

Hearing Date: December 21, 2005 at 10:00 a.m.  
Objection Date: December 14, 2005 at 5:00 p.m.

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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: Chapter 11  
In re : Case Nos. 01-15327 through  
: 01-15328 (ALG)  
eLot, Inc. and eLottery, Inc. :  
: Jointly Administered  
: Debtors. :  
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**TO: THE HONORABLE ALAN L. GROPPER  
UNITED STATES BANKRUPTCY JUDGE**

**MOTION TO: (I) REOPEN CHAPTER 11 CASES, (II)  
AMEND THE TRUST AGREEMENT AND WARRANT  
AGREEMENTS, AND (III) CLOSE CHAPTER 11 CASES**

Reorganized debtors eLot, Inc. (“Reorganized eLot”) and eLottery, Inc. (“Reorganized eLottery” and, with Reorganized eLot, the “Reorganized Debtors”), by and through their counsel, Troutman Sanders LLP, submit this motion (the “Motion”) seeking entry of an Order, pursuant to sections 105(a) and 350(b) of the United States Bankruptcy Code, 11 U.S.C. § 101, *et seq.* (the “Bankruptcy Code”), and Rule 5010 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), to: (i) reopen the Reorganized Debtors’ chapter 11 cases (the “Chapter 11 Cases”), (ii) approve the amendment of the Trust Agreement to extend the term of the Trust Agreement and the amendment of the Warrant Agreements (as defined in the Motion) to extend the expiration dates of the Warrants (defined below) in order to permit the exercise, after the current expiration dates, of the Warrants distributed pursuant to the Second Amended Plan (defined below), (iii) close the Chapter 11 Cases, and (iv) for such other and further relief as may be deemed just and proper. In support of the Motion, the Reorganized Debtors respectfully

represent as follows:

### **JURISDICTION**

1. This Court has jurisdiction over this matter under 28 U.S.C. §§ 157(a) and 1334(b), the standing referral order of the United States District Court for the Southern District of New York, dated July 10, 1984 (Ward, Acting C.J.) and Section 11.1 of the Second Amended Joint Plan of Reorganization of eLot, Inc. and eLottery, Inc., dated November 22, 2002 (the “Second Amended Plan”). The statutory predicates for the relief sought herein are sections 105(a) and 350(b) of the Bankruptcy Code and Rule 5010 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”). This is a core proceeding pursuant to 28 U.S.C. § 157 (b)(2)(A).

### **RELEVANT BACKGROUND**

2. On October 15, 2001 (the “Petition Date”), the above-captioned debtors (the “Debtors”) each filed a voluntary petition for reorganization under and pursuant to chapter 11 of the Bankruptcy Code. Pursuant to sections 1107 and 1108 of the Bankruptcy Code, the Debtors were authorized to continue in the operation and management of their businesses.

3. Pursuant to an Order of this Court, dated October 16, 2001, the Debtors’ cases were directed to be jointly administered. On October 22, 2001, the United States Trustee appointed an official committee of unsecured creditors (the “Committee”).

4. The Second Amended Plan, which was a joint plan filed by the Debtors and the Committee, was duly confirmed pursuant to an Order of this Court, dated December 20, 2002 (the “Confirmation Order”). No notice of appeal was filed with respect to the Confirmation Order. As such, the Confirmation Order is a final and nonappealable order.

5. On December 30, 2002, eLot, Inc., a Virginia Corporation (“eLot Virginia”),

merged with and into eLot, Inc., a Delaware corporation (previously defined as “Reorganized eLot”).

6. The Effective Date<sup>1</sup> of the Second Amended Plan was December 31, 2002.

7. On November 4, 2004, this Court signed an Order which: (i) granted the Reorganized Debtors’ application for a final decree, and (ii) closed the Chapter 11 Cases.

**DISTRIBUTIONS UNDER THE SECOND AMENDED PLAN**

8. In accordance with the terms and provisions of the Second Amended Plan, all prepetition stock, warrants, options and other equity interests in eLot Virginia were cancelled and extinguished. Pursuant to the Second Amended Plan, shares of eLot Delaware common stock (“Common Stock”) were issued to general unsecured creditors of the Debtors as follows:

a. On December 31, 2002, 1,347,917 shares of Common Stock were issued to the Debtors’ prepetition creditors holding Allowed General Unsecured Claims, and reserves were established with respect to general disputed unsecured claims and claims of holders of eLot 7.5% Convertible Subordinated Debentures due 2011 (the “Debentures”).

b. On January 27, 2004, 6,883,491 shares of Common Stock were issued to holders of the Debentures whose debentures were held in street name.

c. On February 27, 2004, 996,175 shares of Common Stock were issued to the Debtors’ prepetition creditors holding Allowed Unsecured Claims and 16,490 were delivered to registered holders of the Debentures.

d. 6,017 shares of Common Stock remained unclaimed one year after their distribution and have been retired in accordance with Section 5.3 (j) of the

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<sup>1</sup> Unless defined herein, all capitalized terms retain the meanings ascribed to them in the Second Amended Plan.

Second Amended Plan.

9. In accordance with the Second Amended Plan, on December 31, 2003 Reorganized eLot caused to be issued to the Warrant Trustee (defined below), 1,800,000 Class A Warrants, 750,000 Class B Warrants and 1,200,000 Class C Warrants (collectively, the “Warrants”). Pursuant to the New Class A Warrant Agreement, the New Class B Warrant Agreement and the New Class C Warrant Agreement (collectively, the “Warrant Agreements”), the Warrants expire three (3) years from the Effective Date, that being December 31, 2005. The Class A Warrants entitle the holders thereof to purchase 1,800,000 shares of Common Stock at an exercise price of \$1.00 per share; the Class B Warrants entitled the holders thereof to purchase 750,000 shares of Common Stock at \$.10 per share; and the Class C Warrants entitle the holders thereof to purchase 1,200,000 shares of Common Stock at \$1.00 per share.<sup>2</sup>

10. On June 30, 2004, 1,800,000 Class A Warrants became exercisable and 1,798,844<sup>3</sup> were distributed to the Debtors’ prepetition creditors holding Allowed Unsecured Claims, including holders of the Debentures. A total of 43,247 Class A Warrants remained unclaimed one year after their distribution and have been retired in accordance with Section 5.3(j) of the Second Amended Plan. In accordance with the Second Amended Plan, the Class B Warrants and Class C Warrants will only be distributed by the Warrant Trustee to holders of Equity Interests upon the occurrence of a Trigger Event.

11. All other distributions, including cash distributions to administrative, priority and convenience claimants, have been made in accordance with the Second Amended Plan.

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<sup>2</sup> Subsequent to the Effective Date, Reorganized eLot has also issued options to purchase 375,000 shares of its common stock at \$1.00 per share and Class D Warrants to purchase 401,843 shares of Common Stock at \$.01 per share which Warrants are exercisable through February 15, 2010.

<sup>3</sup> The number of Class A Warrants distributed to creditors was 1,798,844 due to rounding in accordance

**A. The Trust Agreement**

12. On or about December 31, 2002, the Reorganized Debtors and American Stock Transfer & Trust Company (“AST”), solely in its capacity as warrant trustee (the “Warrant Trustee”) executed a trust agreement (the “Trust Agreement”) to establish a trust (the “Trust”) the purpose of which was to hold and, on the terms provided, distribute the Warrants (§ 1.1). As set forth in the Trust Agreement, the Trust terminates on the thirtieth day following the third anniversary of the Effective Date.

13. The Trust Agreement further provides that it may not be amended, modified or supplemented without a “Final Order of the Bankruptcy Court” (§ 10.1).<sup>4</sup>

**B. No Occurrence of Trigger Event**

14. As set forth in the Second Amended Plan, the occurrence of any of the following would constitute a “Trigger Event” which would cause the Warrant Trustee to distribute the Class B and C Warrants to the holders of Equity Interests and allow such holders to exercise their rights under such warrants:

- (1) Reorganized eLot and/or its consolidated subsidiaries, including Reorganized eLottery, shall have \$1 million of revenue, provided there is less than \$100,000 of debt outstanding under the Exit Financing Facility, in any consecutive 12-calendar month period determined on a consolidated basis in accordance with generally accepted accounting principles from the direct or indirect operation of the lottery business, including but not limited to, from any license of the Intellectual Property to a third party;
- (2) Reorganized eLot and/or its consolidated subsidiaries shall realize, in one or a series of related transactions, at least \$1 million in the aggregate in cash or cash equivalents or securities (as reasonably valued by the Board of Directors of Reorganized eLot), from the sale or license of the Intellectual Property and/or the assets of Reorganized eLottery (net of transaction costs, including, but not limited to broker, finder, accounting and/or legal fees and expenses

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with the Second Amended Plan.

<sup>4</sup> Extension of the term of the Warrant Agreements and, therefore, the Warrants, does not require court approval.

incurred in connection with such transaction and net of payment of any amounts required to repay or retire outstanding indebtedness secured by the Intellectual Property and/or other assets sold); (3) Reorganized eLot and/or its consolidated subsidiaries shall realize at least \$1 million in cash or cash equivalents or securities (as reasonably valued by the Board of Directors of Reorganized eLot), from the sale of all or a portion of the DCC Stock (net of transaction costs, including, but not limited to, broker, finder, accounting and/or legal fees and expenses incurred in connection therewith and net of payment of any amounts required to repay or retire outstanding indebtedness secured by the DCC Stock); (4) Reorganized eLot shall have entered into a sale (whether by public or private offering) of all or a portion of shares of the common stock of Reorganized eLottery which results in net proceeds of at least \$1 million in cash or cash equivalents or securities (as reasonably valued by the Board of Directors of Reorganized eLot), (net of the costs of sale, including, but not limited to, legal and accounting fees and expenses, printing, filing fees, etc., incurred in connection therewith and any underwriting or similar discounts and commissions and net of payment of any amounts required to repay or retire indebtedness of Reorganized eLot secured by the stock of Reorganized eLottery); (5) Reorganized eLot or Reorganized eLottery shall have entered into a merger, consolidation, or other combination with, or a sale of all or substantially all of its assets in one or more related transactions to any Person (other than any subsidiary of Reorganized eLot) which results in an exchange of the shares of the common stock of Reorganized eLot or of Reorganized eLottery for securities, cash or other consideration; (6) Reorganized eLot shall for any reason file periodic reports under the Securities Exchange Act, as amended (the "Exchange Act"); or (7) Reorganized eLot and its consolidated subsidiaries shall have assets of more than \$10 million determined in accordance with SEC Regulations S-X.

Second Amended Plan, § 1.77.

15. As of the date of this Motion, a Trigger Event has not occurred. Although the Reorganized Debtors have reason to believe that a Trigger Event will occur within a relatively short period of time, they believe that it is unlikely that a Trigger Event will occur before the expiration date of the Class B and C Warrants or, if a Trigger Event does occur prior to such expiration, that such event will occur too near the expiration date of the Class B and C Warrants

to allow the holders of such Warrants to effectively exercise their rights to purchase shares of eLot Common Stock. Accordingly, Reorganized eLot desires to amend the Class B and C Warrants and the related Warrant Agreements to extend the expiration date of the Class B and C Warrants for a period of two years. In that connection, an amendment of the Trust Agreement is necessary to extend the term of the Trust Agreement beyond the current expiration date of January 31, 2006 to a date 30 days after the extended expiration date of the Class B and C Warrants. As set forth above, an amendment or modification of the Trust Agreement requires a Final Order of this Court.<sup>5</sup>

16. Notwithstanding the fact that the Class A Warrants have already been distributed and, therefore, would not require an amendment of the Trust Agreement, in view of the extension of the expiration date of the Class B and C Warrants, Reorganized eLot desires to extend the expiration date of the Class A Warrants for a period of four years. Reorganized eLot and AST, as Warrant Agent for each of the Class A, B and C Warrants may amend each of the Warrant Agreements including the terms of each of the Class A, B and C Warrants without the consent of the holders of the respective Warrants, if Reorganized eLot deems it necessary or desirable and such amendment shall not materially adversely affect the interests of the holders of each of such Warrants. Since the extension of the expiration date of each of the Class A, B and C Warrants is desirable and, with respect to each individual class of Warrants, does not materially adversely affect the interests of the holders of such class, Reorganized eLot and AST, as Warrant Agent, desire to enter into such amendment of each of the Class A, B and C Warrant Agreements promptly after entry of the Order requested herein.

17. Accordingly, by this Motion, the Reorganized Debtors are seeking entry of an

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<sup>5</sup> In accordance with the terms of the Trust Agreement, a copy of the proposed amendment to the Trust Agreement is attached to the affidavit of Herbert Lemmer, a vice-president of AST, the Trustee and Warrant Agent

Order which, inter alia, reopens the Reorganized Debtors' chapter 11 cases, approves the amendment of the Trust Agreement so as to extend the term of the Trust for an additional two years in connection with the extension of the expiration date of the Class B and C Warrants (so as to permit their distribution during such extended term, if and when a Trigger Event occurs), and approves the amendment of the New Class A, B and C Warrant Agreements to extend the expiration date of the Class A, B and C Warrants. The Reorganized Debtors believe that such an amendment of each of the New Class B and C Warrant Agreements and the Trust Agreement will provide the holders of the Class B and C Warrants (as well as the holders of the unexercised Class A Warrants) with the opportunity to realize the benefits of the Second Amended Plan. Furthermore, and perhaps most important, the Reorganized Debtors believe that a more liquid (and potentially more valuable) market for the Common Stock may occur as a result of permitting the exercise of the Class A, B and C Warrants over a longer period of time.

18. Although the Warrant Agreements may be extended without bankruptcy court approval, out of an abundance of caution, the Reorganized Debtors hereby seek entry of an Order approving the extension of the expiration date of the Warrant Agreements for the Class A, B and C Warrants as well as the extension of the term of the Trust Agreement.

#### **RELIEF REQUESTED**

19. Pursuant to sections 105(a) and 350(b) of the Bankruptcy Code and Rule 5010 of the Bankruptcy Rules, the Reorganized Debtors hereby seek entry of an Order: (i) reopening the Chapter 11 Cases, (ii) approving the amendment of the Trust Agreement to extend the term of the Trust Agreement and the amendment of the Warrant Agreements (as defined in the Motion) to extend the expiration dates of the Warrants, and (iv) for such other and further relief as may be deemed just and proper.

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(the "AST Affidavit"). A copy of the AST Affidavit is annexed hereto as Exhibit "A".



## RELIEF REQUESTED

20. Section 350 (b) of the Bankruptcy Code reads as follows:

(b) A case may be reopened in the court in which such case was closed to administer assets, to accord relief to the debtor, or for other cause.

21. The language of section 350(b) gives a court broad discretion in the reopening of a case. In re Shondel, 950 F.2d 1301 (7<sup>th</sup> Cir. 1991). The language of Bankruptcy Rule 5010 is equally broad.<sup>6</sup> The decision whether to reopen a bankruptcy case is committed to the sound discretion of the bankruptcy court. See Mendelsohn v. Ozer, 241 B.R. 503, 506 (E.D.N.Y. 1997). “Although the statute does not provide any specific criteria to guide the determination of whether to reopen closed cases, courts typically examine the benefit to the debtor, the prejudice to the would-be defendant in the litigation, and the benefit to the creditors.” Katz v. I.A. Alliance Corp. (In re I. Appel Corp.), 300 B.R. 564, 571 (S.D.N.Y. 2003), aff’d, 2004 U.S. App. LEXIS 13641 (2004).

22. The Second Amended Plan provides for this Court’s continued jurisdiction of matters relating to the relief requested herein. Sections 11.1(h), (n) and (p) of the Second Amended Plan provide for the Court’s retained jurisdiction: (i) “[t]o issue such orders in aid of execution and consummation of the Plan, to the extent authorized by section 1142 of the Bankruptcy Code;” (ii) “[t]o hear any other matter not inconsistent with the Bankruptcy Code;” and (iii) “[t]o determine such other matters as may be set forth in the Confirmation Order or which may arise in connection with the Plan or the Confirmation Order. The relief requested herein clearly fits within the purview of the Court’s retained jurisdiction set forth above.

23. The Reorganized Debtors believe that an extension of the term of the Trust

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<sup>6</sup> Bankruptcy Rule 5010 reads, in pertinent part, as follows:

A case may be reopened on motion of the debtor or other party in interest pursuant to § 350(b) of the Code.

Agreement is necessary in connection with any extension of the expiration date of the Class B and Class C Warrants to allow the holders of Equity Interests the opportunity to take advantage of the benefits expected to be provided to them by the Second Amended Plan. The Reorganized Debtors further believe that such an extension, coupled with the subsequent exercising of the as yet unexercised Class A, B and C Warrants, may result in a more liquid and valuable market in the Reorganized Debtors' Common Stock in the future.

24. As set forth in the AST Affidavit, AST supports and joins in the request for the relief requested in the Motion.

#### **NOTICE**

25. A copy of this Motion and notice of the relevant hearing and objections dates has been given to (i) the Office of the United States Trustee for the Southern District of New York; (ii) all registered holders of the Class A Warrants; (iii) all registered holders of the common stock of Reorganized eLot, and (iv) all parties that have requested notice pursuant to Rule 2002 of the Bankruptcy Rules. The holders of Equity Interests (as defined in the Second Amended Plan) who, pursuant to the Second Amended Plan, would receive Class B and C Warrants upon the occurrence of a Trigger Event, have been given notice of this Motion pursuant to the "Notice" annexed hereto as Exhibit "B". The Reorganized Debtors respectfully submit that such form and manner of notice shall provide good and sufficient notice of the relief sought herein, in accordance with the provisions of the Bankruptcy Code and Bankruptcy Rules, and that no other or further notice is necessary or required.

#### **WAIVER OF MEMORANDUM OF LAW**

26. The Reorganized Debtors, by and through their counsel, represent that the facts and circumstances set forth herein do not present a novel question of law and, as such,

respectfully request that this Court waive the requirement of filing a memorandum of law in accordance with Local Bankruptcy Rule 9013-1(b).

**WHEREFORE**, the Reorganized Debtors respectfully request that the Court: (i) reopen the Reorganized Debtors' chapter 11 cases (the "Chapter 11 Cases"), (ii) approve the amendment of the Trust Agreement to extend the term of the Trust Agreement and the amendment of the Warrant Agreements to extend the expiration dates of the Warrants in order to permit the exercise of the Warrants after their current expiration dates, (iii) close the Chapter 11 Cases, and (iv) for such other and further relief as may be deemed just and proper.

Dated: New York, New York  
November 28, 2005

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