

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE**

In re:	)	Chapter 11
	)	
Forward Foods LLC,	)	Case No. 09-10545 (KJC)
	)	
Debtor.	)	
	)	
	)	

**APPLICATION TO RETAIN AND TO EMPLOY THE GARDEN CITY GROUP, INC.,  
AS CLAIMS, NOTICE, AND BALLOTING AGENT**

Forward Foods LLC (“Forward Foods” or the “Debtor”), the debtor and debtor in possession in the above-captioned chapter 11 case, hereby applies (the “Application”) for an order authorizing the employment and retention of The Garden City Group, Inc. (“Garden City”) as claims, notice and balloting agent (the “Claims Agent”) for the bankruptcy case of Debtor. A proposed order is attached hereto as Exhibit A. In support of this Application, the Debtor relies upon and incorporates by reference the *Affidavit of J. Patrick Muldoon in Support of First Day Motions* (the “Muldoon Affidavit”) and respectfully represents as follows:

**JURISDICTION AND VENUE**

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory bases for the relief sought herein is 28 U.S.C. § 156(c), as supplemented by Rule 2002(f) of the Federal Rules of Bankruptcy Procedure and Local Rule 2002-1(f).

**BACKGROUND**

2. Simultaneously herewith (the “Petition Date”), Debtor has filed with this Court its voluntary petition for relief under chapter 11 of the Bankruptcy Code. Pursuant to Sections 1107 and 1108 of the Bankruptcy Code, the Debtor is continuing to operate its business and manage

its properties and assets as debtor in possession. No trustee, examiner or committee of creditors has yet been appointed in this chapter 11 proceeding.

3. Debtor is a manufacturer of high protein, snack, energy and meal replacement bars primarily produced under the Detour brand name. Since the introduction of the original Detour bar in October 2002, Detour has grown into a \$25 million business and is a leading high protein brand in health and fitness stores.

4. Debtor is primarily owned by Emigrant Capital Corporation ("Emigrant"), a private equity company.

5. Debtor is headquartered in Minden, Nevada and manufactures product in two leased facilities, both located in Minden. Debtor employs 52 individuals and regularly employs 25 temporary workers. In its business Debtor also contracts with 14 brokers who represent its brand with many regional and local retailers. A material portion of the sales of Debtor is made through these brokers.

6. A majority of the volume of the products produced by Debtor are sold directly to club, mass, convenience and grocery stores, drugstores and health and fitness clubs.

#### **Events Leading to the Commencement of the Debtor's Chapter 11 Case**

7. Debtor commenced operations on September 1, 2006. A group of investors led by Emigrant purchased the assets of a protein bar business from Next Proteins, Inc. ("NP"), David A. Jenkins and Bluegrass Bars, LLC ("Sellers").

8. The purchase of the assets was financed through a senior financing agreement with CIT Commercial Finance ("CIT") which provided a working capital line of credit and a senior secured Term A loan of \$8.9 million as a 5-year credit facility (the "Credit Facility"). Comerica Bank ("Comerica") is a participant in that Credit Facility. The Sellers participated in the financing with a limited, subordinated Term B loan in an original principal balance of \$4

million. Debtor also entered into a subordinated note with NP in the original principal amount of \$2.5 million.

9. Emigrant invested \$12.72 Million in the company at closing to finance the purchase of the assets. Five other parties, including NP, also made an additional investment of \$755,000.

10. Since the asset purchase, Emigrant has loaned Forward Foods \$6.25 million through a series of senior subordinated promissory notes as well as an additional \$2 million evidenced by a promissory note. Forward Foods currently owes various vendors approximately \$2.5 Million.

11. Since the purchase of the protein bar business, Debtor and its major investor and lender, Emigrant, have been in dispute with the Sellers with regard to various aspects of disclosure and other matters involving the purchase. On November 26, 2007, Debtor and Emigrant commenced a lawsuit in the Supreme Court for the State of New York against the Sellers alleging breach of contract, breach of the duty of good faith and fair dealing, fraud and rescission. The Sellers filed a motion to dismiss the New York action based upon *forum non conveniens* which was granted on October 15, 2008.

12. On December 15, 2008, Debtor and Emigrant commenced suit in the Superior Court for the State of California, County of San Diego against the Sellers alleging breach of contract, negligent misrepresentation, fraud and deceit and requesting rescission and restitution. On February 3, 2009, the Sellers filed their answer and cross complaint against the plaintiffs and other affiliated parties alleging fraud and deceit, negligent misrepresentation, intentional interference with prospective economic advantage, negligent interference with the prospective economic advantage, breach of fiduciary duty, aiding and abetting breach of fiduciary duty and breach of the various affiliated agreements with regard to the sale transaction.

13. Debtor, Emigrant, and the Sellers have entered into a prospective settlement which has been submitted to this Court for approval which would provide, among other things, a cash payment to Debtor of \$975,000, the release of \$500,000 in escrow to the Sellers, assignment of the \$4 million Term B obligation to Emigrant, assignment of the unsecured note of \$2.5 million to Emigrant, assignment of the Seller's equity interest to Emigrant, a grant to Debtor of the alleged defaulted license agreement as to specific trademarks to permit continued use by Debtor through and until December 31, 2009, continuance of the David A. Jenkins non-compete agreement until August 1, 2009 and appropriate releases among the parties with regard to all claims.

14. On January 29, 2009, Debtor was notified by Peanut Corporation of America ("PCA") that all peanut products produced by that company's Blakely facility was involved in a nationwide voluntary recall with regard to a salmonella poisoning risk. Debtor has contracted with PCA for a proprietary spiced roasted peanut for use in several of Debtor's Detour brand products. The sales of Detour products containing the PCA peanut product (the "Affected Peanuts") make up approximately 75% of all protein bar sales by Debtor.

15. As a matter of policy, Debtor has always employed an independent laboratory to test representative samples of its finished products for quality and safety assurance; however, the fact that the proprietary spiced roasted peanut incorporated by Debtor in its products was purchased from the specific PCA plant subject to the salmonella risk, thereby creating a risk of cross contamination, has created a sufficient risk for Debtor to have initiated a voluntary recall with regard to specific products incorporating the PCA peanuts (the "Affected Product"). Notices with regard to Affected Products were delivered on January 29, 2009, to all known customers purchasing any of the Affected Products.

16. The cost of this recall to the business of the Debtor is material. A significant value of inventory must be condemned, and to, the extent customers are appropriately destroying or returning unsold recalled product, the ability to collect outstanding receivables is very much at risk.

**RELIEF REQUESTED AND REASONS THEREFOR**

17. By this Application, the Debtor seeks entry of an order authorizing it to retain and employ Garden City as the Claims Agent to, *inter alia*: (a) serve as the Court's noticing agent to mail notices to the Debtor's creditors, interest holders and parties in interest; (b) provide, if necessary, computerized claims, objection and balloting database services; and (c) provide, if necessary, expertise, consultation and assistance in claims, interests and ballot processing and with the dissemination of other administrative information related to the Debtor's bankruptcy case. The Debtor also requests that the Court release all filed claims and interest directly to Garden City. In support of this Application, the Debtor submits the Affidavit of Jeffrey Stein, Esq. (the "Stein Affidavit") attached hereto as Exhibit B.

18. 28 U.S.C. § 156(c), which governs the staffing and expenses of bankruptcy courts, states in pertinent part:

Any court may utilize facilities or services, either on or off the court's premises, which pertain to the provision of notices, dockets, calendars, and other administrative information to parties in cases filed under the provisions of title 11, United States Code, where the cost of such facilities or services are paid for out of the assets of the estate and are not charged to the United States. The utilization of such facilities or services shall be subject to such conditions and limitations as the pertinent circuit council may prescribe.

28 U.S.C. § 156(c).

19. Bankruptcy Rule 2002 generally regulates the notices that must be provided to creditors, interest holders and other parties in interest in bankruptcy cases. Under Bankruptcy

Rule 2002, the Court may direct that a person other than the Clerk of the Court give notice of the various matters described therein. The Debtor's engagement of Garden City as the Claims Agent is therefore expressly authorized under section 156(c) of Title 28 of the United States Code, Bankruptcy Rule 2001, and the Local Rules.

20. The Debtor has identified over 200 creditors and other parties in interest to whom certain notices, including notice of the commencement of the chapter 11 case, and voting documents, must be sent. Local Rule 2002-1(f) requires the appointment of a claims agent in all cases with more than 200 creditors, unless the Court orders otherwise.

21. Garden City is a data processing firm that specializes in noticing, claims processing, and other administrative tasks in chapter 11 cases. The Debtor wishes to engage Garden City to (a) send out certain designated notices, (b) maintain claims and interest files, (c) maintain claims and interest registers, and (d) act as voting agent with respect to certain creditors in this case. The Debtor believes that such assistance will expedite the service of notices required under Bankruptcy Rule 2002 and the Local Rules, streamline the claims and interests administration process, and permit the Debtor to focus on its reorganization efforts.

22. The Debtor believes that Garden City is well-qualified to serve in the capacity as claims, notice, and balloting agent. The Debtor chose Garden City based on both its experience and the competitiveness of its fees. Garden City has provided identical or substantially similar services in other Chapter 11 cases in Delaware, including, among others: *In re Jancor Companies Inc., et al.*, case no. 08-12556 (MFW), *In re Comfort Co., Inc.*, case no. 08-12305 (MFW), *In re DG Liquidation Corp.*, case no. 08-10601 (CSS), *In re KCMVNO, Inc.*, case no. 08-10600 (BLS), *In re Supplements LT Inc.*, case no. 08-10446 (KJC), *In re ProRhythm, Inc.*, case no. 07-11861 (KJC), *In re S-Tran Holdings, Inc., et al.*, case no. 05-11391 (RB), *In re Flintkote Company*, case no. 04-11300 (JKF), *In re Factory 2-U Stores, Inc.*, case no. 04-10111

(PJW), *In re Magnatrax Corporation*, case no. 03-11402 (PJW), *In re HQ Global Holdings, Inc., et al.*, case no. 02-10760 (MFW), *In re Federal-Mogul Global, Inc.*, case no. 01-10578 (AMW) and *In re ACandS, Inc.*, case no. 02-12687 (RJN).

23. The Debtor proposes to retain Garden City on substantially the terms and conditions set forth in the Bankruptcy Administration Agreement (the "Agreement") between the Debtor and Garden City, attached hereto as Exhibit C.

24. Garden City has represented to the Debtor that it neither holds nor represents any interest adverse to the Debtor's estate on matters for which it is to be retained and employed and that it has no prior connection with the Debtor, except as disclosed in the Stein Affidavit.

25. The Debtor anticipates that Garden City would perform some or all of the following services, among others, at the request of the Debtor, the Court, or the Clerk's Office:

- (a) notify all potential creditors of the filing of the Debtor's bankruptcy petition and of the setting of the first meeting of creditors, pursuant to Bankruptcy Code § 341, under the proper provisions of the Bankruptcy Code and the Bankruptcy Rules;
- (b) maintain an official copy of the Debtor's schedules of assets and liabilities and statement of financial affairs (collectively, the "Schedules") listing the Debtor's known creditors and the amounts owed thereto;
- (c) notify all potential creditors of the existence and amount of their respective claims, as evidenced by the Debtor's books and records and as set forth in their Schedules;
- (d) furnish a notice of the last day for the filing of proofs of claim and a form for the filing of a proof of claim, after such notice and form are approved by this Court;
- (e) file with the Clerk an affidavit or certificate of service which includes a copy of the notice, a list of persons to whom it was mailed (in alphabetical order), and the date the notice was mailed, within seven days of service;
- (f) docket all claims received, maintain the official claims register (the "Claims Register") for the Debtor on behalf of the Clerk, and provide the Clerk with a certified duplicate unofficial Claims Register on a monthly basis, unless otherwise directed;

- (g) specify, in the Claims Register, the following information for each claim docketed: (i) the claim number assigned, (ii) the date received, (iii) the name and address of the claimant and agent, if applicable, who filed the claim, (iv) the filed amount of the claim, if liquidated, and (v) the classification(s) of the claim (e.g. secured, unsecured, priority, etc.) according to the proof of claim;
- (h) record all transfers of claims and provide any notices of such transfers required by Bankruptcy Rule 3001;
- (i) make changes in the Claims Register pursuant to Court Order;
- (j) upon completion of the docketing process for all claims received to date by the Clerk's office, turn over to the Clerk copies of the Claims Register for the Clerk's review;
- (k) maintain the Claims Register for public examination without charge during regular business hours;
- (l) maintain the official mailing list for the Debtor, which shall be available upon request by a party-in-interest or the Clerk, of all entities that have filed a proof of claim;
- (m) assist with, among other things, solicitation, calculation, and tabulation of votes and distribution, as required in furtherance of confirmation of the Plan;
- (n) provide and maintain a website where parties can view claims filed, status of claims, and pleadings or other documents filed with the Court by the Debtor;
- (o) Thirty days prior to the close of this case, an order dismissing Garden City would be submitted terminating its services upon completion of its duties and responsibilities and upon the closing of this case; and
- (p) at the close of the case, box and transport all original documents in proper format, as provided by the Clerk's office, to the Federal Records Center.

26. In addition, the Debtor may utilize other services offered by Garden City such as disbursing and other related administrative services that may be requested by the Debtor, including but not limited to assisting the Debtor with the preparation of a master creditor list and any amendments thereto, and to the extent necessary, gathering data in conjunction with the preparation of the Debtor's Schedules.

27. The proposed fees to be charged by Garden City are set forth in the Agreement. The Debtor believes that the rates to be charged by Garden City for its services in connection with noticing, claims processing, and the solicitation process are competitive and either at or below the rates charged by its competitors. Prior to the filing of the chapter 11 case, the Debtor agreed to pay, upon Court approval of this Motion, Garden City a retainer of \$15,000 for anticipated expenses that Garden City expect to incur.

28. The Debtor requests that the fees and expenses of Garden City incurred in the performance of the above-described services be treated as an administrative expense of the Debtor's chapter 11 estate and be paid by the Debtor in the ordinary course of business, without the need to file any fee applications or otherwise seek Court approval for the compensation of its services and reimbursement of its expenses.<sup>1</sup> Garden City has informed the Debtor that it will maintain records of all services provided, showing dates, categories of services, fees charged, and expenses incurred and that it would serve monthly invoices on: (i) the Debtor; (ii) counsel for the Debtor; (iii) the Office of the United States Trustee; and (iv) counsel for any official committees that may be appointed in this case.

29. In the event this case is converted to a case under chapter 7 of the Bankruptcy Code, the Debtor requests that Garden City continue to be paid for its services until the claims filed in this case has been completely processed, and that if claims agent representation is necessary in the converted chapter 7 case, Garden City would continue to be paid in accordance with 28 U.S.C. section 156(c).

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<sup>1</sup> As administrative agent and adjunct to the Court, the Debtor does not believe that Garden City is a "professional" whose retention is subject to approval under Bankruptcy Code § 327 or whose compensation is subject to approval under Bankruptcy Code § 330 or 331.

30. The Debtor has many creditors, and accordingly, Garden City may have rendered and may continue to render services to certain of these creditors. Garden City has not and will not represent the separate interests of any such creditor in this case. Additionally, Garden City employees may, in the ordinary course of their personal affairs, have relationships with certain creditors of the Debtor. For example, one or more of Garden City's employees may have obligations outstanding with financial institutions that are creditors of the Debtor.

31. To the best of the Debtor's knowledge, information, and belief, and except as disclosed in the Stein Affidavit, the employees of Garden City have no relationship to the Debtor, its creditors, or the United States Trustee for this Region. In the Stein Affidavit, Garden City has represented that it neither holds nor represents any interest adverse to the Debtor's estate and that it is a "disinterested person," as referenced in Bankruptcy Code § 327(a) and as defined in Bankruptcy Code § 101(14), as modified by Bankruptcy Code § 1107(b).

32. Garden City has informed the Debtor that it would not employ any past or present employee of the Debtor for work that involves the Debtor's bankruptcy proceedings.

33. For the foregoing reasons, the Debtor believes that the retention of Garden City is in its best interest and the best interests of its estate, creditors, and other parties in interest, and therefore, the Debtor desires to retain and employ Garden City as their claims, notice, and balloting agent upon the terms set forth herein and in the Agreement.

#### **NOTICE**

34. No trustee, examiner, or creditors' committee has been appointed in this chapter 11 case. Notice of this Motion has been given to: (a) the United States Trustee for this region, (b) the Debtor's twenty largest unsecured creditors; and (c) counsel to the CIT Group/Commercial Services, Inc., Emigrant Capital Corporation, Next Proteins, Inc., and

Comerica Bank. In light of the nature of the relief requested herein, the Debtor submits that no other or further notice is required.

WHEREFORE, Debtor requests that the Court enter an order, substantially in the form of Exhibit A hereto, authorizing the employment and retention of Garden City as claims, notice and balloting agent and granting such other and further relief as the Court deems just and proper.

Dated: February 17, 2009  
Wilmington, DE

Respectfully submitted,

/s/ Bradford J. Sandler

Bradford J. Sandler, Esquire (No. 4142)  
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Proposed Counsel for Forward Foods LLC,  
Debtor and Debtor in Possession

EXHIBIT A

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

\_\_\_\_\_  
In re: ) Chapter 11  
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Forward Foods LLC, ) Case No. 09- \_\_\_\_\_ ( )  
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Debtor. )  
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**ORDER AUTHORIZING RETENTION AND EMPLOYMENT OF THE GARDEN CITY GROUP, INC. AS CLAIMS, NOTICE, AND BALLOTING AGENT**

Upon the application (the "Application") of Forward Foods LLC ("Forward Foods" or the "Debtor"), for entry of an order authorizing and approving the Debtor's retention and employment of The Garden City Group, Inc. ("Garden City"), as claims, notice, and balloting agent for the bankruptcy case of the Debtor, as agent for the clerk of the United States Bankruptcy Court for the District of Delaware (the "Clerk"), under 28 U.S.C. § 156(c), pursuant to the terms of the Bankruptcy Administration Agreement (the "Agreement") attached to the Application as Exhibit C to, among other things, (a) serve as the Court's noticing agent to mail notices to the Debtor's creditors, interest holders and parties in interest; (b) provide, if necessary, computerized claims, objection and balloting database services; and (c) provide, if necessary, expertise, consultation and assistance in claims, interests and ballot processing and with the dissemination of other administrative information related to the Debtor's bankruptcy case; and upon the Affidavit of Jeffrey Stein, Esq. (the "Stein Affidavit") submitted in support of and attached as Exhibit B to the Application; and the Debtor having estimated that there are over 200 creditors and other potential parties-in-interest in this chapter 11 case, many of which are expected to file proofs of claim; and it appearing that the receiving, docketing, and maintaining

of proofs of claim would be unduly time consuming and burdensome for the Clerk; and the Court being authorized under 28 U.S.C. §156(c) and Local Rule 2002-1(f), to utilize, at the Debtor's expense, outside agents and facilities to provide notices to parties in bankruptcy cases and to receive, docket, maintain, photocopy, and transmit proofs of claim; and the Court being satisfied that Garden City has the capability and experience to provide such services and that Garden City does not hold an interest adverse to the Debtor or its estate; and good and sufficient notice of the Application having been given; and no other or further notice being required; and it appearing that the retention and employment of Garden City is in the best interests of the Debtor, its estates, creditors, and other parties-in-interest; and sufficient cause appearing therefore; it is hereby

**ORDERED** that the Application is granted; and it is further

**ORDERED** that the Debtor is authorized to retain and Garden City *nunc pro tunc* to the date of the filing of this case to provide the noticing and other services set forth in the Agreement and to receive, maintain, record, and otherwise administer the proofs of claim filed in this chapter 11 case; and it is further

**ORDERED** that Garden City is appointed as agent for the Clerk and custodian of court records and, as such, is designated as the authorized repository for all proofs of claim filed in this chapter 11 case and is authorized and directed to maintain an official claims register for the Debtor and to provide the Clerk with a certified duplicate thereof on a monthly basis unless otherwise directed by the Clerk; and it is further

**ORDERED** that Garden City is authorized and directed to perform all related tasks to process the proofs of claim and maintain a claims register including, without limitation:

- (a) notify all potential creditors of the filing of the Debtor's bankruptcy petition and of the setting of the first meeting of creditors, pursuant to Bankruptcy Code § 341, under the proper provisions of the Bankruptcy Code and the Bankruptcy Rules;
- (b) maintain an official copy of the Debtor's schedules of assets and liabilities and statement of financial affairs (collectively, the "Schedules") listing the Debtor's known creditors and the amounts owed thereto;
- (c) notify all potential creditors of the existence and amount of their respective claims, as evidenced by the Debtor's books and records and as set forth in their Schedules;
- (d) furnish a notice of the last day for the filing of proofs of claim and a form for the filing of a proof of claim, after such notice and form are approved by this Court;
- (e) file with the Clerk an affidavit or certificate of service which includes a copy of the notice, a list of persons to whom it was mailed (in alphabetical order), and the date the notice was mailed, within seven days of service;
- (f) docket all claims received, maintain the official claims register (the "Claims Register") for the Debtor on behalf of the Clerk, and provide the Clerk with a certified duplicate unofficial Claims Register on a monthly basis, unless otherwise directed;
- (g) specify, in the Claims Register, the following information for each claim docketed: (i) the claim number assigned, (ii) the date received, (iii) the name and address of the claimant and agent, if applicable, who filed the claim, (iv) the filed amount of the claim, if liquidated, and (v) the classification(s) of the claim (e.g. secured, unsecured, priority, etc.) according to the proof of claim;
- (h) record all transfers of claims and provide any notices of such transfers required by Bankruptcy Rule 3001;
- (i) make changes in the Claims Register pursuant to Court Order;
- (j) upon completion of the docketing process for all claims received to date by the Clerk's office, turn over to the Clerk copies of the Claims Register for the Clerk's review;
- (k) maintain the Claims Register for public examination without charge during regular business hours;

- (l) maintain the official mailing list for the Debtor, which shall be available upon request by a party-in-interest or the Clerk, of all entities that have filed a proof of claim;
- (m) assist with, among other things, solicitation, calculation, and tabulation of votes and distribution, as required in furtherance of confirmation of the Plan;
- (n) provide and maintain a website where parties can view claims filed, status of claims, and pleadings or other documents filed with the Court by the Debtor;
- (o) Thirty days prior to the close of this case, an order dismissing Garden City would be submitted terminating its services upon completion of its duties and responsibilities and upon the closing of this case; and
- (p) at the close of the case, box and transport all original documents in proper format, as provided by the Clerk's office, to the Federal Records Center.

and it is further

**ORDERED** that the Debtor may utilize other services offered by Garden City such as disbursing and other related administrative services that may be requested by the Debtor, including but not limited to assisting the Debtor with the preparation of a master creditor list and any amendments thereto, and to the extent necessary, gathering data in conjunction with the preparation of the Debtor's Schedules; and it is further

**ORDERED** that the Debtor is authorized to execute such documents, take such action, and do such things as may be necessary to implement and effectuate the terms of this Order; and it is further

**ORDERED** that Garden City is authorized to take such further and other action to comply with all duties set forth in the Application; and it is further

**ORDERED** that the Debtor is authorized to compensate Garden City on a monthly basis, in accordance with the Agreement, upon the receipt of reasonably detailed invoices setting forth

the services provided by Garden City in the prior month and the rates charged for each, and to reimburse Garden City for all reasonable and necessary expenses it may incur, upon the presentation of appropriate documentation, without the need for Garden City to file any fee applications or otherwise seek Court approval for the compensation of its services and reimbursement of its expenses, and such fees and expenses of Garden City shall be treated as administrative expenses of the Debtor's chapter 11 estate; and it is further

**ORDERED** that Garden City shall maintain records of all services provided, showing dates, categories of services, fees charged, and expenses incurred; and it is further

**ORDERED** that Garden City shall serve monthly invoices on: (i) the Debtor, (ii) counsel for the Debtor, (iii) the Office of the United States Trustee and (iv) counsel for any official committees that may be appointed in this case; and it is further

**ORDERED** that if this case converts to a case under chapter 7 of the Bankruptcy Code, Garden City will continue to be paid for its services until the claims filed in this chapter 11 case have been completely processed, and that if claims agent representation is necessary in the converted chapter 7 case, Garden City will continue to be paid in accordance with 28 U.S.C. § 156(c) on the terms set forth in this Order; and it is further

**ORDERED** that, in the event Garden City is unable to provide the services set out in this Order, Garden City will immediately notify the Clerk and the Debtor and its counsel and cause to have all original proofs of claim and computer information turned over to another claims, notice, and balloting agent with the advice and consent of the Clerk and the Debtor and its counsel; and it is further

**ORDERED** that this Court shall retain jurisdiction over all matters arising from or related to the interpretation and implementation of this Order.

Dated: \_\_\_\_\_, 2009  
Wilmington, Delaware

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United States Bankruptcy Judge

EXHIBIT B

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

\_\_\_\_\_  
In re: ) Chapter 11  
          ) )  
Forward Foods LLC, ) Case No. 09-\_\_\_\_\_ ( )  
                          ) )  
                          ) Debtor. )  
                          ) )  
\_\_\_\_\_) )

**AFFIDAVIT OF JEFFREY STEIN, ESQ. IN SUPPORT OF DEBTOR'S APPLICATION  
TO RETAIN AND TO EMPLOY THE GARDEN CITY GROUP, INC., AS  
CLAIMS, NOTICE, AND BALLOTING AGENT**

STATE OF [insert state] )  
                                  ) SS:  
COUNTY OF [insert county] )

JEFFREY STEIN, ESQ., being first duly cautioned and sworn, deposes and says:

1. I am the Senior Vice President, Business Reorganization of The Garden City Group, Inc. (Garden City"), a chapter 11 administrator, which maintains an office at 105 Maxess Road, Melville, New York 11747. I am over 18 years of age and have personal knowledge of all matters testified to herein. I submit this Affidavit in support of the Debtor's application to retain and to employ Garden City as claims, notice and balloting agent for the Office of the Clerk of the United States Bankruptcy Court for the District of Delaware in the Debtor's chapter 11 case. Except as otherwise noted, I have personal knowledge of the facts contained in this Affidavit and can and would testify competently thereto.

2. As agent and custodian of Court records, the services Garden City proposed to render to the Clerk's Office and the Debtor include the following:

- (a) notify all potential creditors of the filing of the Debtor's bankruptcy petition and of the setting of the first meeting of creditors, pursuant to Bankruptcy Code § 341, under the proper provisions of the Bankruptcy Code and the Bankruptcy Rules;

- (b) maintain an official copy of the Debtor's schedules of assets and liabilities and statement of financial affairs (collectively, the "Schedules") listing the Debtor's known creditors and the amounts owed thereto;
- (c) notify all potential creditors of the existence and amount of their respective claims, as evidenced by the Debtor's books and records and as set forth in their Schedules;
- (d) furnish a notice of the last day for the filing of proofs of claim and a form for the filing of a proof of claim, after such notice and form are approved by this Court;
- (e) file with the Clerk an affidavit or certificate of service which includes a copy of the notice, a list of persons to whom it was mailed (in alphabetical order), and the date the notice was mailed, within seven days of service;
- (f) docket all claims received, maintain the official claims register (the "Claims Register") for the Debtor on behalf of the Clerk, and provide the Clerk with a certified duplicate unofficial Claims Register on a monthly basis, unless otherwise directed;
- (g) specify, in the Claims Register, the following information for each claim docketed: (i) the claim number assigned, (ii) the date received, (iii) the name and address of the claimant and agent, if applicable, who filed the claim, (iv) the filed amount of the claim, if liquidated, and (v) the classification(s) of the claim (e.g. secured, unsecured, priority, etc.) according to the proof of claim;
- (h) record all transfers of claims and provide any notices of such transfers required by Bankruptcy Rule 3001;
- (i) make changes in the Claims Register pursuant to Court Order;
- (j) upon completion of the docketing process for all claims received to date by the Clerk's office, turn over to the Clerk copies of the Claims Register for the Clerk's review;
- (k) maintain the Claims Register for public examination without charge during regular business hours;
- (l) maintain the official mailing list for the Debtor, which shall be available upon request by a party-in-interest or the Clerk, of all entities that have filed a proof of claim;
- (m) assist with, among other things, solicitation, calculation, and tabulation of votes and distribution, as required in furtherance of confirmation of the Plan;

- (n) provide and maintain a website where parties can view claims filed, status of claims, and pleadings or other documents filed with the Court by the Debtor;
- (o) Thirty days prior to the close of this case, an order dismissing Garden City would be submitted terminating its services upon completion of its duties and responsibilities and upon the closing of this case; and

3. In addition, the Debtor may utilize other services offered by Garden City such as other disbursing and other related administrative services that may be requested by the Debtor, including but not limited to assisting the Debtor with the preparation of a master creditor list and any amendments thereto, and to the extent necessary, gathering data in conjunction with the preparation of the Debtor's Schedules.

4. Garden City is a legal administration services firm that specializes in noticing, claims processing, and other administrative tasks in chapter 11 cases. Garden City has provided identical or substantially similar services in other Chapter 11 cases in Delaware, including, among others: *In re Jancor Companies Inc., et al.*, case no. 08-12556 (MFW), *In re Comfort Co., Inc.*, case no. 08-12305 (MFW), *In re DG Liquidation Corp.*, case no. 08-10601 (CSS), *In re KCMVNO, Inc.*, case no. 08-10600 (BLS), *In re Supplements LT Inc.*, case no. 08-10446 (KJC), *In re ProRhythm, Inc.*, case no. 07-11861 (KJC), *In re S-Tran Holdings, Inc., et al.*, case no. 05-11391 (RB), *In re Flintkote Company*, case no. 04-11300 (JKF), *In re Factory 2-U Storex, Inc.*, case no. 04-10111 (PJW), *In re Magnatrax Corporation*, case no. 03-11402 (PJW), *In re HQ Global Holdings, Inc., et al.*, case no. 02-10760 (MFW), *In re Federal-Mogul Global, Inc.*, case no. 01-10578 (AMW) and *In re ACandS, Inc.*, case no. 02-12687 (RJN).

5. Garden City represents, among other things, that:

- (a) it is not employed by the United States government and shall not seek any compensation from the United States government in its capacity as the agent in this case;

- (b) by accepting employment in this case, Garden City waives any right to receive compensation from the United States government;
- (c) it is not an agent of the United States and is not acting on behalf of the United States in this case; and
- (d) it will not misrepresent any fact to the public.

6. Garden City will not employ any past or present employee of the Debtor for work that involves the Debtor's bankruptcy proceedings. The terms of Garden City's retention are set forth in Exhibit C attached to the Application.

7. To the best of my knowledge and belief, neither Garden City, nor any employee of Garden City, holds or represents any interest adverse to the Debtor or its estate with respect to matters upon which Garden City is to be engaged.

8. To the best of my knowledge and belief, Garden City has no connections with Benesch Friedlander Coplan & Aronoff LLP, any United States Bankruptcy Judge for the District of Delaware, or any person employed by the office of the United States Trustee, that would conflict with the scope of Garden City's retention or would create any interest adverse to the Debtor's estate or any other party in interest.

9. Notwithstanding anything contained herein, as part of its diverse business, Garden City is the noticing, claims and balloting agent for debtors in numerous cases involving many different creditors (including taxing authorities), professionals, including attorneys, accountants, investment bankers and financial consultants, some of which may be creditors or represent creditors and parties in interest in this chapter 11 case. In addition, Garden City has in the past and will likely in the future continue working with or against other professionals involved in this chapter 11 case in matters unrelated to this chapter 11 case. Based upon my current knowledge of the parties involved, and to the best of my knowledge, none of these business relations constitute interests adverse to that of the creditors, or the Debtor's estate, with respect to the

matter upon which Garden City is to be engaged. Additionally, Garden City employees may have obligations outstanding with financial institutions that are creditors of the Debtor. Garden City, however, has not and will not represent the separate interests of any such creditor in this case: Based upon the information available to me, I believe that Garden City is a "disinterested person" within the meaning of section 101(14) of the Bankruptcy Code and holds no interest adverse to the Debtor or its estate for the matters for which Garden City is to be employed.

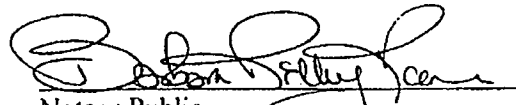
10. In performing the services identified above, Garden City will charge the rates set forth in the Agreement, a copy of which is attached to the Application as Exhibit C. The rates set forth therein are as favorable and reasonable as the prices Garden City charges in cases in which it has been retained to perform similar bankruptcy related services.

11. Garden City will comply with all requests of the Clerk's office and the guidelines promulgated by the Judicial Conference of the United States for the implementation of 28 U.S.C. § 156(c).

FURTHER AFFIANT SAYETH NAUGHT.

  
\_\_\_\_\_  
JEFFREY STEIN, ESQ

SWORN TO BEFORE ME and subscribed in my presence this 13<sup>th</sup> day of February, 2009.

  
\_\_\_\_\_  
Notary Public

BARBARA KELLEY KEANE  
Notary Public, State of New York  
No. 01KE4760720  
Qualified in Suffolk County  
Commission Expires Feb. 28, 20 11

## BANKRUPTCY ADMINISTRATION AGREEMENT

This Bankruptcy Administration Agreement, dated as of February 11, 2009 is between The Garden City Group, Inc., a Delaware corporation (the "Company"), and [ ] Debtor (the "Client").

The Client desires to retain the Company to perform certain noticing, claims processing and balloting administration services for the Client in the Chapter 11 case it anticipates filing in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"), and the Company desires to be so retained, in accordance with the terms and conditions of this Agreement. The Client shall file an application (the "Application") with the Bankruptcy Court seeking entry of an order (the "Order") approving the Company's retention and the terms of the Agreement.

In consideration of the mutual covenants herein contained, the parties hereby agree as follows:

1. Services. The Company agrees to provide the services necessary to perform the tasks specified in the pricing schedule that has been supplied to the Client. Such services are hereinafter referred to as "Services." The Client agrees and understands that none of the Services constitute legal advice.

2. Payment for Services; Expenses.

2.1 Compensation. As full compensation for the Services to be provided by the Company, the Client agrees to pay the Company its fees as outlined in the pricing schedule that has been supplied to the Client (subject to Bankruptcy Court approval in the event of an unresolved dispute). Billing rates may be adjusted from time to time by the Company in its reasonable discretion, although billing rates generally are changed on an annual basis. The Client agrees to pay the Company a retainer of [\$15,000], to be applied first against the pre-petition fees and expenses incurred by the Client in connection with Services rendered by the Company and then against the final bill that will be rendered by the Company to the Client for the post-petition fees and expenses incurred by the Client in connection with Services rendered by the Company.

2.2 Expenses. In addition to the compensation set forth in Section 2.1, the Client shall reimburse the Company for all out-of-pocket expenses reasonably incurred by the Company in connection with the performance of the Services (subject to Bankruptcy Court determination in the event of an unresolved dispute). The out-of-pocket expenses will be billed on the expense (non-fee) portion of the Company's invoice to the Client and may include, but are not limited to, postage, banking fees, brokerage fees, costs of messenger and delivery service, travel, filing fees, staff overtime meal expenses and other similar expenses. In some cases, the Company may receive a rebate at the end of a year from a vendor.

2.3 Billing and Payment. Except as provided in Section 2.2, the Company shall bill the Client for its fees and expenses on a monthly basis, and the Client shall pay the Company within thirty (30) days of its receipt of each such bill in the ordinary course of business (subject to Bankruptcy Court approval in the event of an unresolved dispute). Unless otherwise agreed to in writing, the fees for print notice and media publication (including commissions) as well as certain expenses such as postage must be paid at least three (3) business days in advance of those fees and expenses being incurred.

3. Term and Termination.

3.1 Term. The term of this Agreement shall commence on the date hereof and shall continue until performance in full of the Services, unless earlier terminated as set forth herein.

### 3.2 Termination.

(a) In the event of any material breach of this Agreement by either party hereto, either party may apply to the Bankruptcy Court for an order allowing termination of the Agreement. Grounds for termination include: (i) failure to cure a material breach within thirty (30) days after receipt of the notice by the non-breaching party or (ii) in the case of any breach which requires more than thirty (30) days to effect a cure, failure to commence and continue in good faith efforts to cure such breach, provided that such cure shall be effected no later than ninety (90) days after receipt of such notice of such breach. Waiver of any such default or material breach by either party hereto shall not be construed as limiting any right of termination for a subsequent default or material breach.

(b) The Company shall be entitled to an administrative claim for all fees and expenses outstanding at the time of termination (subject to Bankruptcy Court approval in the event of an unresolved dispute).

4. Independent Contractor. It is understood and agreed that the Company, through itself or any of its agents, shall perform the Services as an independent contractor. Neither the Company nor any of its employees shall be deemed to be an employee of the Client. Neither the Company nor any of its employees shall be entitled to any benefits provided by the Client to its employees, and the Client will make no deductions from any of the payments due to the Company hereunder for state or federal tax purposes. The Company agrees that the Company shall be responsible for any and all taxes and other payments due on payments received hereunder by the Company from the Client. Nothing in this Agreement requires the Client to use the Company for any future work relating to the Services, and, in the event the Client decides to use another party for such future work, the Company agrees to cooperate fully with the Client to ensure a smooth transition to the new party.

5. Accuracy of Client Supplied Information. The Client is responsible for the accuracy of all programs, data and other information it submits to the Company (including all information for schedule and statement preparation) and for the output of such information. The Company may undertake to place that data and information into certain systems and programs, including in connection with the generation of Schedules of Assets and Liabilities ("Schedules") and Statements of Financial Affairs ("Statements"). The Company does not verify information provided by the Client and, with respect to Schedules and Statements preparation, all decisions are at the sole discretion and direction of the Client. All Schedules and Statements filed on behalf of, or by, the Client are reviewed and ultimately approved by the Client, and the Company bears no responsibility for the accuracy or contents therein.

### 6. Confidential Information.

6.1 Confidentiality. In connection with this Agreement, each of the Client and the Company (as the case may be, the "Disclosing Party") may disclose to the Company or the Client (as the case may be, the "Receiving Party") certain information (a) that is marked or otherwise identified in writing as confidential or proprietary information of the Disclosing Party ("Confidential Information") prior to or upon receipt by the Receiving Party; or (b) which the Receiving Party reasonably should recognize from the circumstances surrounding the disclosure to be Confidential Information. The Receiving Party (x) shall hold all Confidential Information in confidence and will use such information only for the purposes of fulfilling the Receiving Party's obligations hereunder and for no other purpose, and (y) shall not disclose, provide, disseminate or otherwise make available any Confidential Information to any third party other than for the purposes of fulfilling the Receiving Party's obligations hereunder, in either case without the express prior written permission of the Disclosing Party. Notwithstanding the foregoing, the Receiving Party may disclose Confidential Information pursuant to a validly issued subpoena or order of a court of competent jurisdiction.

6.2 Protection of Intellectual Property. The Client acknowledges that the Company's intellectual property, including, without limitation, the Company's inventions (whether or not patentable), processes, trade secrets and know how are of ultimate importance to the Company. Accordingly, the Client agrees to use its best efforts to protect such intellectual property, and shall not, either during the term of this Agreement or subsequent to its termination, utilize, reveal or disclose any of such intellectual property. The Client understands that the software programs and other materials furnished by the Company pursuant to this Agreement and/or developed during the course of this Agreement by the Company are the sole property of the Company. The term "program" shall include, without limitation, data processing programs, check printing programs, specifications, applications, routines, sub-routines, procedural manuals, and documentation. The Client further agrees that any ideas, concepts, know-how or techniques relating to the claims management software used or developed by the Company during the course of this Agreement shall be the exclusive property of the Company.

6.3 Scope. The foregoing obligations in Sections 6.1 and 6.2 shall not apply to (a) information that is or becomes generally known or available by publication, commercial use or otherwise through no fault of the Receiving Party; (b) information that is known by the Receiving Party prior to the time of disclosure by the Disclosing Party to the Receiving Party; (c) information that is obtained from a third party who, to the Receiving Party's knowledge, has the right to make such disclosure without restriction; (d) any disclosure required by applicable law; or (e) information that is released for publication by the Disclosing Party in writing. The obligations set forth under Sections 6.1 and 6.2 shall survive the termination of this Agreement.

7. Indemnification. The Client hereby indemnifies and holds harmless the Company and its directors, officers, employees, affiliates and agents against any Losses incurred by the Company arising out of or in connection with or related to (a) any gross negligence or willful misconduct by Client, its employees, agents or representatives, or any misrepresentations made by such persons to third parties in connection with the Company's acts or omissions in connection with its rendition of the Services; (b) any breach of this Agreement by the Client; or (c) any erroneous instructions or information provided to the Company by the Client for use in providing the Services. Notwithstanding any provision in the Application or the Agreement to the contrary, the Client has no obligation to indemnify the Company, or provide contribution or reimbursement to the Company, for any claim or expense that is either (a) judicially determined (the determination having become final) to have arisen from the Company's gross negligence or willful misconduct or (b) settled prior to a judicial determination as to the Company's gross negligence or willful misconduct, but determined by the Bankruptcy Court, after notice and a hearing, to be a claim or expense for which the Company should not receive indemnity, contribution or reimbursement under the terms of the Application and the Agreement, as modified by the Order. If, before the earlier of (a) the entry of an order confirming a Chapter 11 plan in this case (that Order having become a final order no longer subject to appeal), and (b) the entry of an order closing this Chapter 11 case, the Company believes that it is entitled to the payment of any amounts by the Client on account of the Client's indemnification, contribution and/or reimbursement obligations under this Agreement (as modified by the Order), including without limitation the advancement of defense costs, the Company must file an application therefore in the Bankruptcy Court, and the Client may not pay any such amounts to the Company before the entry of an order approving the payment.

8. Jurisdiction. This Agreement is subject to the approval of the Bankruptcy Court, and such Court shall retain jurisdiction over all matters regarding this Agreement.

9. Force Majeure. Whenever performance by the Company of any of its obligations hereunder is substantially prevented by reason of any act of God, strike, lock-out or other industrial or transportation disturbance, fire, lack of materials, law, regulation or ordinance, war or war conditions, or by reason of any other matter beyond the Company's reasonable control, then such performance shall be excused and this Agreement shall be deemed suspended during the continuation of such prevention and for a reasonable time thereafter.

10. Notice. Any notice or other communication required or permitted hereunder shall be in writing and shall be delivered personally, or sent by registered mail, postage prepaid, or overnight courier. Any such notice shall be deemed given when so delivered personally, or, if mailed, five days after the date of deposit in the United States mail, or, if sent by overnight courier, one business day after delivery to such courier, as follows: if to the Company, to The Garden City Group, Inc., 105 Maxess Road, Melville, New York 11747-3836, Attention: David Isaac, Chief Executive Officer; and if to the Client, to Benesch, Friedlander, Coplan & Aronoff LLP, 200 Public Square, Suite 2300, Cleveland, Ohio 44114-2378, Attention: William I. Kohn, Esq.

11. Governing Law. This contract will be governed by and construed in accordance with the laws of the State of New York (without reference to its conflict of laws provisions).

12. Severability. All clauses and covenants contained in this Agreement are severable and in the event any of them are held to be invalid by any court, such clause or covenant shall be valid and enforced to the maximum extent as to which it may be valid and enforceable, and this Agreement will be interpreted as if such invalid clauses or covenants were not contained herein.

13. Assignment. This Agreement and the rights and obligations of the Company and the Client hereunder shall bind and inure to the benefit of any successors or assigns thereto.

14. General. This Agreement supersedes and replaces any existing agreement entered into by the Company and the Client relating generally to the same subject matter, and may be modified only in a writing signed by the Company and the Client. The paragraph headings in this Agreement are included only for convenience, do not in any manner modify or limit any of the provisions of this Agreement and may not be used in the interpretation of this Agreement. Failure to enforce any provision of this Agreement shall not constitute a waiver of any term hereof. This Agreement contains the entire agreement between the parties with respect to the subject matter hereof. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one in the same instrument. Any discrepancies between this Agreement, the Application and the Order shall be controlled by the Application and Order.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year set forth above.

**FORWARD FOODS LLC**

***THE GARDEN CITY GROUP, INC.***

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

By: \_\_\_\_\_  
Name: Karen B. Shaer  
Title: Exec. Vice Pres. & General Counsel

**File a First Day Motion:**09-10545-KJC Forward Foods LLC

Type: bk	Chapter: 11 v	Office: 1 (Delaware)
Assets: y	Judge: KJC	Case Flag: PlnDue, DsclsDue, LEAD

**U.S. Bankruptcy Court****District of Delaware**

## Notice of Electronic Filing

The following transaction was received from Bradford J. Sandler entered on 2/17/2009 at 10:45 AM EST and filed on 2/17/2009

**Case Name:** Forward Foods LLC**Case Number:** 09-10545-KJC**Document Number:** 16**Docket Text:**

Application to Appoint Claims/Noticing Agent *and Balloting Agent* Filed By Forward Foods LLC (Attachments: # (1) Proposed Form of Order # (2) Affidavit of Jeffrey Stein, Esq. in Support of Debtor's Application to Retain and Employ The Garden City Group, Inc. as Claims, Notice and Balloting Agent# (3) Agreement)(Sandler, Bradford)

The following document(s) are associated with this transaction:

**Document description:**Main Document**Original filename:**E:\32199\Claims Agent\Application to Approve Claims Agent.pdf**Electronic document Stamp:**

[STAMP bkecfStamp\_ID=983460418 [Date=2/17/2009] [FileNumber=6965847-0]  
[5281e47e066b65615ddedd17468aec9d53cdf399e289f0b1dfba60533f9ebbefc1fb  
32f2c82cf76079f3c2bff547ba2e172b014774df24d924d8e03e52351b74]]

**Document description:**Proposed Form of Order**Original filename:**E:\32199\Claims Agent\Exhibit A to Application re Claims Agent.pdf**Electronic document Stamp:**

[STAMP bkecfStamp\_ID=983460418 [Date=2/17/2009] [FileNumber=6965847-1]  
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01d67855c9d4b01a2f1582a2fc8e2c9622b7c253506af4874b4c0784438b]]

**Document description:**Affidavit of Jeffrey Stein, Esq. in Support of Debtor's Application to Retain and Employ The Garden City Group, Inc. as Claims, Notice and Balloting Agent

**Original filename:**E:\32199\Claims Agent\Exhibit B Stein Affidavit.pdf**Electronic document Stamp:**

[STAMP bkecfStamp\_ID=983460418 [Date=2/17/2009] [FileNumber=6965847-2]  
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**Document description:**Agreement**Original filename:**E:\32199\Claims Agent\Exhibit C Garden City Agreement.pdf**Electronic document Stamp:**

[STAMP bkecfStamp\_ID=983460418 [Date=2/17/2009] [FileNumber=6965847-3]  
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**09-10545-KJC Notice will be electronically mailed to:**

Bradford J. Sandler on behalf of Debtor Forward Foods LLC

bsandler@beneschlaw.com,

svandyk@beneschlaw.com;rlemischbeneschlaw.com;jhoover@beneschlaw.com;docket@aol.com;docket@beneschlaw.com;lbehra@beneschlaw.com

United States Trustee

USTPREGION03.WL.ECF@USDOJ.GOV

**09-10545-KJC Notice will not be electronically mailed to:**