

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

In re:

BROOKSTONE HOLDINGS CORP., *et al.*,¹

Debtors.

Chapter 11

Case No. 18-____ (____)

(Joint Administration Requested)

**DEBTORS' APPLICATION FOR APPOINTMENT OF
OMNI MANAGEMENT GROUP, INC. AS CLAIMS AND NOTICING AGENT**

Brookstone Holdings Corp. and its affiliated debtors and debtors in possession (collectively, the "Debtors") hereby file this application (this "Section 156(c) Application") for entry of an order, substantially in the form of Exhibit A hereto (the "Retention Order"), pursuant to section 156(c) of title 28 of the United States Code, section 105(a) of title 11 of the United States Code (the "Bankruptcy Code"), and Rule 2002-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), appointing Omni Management Group, Inc. ("Omni")² as claims and noticing agent ("Claims and Noticing Agent") in the above-captioned chapter 11 cases (collectively, the "Chapter 11 Cases"), effective *nunc pro tunc* to the Petition Date (as defined below). In support of this Section 156(c) Application, the Debtors submit the Declaration of Paul H. Deutch, Senior Vice President of Omni (the "Deutch Declaration"), attached hereto as Exhibit B, and respectfully represent as follows:

¹ The Debtors, along with the last four digits of each Debtor's tax identification number, are: Brookstone Holdings Corp. (4638), Brookstone, Inc. (2895), Brookstone Company, Inc. (3478), Brookstone Retail Puerto Rico, Inc. (5552), Brookstone International Holdings, Inc. (8382), Brookstone Purchasing, Inc. (2514), Brookstone Stores, Inc. (2513), Big Blue Audio LLC (N/A), Brookstone Holdings, Inc. (2515), and Brookstone Properties, Inc. (2517). The Debtors' corporate headquarters and the mailing address for each Debtor is One Innovation Way, Merrimack, NH 03054.

² Omni is formerly known as Rust Consulting/Omni Bankruptcy.

JURISDICTION AND VENUE

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated as of February 29, 2012. This is a core proceeding within the meaning of 28 U.S.C. § 157(b) and, pursuant to Local Rule 9013-1(f), the Debtors consent to the entry of a final order by the Court in connection with this Section 156(c) Application to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution. Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory and legal predicates for the relief sought herein are sections 327(a), 328, and 330 of the Bankruptcy Code, Rules 2014 and 2016 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Local Rules 2014-1 and 2016.

BACKGROUND

3. On the date hereof (the “Petition Date”), each of the Debtors commenced a voluntary case under chapter 11 of the Bankruptcy Code. The Debtors are authorized to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No official committees have been appointed in these Chapter 11 Cases and no request has been made for the appointment of a trustee or examiner.

4. Additional information regarding the Debtors’ businesses, capital structure, and the circumstances leading to the filing of these Chapter 11 Cases is set forth in the *Declaration of Greg Tribou in Support of the Debtors’ Chapter 11 Petitions and Requests for First Day Relief* (the “First Day Declaration”), filed contemporaneously herewith.

RELIEF REQUESTED

5. The Debtors request entry of an order appointing Omni as the Claims and Noticing Agent for the Debtors and these Chapter 11 Cases, including assuming full responsibility for the distribution of notices and the maintenance, processing, and docketing of proofs of claim filed in the Debtors' Chapter 11 Cases. The Debtors' selection of Omni to act as the Claims and Noticing Agent has satisfied the Court's *Protocol for the Employment of Claims and Noticing Agents under 28 U.S.C. § 156(c)* (the "Claims Agent Protocol"), in that the Debtors have obtained and reviewed engagement proposals from at least two other court-approved claims and noticing agents to ensure selection through a competitive process. Moreover, the Debtors submit, based on all engagement proposals obtained and reviewed, that Omni's rates are competitive and reasonable given Omni's quality of services and expertise. The terms of Omni's retention are set forth in the Retention Agreement attached hereto as Exhibit C (the "Retention Agreement"); *provided, however*, that the Debtors are seeking approval solely of the terms and provisions as set forth in this Section 156(c) Application and the proposed Retention Order attached hereto.

6. Although the Debtors have not yet filed their schedules of assets and liabilities, they anticipate that there will be [thousands] of entities to be noticed. Local Rule 2002-1(f) provides that "[i]n all cases with more than 200 creditors or parties in interest listed on the creditor matrix, unless the Court orders otherwise, the debtor shall file [a] motion [to retain a claims and noticing agent] on the first day of the case or within seven (7) days thereafter." In view of the number of anticipated claimants and the complexity of the Debtors' businesses, the Debtors submit that the appointment of a claims and noticing agent is required by Local Rule 2002-1(f) and is otherwise in the best interests of both the Debtors' estates and their creditors.

7. By separate application, the Debtors will seek authority to retain and employ Omni as administrative agent in these Chapter 11 Cases pursuant to section 327(a) of the Bankruptcy Code because the administration of these Chapter 11 Cases will require Omni to perform duties outside the scope of 28 U.S.C. § 156(c).

OMNI'S QUALIFICATIONS

8. Omni is comprised of leading industry professionals with significant experience in both the legal and administrative aspects of large, complex chapter 11 cases. Omni's professionals have experience in noticing, claims administration, solicitation, balloting, and facilitating other administrative aspects of chapter 11 cases and experience in matters of this size and complexity. Omni's professionals have acted as debtors' administrative agent and/or official claims and noticing agent in many large bankruptcy cases in this district and in other districts nationwide, including: *In re PES Holdings, LLC*, Case No. 18-10122 (KG) (Bankr. D. Del. 2018); *In re Dextera Surgical Inc.*, Case No. 17-12913 (KJC) (Bankr. D. Del. 2017); *In re Charming Charlie*, Case No. 17-12906 (CSS) (Bankr. D. Del. 2017); *In re Memorial Production Partners LP*, Case No. 17-30262 (MI) (Bankr. S.D. Tex. Jan. 16, 2017); *In re ITT Educational Services, Inc.*, Case No. 16-07207 (JMC) (Bankr. S.D. Ind. Sept. 16, 2016); *In re Joyce Leslie, Inc.*, Case No. 16-22035 (RDD) (Bankr. S.D.N.Y. Jan. 9, 2016); *In re Phoenix Brands, LLC*, Case No. 16-11242 (BLS) (Bankr. D. Del. May 24, 2016); *In re Mission Grp. Kansas*, Case No. 16-20656 (RDB) (Bankr. D. Kan. Apr. 15, 2016); *In re Quirky, Inc.*, Case No. 15-12596 (MG) (Bankr. S.D.N.Y. Sept. 22, 2015); *In re First Mariner Bancorp*, Case No. 14-11952 (DER) (Bankr. D. Md. Feb. 10, 2014); *In re Budget Travel*, Case No. 12-14815 (ALG) (Bankr. S.D.N.Y. May 2, 2013); *In re MetroPark USA, Inc.*, Case No. 11-22866 (RDD) (Bankr.

S.D.N.Y. May 9, 2011); *In re Lehr Construction Corp.*, Case No. 11-10723 (SHL) (Bankr. S.D.N.Y. Mar. 24, 2011).

9. By appointing Omni as the Claims and Noticing Agent in these Chapter 11 Cases, the distribution of notices and the processing of claims will be expedited, and the Office of the Clerk of the Bankruptcy Court (the “Clerk”) will be relieved of the administrative burden of processing what may be an overwhelming number of claims.

SERVICES TO BE PROVIDED

10. This Section 156(c) Application pertains only to the work to be performed by Omni under the Clerk’s delegation of duties permitted by 28 U.S.C. § 156(c) and Local Rule 2002-1(f). Any work to be performed by Omni outside of this scope is not covered by this Section 156(c) Application or by any order granting approval hereof. Specifically, Omni will perform the following tasks in its role as Claims and Noticing Agent, as well as all quality control relating thereto:

- a. Prepare and serve required notices and documents in these chapter 11 cases in accordance with the Bankruptcy Code and the Bankruptcy Rules in the form and manner directed by the Debtors and/or the Court, including (i) notice of the commencement of these chapter 11 cases and the initial meeting of creditors under Bankruptcy Code § 341(a), (ii) notice of any claims bar date, (iii) notices of transfers of claims, (iv) notices of objections to claims and objections to transfers of claims, (v) notices of any hearings on a disclosure statement and confirmation of the Debtors’ plan or plans of reorganization, including under Bankruptcy Rule 3017(d), (vi) notice of the effective date of any plan, and (vii) all other notices, orders, pleadings, publications, and other documents as the Debtors or Court may deem necessary or appropriate for an orderly administration of these chapter 11 cases;
- b. Maintain an official copy of the Debtors’ schedules of assets and liabilities and statements of financial affairs (collectively, the “Schedules”), listing the Debtors’ known creditors and the amounts owed thereto;

- c. Maintain (i) a list of all potential creditors, equity holders, and other parties-in-interest and (ii) a “core” mailing list consisting of all parties described in Bankruptcy Rule 2002(i), (j), and (k) and those parties that have filed a notice of appearance pursuant to Bankruptcy Rule 9010; update and make said lists available upon request by a party-in-interest or the Clerk;
- d. Furnish a notice to all potential creditors of the last date for filing proofs of claim and a form for filing a proof of claim, after such notice and form are approved by the Court, and notify said potential creditors of the existence, amount, and classification of their respective claims as set forth in the Schedules, which may be effected by inclusion of such information (or the lack thereof, in cases where the Schedules indicate no debt due to the subject party) on a customized proof of claim form provided to potential creditors;
- e. Maintain a post office box or address for the purpose of receiving claims and returned mail and process all mail received;
- f. For *all* notices, motions, orders or other pleadings or documents served, prepare and file or cause to be filed with the Clerk an affidavit or certificate of service within seven (7) business days of service which includes (i) either a copy of the notice served or the docket number(s) and title(s) of the pleading(s) served, (ii) a list of persons to whom it was mailed (in alphabetical order) with their addresses, (iii) the manner of service, and (iv) the date served;
- g. Process all proofs of claim received, including those received by the Clerk, check said processing for accuracy and maintain the original proofs of claim in a secure area;
- h. Maintain the official claims register for each Debtor (collectively, the “Claims Registers”) on behalf of the Clerk; upon the Clerk’s request, provide the Clerk with certified, duplicate unofficial Claims Registers; and specify in the Claims Registers 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 amount asserted, (v) the asserted classification(s) of the claim (*e.g.*, secured, unsecured, priority, *etc.*), (vi) the applicable Debtor, and (vii) any disposition of the claim;
- i. Provide public access to the Claims Registers, including complete proofs of claim with attachments, if any, without charge;
- j. Implement necessary security measures to ensure the completeness and integrity of the Claims Registers and the safekeeping of the original claims;

- k. Record all transfers of claims and provide any notices of such transfers as required by Bankruptcy Rule 3001(e);
- l. Relocate, by messenger or overnight delivery, all of the court-filed proofs of claim to the offices of Omni, not less than weekly;
- m. Upon completion of the docketing process for all claims received to date for each case, turn over to the Clerk copies of the Claims Registers for the Clerk's review (upon the Clerk's request);
- n. Monitor the Court's docket for all notices of appearance, address changes, and claims-related pleadings and orders filed and make necessary notations on and/or changes to the claims register and any service or mailing lists, including to identify and eliminate duplicative names and addresses from such lists;
- o. Identify and correct any incomplete or incorrect addresses in any mailing or service lists;
- p. Assist in the dissemination of information to the public and respond to requests for administrative information regarding these Chapter 11 Cases as directed by the Debtors or the Court, including through the use of a case website and/or call center;
- q. Monitor the Court's docket in these Chapter 11 Cases and, when filings are made in error or containing errors, alert the filing party of such error and work with them to correct any such error;
- r. If these Chapter 11 Cases are converted to cases under chapter 7 of the Bankruptcy Code, contact the Clerk's office within three (3) days of notice to Omni of entry of the order converting the cases;
- s. Thirty (30) days prior to the close of these Chapter 11 Cases, to the extent practicable, request that the Debtors submit to the Court a proposed order dismissing Omni as Claims and Noticing Agent and terminating its services in such capacity upon completion of its duties and responsibilities and upon the closing of these Chapter 11 Cases;
- t. Within seven (7) days of notice to Omni of entry of an order closing these chapter 11 cases, provide to the Court the final version of the Claims Registers as of the date immediately before the close of the Chapter 11 Cases; and
- u. At the close of these Chapter 11 Cases, (i) box and transport all original documents, in proper format, as provided by the Clerk's office, to (A) the Philadelphia Federal Records Center, 14700 Townsend Road, Philadelphia, PA 19154-1096 or (B) any other location requested by the

Clerk's office; and (ii) docket a completed SF-135 Form indicating the accession and location numbers of the archived claims.

11. The Claims Registers shall be open to the public for examination without charge during regular business hours and on a case-specific website maintained by Omni.

PROFESSIONAL COMPENSATION

12. The Debtors respectfully request that the undisputed fees and expenses incurred by Omni in the performance of the above services be treated as administrative expenses of the Debtors' chapter 11 estates pursuant to 28 U.S.C. § 156(c) and section 503(b)(1)(A) of the Bankruptcy Code and be paid in the ordinary course of business without further application to or order of the Court. Omni agrees to maintain records of all services showing dates, categories of services, fees charged and expenses incurred, and to serve monthly invoices on the Debtors, the Office of the United States Trustee for the District of Delaware (the "U.S. Trustee"), counsel for the Debtors, counsel for any official committee monitoring the expenses of the Debtors, and any party-in-interest who specifically requests service of the monthly invoices. If any dispute arises relating to the Retention Agreement or monthly invoices, the parties shall meet and confer in an attempt to resolve the dispute; if resolution is not achieved, the parties may seek resolution of the matter from the Court.

13. Prior to the Petition Date, the Debtors provided Omni a retainer in the amount of \$25,000. Omni may apply its retainer to all pre-petition invoices, which retainer shall be replenished to the original retainer amount, and, thereafter, Omni may hold its retainer under the Retention Agreement during the Chapter 11 Cases as security for payment of fees and expenses incurred under the Retention Agreement.

14. Additionally, under the terms of the Retention Agreement, the Debtors have agreed to indemnify, defend, and hold harmless Omni and its members, officers, employees,

representatives, and agents under certain circumstances specified in the Retention Agreement, except in circumstances resulting solely from Omni's gross negligence or willful misconduct or as otherwise provided in the Retention Agreement or Retention Order. The Debtors believe that such an indemnification obligation is customary, reasonable, and necessary to retain the services of a Claims and Noticing Agent in these Chapter 11 Cases.

DISINTERESTEDNESS

15. Although the Debtors do not propose to employ Omni under section 327 of the Bankruptcy Code pursuant to this Section 156(c) Application (such retention will be sought by separate application), Omni has nonetheless reviewed its electronic database to determine whether it has any relationships with the creditors and parties in interest provided by the Debtors, and, to the best of the Debtors' knowledge, information, and belief, and except as disclosed in the Deutch Declaration, Omni has represented that it neither holds nor represents any interest materially adverse to the Debtors' estates in connection with any matter on which it would be employed.

16. Moreover, in connection with its retention as Claims and Noticing Agent, Omni represents in the Deutch Declaration, among other things, that:

- a. Omni is not a creditor of the Debtors;
- b. Omni will not consider itself employed by the United States government and shall not seek any compensation from the United States government in its capacity as the Claims and Noticing Agent in these Chapter 11 Cases;
- c. By accepting employment in these Chapter 11 Cases, Omni waives any rights to receive compensation from the United States government in connection with these Chapter 11 Cases;
- d. In its capacity as the Claims and Noticing Agent in these Chapter 11 Cases, Omni will not be an agent of the United States and will not act on behalf of the United States;

- e. Omni will not employ any past or present employees of the Debtors in connection with its work as the Claims and Noticing Agent in these Chapter 11 Cases;
- f. Omni is a “disinterested person” as that term is defined in section 101(14) of the Bankruptcy Code with respect to the matters upon which it is engaged;
- g. In its capacity as Claims and Noticing Agent in these Chapter 11 Cases, Omni will not intentionally misrepresent any fact to any person;
- h. Omni shall be under the supervision and control of the Clerk’s office with respect to the receipt and recordation of claims and claim transfers;
- i. Omni 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); and
- j. None of the services provided by Omni as Claims and Noticing Agent in these Chapter 11 Cases shall be at the expense of the Clerk’s office.

Omni will supplement its disclosure to the Court if any facts or circumstances are discovered that would require such additional disclosure.

COMPLIANCE WITH CLAIMS AND NOTICING AGENT PROTOCOL

17. This Section 156(c) Application complies with the Claims Agent Protocol and substantially conforms to the standard Section 156(c) Application in use in the Court. To the extent that there is any inconsistency between this Section 156(c) Application, the Retention Order and the Retention Agreement, the Retention Order shall govern.

NOTICE

18. The Debtors have provided notice of this Motion to: (a) the Office of the United States Trustee for the District of Delaware; (b) holders of the 30 largest unsecured claims on a consolidated basis against the Debtors; (c) counsel to Wells Fargo Bank, National Association in its capacity as Agent under the Credit Agreement, dated as July 7, 2014; (d) counsel to Gordon Brothers Finance Company, in its capacity as Term Loan Lender under the Term Note dated

June 3, 2015; (e) counsel to Wilmington Trust, National Association, in its capacity as Trustee under the Indenture dated as of July 7, 2014; (f) counsel to Sanpower (Hong Kong) Company Limited as Lender under certain secured and unsecured notes; (g) all state and local taxing authorities in the State(s) where the assets are located; (h) the Internal Revenue Service; and (i) all parties that have filed a notice of appearance and request for service of papers pursuant to Bankruptcy Rule 2002. Notice of this Motion and any order entered hereon will be served in accordance with Local Rule 9013-1(m). In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is necessary.

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WHEREFORE, the Debtors respectfully request entry of the Retention Order, substantially in the form attached hereto as Exhibit A, authorizing Omni to act as Claims and Noticing Agent for the Debtors and granting such other relief as may be appropriate.

Dated: August 2, 2018

Respectfully submitted,
Brookstone Holdings Corp., *et al.*
Debtors and Debtors in Possession

/s/ Greg Tribou

Greg Tribou
Vice President
Chief Financial Officer

EXHIBIT A

Proposed Retention Order

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

In re:

BROOKSTONE HOLDINGS CORP., *et al.*,¹

Debtors.

Chapter 11

Case No. 18-____ (____)

(Jointly Administered)

Ref. Docket No. __

**ORDER AUTHORIZING RETENTION AND APPOINTMENT
OF OMNI MANAGEMENT GROUP, INC. AS CLAIMS AND NOTICING AGENT**

Upon the application (the “Section 156(c) Application”) of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for retention and appointment of Omni Management Group, Inc. (“Omni”) as claims and noticing agent (“Claims and Noticing Agent”), pursuant to 28 U.S.C. § 156(c), section 105(a) of the Bankruptcy Code,² and Local Rule 2002-1(f) to, among other things, (i) distribute required notices to parties in interest, (ii) receive, maintain, docket, and otherwise administer the proofs of claim filed in the Debtors’ Chapter 11 Cases, and (iii) provide such other administrative services—as required by the Debtors—that would fall within the purview of services to be provided by the Clerk’s office; and upon the Deutch Declaration submitted in support of the Section 156(c) Application; and it appearing that the receiving, docketing, and maintaining of proofs of claim would be unduly time-consuming and burdensome for the Clerk; and this Court being authorized under 28 U.S.C. § 156(c) to utilize, at the Debtors’ expense, outside agents and facilities to provide notices to parties in title 11 cases and

¹ The Debtors, along with the last four digits of each Debtor’s tax identification number, are: Brookstone Holdings Corp. (4638), Brookstone, Inc. (2895), Brookstone Company, Inc. (3478), Brookstone Retail Puerto Rico, Inc. (5552), Brookstone International Holdings, Inc. (8382), Brookstone Purchasing, Inc. (2514), Brookstone Stores, Inc. (2513), Big Blue Audio LLC (N/A), Brookstone Holdings, Inc. (2515), and Brookstone Properties, Inc. (2517). The Debtors’ corporate headquarters and the mailing address for each Debtor is One Innovation Way, Merrimack, NH 03054.

² All capitalized terms used and not defined herein shall have the meanings ascribed to them in the Section 156(c) Application.

to receive, docket, maintain, photocopy, and transmit proofs of claim; and this Court being satisfied that Omni has the capability and experience to provide such services and that Omni does not hold an interest adverse to the Debtors or the estates respecting the matters upon which it is to be engaged; and good and sufficient notice of the Section 156(c) Application having been given and no other or further notice being required; and it appearing that the employment of Omni is in the best interests of the Debtors, their estates, and creditors; and sufficient cause appearing therefor;

IT IS HEREBY ORDERED THAT:

1. Notwithstanding the terms of the Retention Agreement attached to the Section 156(c) Application, the Section 156(c) Application is approved solely as set forth in this Order.
2. The Debtors are authorized to retain Omni as Claims and Noticing Agent effective *nunc pro tunc* to the Petition Date under the terms of the Retention Agreement, and Omni is authorized and directed to perform noticing services and to receive, maintain, record, and otherwise administer the proofs of claim filed in these Chapter 11 Cases, and all related tasks, all as described in the Section 156(c) Application.
3. Omni shall serve as the custodian of court records and shall be designated as the authorized repository for all proofs of claim filed in these Chapter 11 Cases and is authorized and directed to maintain official claims registers for each of the Debtors, to provide public access to every proof of claim unless otherwise ordered by this Court, and to provide the Clerk with a certified duplicate thereof upon the request of the Clerk.
4. Omni is authorized and directed to provide an electronic interface for filing proofs of claim and to obtain a post office box or address for the receipt of proofs of claim.

5. Omni is authorized to take such other action to comply with all duties set forth in the Section 156(c) Application.

6. The Debtors are authorized to compensate Omni in accordance with the terms of the Retention Agreement upon the receipt of reasonably detailed invoices setting forth the services provided by Omni and the rates charged for each, and to reimburse Omni for all reasonable and necessary expenses it may incur, upon the presentation of appropriate documentation, without the need for Omni to file fee applications or otherwise seek Court approval for the compensation of its services and reimbursement of its expenses.

7. Omni shall maintain records of all services showing dates, categories of services, fees charged, and expenses incurred, and shall serve monthly invoices on the Debtors, the U.S. Trustee, counsel for the Debtors, counsel for any official committee monitoring the expenses of the Debtors, and any party-in-interest who specifically requests service of the monthly invoices.

8. The parties shall meet and confer in an attempt to resolve any dispute which may arise relating to the Retention Agreement or monthly invoices; *provided* that the parties may seek resolution of the matter from the Court if resolution is not achieved.

9. Pursuant to section 503(b)(1)(A) of the Bankruptcy Code, the fees and expenses of Omni under this Order shall be an administrative expense of the Debtors' estates.

10. Omni may apply its retainer to all pre-petition invoices, which retainer shall be replenished to the original retainer amount, and, thereafter, Omni may hold its retainer under the Retention Agreement during the Chapter 11 Cases as security for payment of fees and expenses incurred under the Retention Agreement.

11. The Debtors shall indemnify Omni under the terms of the Retention Agreement, as modified pursuant to this Order.

12. Omni shall not be entitled to indemnification, contribution or reimbursement pursuant to the Retention Agreement for services other than the services provided under the Retention Agreement, unless such services and the indemnification, contribution or reimbursement therefor are approved by the Court.

13. The limitation of liability section of the Retention Agreement is deemed to be of no force or effect with regard to the services provided pursuant to this Order.

14. Notwithstanding anything to the contrary in the Retention Agreement, the Debtors shall have no obligation to indemnify Omni, or provide contribution or reimbursement to Omni, for any claim or expense that is either: (i) judicially determined (the determination having become final) to have arisen from Omni's gross negligence, willful misconduct or fraud; (ii) for a contractual dispute in which the Debtors allege the breach of Omni's contractual obligations if the Court determines that indemnification, contribution or reimbursement would not be permissible pursuant to *In re United Artists Theatre Co.*, 315 F.3d 217 (3d Cir. 2003); or (iii) settled prior to a judicial determination under (i) or (ii), but determined by this Court, after notice and a hearing, to be a claim or expense for which Omni should not receive indemnity, contribution or reimbursement under the terms of the Retention Agreement as modified by this Order.

15. If, before the earlier of (i) the entry of an order confirming a chapter 11 plan in these Chapter 11 Cases (that order having become a final order no longer subject to appeal), or (ii) the entry of an order closing these Chapter 11 Cases, Omni believes that it is entitled to the payment of any amounts by the Debtors on account of the Debtors' indemnification, contribution and/or reimbursement obligations under the Retention Agreement (as modified by this Order), including the advancement of defense costs, Omni must file an application therefor in this Court, and the Debtors may not pay any such amounts to Omni before the entry of an order by this Court

approving the payment. This paragraph is intended only to specify the period of time under which this Court shall have jurisdiction over any request for fees and expenses by Omni for indemnification, contribution or reimbursement, and not a provision limiting the duration of the Debtors' obligation to indemnify Omni. All parties in interest shall retain the right to object to any demand by Omni for indemnification, contribution or reimbursement.

16. In the event that Omni is unable to provide the services set out in this Order, Omni will immediately notify the Clerk and the Debtors' counsel and, upon approval of this Court, cause to have all original proofs of claim and computer information turned over to another claims and noticing agent with the advice and consent of the Clerk and the Debtors' attorney.

17. The Debtors may submit a separate retention application, pursuant to section 327 of the Bankruptcy Code and/or any applicable law, for work that is to be performed by Omni but is not specifically authorized by this Order.

18. The Debtors and Omni are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Section 156(c) Application.

19. Notwithstanding any term in the Retention Agreement to the contrary, this Court shall retain exclusive jurisdiction with respect to all matters arising from or related to the implementation of this Order.

20. Notwithstanding any provision in the Bankruptcy Rules to the contrary, this Order shall be immediately effective and enforceable upon its entry.

21. Omni shall not cease providing claims processing services during the Chapter 11 Cases for any reason, including nonpayment, without an order of this Court.

22. In the event of any inconsistency between the Retention Agreement, the Section 156(c) Application and the Order, this Order shall govern.

Dated: August ____, 2018
Wilmington, Delaware

UNITED STATES BANKRUPTCY JUDGE

EXHIBIT B

Deutch Declaration

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

In re:

BROOKSTONE HOLDINGS CORP., *et al.*,¹

Debtors.

Chapter 11

Case No. 18-____ (____)

(Joint Administration Requested)

**DECLARATION OF PAUL H. DEUTCH IN SUPPORT
OF DEBTORS' APPLICATION FOR APPOINTMENT OF
OMNI MANAGEMENT GROUP, INC. AS CLAIMS AND NOTICING AGENT**

I, Paul H. Deutch, under penalty of perjury, declare as follows:

1. I am the Senior Vice President of Omni Management Group, Inc. ("Omni"), a chapter 11 administrative services firm with offices located at 1120 Avenue of the Americas, 4th Floor, New York, New York 10036. Except as otherwise noted, I have personal knowledge of the matters set forth herein, and if called and sworn as a witness, I could and would testify competently thereto.

2. This declaration (this "Declaration") is made in support of the *Debtors' Application for Appointment of Omni Management Group, Inc. as Claims and Noticing Agent*, filed by the above-captioned debtors and debtors in possession (collectively, the "Debtors"), which was filed contemporaneously herewith (the "Section 156(c) Application").²

¹ The Debtors, along with the last four digits of each Debtor's tax identification number, are: Brookstone Holdings Corp. (4638), Brookstone, Inc. (2895), Brookstone Company, Inc. (3478), Brookstone Retail Puerto Rico, Inc. (5552), Brookstone International Holdings, Inc. (8382), Brookstone Purchasing, Inc. (2514), Brookstone Stores, Inc. (2513), Big Blue Audio LLC (N/A), Brookstone Holdings, Inc. (2515), and Brookstone Properties, Inc. (2517). The Debtors' corporate headquarters and the mailing address for each Debtor is One Innovation Way, Merrimack, NH 03054.

² Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Section 156(c) Application.

3. Omni is comprised of leading industry professionals with significant experience in both the legal and administrative aspects of large, complex chapter 11 cases. Omni's professionals have experience in noticing, claims administration, solicitation, balloting, and facilitating other administrative aspects of chapter 11 cases and experience in matters of this size and complexity. Omni's professionals have acted as debtors' administrative agent and/or official claims and noticing agent in many large bankruptcy cases in this district and in other districts nationwide, including: *In re PES Holdings, LLC*, Case No. 18-10122 (KG) (Bankr. D. Del. 2018); *In re Dexter Surgical Inc.*, Case No. 17-12913 (KJC) (Bankr. D. Del. 2017); *In re Charming Charlie*, Case No. 17-12906 (CSS) (Bankr. D. Del. 2017); *In re Memorial Production Partners LP*, Case No. 17-30262 (MI) (Bankr. S.D. Tex. Jan. 16, 2017); *In re ITT Educational Services, Inc.*, Case No. 16-07207 (JMC) (Bankr. S.D. Ind. Sept. 16, 2016); *In re Joyce Leslie, Inc.*, Case No. 16-22035 (RDD) (Bankr. S.D.N.Y. Jan. 9, 2016); *In re Phoenix Brands, LLC*, Case No. 16-11242 (BLS) (Bankr. D. Del. May 24, 2016); *In re Mission Grp. Kansas*, Case No. 16-20656 (RDB) (Bankr. D. Kan. Apr. 15, 2016); *In re Quirky, Inc.*, Case No. 15-12596 (MG) (Bankr. S.D.N.Y. Sept. 22, 2015); *In re First Mariner Bancorp*, Case No. 14-11952 (DER) (Bankr. D. Md. Feb. 10, 2014); *In re Budget Travel*, Case No. 12-14815 (ALG) (Bankr. S.D.N.Y. May 2, 2013); *In re MetroPark USA, Inc.*, Case No. 11-22866 (RDD) (Bankr. S.D.N.Y. May 9, 2011); *In re Lehr Construction Corp.*, Case No. 11-10723 (SHL) (Bankr. S.D.N.Y. Mar. 24, 2011).

4. As agent and custodian of Court records pursuant to 28 U.S.C. § 156(c), Omni will perform, at the request of the Office of the Clerk of the Bankruptcy Court (the "Clerk"), the services specified in the Section 156(c) Application and the Retention Agreement, and, at the Debtors' request, any related administrative, technical, and support services as specified in the Section 156(c) Application and the Retention Agreement. In performing such services, Omni will

charge the Debtors the rates set forth in the Retention Agreement, which is attached as Exhibit C to the Section 156(c) Application.

5. Before the Petition Date, the Debtors provided Omni a retainer in the amount of \$25,000. Omni seeks to hold the retainer under the Retention Agreement during these Chapter 11 Cases as security for the payment of fees and expenses incurred under the Retention Agreement.

6. Omni represents, among other things, the following:

- a. Omni is not a creditor of the Debtors;
- b. Omni will not consider itself employed by the United States government and shall not seek any compensation from the United States government in its capacity as the Claims and Noticing Agent in these Chapter 11 Cases;
- c. By accepting employment in these Chapter 11 Cases, Omni waives any rights to receive compensation from the United States government in connection with these Chapter 11 Cases;
- d. In its capacity as the Claims and Noticing Agent in these Chapter 11 Cases, Omni will not be an agent of the United States and will not act on behalf of the United States;
- e. Omni will not employ any past or present employees of the Debtors in connection with its work as the Claims and Noticing Agent in these Chapter 11 Cases;
- f. Omni is a “disinterested person” as that term is defined in section 101(14) of the Bankruptcy Code with respect to the matters upon which it is engaged;
- g. In its capacity as Claims and Noticing Agent in these Chapter 11 Cases, Omni will not intentionally misrepresent any fact to any person;
- h. Omni shall be under the supervision and control of the Clerk’s office with respect to the receipt and recordation of claims and claim transfers;
- i. Omni 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); and
- j. None of the services provided by Omni as Claims and Noticing Agent in these Chapter 11 Cases shall be at the expense of the Clerk’s office.

7. To the best of my knowledge, and based solely upon information provided to me by the Debtors, and except as provided herein, neither Omni, nor any employee thereof, has any materially adverse connection to the Debtors, their creditors or other relevant parties. Omni may have relationships with certain of the Debtors' creditors as a vendor or in connection with cases in which Omni serves or has served in a neutral capacity as noticing, claims and balloting agent for another chapter 11 debtor.

8. Omni personnel may have relationships with some of the Debtors' creditors or other parties-in-interest. However, to the best of my knowledge, such relationships, to the extent they exist, are of a personal nature and completely unrelated to these Chapter 11 Cases. Omni has and will continue to represent clients in matters unrelated to these Chapter 11 Cases. In addition, Omni has had and will continue to have relationships in the ordinary course of its business with certain vendors, professionals, and other parties-in-interest that may be involved in the Debtors' cases in matters unrelated to these cases. Omni may also provide professional services to entities or persons that may be creditors or parties-in-interest in these Chapter 11 Cases, which services do not directly relate to, or have any direct connection with, these Chapter 11 Cases or the Debtors. To the best of my knowledge, neither Omni, nor any employees thereof, represent any interest materially adverse to the Debtors' estates with respect to any matter upon which Omni is to be engaged.

9. Although the Debtors do not propose to retain Omni under section 327 of the Bankruptcy Code pursuant to the Section 156(c) Application (such retention will be sought by separate application), Omni has nonetheless reviewed its electronic database to determine whether it has any relationships with the entities provided by the Debtors. At this time, we are not aware of any relationship that would present a disqualifying conflict of interest. Should Omni discover

any new relevant facts or relationships bearing on the matters described herein during the period of its retention, Omni will use reasonable efforts to file promptly a supplemental declaration. Omni will also 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).

10. Based on the foregoing, I believe that Omni is a "disinterested person" as that term is defined in section 101(14) of the Bankruptcy Code.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my information, knowledge and belief.

Executed on August 2, 2018

/s/ Paul H. Deutch

Paul H. Deutch
Senior Vice President
Omni Management Group, Inc.

EXHIBIT C

Retention Agreement

OMNI MANAGEMENT GROUP
5955 De Soto Avenue, Suite 100
Woodland Hills, CA 91367
818-906-8300

July 2, 2018

Stephen A. Gould
Senior Vice President, General Counsel
Brookstone Holdings Corp.
One Innovation Way
Merrimack, NH 03054

Re: Omni Management Group Retention letter

Mr. Gould:

This letter (the "Agreement") will acknowledge that you have requested Omni Management Group, Inc. ("Omni") to provide services to Brookstone Holdings Corp. and certain of its affiliates and subsidiaries (collectively, the "Companies") in preparation of, and in connection with, the Companies' potential joint chapter 11 filing. Omni will make itself available to the Companies, *as requested*, for the purposes of assisting the Companies with pre- and post-petition case administration matters including data entry, preparation and management of the creditor matrix, preparation of schedules of assets and liabilities and statements of financial affairs, claims management, noticing, plan solicitation and tabulation, distribution, the development and maintenance of a virtual data room, the development and maintenance of an informational website, and any other services as may be requested by the Companies.

The services to be rendered by Omni will be billed at rates ranging from \$25.00 to \$155.00 per hour as per the attached rate sheet. Rates are adjusted annually on January 2nd of each year, and are subject to increases not to exceed ten (10%) percent per annum. Increases greater than ten (10%) percent per annum will be discussed with you, and be subject to your prior approval, before becoming effective.

For all such services rendered, we require a \$25,000 retainer. All charges will be on a portal to portal basis plus reasonable, actual, and documented out-of-pocket expenses. Omni shall be compensated on a monthly basis for those services performed by Omni during the preceding calendar month. Invoices are payable within 7 days of receipt by the Companies.

Each of Omni and the Companies, on behalf of themselves and their respective employees, agents, professionals and representatives, agrees to keep confidential all non-public records, systems, procedures, software and other information received from the other party in connection with the services provided under this Agreement; provided,

Stephen A. Gould
July 2, 2018
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however, that if either party reasonably believes that it is required to produce any such information by order of any governmental agency or other regulatory body it may, upon not less than five (5) business days' written notice to the other party, release the required information.

The parties understand that the software programs and other materials furnished by Omni pursuant to this Agreement and/or developed during the course of this Agreement by Omni are the sole property of Omni. The term "program" shall include, without limitation, data processing programs, specifications, applications, routines, and documentation. The Debtors agree not to copy or permit others to copy the source code from the support software or any other programs or materials furnished pursuant to this Agreement. The Debtors further agree that any ideas, concepts, know-how or techniques relating to data processing or Omni's performance of its services developed during the course of its Agreement by Omni shall be the exclusive property of Omni. Upon the Debtors' request at any time or times while this Agreement is in effect, Omni shall immediately deliver to the Debtors and/or the Debtors' retained professionals, at the Debtors' expense, any or all of the non-proprietary data and records held by Omni pursuant to this Agreement, in the form requested by the Debtors.

To the fullest extent permitted by applicable law, the Companies shall indemnify and hold harmless Omni and its members, directors, officers, employees, representatives, affiliates, consultants, subcontractors and agents (collectively, the "Indemnified Parties") from and against any and all losses, claims, damages, judgments, liabilities and expenses, whether direct or indirect (including, without limitation, counsel fees and expenses) (collectively, "Losses") resulting from, arising out of or related to Omni's performance hereunder. Without limiting the generality of the foregoing, Losses include any liabilities resulting from claims by any third parties against any Indemnified Parties. Omni and the Companies shall notify each other in writing promptly upon the assertion, threat or commencement of any claim, action, investigation or proceeding that either party becomes aware of with respect to the services provided under and pursuant to the Agreement. The Companies' indemnification of Omni hereunder shall exclude Losses resulting from Omni's gross negligence or willful misconduct. The Companies' indemnification obligations hereunder shall survive the termination of this Agreement.

Except as expressly provided herein, Omni's liability to the Companies for any Losses, unless due to Omni's gross negligence or willful misconduct, shall be limited to the total amount paid by the Companies for the portion of the particular work that gave rise to the alleged Loss. In no event shall Omni's liability to the Debtors for any Losses arising out of this Agreement exceed the total amount actually paid to Omni for services provided under and pursuant to this Agreement. In no event shall Omni be liable for any indirect, special or consequential damages (such as loss of anticipated profits or other economic loss) in connection with or arising out of the services provided under and pursuant to this Agreement.

This Agreement is terminable at will by the parties hereto upon three (3) days

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July 2, 2018
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written notice. Notwithstanding the foregoing, either party may terminate this Agreement immediately upon written notice in the event of a breach by the other party. In the event that this Agreement is terminated, regardless of the reason for such termination, Omni shall cooperate with the Companies to maintain an orderly transfer of all records, data and information and record keeping functions, and shall provide all necessary staff, services and assistance required for an orderly transfer. The Companies agree to pay for such services in accordance with Omni's then existing prices for such services.

Please acknowledge the above by signing and returning a copy of this letter. Should you have any questions regarding the above, please do not hesitate to call me.

Sincerely,



Paul H. Deutch
Senior Vice President

Enc.

cc: David Feldman, Esq.
Matthew Kelsey, Esq.
Matthew Feldman, Esq.
Keith Martorana, Esq.
Brian Osborne

BROOKSTONE HOLDINGS CORP.



Date: 7/2/18

By: 

Stephen A. Gould
Senior Vice President, General Counsel

Rate Sheet

WWW.OMNIMGT.COM

▲ Hourly Rates for Standard and Custom Services

RATE/COST

Analyst	\$25.00 - \$40.00 per hour
Consultants	\$50.00 - \$125.00 per hour
Senior Consultants	\$140.00 - \$155.00 per hour
Equity Services	\$175.00 per hour
Technology/Programming	\$85.00 - \$135.00 per hour
President/Executive (Brian Osborne and Paul Deutch, with 52 years combined restructuring experience, provide supervisory services at no charge.)	Waived

▲ Printing and Noticing Services

Copy	\$.10 per image
Document folding and insertion	No Charge
Labels/Envelope printing	\$.035 each
E-mail noticing	No charge
Bulk E-mail noticing (Over 10,000 parties)	Quote Upon Request
Certified email	Quote upon request
Facsimile noticing	\$.10/image
Postage	At cost (Advance payment required for postage charges over \$10,000)
Envelopes	Varies by size

▲ Newspaper and Legal Notice Publishing

Coordinate and publish legal notice	Quote prior to publishing
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▲ Claims Management

Inputting proofs of claim	Hourly rates (No per claim charges)
Scanning	\$.10/image
Remote Internet access for claims management	
Setup	No charge
Access	No charge

▲ Creditor Database

Data storage	Waived for 3 months. Under 10,000 records - No charge, Over 10,000 records - .05 per record, Over 100,000 records - .04 per record
Per image storage	No charge

▲ Informational Website

Creation, configuration, and initial setup	No charge
Data entry/information updates	\$60.00 per hour
Programming and customization	\$85 - \$135.00 per hour
Debtor website hosting	No charge
Committee website hosting	No charge

Rate Sheet

WWW.OMNIMGT.COM

Shareholder website hosting	No charge
Scanning	\$.10/image

▲ Virtual Data Rooms Quote upon request

▲ Call Centers / Dedicated Line

Creation, configuration and initial setup	No charge
Hosting fee	\$5.50 per month
Usage	\$.0825 per minute
Service rates (actual talk and log-entry time)	\$60.00 per hour

▲ Case Docket / Claims Register No charge

▲ Solicitation and Tabulation

Plan and disclosure statement mailings	Quoted prior to printing
Ballot tabulation	Standard hourly rates apply

▲ Public Debt and Equities Securities and/Rights Offerings Services

Noticing Services	Standard hourly rates apply
Solicitation, Balloting and Tabulation	Standard hourly rates apply
Rights Offerings	Standard hourly rates apply
Security Position Identification Reports	Standard hourly rates apply

▲ Schedules / SoFA

Preparation and updating of schedules and SoFAs	\$50.00 - \$155.00 per hour
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▲ UST Reporting Compliance

(e.g., assist debtors to meet satisfy jurisdictional requirements, preparation of monthly operating and post-confirmation reports)	Standard hourly rates apply
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▲ Miscellaneous

Telephone charges	At cost
Delivery	At cost
Archival DVD/CD-Rom	\$40.00 per copy

▲ Real-Time Reports

Claims dashboard	No charge
Claim reports	\$25.00
Solicitation dashboard	No charge
Tabulation dashboard	No charge
Solicitation reports	\$25.00
Service list manager	\$0.05 per party, per generated list

