

1108 of the Bankruptcy Code. Contemporaneously herewith, the Debtors requested an order for the joint administration of the Reorganization Cases pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules,” and each rule thereunder, a “Bankruptcy Rule”).

3. In order to enable the Debtors to minimize the adverse effects of the commencement of the Reorganization Cases on their businesses, the Debtors have requested various types of relief in their “first day” motions and applications (individually, a “First Day Motion” and, collectively, the “First Day Motions”). The First Day Motions seek procedural relief and relief intended to allow the Debtors (a) to retain the professionals needed to guide them through the Reorganization Cases, and (b) to perform and meet those obligations necessary to fulfill their duties as debtors in possession in the Reorganization Cases. I am familiar with the contents of each First Day Motion (including the exhibits thereto), and I believe that the relief sought in each First Day Motion (a) is necessary to enable the Debtors to operate in chapter 11 with minimum disruption or loss of productivity or value, (b) constitutes a critical element in achieving a successful reorganization of the Debtors, and (c) best serves the Debtors’ estates and creditors’ interests.

4. I submit this Affidavit in support of the First Day Motions.² Except as otherwise indicated, all facts set forth in this Affidavit are based on my personal knowledge, upon information supplied to me by other members of the Debtors’ management and/or the Debtors’ professionals, upon information learned from my review of relevant documents or upon my opinion based upon my experience and knowledge of the Debtors’ operations and financial

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

condition. If I were called upon to testify, I could and would testify competently to the facts set forth herein. I am authorized to submit this Affidavit.

5. Part I of this Affidavit describes the Debtors' business and the circumstances surrounding the commencement of the Reorganization Cases. Part II sets forth the relevant facts in support of the First Day Motions.

I. DESCRIPTION OF DEBTORS' BUSINESS AND CIRCUMSTANCES SURROUNDING THE FILING OF THEIR REORGANIZATION CASES

6. Boyds is a leading designer, marketer and distributor of high-quality hand-crafted collectibles, gift, and other specialty products. Boyds was founded in 1979 and is the parent company, holding direct or indirect ownership interests in eight (8) domestic subsidiaries and four (4) foreign subsidiaries.³ From the time of Boyds' initial public offering in March 1999 until October 10, 2005, Boyds' was listed on the New York Stock Exchange ("NYSE") under the symbol "FOB."⁴

7. Boyds operates in two segments that consist of a wholesale gift business and a retail gift/entertainment business. Boyds' wholesale business designs, imports, and distributes plush animals, resin figurines and other specialty giftware products (ranging from home décor, stationary, miniature furniture, wooden accessories and glasses, through cast iron products and resin accessories) via a global network of independent retailers and distributors. Boyds imports substantially all of its products from manufacturers in China through buying agencies. Boyds' retail business sells plush animals, resin figurines and specialty giftware products and provides a

³ None of the foreign subsidiaries are Debtors.

⁴ On October 10, 2005, the NYSE suspended trading of Boyds' public shares. The shares are currently trading on an over-the-counter market under the symbol "BOYD".

unique interactive entertainment experience at its Gettysburg, Pennsylvania and Pigeon Forge, Tennessee retail stores. In addition, Boyds continually evaluates new product ideas and regularly introduces new product lines that maintain Boyds' whimsical and "Folksy with Attitude" themes. New introductions during 2004 included the *NASCAR*TM, *Naughty & Nice*TM, *Bear and Friends*TM, and *Basketbearies*TM lines.

8. Boyds sells its products through an extensive national network of approximately 14,000 accounts comprised of independent gift and collectibles retailers, premier department stores, selected catalogue retailers and other electronic and retail channels. In September 2002, Boyds opened *Boyds Bear Country*TM - *Gettysburg*, a 130,000 square foot retail store in Gettysburg, Pennsylvania. In November 2004, Boyds opened its second 130,000 square foot retail store in Pigeon Forge, Tennessee. In addition to its two retail locations, Boyds leases approximately 233,000 square feet of headquarters, distribution and warehouse space in McSherrystown, Pennsylvania, and has entered into land leases for locations in Atlanta, Georgia, Myrtle Beach, South Carolina, and Branson, Missouri.

9. Boyds' workforce currently consists of approximately 491 employees, of whom approximately 340 are full-time hourly employees and approximately 151 are part-time employees. Of the full-time employees, approximately 201 are hourly employees and approximately 139 are salaried employees. None of these employees are represented by labor unions.

Boyds' Financial Performance And Capital Structure

10. As of the Commencement Date, Boyds had approximately \$1 million of cash. As set forth in the Form 10-Q filed by Boyds on August 12, 2005, as of June 30, 2005, the Debtors' consolidated books and records reflected assets totaling approximately \$66.9 million and

liabilities totaling approximately \$101.7 million. For the three months ended June 30, 2005, Boyds reported revenues of approximately \$17.1 million and net losses of approximately \$101.3 million.

11. As set forth in greater detail below, the significant indebtedness of Boyds consists of: (i) approximately \$56.5 million in aggregate principal amount under the Pre-Petition Credit Agreement (as defined below) and (ii) approximately \$34.4 million in aggregate principal amount pursuant to the Senior Subordinated Notes due 2008.⁵ Historically, Boyds has obtained cash from operations, borrowings under credit facilities, and issuance of debt and equity securities.

(i) **Pre-Petition Credit Agreement**

12. On February 23, 2005, Boyds entered into a senior secured credit agreement (the “Pre-Petition Credit Agreement”) among Boyds, as borrower; certain affiliates of Farallon Capital Management, LLC and Canyon Capital Advisors LLC, as lenders; Fleet National Bank, as letter of credit issuer; and Bank of America, N.A., as administrative agent. D.E. Shaw Laminar Portfolios, L.L.C. (“D.E. Shaw” and, collectively with the other lenders under the Pre-Petition Credit Agreement, the “Pre-Petition Lenders”) subsequently became a lender under the Pre-Petition Credit Agreement pursuant to certain assignment agreements. The Pre-Petition Credit Agreement matures on February 15, 2008.

13. The Pre-Petition Credit Agreement contains a revolving credit facility (the “Pre-Petition Revolver”) with capacity of up to \$20 million and a Pre-Petition Term Loan of \$45

⁵ The summaries contained herein are qualified in their entirety by reference to the relevant debt documents. Nothing herein shall be deemed an admission as to the amount, terms, enforceability, priority, characterization or avoidability of any of Boyds’ obligations under any of the relevant transaction documents or of any liens granted to secured parties in connection therewith, and all of the rights of Boyds with respect thereto are, in each case, reserved.

million (the “Pre-Petition Term Loan”). The Pre-Petition Revolver contains a \$10 million sub-limit for letters of credit. As of June 30, 2005, the weighted average interest rates in effect for the Pre-Petition Term Loan and the Pre-Petition Revolver was 14.27% and 15.25%, respectively. The Pre-Petition Credit Agreement is secured by substantially all of the assets of Boyds and its existing and future direct and indirect subsidiaries and is guaranteed by all of Boyds’ existing and future direct and indirect subsidiaries, subject to certain exceptions. As of the Commencement Date, Boyds had approximately \$58.87 million in outstanding principal, interest and/or fees under the Pre-Petition Credit Agreement. In addition, as of the Commencement Date, Boyds had letters of credit outstanding under the Pre-Petition Credit Agreement amounting to \$1.07 million.

14. The Pre-Petition Credit Agreement contains financial covenants and covenants that restrict Boyds’ ability to incur additional indebtedness, make capital expenditures, pay dividends on and redeem capital stock, make other restricted payments, make investments, sell assets and enter into consolidations, mergers and transfers of all or substantially all of its assets. The Pre-Petition Credit Agreement requires no scheduled principal payments until the entire outstanding amount of debt is required to be repaid at maturity in February 2008.

15. During the third quarter of 2005, as a result of Boyds’ inability to comply with certain financial covenants under the Pre-Petition Credit Agreement, events of default occurred thereunder and were continuing as of the Commencement Date. On October 3, 2005, in connection with such defaults, Boyds entered into a waiver agreement with the Pre-Petition Lenders.

(ii) **The Senior Subordinated Notes due 2008**

16. In connection with a recapitalization in 1998, Boyds issued \$165 million of 9% Senior Subordinated Notes due 2008 (the “Notes”). The repayment of outstanding amounts under the Notes is secured by liens upon and security interests in Boyds’ equity interests in its subsidiaries, as well as other assets. Boyds has since paid down \$130.6 million, leaving approximately \$34.4 million in aggregate principal amount outstanding as of the Commencement Date.

(iii) **Capital Stock**

17. Boyds has one class of common stock with a par value of \$0.0001 per share. As of July 25, 2005, Boyds had 59,008,133 shares of common stock outstanding, with approximately 1900 registered holders.

Events Leading To The Commencement Of The Reorganization Cases

18. During 2001, Boyds’ financial results began to deteriorate significantly as a consequence of industry-wide and company-specific factors. Over a period of several years, retail sales of plush toys shifted from small independent retailers, in which Boyds had a leading presence, to large regional and national retailers and mass merchandisers, in which Boyds did not have a meaningful presence. Moreover, the large retailers competed with Boyds’ product line at lower price points. This shift in distribution channels coincided with a general cooling of consumer demand for “collectible” products. As a result, the retail sales of Boyds and its direct industry competitors were negatively affected.

19. In response, during 2004 Boyds began to implement various operational restructuring and cost reduction programs. Such programs focused on (i) redirecting sales efforts towards larger regional and national channels, (ii) developing products specifically targeted to

these channels, (iii) selectively expanding distribution to include direct in-home marketing initiatives, and (iv) developing co-branding campaigns with well-recognized brands such as NASCAR, Coca-Cola, Crayola, and M&Ms.

20. Unfortunately, despite the efforts of Boyds' management to reposition the business in response to the changing industry sales dynamics, Boyds was not able to increase sales in the new channels quickly enough to offset the dramatic decline in sales from Boyds' traditional, core-market of independent retailers. In 2004, Boyds saw its net sales decline by approximately 8% while net income declined by approximately 50%. During the twelve-months ending June 30, 2005, Boyds' EBITDA declined to \$0.4 million, as compared to \$88.5 million for the twelve-months ending June 30, 2000. The decline in Boyds' financial performance accelerated dramatically during the three quarters preceding the third quarter of 2005.

21. By the late summer of 2005, Boyds' management recognized that Boyds could no longer comply with the financial covenants in the Pre-Petition Credit Agreement. On August 11, 2005, in connection with Boyds' second quarter earnings release, Boyds disclosed that there was a significant likelihood that Boyds would not be in compliance with one or more financial covenants in the Pre-Petition Credit Agreement as of the end of the third and fourth quarters of 2005. A failure by Boyds to comply with the financial covenants would immediately trigger events of default under the Pre-Petition Credit Agreement, entitling the Pre-Petition Lenders to accelerate the entire principal amount of indebtedness under the Pre-Petition Credit Agreement or impose a two percent increase in the interest rate.

22. Meanwhile, Boyds' share price, which had been declining since February 2005, fell below one dollar. On September 21, 2005, the NYSE notified Boyds that it was not in compliance with the NYSE's newly increased continued listing standards, as Boyds' average

market capitalization and shareholders' equity over a thirty trading-day period had fallen below \$75 million, and the average closing price of Boyds' shares over a consecutive thirty trading-day period had fallen below \$1.00.

23. In late September 2005, Boyds confirmed to the Pre-Petition Lenders that it had breached the financial covenants under the Pre-Petition Credit Agreement, and consequently that defaults had been triggered thereunder and were continuing (the "Existing Defaults"). On October 3, 2005, Boyds entered into a waiver agreement (the "Waiver") with the Pre-Petition Lenders. The Waiver provided for, among other things, the Pre-Petition Lenders' forbearance from exercising contractual remedies under the Pre-Petition Credit Agreement on account of the Existing Defaults through October 16, 2005. Although Boyds did not provide cash to the Pre-Petition Lenders in consideration for the Waiver, the Waiver provided that future interest under the Pre-Petition Credit Agreement would accrue at the two per cent default rate. In addition, notwithstanding the Waiver, Boyds would not be permitted to incur additional indebtedness or issue letters of credit without the Pre-Petition Lenders' consent.

24. By the fall of 2005, it had become apparent that Boyds could not avoid a financial restructuring. From September to the Commencement Date, Boyds engaged in discussions with the Pre-Petition Lenders regarding the terms of a comprehensive plan to restructure Boyds' operations and existing debt obligations. Though Boyds and the Pre-Petition Lenders made substantial progress in these negotiations, as of the Commencement Date, negotiations were still ongoing. The Pre-Petition Lenders were unwilling to extend the Waiver or commit to providing any further liquidity outside of a reorganization. On the Commencement Date, the Debtors, in the exercise of their prudent business judgment, determined that it was in the best interest of all their stakeholders to commence the Reorganization Cases, continue negotiations with the

Debtors' creditor constituencies and consummate a restructuring under the auspices of this Court.

II. THE DEBTORS' FIRST DAY MOTIONS

25. In order to enable the Debtors to minimize the adverse effects of the commencement of the Reorganization Cases on the Debtors' businesses, the Debtors have requested various types of relief in the following First Day Motions, all of which are being filed concurrently with this Affidavit:

- a. Emergency Motion for Entry of an Order Pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure Directing Joint Administration of the Debtors' Reorganization Cases (the "Joint Administration Motion");
- b. Request for Designation as Complex Chapter 11 Bankruptcy Cases (the "Complex Chapter 11 Cases Motion");
- c. Emergency Motion for Expedited Hearings on First Day Motions (the "Expedited Hearing Motion");
- d. Emergency Motion for Interim and Final Orders (I) Authorizing Debtors in Possession to Enter into Post-Petition Credit Agreement Pursuant to Section 364 of the Bankruptcy Code, (II) Authorizing Use of Cash Collateral Pursuant to Section 363 of the Bankruptcy Code, (III) Granting Adequate Protection Pursuant to Sections 363 and 364 of the Bankruptcy Code, (IV) Scheduling Final Hearing Pursuant to Fed. R. Bankr. P. 4001(c) and (V) Approving Notice with Respect Thereto (the "DIP and Cash Collateral Motion");
- e. Emergency Motion for Entry of an Order Pursuant to Sections 105(a), 362(a)(3), and 541 of the Bankruptcy Code (A) Limiting Certain Transfers of Equity Interests of the Debtors and Claims Against the Debtors and (B) Approving Related Notice Procedures (the "Claims Trading Motion");
- f. Emergency Motion for Entry of an Administrative Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses for Professionals and Official Committee Members (the "Interim Compensation Motion");
- g. Emergency Motion for Entry of an Order (A) Authorizing, But Not Requiring, the Debtors to Remit and Pay Sales, Use and Franchise Taxes and Certain Other Government Charges, and (B) Authorizing Banks and

Other Financial Institutions to Receive, Process, Honor, and Pay Checks Issued and Electronic Payment Requests Made Relating to the Foregoing (the “Sales Tax Motion”);

- h. Emergency Motion for Entry of an Order Authorizing the Debtors to Honor Certain Prepetition Obligations to Customers In the Ordinary Course of Business (the “Customer Program Motion”);
- i. Emergency Motion for Entry of an Order (A) Authorizing, But Not Directing, the Debtors to Pay Certain Prepetition (I) Wages, Salaries and Other Compensation; (II) Employee Medical and Similar Benefits; and (III) Reimbursable Employee Expenses; (B) to Make Deductions From Employees’ Paychecks; and (C) Authorizing and Directing Banks and Financial Institutions to Pay All Checks and Electronic Payment Requests Made by the Debtors Relating to the Foregoing (the “Wages Motion”);
- j. Emergency Motion for Entry of an Order Pursuant to Sections 363, 364, 1107 and 1108 of the Bankruptcy Code (A) Authorizing (I) Continued Use of Existing Cash Management System, (II) Maintenance of Existing Bank Accounts, and (III) Continued Use of Existing Business Forms; and (B) Granting Administrative Priority Status to Postpetition Intercompany Claims (the “Cash Management Motion”);
- k. Emergency Motion for Entry of an Order (A) Deeming Utilities Adequately Assured of Future Performance and (B) Establishing a Procedure for Determining Adequate Assurances Pursuant to 11 U.S.C. § 366 (the “Utilities Motion”);
- l. Emergency Motion for Entry of an Order Granting the Debtors Additional Time Within Which to File Schedules and Statements (the “Schedules and Statements Extension Motion”);
- m. Emergency Motion For Order Authorizing the Debtors To (A) Maintain Existing Insurance Policies, (B) Pay Prepetition Insurance Premiums, and (C) Enter Into Postpetition Premium Financing Agreements (the “Insurance Motion”);
- n. Emergency Motion for Entry of an Order (A) Authorizing the Debtors to Pay Prepetition Shipping and Warehousing Charges and (B) Authorizing Financial Institutions to Pay All Checks and Electronic Payment Requests Made by the Debtors Relating to the Foregoing (the “Shipping Motion”);
- o. Application by the Debtors for Entry of an Order Authorizing the Employment and Retention of Kirkland & Ellis LLP as Attorneys for the Debtors and Debtors in Possession (the “Debtors’ Counsel Retention Motion”);

- p. Application for an Order Authorizing the Employment and Retention of Swidler Berlin LLP as Maryland Bankruptcy Co-Counsel to the Debtors and Debtors in Possession (the “Local Counsel Motion”);
- q. Application for Order Authorizing the Debtors to Employ and Retain Houlihan Lokey Howard & Zukin Capital, Inc. as Financial Advisors and Investment Bankers to the Debtors (the “Financial Advisors’ Retention Motion”); and
- r. Application of the Debtors for Entry of an Order Pursuant to 28 U.S.C. § 156(c) Authorizing and Approving the Retention of The Garden City Group, Inc. as Notice, Claims, and Balloting Agent to the Debtors and Debtors in Possession (the “Notice and Claims Agent Retention Motion”).

26. Below is a description of each of the First-Day Motions:

Joint Administration Motion

27. Pursuant to the Joint Administration Motion, the Debtors seek entry of an order under Bankruptcy Rule 1015(b) authorizing the joint administration of the Reorganization Cases, for procedural purposes only, under the case number assigned to The Boyds Collection, Ltd. The Debtors seek this relief in order to optimally and economically administer the Reorganization Cases. Many of the motions, hearings and orders that will arise in the Reorganization Cases will jointly affect each and every Debtor. By jointly administering the Reorganization Cases, the Debtors will be able to reduce fees and costs resulting from the administration of the Reorganization Cases and ease the onerous administrative burden of having to file multiple and duplicative documents.

28. Granting of the Joint Administration Motion is in the best interests of all interested parties, including creditors and equity security holders. First, the rights of the Debtors’ respective creditors will not be adversely affected by the joint administration of the Reorganization Cases because the Joint Administration Motion requests only administrative, not substantive, consolidation of the Debtors’ estates. In fact, all of the Debtors’ creditors will benefit from the reduced costs as a result of such joint administration. Second, this Court also

will be relieved of the burden of entering duplicative orders and maintaining duplicative files. Finally, supervision of the administrative aspects of the Reorganization Cases by the Office of the United States Trustee will be simplified.

Complex Chapter 11 Cases Motion

29. By the Complex Chapter 11 Cases Motion, the Debtors move the Court for entry of an order designating the Reorganization Cases as “Complex Chapter 11 Cases” pursuant to the Order Implementing Procedures for Complex Chapter 11 Cases, effective August 1, 2002. The Debtors believe that the Reorganization Cases qualify as Complex Chapter 11 Cases because, as of the Commencement Date, (i) there is a need for emergency consideration of First Day Motions regarding joint administration, use of cash collateral, restrictions on transfers of certain claims against and equity interests in the Debtors, employee wages and benefits and other issues, (ii) as of June 30, 2005, the Debtors’ consolidated books and records reflected liabilities totaling approximately \$101.7 million, (iii) as of June 30, 2005, the Debtors’ consolidated books and records reflected assets totaling approximately \$66.9 million, (iv) the Debtors have thousands of actual and potential creditors, (v) the lead Debtor, The Boyds Collection, Ltd., is a publicly traded company and (vi) there is a need for simplification of noticing and hearing procedures to reduce delays and expense.

Expedited Hearing Motion

30. The Expedited Hearing Motion requests that the Court hear the emergency First Day Motions (collectively, the “Emergency Motions”) on October 17, 2005.⁶ In the event that

⁶ The Emergency Motions consist of: (i) the Joint Administration Motion; (ii) the Complex Chapter 11 Cases Motion; (iii) the DIP and Cash Collateral Motion; (iv) the Claims Trading Motion; (v) the Sales Tax Motion; (vi) (Continued...)

the Court is not able to hear all of the Emergency Motions on October 17, 2005, the Debtors request that the Court hear the DIP and Cash Collateral Motion and the Claims Trading Motion on October 17, 2005 and hear the remainder of the Emergency Motions at the Court's earliest convenience. Without access to cash collateral on October 17, 2005, the Debtors will be unable to operate their businesses. Absent the granting of the relief requested in the Claims Trading Motion on an interim basis, significant claims against or equity interests in the Debtors could be transferred. Such transfers could prevent the Debtors from utilizing their significant tax assets in connection with a plan of reorganization.. The Debtors believe that the ability to utilize these tax assets will maximize value to creditors in the Reorganization Cases.

The DIP and Cash Collateral Motion

31. The Debtors have an urgent need to obtain the use of cash collateral and debtor in possession financing in order to, among other things, (i) maintain their relationships with their vendors, suppliers and customers, (ii) continue to fund their payroll, (iii) fund capital expenditures and (iv) satisfy their other working capital and operational needs. Absent the granting of the relief requested on a timely basis, the Debtors will be forced to terminate their business operations — to the material detriment of their creditors, employees and other parties in interest. Indeed, the Debtors' access to sufficient liquidity and working capital is vital to the preservation of their going concern value and the Debtors' efforts to successfully reorganize their businesses.

the Customer Program Motion; (vii) the Wages Motion; (viii) the Cash Management Motion; (ix) the Utilities Motion; (x) the Schedules and Statements Motion; and (xi) the Shipping Motion.

32. After speaking with various potential lenders and purchasers, the Debtors and their financial advisors have concluded that the Debtors are unable to obtain post-petition financing on an unsecured basis or on terms superior to the terms set forth in a new debtor in possession financing credit agreement (the “Post-Petition Credit Agreement,” and the lenders thereunder, the “DIP Lenders”). The Debtors and the DIP Lenders have engaged in good faith and extensive arm’s length negotiations that have culminated in the Post-Petition Credit Agreement.

33. The Post-Petition Credit Agreement is an \$8 million revolving facility (the “DIP Facility”) that shall be available to pay fees and expenses associated with the Post-Petition Credit Agreement as well as fund working capital and other general corporate purposes of the Debtors. The DIP Facility will also allow the Debtors to issue letters of credit that are essential for the operation of their businesses.

34. The Debtors propose to provide adequate protection to the Pre-Petition Lenders in the form of valid, binding, enforceable and perfected liens (the “Adequate Protection Liens”) in all Collateral to secure an amount of Pre-Petition Indebtedness (as defined in the Interim Order) equal to the sum of, without duplication, the aggregate diminution, if any, subsequent to the Commencement Date, in the value of the Pre-Petition Collateral, resulting from the priming authorized thereunder, any loss in market value or otherwise. The Adequate Protection Liens are: (i) subject and subordinate only to (a) the Post-Petition Liens, (b) the Carve-Out and (c) any Permitted Liens; and (ii) senior and superior pursuant to section 364(d) of the Bankruptcy Code to the Pre-Petition Liens. The Pre-Petition Lenders have consented to the use of cash collateral pursuant to Section 10.6 of the Pre-Petition Credit Agreement.

Claims Trading Motion

35. By the Claims Trading Motion, the Debtors request that the Court order that certain notice and waiting procedures govern transfers of equity interest in and of, and claims against, the Debtors. Such relief will provide the Debtors with advance notice of certain transfers that may jeopardize their net operating losses (the “NOLs”), and will enable the Debtors, if necessary, to obtain substantive relief from this Court to protect their NOLs. The limited relief requested in the Claims Trading Motion will enable Debtors to closely monitor certain transfers of equity and claims, and ensure that the Debtors are in a position to act expeditiously to prevent such transfers if necessary, and thus allow the Debtors to protect and preserve their NOLs under Section 382 of the Internal Revenue Code (the “IRC”).

36. The Debtors have had significant operating losses in the recent past. Since calendar tax year 2001, the Debtors have not incurred significant federal income tax liability and in fact have incurred substantial net NOLs. Such NOLs are an extremely valuable asset of the Debtors’ estates because under the IRC, the Debtors can carry-forward their NOLs to offset their future taxable income for up to twenty (20) taxable years and thereby reduce their future aggregate tax obligations. The NOLs are currently estimated to be approximately \$409 million, which, based on the 38.7% corporate tax rate now in effect, represent approximately \$158 million in potential tax savings to be utilized in future years. These tax savings — and the accompanying increase in the Debtors’ cash flow — will greatly facilitate the Debtors’ successful reorganization.

37. In order to preserve the Debtors’ ability to utilize the NOLs in accordance with Section 382 of the IRC, the Debtors propose to implement certain trading-related notice and hearing procedures and restrictions, each of which have been very narrowly tailored to preserve

the NOLs. Specifically, the procedures and restrictions will apply only to (i) those persons who own (or would own as a result of the proposed transfer) equity in the Debtors of 4.5% of total shares outstanding or more and (ii) those holders who own (or would own as a result of the proposed transfer) claims against the Debtors with an aggregate principal amount of \$6,000,000 or more. Thus, the Debtors only seek to impose the notice and hearing procedures on transfers of equity interests and claims by or to a relatively small group of persons. The proposed notice and hearing procedures provide that significant claimholders and equity holders (including entities that would become significant claimholders or equity holders after a proposed purchase transaction) must give the Debtors 30 days' notice of a proposed transfer of such claims or equity interest before such holders could move the Court for relief from the automatic stay should the Debtors object to such transaction.

38. The relief requested in the Trading Motion is critical to the Debtors' ability to preserve the NOLs. Indeed, it is imperative that the Debtors closely scrutinize any transactions that would increase the risk of a disqualifying "ownership change" under the IRC, because the very low consolidated value of the Debtors' equity makes acquiring large blocks of such equity relatively inexpensive (and therefore likely), and there may be a significant delay until current significant equity holders have to disclose their stock transactions to the Debtors or to the Securities and Exchange Commission. For the Debtors to adequately evaluate whether a particular transaction would materially increase the risk of an "ownership change" occurring, the Debtors need to conduct a thorough investigation to determine the identity of their stakeholders and the size of such stakeholders' holdings before and after such proposed transaction. Once the Debtors determine the identity of their current stakeholders, the Debtors must make a very complicated legal determination of whether the proposed transfer of claims or stock would likely

trigger an “ownership change” for purposes of IRC Section 382. The Debtors believe that they cannot conduct a necessarily thorough and diligent investigation and analysis in much less than 30 days.

39. As described above, the NOLs are valuable assets of the Debtors’ estates that will facilitate the Debtors’ reorganization and benefit all of their stakeholders. If the Debtors are unable to monitor and object to the above-referenced transfers, the Debtors’ future use of the NOLs may be jeopardized. The Debtors have proposed notice and hearing procedures that impose minimal burdens on affected entities to achieve a substantial benefit to the Debtors’ estates, and the Debtors believe that granting the relief requested in this Motion is in the best interests of the Debtors’ estates, their creditors and other parties in interest.

Interim Compensation Motion

40. Pursuant to the Interim Compensation Motion, the Debtors request entry of an order pursuant to sections 105(a), 328 and 331 of the Bankruptcy Code establishing an orderly, regular process for the allowance and payment of compensation and reimbursement for attorneys and other professionals (the “Professionals”) whose retentions are approved by this Court pursuant to sections 327 or 1103 of the Bankruptcy Code and who will be required to file applications for allowance of compensation and reimbursement of expenses pursuant to sections 330 and 331 of the Bankruptcy Code. In addition, the Debtors request entry of an order establishing a procedure for reimbursement of reasonable out-of-pocket expenses incurred by members of any statutory creditors’ committee appointed in the Reorganization Cases.

41. A number of factors militate strongly in favor of granting the Interim Compensation Motion: (i) the Debtors’ cases are unusually large and complex, and will require the Professionals to render significant services each month, (ii) absent compensation and reimbursement procedures, Professionals may be subject to undue hardships due to delays in

payment of fees and expense reimbursements, (iii) the Professionals are large, reputable firms, each with a strong financial position that makes it certain that any reassessment can be repaid to the estates should it become necessary to do so, (iv) the Debtors have provided notice of the Interim Compensation Motion to the Office of the United States Trustee, the Debtors' 30 largest unsecured creditors, the Debtors' pre-petition secured creditors and all parties who have requested such notice under Bankruptcy Rule 2002 and (v) the requested relief will not prejudice other creditors of the Debtors' estates because the Debtors expect to have sufficient cash flow to pay the Professionals and to operate their businesses throughout the administration of the Reorganization Cases. Finally, the proposed procedures will enable the Debtors to monitor closely costs of administration, maintain a level cash flow availability and implement efficient cash management procedures and enable the Court and key parties in interest to ensure the reasonableness and necessity of the compensation and reimbursement sought pursuant to such procedures.

Sales Tax Motion

42. By the Sales Tax Motion, the Debtors seek authority to pay, in their sole discretion, use and franchise taxes and other taxes necessary to operate their businesses (the "Taxes") and fees, licenses, permits, and other similar charges and assessments (the "Fees") to various taxing and licensing authorities (the "Authorities") in the ordinary course of business. Although the Debtors' records reflect that they are current on all of their Taxes and Fees owed as of the Commencement Date, the Debtors seek the relief requested in the event and to the extent that any Taxes and Fees that accrued prepetition were not in fact paid prepetition, or were paid in an amount that was less than is actually owed, or in the event that any payments made prepetition were rejected, lost, or otherwise not received in full by any Authorities. Further, there may be taxes incurred or collected from sales and services provided prepetition that will become due

shortly after the filing. The Debtors estimate that the total amount of prepetition Taxes and Fees owing to the various Authorities will not exceed approximately \$650,000.

43. The relief requested in the Sales Tax Motion is necessary because some, if not all, of the Authorities may cause the Debtors to be audited if the Taxes and Fees are not paid immediately. Such audits will unnecessarily divert the Debtors' attention away from the reorganization process. Furthermore, if the Debtors do not pay such amounts in a timely manner, the Authorities may attempt to suspend the Debtors' operations, file liens, seek to lift the automatic stay and pursue other remedies that will harm the estates. Moreover, some of these outstanding tax liabilities are for trust fund taxes that the Debtors have collected and hold in trust for the benefit of the Authorities. Therefore, such funds do not constitute property of the estate and could not otherwise be used by the estates. In all cases, the Debtors' failure to pay the Taxes and Fees could have a material adverse impact on their ability to operate in the ordinary course of business.

Customer Program Motion

44. By the Customer Program Motion, the Debtors seek an order authorizing, but not directing, the Debtors, in their business judgment, to honor the Debtors' gift card and warranty programs in the ordinary course of business, without further application to the Court.

45. Prior to the Commencement Date and in the ordinary course of their businesses, the Debtors engaged in certain practices, including gift card and product warranty programs, to develop and sustain positive reputations in the marketplace for their products and services (collectively, the "Customer Programs"). As part of the Debtors' business and promotional activities, and as is typical in the retail industry, the Debtors have offered to the public gift cards which entitle the holder to receive goods from the Debtors' stores in dollar amounts as specified

on the gift cards. The Debtors also have a warranty program whereby purchasers of the Debtors' merchandise can return defective merchandise and receive a new piece of merchandise.

46. The Customer Programs are a critical aspect of the Debtors' business, one which depends on their customers' brand loyalty. Further, the Customer Programs arguably constitute prepetition priority liabilities of the Debtors and give rise to individual priority claims against the Debtors under section 507(a)(6) of the Bankruptcy Code, which provides priority treatment for "allowed unsecured claims of individuals, to the extent of \$2,225 for each such individual, arising from the deposit, before the commencement of the case, of money in connection with the purchase . . . of property . . . for the personal, family, or household use of such individuals, that were not delivered or provided." 11 U.S.C. § 507(a)(6).

47. The Debtors believe that the relief requested in the Customer Programs Motion is necessary to preserve, during the postpetition period, their customer relationships and goodwill for the benefit of their estates. Further, because the individual holders of the gift cards and warranty claims are entitled to receive payment in full under a plan of reorganization under section 1129(a)(9) of the Bankruptcy Code, other creditors of the estate will not be injured by this Court's approval of the Debtors' request to honor the warranty and gift card claims. Accordingly, the Debtors request an order authorizing them to honor, in the ordinary course of business, customer gift cards and warranty claims made or issued prior to the Commencement Date.

Wages Motion

48. As described above, as of the Commencement Date, the Debtors employ approximately 491 employees (the "Employees"), of whom approximately 340 are full-time employees (the "Full-Time Employees"). The Employees perform a variety of critical functions, including sales, design, marketing, shipping, administrative, accounting, supervisory,

management, maintenance, cashier, food preparation, systems, human resources and other tasks, and without their continued services, an effective reorganization of the Debtors will not be possible.

49. To minimize the personal hardship that the Employees will suffer if prepetition employee-related obligations are not paid when due or as expected, and to maintain morale and an essential workforce during this critical time, the Wages Motion seeks authority to pay and honor certain prepetition claims for, among other items, wages, salaries, commissions, bonuses and other compensation, federal and state withholding taxes and other amounts withheld (e.g., garnishments, Employees' share of insurance premiums, taxes and 401(k) contributions), Employee health benefits, insurance benefits, workers' compensation benefits, vacation time, life and accidental death and dismemberment insurance, short- and long-term disability coverage and all other Employee benefits that the Debtors have historically provided in the ordinary course of business (collectively, the "Employee Wages and Benefits") and to pay all costs incident to the foregoing.

50. The Debtors believe that, as of the Commencement Date, approximately \$566,000 in accrued wages, salaries, commissions and other compensation (but excluding reimbursable expenses, vacation pay, deferred compensation and incentive bonus pay) earned prior to the Commencement Date remains unpaid to Employees. In addition, as of the Commencement Date, the Debtors owed approximately \$39,000 to employment agencies in connection with the employment of "temporary" workers, and approximately \$34,000 of monthly bonuses to the Debtors' sales and other field associates.

51. The Wages Motion also seeks authority, in the Debtors' sole discretion, to reimburse Employees for certain expenses (the "Reimbursable Expenses") incurred during the

scope of their employment. The Debtors estimate that, as of the Commencement Date, approximately \$16,100 in Reimbursable Expenses remained unpaid. In addition, the Wages Motion requests the right to modify, change and discontinue any of the Employee Wages and Benefits, and the policy related to the Reimbursable Expenses, and to implement new Employee Wages and Benefits in the ordinary course of business during the Reorganization Cases in the Debtors' sole discretion and without the need for further Court approval. Finally, the Wages Motion requests that banks and other financial institutions be authorized and directed to receive, process, honor, and pay all checks presented for payment and electronic payment requests relating to the foregoing.

52. The Debtors believe that a number of factors counsel strongly in favor of granting the relief requested in the Wages Motion. The vast majority of the Employee-related obligations that the Debtors seek to pay are entitled to priority status under sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code and individually do not exceed \$10,000.⁷ Thus, granting the relief sought in the Wages Motion would only affect the timing, and not the amount, of the payment of the Employee Wages and Benefits and the Reimbursable Expenses to the extent that they constitute priority claims. Moreover, the vast majority of the Employees rely exclusively on their full compensation and reimbursement of their expenses in order to continue to pay their daily living expenses, and these Employees will be exposed to significant financial difficulties if the Debtors are not permitted to pay the unpaid Employee Wages and Benefits and the Reimbursable Expenses. The Debtors believe that if they are unable to honor such obligations,

⁷ This amount is found in the new statute, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (the "Act"). The Act re-designated the employee priority provision from its current section 507(a)(3) to a new section 507(a)(4). Though most of the provisions of the Act become effective 180 days after the date of enactment, the provisions relating to employee priority claims (other than the re-designation to section 507(a)(4)) become effective upon enactment.

Employee morale and loyalty will be jeopardized at a time when such support is critical. Finally, courts in this and other districts have approved the payment of prepetition claims of employees for wages, salaries, expenses, and benefits on the grounds that the payment of such claims was necessary to effectuate a successful reorganization. Indeed, the Employees are essential to the orderly and successful reorganization of the Debtors. They have an intimate knowledge of the operation of the Debtors' businesses, and any deterioration in Employee morale and welfare at this critical time undoubtedly would adversely impact the Debtors, the value of their assets and businesses, and ultimately their ability to reorganize.

Cash Management Motion

53. The Debtors' domestic cash management system (the "Cash Management System") involves the collection, disbursement and movement of funds through a series of bank accounts. The Office of the United States Trustee has established certain operating guidelines for debtors in possession to supervise the administration of reorganization Cases, including changes to the debtor's cash management system (the "UST Guidelines"). The UST Guidelines require debtors to, among other things, establish one debtor in possession account for all estate monies required for the payment of taxes (including payroll taxes), close all existing bank accounts and open new debtor in possession accounts, issue post-petition payments by check only, maintain a separate debtor in possession account for cash collateral, obtain checks that bear the designation "debtor in possession" and reference the bankruptcy case number and the type of account on such checks. Enforcement of the UST Guidelines in the Reorganization Cases, however, would severely disrupt the ordinary financial operations of the Debtors. Accordingly, the Debtors request authority to continue to use their existing cash management system, maintain their existing bank accounts and continue to use existing business forms. The Debtors further request that administrative priority status be granted to certain of their intercompany claims.

Finally, the Debtors further request relief from the UST Guidelines to the extent that they require the Debtors to make all disbursements by check.

54. The Cash Management System consolidates virtually all funds received by the Debtors, tracks the corporate entities that are the owners of such funds and otherwise allows the Debtors to conduct their banking and cash management activities in an efficient and cost-effective matter. Certain foreign non-Debtor subsidiaries are also occasionally part of the Cash Management System. The Cash Management System is separated into two primary areas: (i) collection of receipts through depository accounts and (ii) payment of accounts payable and payroll through a central disbursement account and a payroll account, respectively. It is essential that the Debtors be permitted to retain their existing Cash Management System.

55. In addition, to minimize expenses to the estates and continue to operate their business without interruption, the Debtors should be granted a waiver from the UST Guidelines to enable them to maintain their existing bank accounts and continue to use existing business forms. Furthermore, given the interrelated nature of the Debtor and non-Debtor affiliates that are part of the Cash Management System, administrative priority status should be granted to the Debtors' intercompany claims. Finally, considering the nature of the Debtors' operations, it is also necessary for the Debtors to conduct transactions by debit, wire or ACH payments and other similar methods.

Utilities Motion

56. Utility services are provided by the Debtors' numerous utility companies (the "Utility Companies") for, among other things, water, sewer service, electricity, gas, local telephone service, long-distance telephone service, and waste disposal. By the Utilities Motion, the Debtors seek an order (i) deeming utilities adequately assured of future performance and (b)

establishing a procedure for determining adequate assurances pursuant to section 366 of the Bankruptcy Code.

57. Prior to the Commencement Date, the Debtors were generally current in the payment of invoices received from the Utility Companies. Further, the Utility Companies are protected by their entitlement to an administrative expense priority under section 503 of the Bankruptcy Code for any unpaid postpetition utility services. The Debtors, therefore, submit that no additional adequate assurances of payment of postpetition utility services are warranted. However, should a Utility Company demand additional assurances, the Utilities Motion sets forth procedures which the Utility Company must follow to apply for additional adequate assurances.

58. The relief requested in the Utilities Motion is necessary because uninterrupted utility services are essential to the Debtors' ongoing operations and, therefore, to the success of the Debtors' reorganization. Should one or more of the Utility Companies refuse or discontinue service even for a brief period, operations would be severely disrupted. Such an interruption would damage customer relationships, revenues and profits and ultimately would adversely affect the Debtors' restructuring efforts. It is therefore critical that utility services continue uninterrupted.

Schedules and Statements Extension Motion

59. By the Schedules and Statements Extension Motion, the Debtors seek entry of an order pursuant to Bankruptcy Rule 1007(c) extending the time within which they are required to file their schedules of assets and liabilities, schedules of current income and expenditures, schedules of executory contracts and unexpired leases and statements of financial affairs (collectively, the "Schedules and Statements") by 45 days, providing the Debtors with a total of 60 days after the Commencement Date to file the Schedules and Statements.

60. The Debtors have approximately 1,000 creditors (including current and former employees). In addition, the conduct and operation of the Debtors' business operations require the Debtors to maintain voluminous books and records and complex accounting systems. Given the size and complexity of the Debtors' business operations, the number of creditors, and the fact that certain prepetition invoices have not yet been received or entered into the Debtors' financial accounting systems, the Debtors have begun, but have not yet finished, compiling the information required to complete the Schedules and Statements. Courts in this jurisdiction as well as others have granted similarly situated debtors an extension to file the Schedules and Statements.

61. Accordingly, the Debtors request an extension of 45 days from the time provided for under Bankruptcy Rule 1007(c) to file the Schedules and Statements, which will provide the Debtors with a total of 60 days after the Commencement Date to file the Schedules and Statements. The Schedules and Statements will be filed at least 10 days before the "Meeting of Creditors" pursuant to section 341 of the Bankruptcy Code.

Insurance Motion

62. By the Insurance Motion, the Debtors seek to (i) maintain existing insurance policies, (ii) pay prepetition insurance premiums, if any, and (iii) enter into postpetition financing of insurance premiums. In the ordinary course of business, the Debtors maintain numerous insurance policies providing coverage for, *inter alia*, general liability, workers' compensation and employers liability, directors and officers liability, umbrella liability, automotive liability, crime, special risk, fiduciary liability, legal liability, employment practices liability, marine/war cargo liability and foreign general liability (the "Policies"). The total annual premium paid for the Policies is \$995,999.00. These policies are essential to the preservation of the Debtors'

business, property and assets and, in many cases, such coverages are required by various regulations, laws and contracts that govern the Debtors' business conduct.

63. Further, in view of the importance of maintaining insurance coverage with respect to the Debtors' business activities and the preserving the Debtors' cash flow and estates by financing the insurance premiums, the Debtors believe it is in the best interests of their estates to authorize the Debtors to enter into postpetition premium financing agreements. Any other alternative would likely require considerable additional cash expenditures and would be detrimental to the Debtors' reorganization efforts.

Shipping Motion

64. The Debtors have a reputation for reliability and dependability among their customers. Indeed, many of the Debtors' pricing policies and marketing strategies revolve around that reliability and dependability. This reputation depends in substantial part on the timely delivery of product to the Debtors' customers. The Debtors' supply and delivery system depends upon the use of reputable domestic common carriers, shippers, truckers and customs agents, as well as a network of third-party warehouses to store goods in transit. It is essential for the Debtors' businesses, and their efforts to maximize value for all creditors, that they maintain a reliable and efficient supply and distribution system. If the Debtors are unable to provide goods to customers on a timely basis, the Debtors will likely suffer, at a minimum, a significant loss of credibility and customer goodwill, thereby causing substantial harm to the Debtors' businesses and their reorganization efforts.

Debtors' Counsel Retention Motion

65. The Debtors respectfully request that the Court enter an order pursuant to section 327(a) of the Bankruptcy Code and Bankruptcy Rule 2014(a) authorizing the Debtors to employ

and retain Kirkland & Ellis LLP (“K&E”) as their bankruptcy counsel to file and prosecute the Reorganization Cases and all related matters, effective as of the Commencement Date. The Debtors seek to retain K&E as their attorneys because K&E has extensive experience and knowledge in the field of debtors’ and creditors’ rights and business reorganizations under chapter 11 of the Bankruptcy Code. K&E also possesses extensive expertise, experience, and knowledge practicing before bankruptcy courts. Moreover, in preparation for the Reorganization Cases, K&E has become familiar with the Debtors’ businesses and affairs and many of the potential legal issues that may arise in the context of the Reorganization Cases. Accordingly, the Debtors believe that K&E is both well-qualified and uniquely able to represent them in the Reorganization Cases in an efficient and timely manner. Moreover, K&E (i) has no connection with the Debtors, their creditors or other parties in interest in the Reorganization Cases, (ii) does not hold any interest adverse to the Debtors’ estates, and (iii) believes it is a “disinterested person” as that term is defined by section 101(14) of the Bankruptcy Code, as modified by section 1107(b) of the Bankruptcy Code, and K&E’s employment is necessary and in the best interests of the Debtors and the Debtors’ estates.

Debtors’ Local Counsel Retention Motion

66. The Debtors respectfully request that the Court enter an order pursuant to section 327(a) of the Bankruptcy Code and Bankruptcy Rule 2014(a) authorizing the Debtors to employ and retain Swidler Berlin LLP (“Swidler”) as their local bankruptcy counsel and special counsel pursuant to section 327(a) of the Bankruptcy Code, effective as of the Commencement Date.

67. The Debtors are familiar with the professional standing and reputation of Swidler. Swidler is intimately familiar with the local bankruptcy rules and procedures in this Court. In addition, Swidler has considerable experience in insolvency and bankruptcy matters, including representation of debtors in large chapter 11 cases. The Debtors seek to retain and use Swidler to

coordinate with and assist K&E in the Reorganization Cases. The Debtors believe that the services of Swidler are necessary and that Swidler is well qualified to act as Maryland counsel in conjunction with K&E and provide the specialized legal advice sought by the Debtors on a going-forward basis in a cost-effective, efficient, and timely manner. Moreover, Swidler (i) has no connection with the Debtors, their creditors or other parties in interest in the Reorganization Cases, (ii) does not hold any interest adverse to the Debtors' estates, and (iii) believes it is a "disinterested person" as that term is defined by section 101(14) of the Bankruptcy Code, as modified by section 1107(b) of the Bankruptcy Code. Accordingly, the Debtors submit that Swidler's retention is in the best interest of their estates and wish to retain Swidler as their Maryland bankruptcy counsel.

Financial Advisors' Retention Motion

68. The Debtors seek to employ and retain Houlihan Lokey Howard & Zukin Capital, Inc. ("Houlihan Lokey"), pursuant to section 327(a) of the Bankruptcy Code and the terms of the Retention Agreement between Boyds and Houlihan Lokey, as the Debtors' financial advisors and investment bankers in the Reorganization Cases. Specifically, the Debtors wish to retain Houlihan Lokey to represent the Debtors in connection with pursuing a potential Restructuring Transaction⁸ or a Sale Transaction. In connection with this role, Houlihan Lokey shall provide investment banking services including but not limited to (i) evaluating the Debtors' strategic

⁸ As defined in the Retention Agreement, "Restructuring Transaction" shall mean (a) any modification or amendment to, or other change in, any instrument or term which reduces, defers, or converts to equity, debt or other security, the principal of or any debt service requirements of any Company Obligations that allows the Company to restructure (either in-court or out-of-court) on a stand-alone basis, (b) any exchange of Company Obligations for equity or other securities in the Company; (c) any transaction in which the requisite consent to a reorganization or restructuring is obtained either in-court or out-of-court pursuant to applicable law or pursuant to a plan under the Bankruptcy Code; and/or (d) any other going concern exit from a proceeding under Chapter 11 of the Bankruptcy Code.

options based upon Houlihan Lokey's initial review, (ii) advising the Debtors generally as to available financing and capital restructuring alternatives, including recommendations of specific courses of action, (iii) advising the Debtors in connection with the development and implementation of key employee retention and other critical employee benefit programs, and (iv) assisting the Debtors with the development, negotiation and implementation of a restructuring plan, including participation as an advisor to the Debtors in negotiations with creditors and other parties involved in a restructuring.

69. The Debtors are familiar with the professional standing and reputation of Houlihan Lokey, and are hiring Houlihan Lokey because of Houlihan Lokey's knowledge of the Debtors' business and financial affairs as well as Houlihan Lokey's extensive expertise in restructuring advisory roles and sale transactions. Accordingly, the Debtors believe that the employment of Houlihan Lokey is necessary, essential and in the best interests of the administration of the Reorganization Cases and know of no reason why Houlihan Lokey should not be retained. Houlihan Lokey is not connected with the Debtors, their creditors, other parties in interest, the United States Trustee or any other person employed by the Office of the United States Trustee. In addition, Houlihan Lokey does not hold or represent any interest adverse to the Debtors, their estates or any class of creditors or equity holders respecting the matters upon which it is engaged. Accordingly, Houlihan Lokey qualifies as a "disinterested person" within the meaning of Bankruptcy Code section 101(14), as modified by Bankruptcy Code section 1107(b), and should be retained.

Notice and Claims Agent Retention Motion

70. The Debtors seek to retain and employ The Garden City Group, Inc. ("GCG") as their notice, claims and balloting agent pursuant to 28 U.S.C. § 156(c). The Debtors have approximately 1000 potential creditors. Upon information and belief, the office of the Clerk of

the Bankruptcy Court for the District of Maryland (the “Clerk’s Office”) is not equipped to efficiently and effectively serve notice on the large number of creditors and parties in interest and administer claims during the Reorganization Cases. The sheer size and magnitude of the Debtors’ creditor body makes it impracticable for the Clerk’s Office to undertake that task. The Debtors believe that the most effective and efficient manner of noticing these creditors and parties in interest of the filing of the Reorganization Cases, and to transmit, receive, docket, maintain, photocopy and scan claims, is for the Debtors to engage an independent third-party to act as the Debtors’ notice and claims agent. The Debtors may also require the services of an agent to administer votes pursuant to a plan of reorganization. Accordingly, the Debtors propose to employ GCG as notice, claims and balloting agent, *inter alia*, to assist the Debtors in distributing notices, as necessary, and to process other administrative information pertaining to the Reorganization Cases.

71. The Debtors believe that GCG is well-qualified to serve in this capacity and that GCG’s retention is in the best interests of the Debtors’ estates and their creditors. The Debtors chose GCG based on both its experience and the competitiveness of its fees. GCG specializes in noticing, claims processing, balloting and other administrative tasks in Reorganization Cases, and has provided identical or substantially similar services in other reorganization cases in a variety of jurisdictions. Moreover, to the best of the Debtors’ knowledge, GCG is a “disinterested person” as that term is defined in section 101(14) of the Bankruptcy Code, as modified by section 1107(b) of the Bankruptcy Code.

72. I have reviewed each of the First Day Motions (including the exhibits and schedules thereto). The facts stated therein are true and correct to the best of my information and belief, and I believe that the relief sought in each of the First Day Motions: (a) is necessary to enable the Debtors to operate in chapter 11 with minimal disruption to their business operations, and (b) constitutes a critical element in achieving a successful reorganization of the Debtors.

By: /s/ Jan Murley
Jan Murley, Chief Executive Officer
The Boyds Collection, Ltd.

Sworn to before me on this

16th day of October 2005

Notary Public
State of _____, County of _____
Registration Number:
My Commission Expires: