

RECORDATION FORM COVER SHEET  
TRADEMARKS ONLY

Form PTO-1594 (Modified)  
(Rev. 6/93)  
OMB No. 0651-0011 (exp. 4/04)  
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TM05/REV03

Docket No.:

26422/42013

Tab settings → → → →

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):  
LINC Credit Property III, LLC

Individual(s)                       Association  
 General Partnership               Limited Partnership  
 Corporation-State -California  
 Other \_\_\_\_\_

Additional name(s) of conveying party(ies) attached?     Yes     No

3. Nature of conveyance:  
 Assignment                       Merger  
 Security Agreement               Change of Name  
 Other \_\_\_\_\_

Execution Date: 8/28/03

2. Name and address of receiving party(ies)

Name: Boyd Flotation, Inc.

Internal Address: \_\_\_\_\_

Street Address: 2440 Adle Road

City: Maryland Heights State: MO ZIP: 63043

Individual(s) citizenship \_\_\_\_\_  
 Association \_\_\_\_\_  
 General Partnership \_\_\_\_\_  
 Limited Partnership \_\_\_\_\_  
 Corporation-State Missouri  
 Other \_\_\_\_\_

If assignee is not domiciled in the United States, a domestic representative designation is attached:                       Yes     No  
(Designations must be a separate document from Assignment)

Additional name(s) & address(es) attached?     Yes     No

4. Application number(s) or patent number(s):

A. Trademark Application No.(s)

B. Trademark Registration No.(s)  
2,220,384; 2,275,986; 1,503,525; 1,138,422;  
1,415,912; 2,631,361; 1,389,122; 1,386,413;  
872,724; 1,156,014; 1,314,169; 1,361,253;  
1,393,685

Additional numbers attached?     Yes     No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: Caroline G. Chicoine

Internal Address: Thompson Coburn LLP

Street Address: One US Bank Plaza

City: St. Louis State: MO ZIP: 63101

6. Total number of application and registrations involved: ..... 13

7. Total fee (37 CFR 3.41): .....\$ 520.00

Enclosed  
 Authorized to be charged to deposit account

8. Deposit account number:  
20-0823

DO NOT USE THIS SPACE

9. Statement and signature.  
*To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.*

Caroline G. Chicoine                      October 7, 2003  
Name of Person Signing                      Signature                      Date

Total number of pages including cover sheet, attachments, and documents: 12

CH \$520.00 200623 2220384

## PURCHASE AGREEMENT

This Purchase Agreement ("Agreement") is entered into as of August 28, 2003 by and between LINC Credit Property III, LLC, a California limited liability company ("LINC"), on the one hand, and Boyd Flotation, Inc., a Missouri corporation, ("Buyer"), on the other hand, with reference to the following facts:

### RECITALS

A. On or about February 18, 2000 Blue Magic Products, Inc. ("Blue Magic") made, executed, and delivered to Wells Fargo Bank, N.A. ("Bank"), for value received, its Second Amended and Restated Credit Agreement ("Second Credit Agreement") pursuant to which the Bank agreed to make extensions of credit to Blue Magic on the terms and conditions set forth therein.

B. In order to induce the Bank to extend or grant credit to Blue Magic, on or about August 31, 2000, Anthony J. Bova ("A. Bova") Blue Magic's owner and C.E.O., made, executed, and delivered to the Bank his Continuing Guaranty ("Guaranty") pursuant to which A. Bova personally agreed to guaranty and pay an amount equal to the outstanding indebtedness of Blue Magic in an amount not to exceed \$3,800,000 as more specifically set forth therein.

C. On or about August 31, 2000, Blue Magic made, executed, and delivered to the Bank, for value received, a First Modification Agreement which modified certain terms and conditions of the Second Credit Agreement ("First Modification").

D. On or about November 6, 2000, Blue Magic made, executed, and delivered to the Bank, for value received, a Second Modification Agreement which modified certain terms and conditions of the Second Credit Agreement ("Second Modification").

E. On or about February 1, 2001, Blue Magic made, executed, and delivered to the Bank, for value received, a Third Modification Agreement which modified certain terms and conditions of the Second Credit Agreement ("Third Modification").

F. On or about March 15, 2001, Blue Magic made, executed, and delivered to the Bank, for value received, a Fourth Modification Agreement which modified certain terms and conditions of the Second Credit Agreement ("Fourth Modification"). Collectively, the Second Credit Agreement, First Modification, Second Modification, Third Modification, and Fourth Modification are referred to as the "Credit Agreement."

G. Pursuant to the Credit Agreement, on or about March 15, 2001, Blue Magic made, executed, and delivered to the Bank, for value received, its Revolving Line of Credit Note, in the principal sum of \$2,000,000.00, having a final payment maturity date of December 31, 2001 ("Revolving Note").

H. Pursuant to the Credit Agreement, on or about March 15, 2001, Blue Magic made, executed, and delivered to the Bank, for value received, its Term Note A, in the principal sum of \$918,972.00, having a final payment maturity date of December 31, 2001 ("Term Note A").

L Pursuant to the Credit Agreement, on or about March 15, 2001, Blue Magic made, executed, and delivered to the Bank, for value received, its Term Note B, in the principal sum of \$697,630.00, having a final payment maturity date of December 31, 2001 ("Term Note B"). Collectively, the Revolving Note, Term Note A, and Term Note B are referred to as the "Notes."

J. In order to secure all obligations owed by Blue Magic to the Bank, on or about August 31, 1999, Blue Magic made, executed, and delivered to the Bank, for value received, its Security Agreement-Equipment ("Equipment Security Agreement") pursuant to which Blue Magic granted the Bank a security interest in, *inter alia*, its goods, tools, machinery, furnishings, furniture, and other equipment, then owned or after acquired ("Equipment Collateral").

K. In order to further secure all obligations owed by Blue Magic to the Bank, on or about August 31, 1999, Blue Magic made, executed and delivered to the Bank, for value received, its Security Agreement-Rights to Payment and Inventory ("Rights to Payment Security Agreement") pursuant to which Blue Magic granted the Bank a security interest in, *inter alia*, its accounts, deposit accounts, inventory, chattel paper, instruments, documents and general intangibles, then owned or after acquired ("Rights to Payment Collateral"). Collectively, the Equipment Security Agreement and the Rights to Payment Security Agreement are referred to as the "Security Agreements" and the Equipment Collateral and Rights to Payment Collateral are referred to as the "Collateral."

L. The Bank filed a Uniform Commercial Code Financing Statement with the California Secretary of State which was thereafter continued and assigned to LINC Credit, as hereinafter defined, and subsequently assigned to LINC (collectively, the "Financing Statements") (The Financing Statements filed with the California Secretary of State were assigned document numbers 9522960240, 00056C0106, 02122C0012, and 03078C0528).

M. Thereafter, Blue Magic defaulted under the terms of the Credit Agreement and Notes.

N. As a result, on or about January 1, 2002, Blue Magic, the Bank, and A. Bova, entered into and executed a Forbearance Agreement pursuant to which the Bank agreed to forbear from exercising its rights and remedies on the terms and conditions more specifically set forth therein ("Bank Forbearance"). Collectively, the Credit Agreement, the Notes, the Security Agreements, the Bank Forbearance, and related documents, are referred to as the "Bank Loan Documents."

O. Thereafter, the Bank assigned all its right, title, and interest in and to, *inter alia*, the Bank Loan Documents and the Collateral to LINC Credit, LLC (hereinafter, "LINC Credit") (the "Bank Assignment"). Collectively, the Bank Loan Documents and the Bank Assignment are referred to as the "LINC Credit Loan Documents."

P. Thereafter, Blue Magic defaulted under the terms of the LINC Credit Loan Documents.

**Q.** As a result, on August 30, 2002, Blue Magic, A. Bova, and LINC Credit entered into and executed a Forbearance Agreement pursuant to which LINC Credit agreed to forbear from exercising its rights and remedies on the terms and conditions more specifically set forth therein ("LINC Credit Forbearance").

**R.** On December 5, 2002, Blue Magic, A. Bova, and LINC Credit entered into and executed an Amendment, Modification, and Extension Agreement which amended and modified certain terms and conditions set forth in the LINC Credit Forbearance ("Amendment to LINC Credit Forbearance"). Collectively, the LINC Credit Forbearance and Amendment to First LINC Credit Forbearance are referred to as the "First LINC Credit Forbearance."

**S.** Thereafter, Blue Magic defaulted under the terms of the LINC Credit Loan Documents and First LINC Credit Forbearance.

**T.** On March 4, 2003, Blue Magic, A. Bova, and LINC Credit, acting by and through its servicer Republic Financial Corporation ("Republic"), entered into and executed a Forbearance Agreement and Release pursuant to which LINC Credit agreed to forbear from exercising its rights and remedies on the terms and conditions more specifically set forth therein ("Second LINC Credit Forbearance").

**U.** Thereafter, Blue Magic defaulted under the terms of the LINC Credit Loan Documents and Second LINC Credit Forbearance.

**V.** LINC Credit assigned its right, title and interest in and to the LINC Credit Loan Documents, the First LINC Credit Forbearance, the Second LINC Credit Forbearance, and the Collateral to LINC ("LINC Credit Assignment").

**W.** Thereafter, Blue Magic, A. Bova, and LINC entered into and executed an Amendment to the Second LINC Credit Forbearance, dated as of May 16, 2003, which amended and modified certain terms and conditions of the Second LINC Credit Forbearance ("Amendment to Second LINC Credit Forbearance").

**X.** Thereafter, Blue Magic defaulted under the terms of the LINC Credit Loan Documents, Second LINC Credit Forbearance, and the Amendment to Second LINC Credit Forbearance. Collectively, the LINC Credit Loan Documents, the First LINC Credit Forbearance, the LINC Credit Assignment, the Second LINC Credit Forbearance, and the Amendment to the Second LINC Credit Forbearance are referred to as the "LINC Loan Documents."

**Y.** On June 11, 2003, an additional and further event of default occurred under the LINC Loan Documents due to Blue Magic's commencement of a Chapter 11 Bankruptcy in the United States Bankruptcy Court for the Eastern District of California, Modesto Division ("Blue Magic Bankruptcy").

**Z.** On August 5, 2003, the Bankruptcy Court entered an Order granting LINC's Motion for Relief From the Automatic Stay and providing that the automatic stay of 11 U.S.C. §

362 is modified to permit LINC to obtain possession of the Collateral, to dispose of the Collateral, and to use the proceeds from its disposition of the Collateral to satisfy its claim, all in accordance with applicable non-bankruptcy law.

**AA.** On August 8, 2003, LINC sent Blue Magic and A. Bova, by overnight delivery, individually and in care of their attorneys, a Notice of Intent to Dispose of Collateral pursuant to California Commercial Code section 9611 wherein LINC provided notice of its intent to dispose of the Collateral at private sale pursuant to the LINC Loan Documents and in accordance with the California Commercial Code.

**BB.** On August 15, 2003, the Blue Magic Bankruptcy, originally filed under Chapter 11 of the United States Bankruptcy Code, was converted to a case under Chapter 7 of the United States Bankruptcy Code and, in connection with said conversion, Gary Farrar was appointed as Bankruptcy Trustee in the Blue Magic Bankruptcy ("Trustee").

**CC.** LINC is informed and believes that an entity known only as Anderson Plastics ("Anderson") claims it is in possession of certain dies and/or moulds and/or inventory included in the Collateral and claims a possessory lien thereon pursuant to California Civil Code 3051.

**DD.** LINC is informed and believes that an entity known only as Motherlode Plastics ("Motherlode") claims that it is in possession of certain dies and/or moulds and/or inventory included in the Collateral and may therefore claim a possessory lien pursuant to California Civil Code 3051.

**EE.** LINC is informed and believes that an entity known as Orange Courier Warehouse ("Orange") is in possession of certain items of Blue Magic's inventory included in the Collateral and may claim a lien thereon.

**FF.**

**GG.** Pursuant to California Commercial Code section 9610 et seq., LINC desires to sell, and the Buyer desires to purchase, Blue Magic's right, title and interest in certain items included in the Collateral, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, the parties hereto, for good and valuable consideration, agree as follows:

### **AGREEMENT**

1. Incorporation of Recitals. The foregoing Recitals are incorporated herein by this reference and the parties agree that each of such Recitals is true and correct in all material respects.

2. Assets to be Sold. Upon the terms and subject to the conditions set forth in this Agreement, LINC shall sell to Buyer, and Buyer shall purchase from LINC, without recourse, in an "as is" condition, "where is," "with all faults," and without any warranties or representations of any kind or nature, whether written or oral, express, by operation of law, or otherwise, all of Blue Magic's right and interest to the following items of Collateral (but excluding the "Excluded Assets," as that term is defined below), to the extent LINC has a perfected security interest in such items: (i) inventory, raw materials, component parts, work in progress and/or materials used or consumed in Blue Magic's business wherever located, whether in the possession of Blue Magic or any warehouseman, bailee, or any other person including, but not limited to Anderson and/or Motherlode; (ii) all goods, tools, machinery, furnishing, furniture and other equipment owned by Blue Magic wherever located; and (iii) general intangibles including, but not limited, to trademarks and associated goodwill, patents, copyrights (collectively, the Assets"). Excluded from the definition of Assets, and not subject to transfer under the terms and conditions of this Agreement, are the following: Blue Magic's (i) accounts and the proceeds thereof, (ii) deposit accounts, (iii) any vehicles registered with the California Department of Motor Vehicles, (iv) all registered copyrights, and (v) all inventory of Blue Magic in the possession or control of Orange, or its successors or assigns, subject to an existing account receivable (collectively, the "Excluded Assets").

3. Secured Party Sale.

4. Consideration.

5. Conditions Precedent.

6. Transfer Documentation.

7. Representations and Warranties.

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8. Additional Disclaimers and Waivers.

g. Rescission.

h. Knowledge of Pertinent Facts.

9. Indemnity.

(a)



(b)

(c)

10. Release.

a.

b.

c.

d. Buyer is the sole and lawful owner of all right, title and interest in and to every claim and other matter which it purports to release herein, and have not assigned or transferred, or purported to assign or transfer to any person or entity any claims or other matters herein released. Buyer shall and hereby does indemnify, defend and hold LINC harmless from and against any claims, liabilities, actions, causes of action, demands, injuries, damages, costs, and expenses (including, but not limited to, attorneys' fees), based upon or arising in connection with any such prior assignment or transfer, or any such purported assignment or transfer, or any claims or other matters released herein.

11. Access to Blue Magic's Books and Records. Buyer acknowledges that LINC has a first perfected security interest in the accounts, deposit accounts, and proceeds thereof of Blue Magic. To the extent that the Buyer is lawfully in possession of the Premises, Buyer agrees that LINC may, following the Closing Date, upon reasonable notice to the Buyer, enter onto the Premises for the purpose of inspecting and/or copying (at LINC's sole cost and expense) the books and records of Blue Magic as they relate to Blue Magic's accounts. Buyer further acknowledges that various items included in the Assets are located at the Premises and that Buyer shall make its own arrangements with the owner of the Premises for access to and/or possession of the Premises in order to obtain possession of the Assets.

12. Taxes. Buyer shall be responsible for and shall pay in a timely manner all sales or other transaction taxes, duties, fees and other similar charges payable in connection with the sale of the Assets or the transactions and payment contemplated in this Agreement, regardless of the person or entity on whom such taxes, duties, fees or charges are imposed by any law, public entity or taxing authority. Buyer does hereby agree to indemnify and hold LINC harmless from the imposition, assessment, levy, payment and collection of sales tax, or any other tax, in connection with the transfer of the Assets.

13. Jury Trial Waiver. Buyer and LINC each hereby expressly, irrevocably, fully and forever releases, waives and relinquishes any and all right to trial by jury and all right to receive punitive, exemplary and consequential damages from the other (or any past, present or future board member, trustee, director, officer, member, manager, partner, employee, agent, representative, or advisor of the other) in any claim, demand, action, suit, proceeding or cause of action in which LINC on the one hand, and Buyer on the other hand, are parties, which in any way (directly or indirectly) arises out of, results from or relates to any of the following, in each case whether now existing or hereafter arising and whether based on contract or tort or any other legal basis: this Agreement; any past, present or future act, omission, conduct or activity with respect to this Agreement; any transaction, event or occurrence contemplated by this Agreement; the performance of any obligation or the exercise of any right under this Agreement; or the enforcement of this Agreement. LINC and Buyer each agrees that this Agreement constitutes written consent that trial by jury shall be waived in any such claim, demand, action, suit, proceeding or other cause of action pursuant to California Code of Civil Procedure Section 631 and agrees that LINC and Buyer each shall have the right at any time to file this Agreement with the clerk or judge of any court in which any such claim, demand, action, suit, proceeding or other cause of action may be pending as statutory written consent to waiver of trial by jury in accordance with California Code of Civil Procedure Section 631. Buyer hereby waives its right, if any, to rescind the transaction herein contemplated upon its consummation.

Initials LSP

DB

14. **Risk of Loss.** Risk of loss with respect to the Assets, and any of them, will pass to Buyer upon payment of the cash portion of the Purchase Price to LINC as provided in Section 4 of this Agreement.

15. **Delivery/Transfer.**

a. LINC shall have no responsibility or obligation to Buyer or any other party to deliver any or all of the Assets to Buyer or any third party. All retrieval, location, storage and shipping costs relating to the Assets shall be the sole responsibility of Buyer and not of LINC.

b. LINC shall have no responsibility or obligation to record or issue any document of title covering all or a portion of the Assets, or to document the transfer of its right, title and interest, if any, in and to the Assets or any of them in any public records. Any recordation, filing, or change to any public or private records relating to the Assets shall be performed by Buyer at its sole direction and expense.

16. **Miscellaneous.**

a. **Entire Agreement; Amendment.** This Agreement may be amended or modified by the parties only by an instrument in writing signed on behalf of each of the parties. This Agreement constitutes the entire agreement and supersedes all prior and contemporaneous agreements and understandings, both written and oral, between the parties with respect to the subject matter hereof.

b. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California as applied to agreements made and performed in California by residents of California.

c. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be considered one and the same agreement. This Agreement may be executed via facsimile. Facsimile signatures shall constitute originals for any and all purposes herein.

d. **Specific Performance.** The parties acknowledge that damages would be an inadequate remedy for any breach of the provisions of this Agreement and agree that the obligations of the parties hereunder shall be specifically enforceable.

e. **Attorneys' Fees.** In any mediation, arbitration or court action between the parties to enforce this Agreement or the rights of the parties hereunder, the prevailing party in such action (as determined by the parties to mediation, arbitral panel or court) will be entitled to receive a reasonable sum for its attorneys' fees and all other reasonable costs and expenses incurred in such action or suit.

f. **Severability of Provisions.** If any provision of this Agreement shall be held invalid or unenforceable, the remaining provisions of this Agreement shall not be affected thereby.

**g. Assignment, Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns. This Agreement may not be assigned by any party whether by operation of law or otherwise without the prior written consent of the other party.

**h. Third Parties.** This Agreement is not intended, and shall not be construed, to confer upon any person other than the parties any rights or remedies.

**i. Headings.** The headings contained in this Agreement are for reference only and shall not affect the meaning of any section.

**j. Costs and Expenses.** Unless specifically stated to the contrary in this Agreement, all expenses incurred in connection with the transactions contemplated by this Agreement shall be the sole responsibility of the party incurring such expenses. Such expenses shall include fees incurred for accountants, investment bankers, brokers and legal counsel.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

**"LINC"**

LINC Credit Property III, L.L.C., a California limited liability company

By: Robert S. Posschl  
Robert S. Posschl

Its: Vice President

**"BUYER"**

Boyd Flotation Inc.

By: Dennis Boyd

Its: Dennis Boyd  
President

By: \_\_\_\_\_

Its: \_\_\_\_\_