

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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In re : Chapter 11  
: Case Nos. 01-15327 through  
: 01-15328 (ALG)  
eLot, Inc. and eLottery, Inc. :  
: Jointly Administered  
: Debtors. :  
-----X

**NOTICE OF MOTION TO: (I) REOPEN CHAPTER 11  
CASES, (II) EXTEND TERM OF TRUST AND WARRANT  
AGREEMENTS, AND (III) CLOSE CHAPTER 11 CASES**

PLEASE TAKE NOTICE that upon the motion (the "Motion") of Reorganized eLot, Inc. ("eLot") and Reorganized eLottery, Inc. ("eLottery" and together with eLot, the "Reorganized Debtors"), dated November 28, 2005, by and through their undersigned counsel, the Reorganized Debtors will move this Court before the Honorable Allan L. Gropper, United States Bankruptcy Judge, at the United States Bankruptcy Court for the Southern District of New York, One Bowling Green, New York, New York, on December 21, 2005 at 10:00 a.m., or as soon thereafter as counsel can be heard, for entry of an Order, pursuant to sections 105(a) and 350(b) of the United States Bankruptcy Code and Rule 5010 of the Federal Rules of Bankruptcy Procedure, to (i) reopen the Reorganized Debtors' chapter 11 cases (the "Chapter 11 Cases"), (ii) amend the Trust Agreement and Warrant Agreements (as defined in the Motion), (iii) close the Chapter 11 Cases; and (iv) for such other and further relief as may be deemed just and proper.

PLEASE TAKE FURTHER NOTICE, that objections, if any, to the relief requested in the Motion shall be in writing, shall state with particularity the grounds therefor and must be: (a) filed with this Court; (b) served in such a manner so as to be received by counsel for the Reorganized Debtors and the Office of the U.S. Trustee on or before 5:00 p.m. on December 14, 2005; and (c) delivered to the Chambers of the Honorable Allan L. Gropper, United States Bankruptcy Judge, at the United States Bankruptcy Court, One Bowling Green, New York, New York on or before 5:00 p.m. on December 14, 2005.

Dated: New York, New York  
November 28, 2005

**TROUTMAN SANDERS LLP**

By:           /s/ Hollace T. Cohen            
Hollace T. Cohen (HC - 8651)  
Paul H. Deutch (PD - 4859)  
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Attorneys for the Reorganized Debtors

TO: Greg Zipes, Esq.  
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Edward J. McGuinn  
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UNITED STATES BANKRUPTCY COURT  
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In re : Chapter 11  
: 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

TROUTMAN SANDERS LLP  
Counsel to the Reorganized Debtors

By: /s/ Hollace T. Cohen  
Hollace T. Cohen (HC - 8651)  
Paul H. Deutch (PD - 4859)  
The Chrysler Building  
405 Lexington Avenue  
New York, New York 10174  
(212) 704-6000

# **EXHIBIT “A”**

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re	:	Chapter 11
	:	Case Nos. 01-15327 through
	:	01-15328 (ALG)
eLot, Inc. and eLottery, Inc.	:	
	:	
	:	Jointly Administered
Debtors.	:	
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**AFFIDAVIT OF HERBERT LEMMER IN SUPPORT OF DEBTORS'  
MOTION TO: (I) REOPEN CHAPTER 11 CASES, (II) EXTEND TERM  
OF TRUST AGREEMENT AND WARRANT AGREEMENTS, AND (III)  
CLOSE CHAPTER 11 CASES**

STATE OF NEW YORK    )  
                                  )  
COUNTY OF KINGS    )    ss.:

HERBERT LEMMER, being duly sworn, deposes and says:

1. I am a vice-president of American Stock Transfer & Trust Company ("AST"). This affidavit is submitted in support of the captioned debtors' (individually, "Reorganized eLot" and "Reorganized eLottery" and collectively, the "Reorganized Debtors") Motion to: (i) Reopen Chapter 11 Cases, (ii) Extend Term of Trust Agreement and Warrant Agreements, and (iii) Close Chapter 11 Cases (the "Motion").

2. In connection with (i) the Second Amended Joint Plan of Reorganization of the Debtors and the Official Committee of Unsecured Creditors of elot, Inc. and eLottery, Inc. (the "Plan"), and (ii) that certain trust agreement, dated as of December 31, 2002, by and among the Reorganized Debtors and AST (the "Trust Agreement"), AST was appointed as trustee of that certain trust (the "Trust") the purpose of which was to, inter alia, hold and distribute the Class A,

B & C Warrants (collectively, the "Warrants")<sup>1</sup> issued by Reorganized eLot in accordance with the Plan. On June 30, 2004, 1,800,000 Class A Warrants became exercisable and were distributed to the Debtors' prepetition creditors holding Allowed Unsecured Claims. In accordance with the Plan, the Class B Warrants and Class C Warrants will only be distributed by the Warrant Trustee to holders of Equity Interests (as defined in the Plan) upon the occurrence of a Trigger Event (as defined in the Plan).

3. As set forth in the Trust Agreement, the Trust terminates on the thirtieth day following the third anniversary of the Effective Date. As of this date, no Trigger Event has occurred.

4. As set forth in the New Class A Warrant Agreement, the New Class B Warrant Agreement and the New Class C Warrant Agreement (collectively, the "Warrant Agreements"), AST was also appointed Warrant Agent for each class of the Warrants.

5. The Reorganized Debtors have informed AST that 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 Reorganized eLot Common Stock. As such it is the desire of Reorganized eLot to extend the expiration dates of the Class B and C Warrants and the New Class B and C Warrant Agreements for a period of two (2) years.

6. In accordance with such an extension of the Class B and C Warrants and the New Class B and C Warrant Agreements, the Reorganized Debtors are also seeking to amend the Trust Agreement to provide for a commensurate extension of the Trust Agreement. The Reorganized Debtors have filed the Motion seeking such relief because the Trust Agreement

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



provides that "no . . . amendment . . . shall be effective except upon a Final Order of the Bankruptcy Court."

7. The Reorganized Debtors have also informed AST that they desire to extend the expiration date of the Class A Warrants and the New Class A Warrant Agreement for a period of four (4) years, notwithstanding the fact that, unlike the Class B and C Warrants, the Class A Warrants have already been distributed and, therefore, are not subject to the Trust Agreement.

8. Section 9.01(a) of each of the Warrant Agreements states as follows:

This Agreement and the terms of the [Class A Warrants, Class B Warrants and Class C Warrants] may be amended by the Company and the Warrant Agent, without the consent of the holder of any [Class A Warrant Certificate, Class B Warrant Certificate or Class C Warrant Certificate], for the purpose of curing any ambiguity, or of curing, correcting or supplementing any defective or inconsistent provision contained herein or therein, or to effect any assumptions of the Company's obligations hereunder and thereunder by a successor corporation under the circumstances described in Section 7.03(d) hereof or in any other manner that the Company may deem necessary or desirable and that shall not materially adversely affect the interests of the holders of the [Class A Warrant Certificate, Class B Warrant Certificate or Class C Warrant Certificate].

9. Reorganized eLot has informed AST that the extension of the expiration date of each individual class of Warrants is desirable and, with respect to each such class, does not materially adversely affect the interests of the holders of such individual class of Warrants. Accordingly, Reorganized eLot has requested that AST, as Warrant Agent, enter into an amendment of each of the Warrant Agreements extending the expiration date of the respective class of Warrants (as described in the Motion). In that connection, the Trustee and Reorganized eLot propose to enter into an amendment of the Trust Agreement extending its term. A copy of the proposed amendment to the Trust Agreement is annexed hereto as Exhibit "A".

10. In its capacity as Trustee, pursuant to the Trust Agreement, and as Warrant Agent for each class of the Warrants, pursuant to the New Class A Warrant Agreement, the New Class B Warrant Agreement and the New Class C Warrant Agreement, respectively, AST hereby supports the relief requested by the Reorganized Debtors in the Motion.

I certify under penalty of perjury that, based upon knowledge, information and belief as set forth in this Affidavit, the foregoing, is true and correct.



**HERBERT LEMMER**

Sworn to before me this  
23rd day of November, 2005

  
Notary Public

*Anthony J. Foti*  
*Notary Public, State of New York*  
*No. 01906022485*  
*Qualified in Kings County*  
*Commission Expires March 29, 2007*

# **EXHIBIT “A”**

## **Amendment No. 1 to Trust Agreement**

Amendment, dated as of December \_\_, 2005 (the "**Amendment**"), to the Trust Agreement, dated as of December 31, 2002 (the "**Trust Agreement**"), by and among eLot, Inc. ("**eLot**"), eLottery, Inc. ("**eLottery**"), and American Stock Transfer & Trust Company ("**AST**"). Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Second Amended Joint Plan of Reorganization of eLot and eLottery and the Official Committee of Unsecured Creditors for eLot and eLottery under Chapter 11 of the Bankruptcy Code.

WHEREAS, eLot is entering into an amendment to the New Class B Warrant Agreement to extend the expiration date of the Class B Warrants to five years after the Effective Date (or the next Business Day, if such date is not a Business Day);

WHEREAS, eLot is entering into an amendment to the New Class C Warrant Agreement to extend the expiration date of the Class C Warrants to five years after the Effective Date (or the next Business Day, if such date is not a Business Day);

WHEREAS, the Trust Agreement, pursuant to which AST, as trustee, is holding the Class B and C Warrants, shall expire no later than 30 days after the third anniversary of the Effective Date;

WHEREAS, Section 10.1 of the Trust Agreement requires AST to obtain the approval of the Bankruptcy Court with respect to any amendment to the Trust Agreement;

WHEREAS, eLot has filed a motion with the Bankruptcy Court seeking, inter alia, approval of this Amendment; and

WHEREAS, this Amendment shall be effective upon a Final Order of the Bankruptcy Court.

NOW THEREFORE, upon the mutual covenants of the parties contained herein and other good and valuable consideration which is hereby acknowledged the parties agree as follows:

1. Section 9.1 of the Trust Agreement is hereby amended by deleting "third anniversary" and substituting in its place "fifth anniversary".
2. This Amendment shall be effective upon a Final Order of the Bankruptcy Court.
3. Except as expressly amended hereby, the Trust Agreement shall remain unmodified and in full force and effect.

4. This Amendment may be executed by fax signature and in counterparts.

IN WITNESS WHEREOF, the parties hereto have either executed and acknowledged this Amendment, or caused it to be executed and acknowledged on their behalf by their duly authorized officers all as of the date first above written.

**eLot, Inc.**

By: \_\_\_\_\_  
Name:  
Title:

**eLottery, Inc.**

By: \_\_\_\_\_  
Name:  
Title:

**American Stock Transfer & Trust  
Company**

By: \_\_\_\_\_  
Name:  
Title:

# **EXHIBIT “B”**

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

-----X  
In re : Chapter 11  
: Case Nos. 01-15327 through  
: 01-15328 (ALG)  
eLot, Inc. and eLottery, Inc. :  
: Jointly Administered  
: Debtors. :  
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**NOTICE OF MOTION TO: (I) REOPEN CHAPTER 11 CASES,  
(II) AMEND THE TRUST AGREEMENT AND WARRANT  
AGREEMENTS, AND (III) CLOSE CHAPTER 11 CASES**

PLEASE TAKE NOTICE that upon the motion (the "Motion") of Reorganized eLot, Inc. ("Reorganized eLot") and Reorganized eLottery, Inc. ("Reorganized eLottery," and together with Reorganized eLot, the "Reorganized Debtors"), dated November 28, 2005, by and through their undersigned counsel, the Reorganized Debtors will move this Court before the Honorable Allan L. Gropper, United States Bankruptcy Judge, at the United States Bankruptcy Court for the Southern District of New York, One Bowling Green, New York, New York, on December 21, 2005 at 10:00 a.m., or as soon thereafter as counsel can be heard, for entry of an Order, pursuant to sections 105(a) and 350(b) of the United States Bankruptcy Code and Rule 5010 of the Federal Rules of Bankruptcy Procedure, to: (i) reopen the Reorganized Debtors' chapter 11 cases (the "Chapter 11 Cases"), (ii) amend the Trust Agreement and each of the New Class A, B and C Warrant Agreements (as defined in the Motion), (iii) close the Chapter 11 Cases; and (iv) for such other and further relief as may be deemed just and proper.

**Motion Summary**

In connection with (i) the Second Amended Joint Plan of Reorganization of the Debtors and the Official Committee of Unsecured Creditors of eLot, Inc. and eLottery, Inc. (the "Plan"), (ii) the Warrant Agreements, and (iii) that certain trust agreement, dated as of December 31, 2002, by and among the Reorganized Debtors and American Stock Transfer & Trust Company ("AST") (the "Trust Agreement"), AST was appointed as trustee of that certain trust (the "Trust") the purpose of which was to, *inter alia*, hold and distribute the Class A, B & C Warrants (collectively, the "Warrants") issued by Reorganized eLot in accordance with the Plan. As set forth in the Motion, the Reorganized Debtors are now seeking to amend the term of the Trust Agreement and to amend the Warrant Agreements to extend the expiration dates of each of the Warrants so that the term of the Trust Agreement and the expiration dates of each of the Class B

and C Warrants are extended for a period of two (2) years and the expiration date of the Class A Warrants is extended for four (4) years.

**PLEASE TAKE FURTHER NOTICE THAT YOU MAY OBTAIN A COPY OF THE MOTION BY MAKING A WRITTEN, TELEPHONIC, FACSIMILE OR E-MAIL REQUEST TO COUNSEL FOR THE REORGANIZED DEBTORS, TROUTMAN SANDERS LLP, AT THE CONTACT INFORMATION SET FORTH BELOW. YOU MAY ALSO OBTAIN A COPY OF THE MOTION AT THE WEBSITE FOR THE BANKRUPTCY COURTS FOR THE SOUTHERN DISTRICT OF NEW YORK: WWW.NYSB.USCOURTS.GOV.**

PLEASE TAKE FURTHER NOTICE, that objections, if any, to the relief requested in the Motion shall be in writing, shall state with particularity the grounds therefor and must be: (a) filed with the Bankruptcy Court; (b) served in such a manner so as to be received by counsel for the Reorganized Debtors and the Office of the U.S. Trustee on or before 5:00 p.m. on December 14, 2005; and (c) delivered to the Chambers of the Honorable Allan L. Gropper, United States Bankruptcy Judge, at the United States Bankruptcy Court, One Bowling Green, New York, New York on or before 5:00 p.m. on December 14, 2005.

Dated: New York, New York  
November 28, 2005

**TROUTMAN SANDERS LLP**

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Attorneys for the Reorganized Debtors



UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re : Chapter 11  
: Case Nos. 01-15327 through  
: 01-15328 (ALG)  
eLot, Inc. and eLottery, Inc. :  
:  
: Jointly Administered  
Debtors. :  
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**ORDER: (I) REOPENING CHAPTER 11 CASES, (II) APPROVING  
THE AMENDMENT OF THE TRUST AGREEMENT AND WARRANT  
AGREEMENTS, AND (III) CLOSING CHAPTER 11 CASES**

Upon the motion, dated November \_\_\_, 2005 (the "Motion") of eLot, Inc. and eLottery, Inc., the above-captioned reorganized debtors (the "Reorganized Debtors") for 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 ("Bankruptcy Rule 5010"), to (i) reopen the Reorganized Debtors' chapter 11 cases (the "Chapter 11 Cases"), (ii) approve the amendment of the Trust Agreement and Warrant Agreements to extend the term of the Trust Agreement and the expiration date of the Class A, Class B and Class C Warrants, all as more fully set forth in the Motion,<sup>1</sup> (iii) close the Chapter 11 Cases; and (iv) for such other and further relief as may be deemed just and proper; and any objections to the Motion having been settled, resolved or withdrawn; and this Court having determined that the relief requested in the Motion is in the best interests of the Reorganized Debtors, their creditors and estates; and it further appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and after due deliberation thereon; and good and sufficient cause appearing therefor, it is hereby

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

ORDERED, that the relief requested in the Motion is granted in its entirety; and it is further

ORDERED, that, pursuant to §§ 105(a) and 350(b) of the Bankruptcy Code and Bankruptcy Rule 5010, the Chapter 11 Cases are hereby reopened; and it is further

ORDERED, that the Reorganized Debtors and the Trustee are hereby authorized to execute an amendment to the Trust Agreement, in a form similar to Exhibit "A" to the Trustee's Affidavit, extending the term of the Trust Agreement for a period of two years and it is further

ORDERED, that the amendment of the New Class B and C Warrant Agreements to provide for the extension of the expiration date of the Class B and C Warrants for a period of two (2) years is hereby approved; and it is further

ORDERED, that the amendment of the New Class A Warrant Agreement to provide for the extension of the expiration date of the Class A Warrants for a period of four (4) years is hereby approved; and it is further

ORDERED, that, upon the filing of a certification that the Reorganized Debtors have satisfied any and all fees of the Court or of the United States Trustee due to the reopening of the Chapter 11 Cases, the Chapter 11 Cases shall be deemed closed without further Order of this Court.

Dated: December , 2005  
New York, New York

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HONORABLE ALLAN L. GROPPER  
UNITED STATES BANKRUPTCY JUDGE