one or more persons as the Beneficiary who shall be entitled to receive the Awards (if any) payable under the Plan upon the Participant's death. A Participant may, from time to time, revoke or change a Beneficiary designation without the consent of any prior Beneficiary by filing a new designation with the Company. The last designation received by the Company shall be controlling; provided, however, that no designation, or change or revocation thereof, shall be effective unless received by the Company prior to the Participant's death.

**7.2 Absence of Valid Designation.** If no Beneficiary designation is in effect at the time of a Participant's death, if no designated Beneficiary survives the Participant,

or if a designation conflicts with law, then the Participant's estate shall be deemed to have been designated by the Participant and shall receive the Awards (if any) payable under the Plan upon the Participant's death. If the Board is in doubt as to the right of any person to receive such amount, the Board may retain such amount, without liability for any interest thereon, until the rights thereto are determined, or the Board may pay such amount into any court of appropriate jurisdiction, and such payment shall be a complete discharge of the liability under the Plan.

## **ARTICLE 8. Duration; Amendment, Suspension, and Termination**

**8.1 Duration of Plan.** The Plan shall terminate until the later of Plan Confirmation and the expiration of the Second Performance Period of the last Asset Sale for the Pool III Assets.

**8.2 Amendment, Suspension, and Termination of Plan.** The Board, upon consultation with the Creditors' Committee, reserves the right at any time to amend, suspend, or terminate the Plan in whole or in part and for any reason and without the consent of any of the Participants or any Beneficiary; provided, however, that any such amendment that materially increases benefits in the aggregate under the Plan shall be subject to the approval of the Bankruptcy Court.

## **ARTICLE 9. General Limitations and Provisions**

**9.1 Tax Withholding.** The Company shall have the right to deduct from all payments under the Plan an amount sufficient to satisfy all withholding tax requirements.

**9.2 No Right, Title, or Interest in the Debtors' Assets.** The Participants shall have no right, title, or interest whatsoever in or to any investments which the Debtors may make to aid it in meeting its obligations under the Plan. Nothing contained in the Plan, and no action taken pursuant to its provisions, shall create or be construed to create a trust of any kind, or a fiduciary relationship between the Debtors and any of the Participants or any other person. To the extent that any person acquires a right to receive payments from the Company under the Plan, such right shall be no greater than the right of an unsecured general creditor of the Company. All payments to be made hereunder shall be paid from the general funds of the Company and no special or separate fund shall be established and no segregation of assets shall be made to assure payment of such amounts.

**9.3 No Right to Continued Employment.** Participation in this Plan shall impose no obligation on the Debtors to continue the service of any Participant and shall not lessen or affect any right that the Debtors may have to terminate the service of such Participant. No Participant or other person shall have any claim to be granted any Award, and there is no obligation for uniformity of treatment of the Participants, or holders or beneficiaries of Awards (whether or not such Participants are similarly situated).



**9.4 No Alienation of Benefits.** Except insofar as may otherwise be required by law, no amount payable at any time under the Plan shall be subject in any manner to alienation by anticipation, sale, transfer, assignment, bankruptcy, pledge, attachment, charge, or encumbrance of any kind nor in any manner be subject to the debts or liabilities of any person, and any attempt to so alienate or subject any such amount, whether presently or thereafter payable, shall be void and of no effect whatsoever. If any person shall attempt to, or shall, alienate, sell, transfer, assign, pledge, attach, charge, or otherwise encumber any amount payable under the Plan, or any part thereof, or if by reason of such person's bankruptcy or other event happening at any such time such amount would be made subject to such person's debts or liabilities or would otherwise not inure to the benefit of such person, then the Board, if it so elects, may direct that such amount be withheld and that such amount or any part thereof be paid or applied to or for the benefit of such person, such person's spouse, child or other dependents, or any of them, in such manner and proportion as the Board may deem proper.

**9.5 Payments to Person Other Than Employee.** If the Board shall determine that any of the Participants is unable to care for such person's affairs because of illness or accident, or if such person is a minor, or has died, then any payment due such person or such person's estate (unless a prior claim therefor has been made by a duly appointed legal representative), may, if the Board so directs the Company, be paid to such person's spouse, child or other dependent, relative, an institution maintaining or having custody of such person, or any other person deemed by the Board to be a proper recipient on behalf of such person otherwise entitled to payment. Any such payment shall be a complete discharge of the liability of the Board and the Debtors therefor.

**9.6 Severability.** In the event that any provision of the Plan shall be held illegal or invalid for any reason, the illegality or invalidity shall not affect the remaining parts of the Plan, and the Plan shall be construed and enforced as if the illegal or invalid provision had not been included.

**9.7 Unfunded Plan; Governing Law.** The Plan is intended to constitute an unfunded bonus program, and all rights thereunder shall be governed by and construed in accordance with the laws of Delaware, without regard to the conflicts of law principles of such State.

**9.8 Headings.** Headings to sections in this Plan are for the convenience of the parties only and are not intended to be part of or to affect the meaning or interpretation hereof.

**9.9 Gender and Number.** Except where expressly required by the context of the Plan, any masculine term used herein also shall include the feminine, the plural shall include the singular, and the singular shall include the plural.