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**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION**

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|   |   |                           |
|---|---|---------------------------|
| In re:                                    | ) | Case No. 07-33849         |
|   | ) | Jointly Administered      |
| MOVIE GALLERY, INC., et al., <sup>1</sup> | ) | Chapter 11                |
|   | ) | Hon. Douglas O. Tice, Jr. |
| Debtors.                                  | ) |                           |

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**NOTICE OF FORM OF THE BACKSTOP RIGHTS PURCHASE AGREEMENT**

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**PLEASE TAKE NOTICE THAT** the above-captioned debtors (collectively, the “Debtors”) have filed with the Court the form of the Backstop Rights Purchase Agreement,<sup>2</sup> which is attached hereto as Exhibit A.

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<sup>1</sup> The Debtors in these proceedings are: Movie Gallery, Inc.; Hollywood Entertainment Corporation; M.G. Digital, LLC; M.G.A. Realty I, LLC; MG Automation LLC; and Movie Gallery US, LLC.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Second Amended Joint Plan of Reorganization of Movie Gallery, Inc. and Its Debtor Subsidiaries under Chapter 11 of the Bankruptcy Code.



Richmond, Virginia  
Dated: April 2, 2008

/s/ Marc J. Carmel

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## **EXHIBIT A**

**BACKSTOP RIGHTS PURCHASE AGREEMENT**

by and among

Movie Gallery, Inc.

and

The Parties Listed on Schedule 1 Hereto

Dated: March 20, 2008

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## BACKSTOP RIGHTS PURCHASE AGREEMENT

THIS BACKSTOP RIGHTS PURCHASE AGREEMENT (this "Agreement") is made this 20th day of March, 2008, by and among Movie Gallery, Inc., a Delaware corporation (the "Company"), on the one hand, and the investment entities affiliated with Sopris Capital Advisors LLC ("Sopris") set forth on Schedule 1 hereto (each, a "Backstop Party" and collectively, the "Backstop Parties"), on the other hand.

## WITNESSETH:

WHEREAS, on October 16, 2007 (the "Petition Date"), the Company and certain of its subsidiaries (collectively, the "Debtors," as set forth herein) filed voluntary Chapter 11 petitions in the Bankruptcy Court (as defined below), and the Debtors' chapter 11 cases are being jointly administered under Case No. 07-33849 (the "Chapter 11 Cases");

WHEREAS, in connection with the restructuring contemplated under the Second Amended Joint Plan of Reorganization of Movie Gallery, Inc. and Its Debtor Subsidiaries Under Chapter 11 of the Bankruptcy Code filed on February 18, 2008 (as may be amended from time to time, the "Plan"), the Company has determined that its successful reorganization requires, among other things, deleveraging its balance sheet by means of a significant new equity investment;

WHEREAS, the Debtors intend, pursuant to the Plan, to effectuate this deleveraging by converting certain Claims into equity of the Reorganized Movie Gallery to be outstanding on the Effective Date pursuant to the Plan and selling equity in the reorganized Company to raise the new money investment (together, the "Initially Issued Common Stock");

WHEREAS, the Parties agree that any valuations of the Debtors' assets or estates, whether implied or otherwise, arising from this Agreement shall not be binding for any other purpose, including but not limited to, determining recoveries under the Plan, and this Agreement does not limit such rights regarding valuation in these Chapter 11 Cases;

WHEREAS, the Debtors have determined that a rights offering backstopped by the Backstop Parties, on terms and conditions set forth in this Agreement (the "Rights Offering"), is the most appropriate method at this time in which to obtain the necessary new money investment;

WHEREAS, in the Rights Offering, all holders, as determined under the Plan, as of the Record Date (each, a "Rights Offering Participant") of the Company's 11% Senior Notes due May 1, 2012 issued pursuant to an indenture dated as of April 12, 2005 (the "Senior Notes" and the claims arising thereunder and under such indenture, the "Senior Notes Claims"), will be offered the opportunity to subscribe for all of the shares of New Common Stock to be issued

pursuant to the Rights Offering (the "Rights Offering Shares") in exchange for cash payments.

WHEREAS, the amount of the Rights Offering shall be \$50 million (the "Rights Offering Amount"), the number of Rights Offering Shares shall be 5 million and the purchase price per share (the "Exercise Price") of the Rights Offering Shares shall be \$10 per share;

WHEREAS, pursuant to the Rights Offering, each Rights Offering Participant shall have the non-detachable, non-assignable and non-transferable right (such Rights Offering Participant's "Individual Subscription Right") to subscribe for the number of Rights Offering Shares to be determined on a pro rata basis in respect of the amount of such Rights Offering Participant's proportionate ownership of the Senior Notes;

WHEREAS, to facilitate the Rights Offering, and in consideration of the payment of the fees and expense reimbursements described herein, each Backstop Party is willing to purchase on the Effective Date, to the extent that the Rights Offering is not fully subscribed, all of the Rights Offering Shares that have not been subscribed for by the Rights Offering Participants by the Rights Offering Expiration Date; and

WHEREAS, the Debtors, Sopris and Wells Fargo Bank, National Association, as escrow agent (the "Escrow Agent"), have entered into the Escrow Agreement, dated as of January 22, 2008 (the "Escrow Agreement"), pursuant to which Sopris has delivered \$50 million to a segregated trust account, to be held and disbursed in accordance with the terms of such Escrow Agreement.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements contained in this Agreement, the Parties hereto hereby agree as follows:

**Section 1. Definitions.**

For purposes of this Agreement, the following terms will have the meanings set forth below:

"Adjusted Equity Value" means an amount equal to the Pre-Money Equity Value plus the Allowed Sopris Second Lien Claims plus the Rights Offering Amount plus the Rights Offering Commitment Fee.

"Affiliate" has the meaning set forth at section 101(2) of the Bankruptcy Code.

"Agreement" has the meaning assigned to it in the Preamble.

"Allowed" means, with respect to Sopris Second Lien Claims, any Claim allowed pursuant to the Plan.



“Amended and Restated First Lien Credit Agreement” means an Amended and Restated First Lien Credit Agreement in accordance with the Amended and Restated First Lien Credit Agreement Term Sheet (as defined in the Plan) and in substantially the form attached to the Notice of Amended and Restated Credit Agreements in form and substance acceptable to the First Lien Agents (as defined in the Plan).

“Amended and Restated Second Lien Credit Agreement” means an Amended and Restated Second Lien Credit Agreement in accordance with the Amended and Restated Second Lien Term Sheet (as defined in the Plan) and in substantially the form attached to the Notice of Amended and Restated Credit Agreements in form and substance acceptable to the Second Lien Agent (as defined in the Plan).

“Antitrust Division” has the meaning assigned to it in Section 5.4 hereof.

“Approvals” means all approvals and other authorizations that are required under applicable law, including the Bankruptcy Code for the Company to take corporate action.

“Backstop Commitment” means the agreement by the Backstop Parties pursuant to this Agreement to purchase all of the Rights Offering Shares in excess of the Sopris Senior Notes Commitment that are not purchased by the Rights Offering Participants as part of the Rights Offering.

“Backstop Party” and “Backstop Parties” have the meanings assigned to such terms in the Preamble.

“Backstop Party Material Adverse Effect” means a material adverse effect on (a) the ability of the Backstop Parties to perform their obligations under this Agreement or the Registration Rights Agreement or (b) the validity or enforceability of this Agreement or the Registration Rights Agreement against the Backstop Parties.

“Backstop Purchase Price” has the meaning assigned to it in Section 2.1(c)(i) hereof.

“Bankruptcy Code” means Chapter 11 of the Bankruptcy Code, 11 U.S.C. §§ 101-1532, as applicable to the Chapter 11 Cases.

“Bankruptcy Court” means the United States Bankruptcy Court for the Eastern District of Virginia, Richmond Division, having jurisdiction over the Chapter 11 Cases and, to the extent of the withdrawal of any reference under section 157 of title 28 of the United States Code and/or the Order of the United States District Court for the Eastern District of Virginia pursuant to section 157(a) of title 28 of the United States Code, the United States District Court for the Eastern District of Virginia.

“Bankruptcy Rules” means the Federal Rules of Bankruptcy Procedure, as applicable to the Chapter 11 Cases, promulgated under 28 U.S.C. § 2075 and the general, local and chambers rules of the Bankruptcy Court.

“Business Day” means any day, other than a Saturday, Sunday or “legal holiday” (as defined in Bankruptcy Rule 9006(a)).

“Chapter 11 Cases” has the meaning assigned to it in the Recitals.

“Claim” means any claim against a Debtor as defined in section 101(5) of the Bankruptcy Code.

“Company” has the meaning assigned to it in the Preamble.

“Confirmation Date” means the date upon which the Bankruptcy Court enters the Confirmation Order on the docket of the Chapter 11 Cases, within the meaning of Bankruptcy Rules 5003 and 9021.

“Confirmation Order” has the meaning assigned to it in Section 6(b) hereof.

“Creditors’ Committee” means the official committee of unsecured creditors of the Debtors appointed by the United States Trustee in the Chapter 11 Cases on October 18, 2007, pursuant to section 1102 of the Bankruptcy Code, comprising the Committee Members (as defined in the Plan) and as reconstituted from time to time.

“Debtors” means, collectively: Movie Gallery, Inc.; Hollywood Entertainment Corporation; M.G. Digital, LLC; M.G.A. Realty I, LLC; MG Automation LLC; and Movie Gallery US, LLC.

“DIP Credit Agreement” means that certain \$150 million Secured Super-Priority Debtor in Possession Credit and Guaranty Agreement among Movie Gallery, Inc., as borrower, and the other Debtors as guarantors, Goldman Sachs Credit Partners L.P., as lead arranger and syndication agent, The Bank of New York, as administrative agent and collateral agent, Goldman Sachs Credit Partners L.P., as documentation agent and the banks, financial institutions and other lenders parties thereto, as may be amended, modified, ratified, extended, renewed, restated or replaced.

“Disclosure Statement” means the Disclosure Statement for the Second Amended Joint Plan of Reorganization of Movie Gallery, Inc. and Its Debtor Subsidiaries Under Chapter 11 of the Bankruptcy Code filed on February 18, 2008, as amended, supplemented or modified from time to time, including all exhibits and schedules thereto and references therein that relate to the Plan, that is prepared and distributed in accordance with the Bankruptcy Code, Bankruptcy Rules and any other applicable law.

“DTC” has the meaning assigned to it in Section 2.2(c) hereof.

“Effective Date” means the day that is the first Business Day after the Confirmation Date on which: (a) no stay of the Confirmation Order is in effect; and (b) all conditions specified in Article IX.B of the Plan have been: (i) satisfied; or (ii) waived pursuant to Article IX.C of the Plan.

“Entity” means an entity as defined in section 101(15) of the Bankruptcy Code.

“Equity Interest” means any share of common stock, preferred stock or other instrument evidencing an ownership interest in any of the Debtors, whether or not transferable, and any option, warrant or right, contractual or otherwise, to acquire any such interest in a Debtor that existed immediately prior to the Effective Date; *provided, however*, that Equity Interest does not include any Intercompany Interest (as defined in the Plan).

“Escrow Agent” has the meaning assigned to it in the Recitals.

“Escrow Agreement” has the meaning assigned to it in the Recitals.

“Exercise Price” has the meaning assigned to it in the Recitals.

“Exit Facility” has the meaning assigned to it in the Plan.

“Expense Reimbursement” means all reasonable and documented out-of-pocket fees and expenses of each Backstop Party, including the reasonable fees and expenses of counsel and other professionals retained by such Backstop Party, that have been and are subsequently incurred in connection with the negotiation, preparation and implementation of the Rights Offering, including, but not limited to, the fees and expenses of Sonnenschein Nath & Rosenthal LLP, Jeffries & Co., Inc. and Tavenner & Beran, P.C., but not including any amounts incurred after the termination of this Agreement or the Lock Up Agreement.

“Expiration Date” has the meaning assigned to it in Section 8.10 hereof.

“File” or “Filed” means file, filed or filing with the Bankruptcy Court or its authorized designee in these Chapter 11 Cases.

“Final DIP Order” means that certain Final Order Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 364(c), 364(d) and 364(e) and Fed. R. Bankr. P. 4001 and 9014 (I) Authorizing Debtors to Obtain Secured Post-Petition Financing on Super-Priority Priming Lien Basis, Granting Adequate Protection For Priming and Modifying Automatic Stay, (II) Authorizing Debtors to Use Cash Collateral of Existing Secured Lenders and Granting Adequate Protection For Use, And (III) Confirming Authorization for Debtors to Repay Existing Revolver Indebtedness Upon Interim Approval, entered by the Bankruptcy Court on November 16, 2007 [Docket No. 937], as the order may be amended from time to time.

“Final Order” means an order or judgment of the Bankruptcy Court, or other court of competent jurisdiction with respect to the subject matter, as entered on the docket in any Chapter 11 Case or the docket of any court of competent jurisdiction, that has not been reversed, stayed, modified or amended, and as to which the time to appeal, or seek certiorari or move for a new trial, reargument or rehearing has expired and no appeal or petition for certiorari or other proceedings for a new trial, reargument or rehearing been timely taken, or as to which any appeal that has been taken or any petition for certiorari that has been timely Filed has been withdrawn or resolved by the highest court to which the order or judgment was appealed or from which

certiorari was sought or the new trial, reargument or rehearing shall have been denied, resulted in no modification of such order or has otherwise been dismissed with prejudice.

“FTC” has the meaning assigned to it in Section 5.4 hereof.

“Holder” means any Entity holding a Claim or an Equity Interest.

“HSR Act” has the meaning assigned to it in Section 5.4 hereof.

“Individual Subscription Right” has the meaning assigned to it in the Recitals.

“Initially Issued Common Stock” has the meaning assigned to it in the Recitals.

“Lock Up Agreement” means that certain Lock Up, Voting and Consent Agreement dated as of October 14, 2007, among the Consenting Second Lien Holders (as defined in the Plan), the Consenting 11% Senior Note Holders (as defined in the Plan), Sopris and the Debtors, as amended from time to time in accordance with the terms thereof.

“Management and Director Equity Incentive Program” means a post-Effective Date director and officer compensation incentive program, approved by the New Board, providing for 10% of the New Common Stock, on a fully-diluted basis, to be reserved for issuance as grants of equity, restricted stock or options.

“Material Adverse Effect” means a material adverse effect on (a) the business, operations, assets, liabilities, financial condition or results of operation of the Company and its Subsidiaries, taken as a whole, or (b) the ability of the Company, subject to the Approvals, to perform its obligations under this Agreement or the Registration Rights Agreement or (c) subject to the Approvals, the validity or enforceability of this Agreement or the Registration Rights Agreement against the Company; *provided, however*, that, under no circumstances shall the term “Material Adverse Effect” include any change, effect, event, occurrence, state of facts or development that has occurred or is in existence prior to the date hereof.

“New Board” means the initial board of directors of Reorganized Movie Gallery.

“New Common Stock” means 60,000,000 shares of common stock in Reorganized Movie Gallery, par value \$.01 per share, to be authorized pursuant to Reorganized Movie Gallery’s charter, of which no more than 25,000,000 shares shall be initially issued on the Effective Date pursuant to the Plan.

“Notice of Amended and Restated Credit Agreements” means one or more notices to be Filed before the hearing on the Disclosure Statement attaching the proposed forms of the Amended and Restated First Lien Credit Agreement and the Amended and Restated Second Lien Credit Agreement.

“Party” means the Company or any Backstop Party, individually, and the “Parties” means the Company and the Backstop Parties, collectively.

“Person” means an individual, a partnership, a corporation, a limited liability company, an association, a joint stock company, a trust, a joint venture, an unincorporated organization or a governmental entity or any department, agency or political subdivision thereof.

“Petition Date” has the meaning assigned to it in the Recitals.

“Plan” has the meaning assigned to it in the Recitals.

“Plan Support Agreement” means that certain Plan Support Agreement dated as of January 22, 2008, between Consenting First Lien Holders (as defined in the Plan), Consenting Second Lien Holders (as defined in the Plan), the Consenting 11% Senior Note Holders (as defined in the Plan), Sopris and the Debtors, as amended from time to time in accordance with the terms thereof.

“Pre-Money Equity Value” means \$100 million.

“Record Date” means the close of business on February 5, 2008.

“Registration Rights Agreement” means a registration rights agreement substantially in the form set forth in the Plan Supplement (as defined in the Plan) obligating the Reorganized Debtors to register for resale certain shares of New Common Stock under the Securities Act in accordance with the terms set forth in such registration rights agreement.

“Remaining Rights Offering Shares” has the meaning assigned to it in Section 2.1(b)(i) hereof.

“Reorganized Debtors” means the Debtors, in each case, or any successor thereto, by merger, consolidation or otherwise, on or after the Effective Date.

“Reorganized Movie Gallery” means Movie Gallery, Inc. or any successor thereto, by merger, consolidation or otherwise, on or after the Effective Date.

“Rights Offering” has the meaning assigned to it in the Recitals.

“Rights Offering Amount” has the meaning assigned to it in the Recitals.

“Rights Offering Commitment Fee” has the meaning assigned to it in Section 2.1(d) hereof.

“Rights Offering Commitment Fee Equity Allocation” means 115,000 shares of New Common Stock to be issued to Sopris on the Effective Date.

“Rights Offering Equity Allocation” means 5 million shares of New Common Stock.

“Rights Offering Expiration Date” means March 24, 2008.

“Rights Offering Participant” has the meaning assigned to it in the Recitals.

“Rights Offering Shares” has the meaning assigned to it in the Recitals.

“Second Lien Administrative Agent” means Wells Fargo Bank, N.A., as successor to CapitalSource Finance LLC, in its capacity as such.

“Second Lien Claim” means any Claim derived from or based upon the Second Lien Credit Agreement, including principal amount plus all accrued cash and PIK interest (as defined in the Second Lien Credit Agreement), and reasonable and documented fees and expenses of the Second Lien Administrative Agent and the Second Lien Collateral Agent and their advisors (including, without limitation, the fees and expenses of Milbank, Tweed, Hadley & McCloy LLP, Venable LLP and Blackstone Advisory Services LP) up to the Effective Date, to the extent not previously paid by the Debtors.

“Second Lien Collateral Agent” means Wells Fargo Bank, N.A., as agent, as successor to CapitalSource Finance LLC, in its capacity as such.

“Second Lien Credit Agreement” means that certain Second Lien Credit and Guaranty Agreement dated March 8, 2007, between Movie Gallery, Inc., as borrower, the Second Lien Administrative Agent, Goldman Sachs Credit Partners, L.P., as Lender, Syndication Agent and Lead Arranger, those lenders party thereto, the Second Lien Collateral Agent and Hollywood Entertainment Corporation, M.G. Digital, LLC, M.G.A. Realty I, LLC, MG Automation LLC and Movie Gallery US, LLC, as guarantors.

“Securities Act” means the Securities Act of 1933, as amended.

“Securities Voting Agent” means Financial Balloting Group, LLC.

“Senior Note Claims” has the meaning assigned to it in the Recitals.

“Senior Notes” has the meaning assigned to it in the Recitals.

“Sopris” has the meaning assigned to it in the Preamble.

“Sopris Second Lien Claims” means any Second Lien Claim held by Sopris, the aggregate principal amount of which is estimated to be \$72.235 million as of the Commencement Date (as defined in the Plan), plus accrued and PIK Interest (as defined in the Second Lien Credit Agreement) thereon.

“Sopris Senior Notes Commitment” means the commitment by Sopris, set forth in this Agreement, to purchase shares in the Rights Offering in an amount equal to its current proportionate ownership of the Senior Notes.

“Subscription Form” means that certain form to be distributed to Rights Offering Participants on which such Rights Offering Participants may exercise their Individual Subscription Rights.

“Subsidiary” means as to any Entity, a corporation, partnership, limited liability company or other entity of which shares of stock or other ownership interests having ordinary voting power (other than stock or such other ownership interests having such power only by reason of the happening of a contingency) to elect a majority of the board of directors or other managers of such corporation, partnership or other entity are at the time owned, or the management of which is otherwise controlled, directly or indirectly through one or more intermediaries, or both, by such Entity. Unless otherwise qualified, all references to a “Subsidiary” or to “Subsidiaries” in this Agreement shall refer to a Subsidiary or Subsidiaries of the Company.

“Voting Deadline” means March 24, 2008, which is the date by which all Ballots must be received by the Voting and Claims Agent (as defined in the Plan) in accordance with the Disclosure Statement Order (as defined in the Plan).

**Section 2. Backstop Commitment, Rights Offering.**

**2.1 Backstop**

(a) Backstop Commitment. The Backstop Parties’ Backstop Commitment is equal to the Rights Offering Amount less the amount to be paid by Sopris in respect of the Sopris Senior Notes Commitment specified in Section 2.2(d) hereof.

(b) Effectuating the Backstop Commitment.

(i) Pursuant to the terms and subject to the conditions of this Agreement, if fewer than all of the Rights Offering Shares are subscribed for by the Rights Offering Participants under the Rights Offering, then the Backstop Parties will purchase from the Company, at the Exercise Price, the number of such Rights Offering Shares that are not subscribed for pursuant to the Rights Offering (the “Remaining Rights Offering Shares”). The obligation of the Backstop Parties to purchase the Remaining Rights Offering Shares are agreed to be joint and several.

(ii) The closing of the purchase and sale of the Remaining Rights Offering Shares, if any, shall take place on the Effective Date.

(c) Backstop Purchase.

(i) Notice. No later than 3 business days after the Voting Deadline, the Company shall deliver notice to the Backstop Parties and the Escrow Agent of: (A) the Backstop Parties’ obligation to purchase the Remaining Rights Offering Shares; and (B) the purchase price therefor equal to the number of Remaining Rights Offering Shares multiplied by the Exercise Price (the “Backstop Purchase Price”).

(ii) Delivery of Funds. On the earliest to occur of (i) the Expiration Date, (ii) the date that this Agreement is terminated in accordance with Section 8.11 hereof, and (iii) the Effective Date, the funds held in escrow under the Escrow Agreement shall be disbursed in the amounts, and to the parties, as specified in Section 1.3 of the Escrow Agreement, without any action by the Debtors, the Backstop Parties or the Bankruptcy Court.

(iii) **Delivery of Shares.** On the Effective Date, the Company shall deliver the Rights Offering Shares in a manner consistent with, and pursuant to, the procedures set forth in the Plan.

(d) **The Rights Offering Commitment Fee.** In consideration for the Backstop Parties having agreed to purchase any Remaining Rights Offering Shares that are not subscribed for in the Rights Offering, on the Effective Date, the Debtors will pay the Backstop Parties the "Rights Offering Commitment Fee," which is equal to \$1,150,000 (2.3% of the \$50 million Rights Offering Amount). The Rights Offering Commitment Fee shall be paid in the form of 115,000 shares of New Common Stock, with no further action required of or entertained by the Bankruptcy Court. For the avoidance of doubt, the Rights Offering Commitment Fee shall be payable without regard to whether the Rights Offering is fully subscribed.

## 2.2 The Rights Offering

(a) **Commencing the Rights Offering.** The Company will commence the Rights Offering as part of the Plan solicitation process. Each Rights Offering Participant will have the opportunity to participate in the Rights Offering by electing to exercise its Individual Subscription Right by (i) completing and returning a duly completed Subscription Form in the manner specified in the instructions accompanying the Subscription Form, and (ii) paying or arranging for payment of such Rights Offering Participant's Subscription Purchase Price (as calculated pursuant to the Subscription Form) in the manner specified in the instructions accompanying the Subscription Form.

(b) **Individual Subscription Right.** Each Holder of a Senior Notes Claim shall be entitled to participate in the Rights Offering and to purchase up to that number of Rights Offering Shares equal to such Holder's proportionate ownership of the Senior Notes.

(c) **Failure to Deliver Subscription Form.** If, for any reason, the Securities Voting Agent does not receive from a Rights Offering Participant (or the Depository Trust Company ("DTC"), in the case of Securities not held through a bank or brokerage firm) both (a) a duly completed Subscription Form or equivalent instructions from DTC on or prior to the Rights Offering Expiration Date and (b) payment in immediately available funds in an amount equal to such Rights Offering Participant's Subscription Purchase Price (as calculated pursuant to the Subscription Form) on or prior to the Rights Offering Expiration Date, or payment by DTC ~~within two Business Days after the Rights Offering Expiration Date,~~ such Rights Offering Participant shall be deemed to have relinquished and waived its right to participate in the Rights Offering.

(d) **Sopris's Individual Subscription Right.** Sopris hereby irrevocably commits to participate in the Rights Offering by purchasing that number of Rights Offering Shares equal to its current proportionate ownership of the Senior Notes.



**Section 3. Representations and Warranties of the Company.** The Company represents and warrants to the Backstop Parties, as of the date hereof, as follows:

**3.1 Organization.** Each of the Debtors (a) is duly organized and validly existing under the laws of the jurisdiction of its organization, (b) is duly qualified or licensed to do business as a foreign corporation and is in good standing under the laws of each jurisdiction where the nature of the property owned or leased by it or the nature of the business conducted by it makes such qualification or license necessary, except where any such failure to be so qualified or licensed, individually in the aggregate, would not result in, and would not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect, and (c), subject to the Approvals, has all corporate or limited liability company power and authority to own and operate its properties, to lease the property it operates under lease and to conduct its business as now or currently proposed to be conducted, except where any such failure to own or operate, individually or in the aggregate, would not result in, and would not reasonably be expected, individually or in the aggregate, to result in, a Material Adverse Effect. Each of the Debtors is in compliance with its certificate of incorporation and by-laws (or equivalent organizational documents).

**3.2 Due Authorization, Execution and Delivery; Enforceability.** The Company has the requisite corporate power and authority to enter into, execute and deliver this Agreement and, subject to the Approvals, to perform its obligations hereunder, including the issuance of the Rights Offering Shares, and has taken all necessary corporate action required for the due authorization, execution, delivery and performance by it of this Agreement, including the issuance of the Initially Issued Common Stock. Subject to the Approvals, this Agreement constitutes the legally valid and binding obligation of the Company, enforceable against it in accordance with its terms, subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and similar laws affecting creditors' rights and remedies generally and subject, as to enforceability, to general principles of equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity).

**3.3 Due Issuance and Authorization of Capital Stock.** The Rights Offering Shares issued and delivered to the Backstop Parties pursuant to the terms of this Agreement will be, upon issuance, duly authorized, validly issued, fully paid and non-assessable, and will be free from all taxes, liens, preemptive rights and charges with respect to the issue thereof.

**3.4 Capitalization of the Company; Due Issuance and Authorization of Initially Issued Common Stock.** As of the Effective Date, the authorized capital stock of the Company will consist solely of shares of Initially Issued Common Stock, par value \$0.01 per share, the number of which shall be determined in accordance with the Plan. The Management and Director Equity Incentive Program will reserve 10% of the New Common Stock, on a fully diluted basis, for issuance as grants of equity, restricted stock or options. As of the Effective Date, all of the issued and outstanding shares of Initially Issued Common Stock will have been duly authorized and validly issued, will be fully paid and non-assessable, will not be subject to any preemptive rights and, assuming the accuracy of the representations and warranties and compliance with the covenants of the Backstop Parties set forth in this Agreement, will not be

issued in violation of the Securities Act or any other applicable laws (including state "blue sky" laws). Other than with respect to any Management and Director Equity Incentive Program, the Warrants (as defined in the Plan), the Exit Facility, and except as contemplated by the Plan as of the Effective Date, the Company will not have issued, granted, or entered into any commitment to issue or grant any outstanding options, warrants, rights or other securities convertible into or exchangeable or exercisable for shares of its Initially Issued Common Stock. As of the Effective Date and except as contemplated by the Plan, the Company and its Subsidiaries will not have agreed to repurchase or redeem any securities of the Company and shall not have granted any registration rights other than those set forth in the Registration Rights Agreement.

**3.5 Capitalization of Subsidiaries.** As of the Effective Date, all of the issued and outstanding shares of the Company's Subsidiaries will have been duly authorized and validly issued and will be fully paid and non-assessable. As of the Effective Date, the Company or one of its Subsidiaries will own of record and beneficially all of the issued and outstanding shares of capital stock or other equity securities of or other equity ownership interests in each of the Company's Subsidiaries free and clear of any liens other than any liens outstanding on any such date which secure indebtedness of the Company or any of its Subsidiaries under the DIP Credit Agreement, the Amended and Restated First Lien Credit Agreement, the Amended and Restated Second Lien Credit Agreement or the Exit Facility. As of the Effective Date, there will be no agreements which may obligate the Company or any of the Company's Subsidiaries, as the case may be, to issue, purchase, register for sale, redeem or otherwise acquire any of the Company's Subsidiaries' shares of capital stock or other equity securities or equity ownership interests.

**3.6 Consents.** Subject to the Approvals, such filings and approvals as may be required under federal securities laws and applicable state securities laws, none of the execution, delivery or performance of this Agreement or the Registration Rights Agreement by the Company, including the issuance of shares of Initially Issued Common Stock by it, will require any consent of, authorization by, exemption from, filing with, or notice to any governmental entity or any other Entity.

**3.7 No Conflicts.** Except for the Approvals, the execution, delivery and performance of this Agreement and the Registration Rights Agreement by the Company, including the issuance of shares of Initially Issued Common Stock and the consummation of the transactions contemplated hereunder and thereunder, will not (a) conflict with or result in any breach of any provision of its certificate of incorporation or by-laws as in effect on the Effective Date, (b) conflict with or result in the breach of the terms, conditions or provisions of or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or give rise to any right of termination, acceleration or cancellation under, any material agreement, lease, mortgage, license, indenture, instrument or other contract to which it or any of its Subsidiaries is a party or by which any of its or any of its Subsidiaries' properties or assets are bound as in effect on the Effective Date or (c) result in a violation of any law, rule, regulation, order, judgment or decree (including, without limitation, federal and state securities laws and regulations) applicable to it or any of its Subsidiaries or by which any of its or its Subsidiaries' properties or assets are bound or affected as in effect on the Effective Date, except in the case of clauses (b) and (c), as would not, individually or in the aggregate, result in or reasonably be expected to result in a Material Adverse Effect.

**3.8 No Registration.** Assuming the accuracy of the representations and warranties and compliance with the covenants of the Backstop Parties set forth in this Agreement, no registration of the Rights Offering Shares under the Securities Act is required for the purchase of the Rights Offering Shares by the Backstop Parties in the manner contemplated by this Agreement.

**3.9 Licenses.** The Company and each of its Subsidiaries possesses adequate licenses, certificates, authorities or permits issued by appropriate governmental agencies or bodies necessary to conduct the business now operated by it and its Subsidiaries and has not received any written notice of proceedings relating to the revocation or modification of any such license, certificate, authority or permit that, if determined adversely to the Company or such Subsidiary, would individually or in the aggregate result in or reasonably be expected to result in a Material Adverse Effect.

**3.10 Compliance With Laws and Regulations.** Neither the Company nor any of its Subsidiaries is in violation of any applicable law, ordinance, statute, rule, regulation, decision or order of any governmental agency or body or any court, domestic or foreign, applicable to the Company or any of its Subsidiaries, which violation would, individually or in the aggregate, have or reasonably be expected to have a Material Adverse Effect.

**Section 4. Representations and Warranties of the Backstop Parties.** The Backstop Parties jointly and severally represent and warrant to the Company as of the date hereof as follows:

**4.1 Organization.** Each Backstop Party is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization.

**4.2 Due Authorization.** Each Backstop Party has the requisite power and authority to enter into, execute and deliver this Agreement and to perform its obligations hereunder and has taken all necessary action required for the due authorization, execution, delivery and performance by it of this Agreement.

**4.3 Due Execution; Enforceability.** This Agreement has been duly and validly executed and delivered by each Backstop Party and constitutes its valid and binding obligation, enforceable against it in accordance with its terms, subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and similar laws affecting creditors' rights and remedies generally and subject, as to enforceability, to general principles of equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity).

**4.4 Consents.** Subject to the Approvals, none of the execution, delivery or performance of this Agreement or the Registration Rights Agreement by the Backstop Parties will require any consent of, authorization by, exemption from, filing with, or notice to any governmental entity or any other Entity.

**4.5 No Conflicts.** The execution, delivery and performance of this Agreement and the Registration Rights Agreement by the Backstop Parties will not (a) conflict with or result in

any breach of any provision of its organizational documents as in effect on the Effective Date, (b) conflict with or result in the breach of the terms, conditions or provisions of or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or give rise to any right of termination, acceleration or cancellation under, any material agreement, lease, mortgage, license, indenture, instrument or other contract to which it or any of its Subsidiaries is a party or by which any of its or any of its Subsidiaries' properties or assets are bound as in effect on the Effective Date, or (c) result in a violation of any law, rule, regulation, order, judgment or decree (including, without limitation, federal and state securities laws and regulations) applicable to it or any of its Subsidiaries or by which any of its or its Subsidiaries' properties or assets are bound or affected as in effect on the Effective Date, except in the case of clauses (b) and (c), as would not, individually or in the aggregate, result in or reasonably be expected to result in a Backstop Party Material Adverse Effect.

**4.6 Legal Proceedings.** There are no actions, suits or proceedings to which any Backstop Party is a party or to which any property of any Backstop Party is subject that, individually or in the aggregate, has prohibited, delayed or adversely impacted, or if determined adversely to such Backstop Party, would reasonably be expected to prohibit, delay or adversely impact the Backstop Parties' performance, of their obligations under this Agreement and no such actions, suits or proceedings are threatened or, to the knowledge of the Backstop Parties, contemplated and, to the knowledge of the Backstop Parties, no investigations are threatened by any governmental or regulatory authority or threatened by others that has or would reasonably be expected, individually or in the aggregate, to prohibit, delay or adversely impact the Backstop Parties' performance of their obligations under this Agreement.

**4.7 No Registration Under the Securities Act.** Each Backstop Party understands that the Rights Offering Shares to be purchased by it pursuant to the terms of this Agreement have not been registered, and that, except as provided in the Registration Rights Agreement, the Company shall not be required to effect any registration or qualification, under the Securities Act or any state securities law, and the Rights Offering Shares will be issued in reliance upon exemptions contained in the Securities Act or interpretations thereof and in the applicable state securities laws. The Rights Offering Shares cannot be offered for sale, sold or otherwise transferred except pursuant to a registration statement or in a transaction exempt from or not subject to registration under the Securities Act.

**4.8 Acquisition for Investment.** The Rights Offering Shares are being acquired under this Agreement by the Backstop Parties in good faith solely for their own accounts, for investment and not with a view toward resale or other distribution within the meaning of the Securities Act; *provided, however*, that the disposition of the Backstop Parties' property shall at all times be under their control.

**4.9 Accredited Backstop Party.** Each Backstop Party is an "accredited investor" within the meaning of Rule 501(a) under the Securities Act.

**4.10 Additional Information.** Each Backstop Party acknowledges that (a) it has been afforded the opportunity to ask questions and receive answers concerning the Company and to obtain additional information that it has requested to verify the accuracy of the information

contained herein and as otherwise considered necessary in connection with the purchase of the Rights Offering Shares, (b) it has received copies of all documents and any other information requested from the Company, or has elected to waive such opportunity, and (c) it has been furnished with such financial and other information concerning the Company, its management and its business and proposed business as the Backstop Party considers necessary or appropriate for deciding whether to purchase the Rights Offering Shares. Notwithstanding the foregoing, nothing contained herein shall operate to modify or limit in any respect the representations and warranties of the Company or to relieve it from any obligations to the Backstop Parties for breach thereof or the making of misleading statements or the omission of material facts in connection with the transactions contemplated herein.

**4.11 Arm's Length.** Each Backstop Party understands that the Company is acting solely in the capacity of an arm's length contractual counterparty to such Backstop Party with respect to the transactions contemplated hereby. Additionally, such Backstop Party is not relying on the Company for any legal, tax, investment, accounting or regulatory advice, except for representations and warranties specifically included in this Agreement.

**4.12 No Broker's Fees.** To the best of its knowledge, no Backstop Party is a party to any contract, agreement or understanding with any person (other than this Agreement) that would give rise to a claim against the Debtors for a brokerage commission, finder's fee or like payment in connection with the transactions contemplated hereby.

**Section 5. Additional Covenants.** The Company and each Backstop Party hereby agree to do the following:

**5.1 Legends.** The Parties agree that the certificates evidencing the shares of Initially Issued Common Stock to be purchased hereunder will bear the following legend:

"THE SECURITIES EVIDENCED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND MAY NOT BE SOLD OR TRANSFERRED UNLESS THERE IS AN EFFECTIVE REGISTRATION STATEMENT UNDER SUCH ACT COVERING SUCH SECURITIES OR THE SECURITIES ARE SOLD AND TRANSFERRED IN A TRANSACTION THAT IS EXEMPT FROM OR NOT SUBJECT TO THE REGISTRATION AND PROSPECTUS DELIVERY REQUIREMENTS OF SUCH ACT."

**5.2 Further Assurances.** From time to time after the date of this Agreement, the Parties shall execute, acknowledge and deliver to the other Party such other instruments, documents, and certificates and will take such other actions as the other Party may reasonably request in order to consummate the transactions contemplated by this Agreement.

**5.3 Commercially Reasonable Efforts.**

- (a) The Company shall use commercially reasonable efforts to cause the conditions set forth in Section 6 to be satisfied and to consummate the transactions contemplated herein. The Backstop Parties shall use commercially reasonable efforts to cause the conditions set forth in Section 7 to be satisfied and to consummate the transactions contemplated herein.

**5.4 HSR.** The Company and the Backstop Parties shall (a) make or cause to be made all filings required of each of them or any of their respective Subsidiaries or Affiliates under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "HSR Act") with respect to the transactions contemplated hereby as promptly as practicable and, in any event, by March 21, 2008, in the case of all filings required under the HSR Act, (b) comply at the earliest practicable date with any request under the HSR Act for additional information, documents or other materials received by the Backstop Parties or their respective Subsidiaries from the Federal Trade Commission (the "FTC"), the Antitrust Division of the United States Department of Justice (the "Antitrust Division") or any other governmental body in respect of such filings or such transactions and (c) cooperate with each other in connection with any such filing (including, without limitation, to the extent permitted by applicable law, providing copies of all such documents to the non-filing Parties prior to filing and considering all reasonable additions, deletions or changes suggested in connection therewith) and in connection with resolving any investigation or other inquiry of any of the FTC, the Antitrust Division or other governmental body with respect to any such filing or any such transaction. Any and all filing fees required to be paid by the Company and the Backstop Parties under the HSR Act in connection with such filings shall be borne by the Company. Each such Party shall use commercially reasonable efforts to furnish to each other all information required for any application or other filing to be made pursuant to any applicable law in connection with the transactions contemplated by this Agreement. Each such Party shall promptly inform the other Party of any oral communication with, and provide copies of written communications with, any governmental body regarding any such filings or any such transaction. No Party hereto shall independently participate in any formal meeting with any governmental body in respect of any such filings, investigation or other inquiry without giving the other Party prior notice of the meeting and, to the extent permitted by such governmental body, the opportunity to attend and/or participate. Subject to applicable law, the Parties will consult and cooperate with one another in connection with any analyses, appearances, presentations, memoranda, briefs, arguments, opinions and proposals made or submitted by or on behalf of any Party relating to proceedings under the HSR. The Company and the Backstop Parties may, as each deems advisable and necessary, reasonably designate any competitively sensitive material provided to the other under this Section as "outside counsel only." Such materials and the information contained therein shall be given only to the outside legal counsel of the recipient and will not be disclosed by such outside counsel to employees, officers or directors of the recipient, unless express written permission is obtained in advance from the source of the materials (the Company and the Backstop Parties, as the case may be).

**5.5 Stockholders Agreement.** If requested by the Backstop Parties, the Company will enter into a stockholders' agreement that shall be in a form reasonably acceptable to the Company and the Backstop Parties.

**Section 6. Conditions to Backstop Parties' Backstop Obligations.** The obligation of the Backstop Parties to purchase the Remaining Rights Offering Shares as set forth in Section 2.1 shall be subject to the satisfaction (or waiver by the Backstop Parties) of each of the following conditions on the Effective Date:

(a) Disclosure Statement and Plan. Any modifications to the Disclosure Statement and the Plan shall be materially consistent with the terms of this Agreement and shall be reasonably acceptable to the Backstop Parties.

(b) Confirmation Order. An order of the Bankruptcy Court confirming the Plan pursuant to section 1129 of the Bankruptcy Code (the "Confirmation Order") that is reasonably acceptable to the Backstop Parties shall have been entered by the Bankruptcy Court, and no order staying the Confirmation Order shall be in effect;

(c) HSR Act. The waiting period (and any extension thereof) applicable to the Plan and the purchase of the Rights Offering Shares under the HSR Act shall have been terminated or shall have expired;

(d) Expense Reimbursement. The Debtors shall have timely paid all Expense Reimbursements on a continuing basis or within thirty (30) days after the Backstop Parties notify the Debtors of their failure to pay such Expense Reimbursements; provided that in the event the Company in good faith disputes whether the amount of such Expense Reimbursements is "reasonable," the Debtors shall separate the disputed amount and pay the remainder pursuant to the terms hereof;

(e) Execution of Documents. All documents arising from or related to the Rights Offering and the Restructuring (as defined in the Plan Support Agreement) set forth on Schedule 6(e) (and any other documents agreed to in writing by the Debtors and the Backstop Parties), which documents must be reasonably satisfactory to the Backstop Parties, shall have been executed by the parties thereto;

(f) Plan Support Agreement. The Plan Support Agreement has not been terminated, whether by occurrence of a Termination Event (as defined in the Plan Support Agreement) or otherwise;

(g) Required Consents. All of the Approvals and all of the approvals necessary for the consummation of the transactions contemplated by this Agreement set forth on Schedule 3.5 attached hereto shall have been obtained;

(h) Rights Offering. The Company shall have consummated the Rights Offering pursuant to and in accordance with the Plan, provided, that this clause shall not be a condition to the obligations of the Backstop Parties to purchase Rights Offering Shares as set forth in Section 2.2(a) pursuant to the Subscription Form;

(i) Other Conditions. (i) The Debtors shall have performed, in all material respects, each of their obligations hereunder required to be performed by them at or prior to the Effective Date, and (ii) the representations and warranties of the Debtors in this Agreement that are not

qualified as to materiality or Material Adverse Effect shall be true and correct in all material respects, and the representations and warranties that are qualified as to materiality or Material Adverse Effect shall be true and correct in all respects, in each case, at and as of the Effective Date as if made at and as of Effective Date (other than those representations and warranties that address matters only as of a particular earlier date, which need only be true and correct or true and correct in all material respects or all respects (as the case may be) as of such earlier date); and

(j) Officer's Certificate. The Company shall have delivered to the Backstop Parties an officer's certificate dated as of the Effective Date certifying that the resolutions duly adopted by the Board of Directors of the Company, authorizing and approving its performance of the transactions contemplated hereby and the execution and delivery of this Agreement and the Registration Rights Agreement, remain in full force and effect.

**Section 7. Conditions to Company's Obligations.** The obligations of the Company hereunder are subject to the satisfaction (or the waiver by the Company) of the following conditions as of the Effective Date:

(a) Required Consents. All of the Approvals and all of the approvals necessary for the consummation of the transactions contemplated by this Agreement set forth on Schedule 3.5 attached hereto shall have been obtained;

(b) Rights Offering. The Rights Offering shall have been consummated pursuant to the Plan;

(c) Plan Confirmation. The Bankruptcy Court shall have entered the Confirmation Order, and no order staying such Confirmation Order shall be in effect;

(d) HSR Act. The waiting period (and any extension thereof) applicable to the Plan and the purchase of the Rights Offering Shares under the HSR Act shall have been terminated or shall have expired; and

(e) Other Conditions. (i) The Backstop Party shall have performed, in all material respects, its obligations hereunder required to be performed by it at or prior to the Effective Date and (ii) the representations and warranties of the Backstop Party in this Agreement that are not qualified as to materiality or Backstop Party Material Adverse Effect shall be true and correct in all material respects, and the representations and warranties that are qualified as to materiality or Backstop Party Material Adverse Effect shall be true and correct in material respects, in each case, at and as of the Effective Date as if made at and as of Effective Date (other than those representations and warranties that address matters only as of a particular earlier date, which need only be true and correct or true and correct in all material respects or all respects (as the case may be) as of such earlier date).

**Section 8. Miscellaneous.**

**8.1 Notices.** Any notice or other communication required or which may be given pursuant to this Agreement will be in writing and either delivered personally to the addressee,



telecopied to the addressee or mailed, certified or registered mail, postage prepaid, and will be deemed given when so delivered personally or telecopied or, if mailed, five (5) days after the date of mailing, as follows:

- (a) if to a Backstop Party, to the address specified on Schedule 1 hereto.
- (b) if to the Company, to:

Movie Gallery, Inc.  
900 West Main Street  
Dothan, Alabama 36301  
Attn: S. Page Todd

with a copy to:

Kirkland & Ellis LLP  
200 East Randolph Drive  
Chicago, Illinois 60601-6636  
Attn: Anup Sathy P.C., Michael G. Timmers, P.C., Marc J. Carmel  
and Ross M. Kwasteniet  
Facsimile: 312-861-2200

(counsel to the Company)

**8.2 Survival of Representations and Warranties, etc.** All representations and warranties made in this Agreement, the Schedules attached hereto or the certificate delivered pursuant to Section 6(j) hereof will survive the execution and delivery of this Agreement, except that representations made in Section 3.6 will only survive for a period of one year after the Effective Date.

**8.3 Assignment.** This Agreement will be binding upon and inure to the benefit of each and all of the Parties and neither this Agreement nor any of the rights, interests or obligations hereunder may or will be assigned by any of the Parties without the prior written consent of the other Parties; *provided, however*, that this Agreement, or any Backstop Party's obligations hereunder, may be assigned, delegated or transferred, in whole or in part, by such Backstop Party to any one or more Persons without the prior written consent of the other Parties so long as any such assignee assumes the obligations of such Backstop Party hereunder and agrees in writing to be bound by the terms of this Agreement in the same manner as such Backstop Party. Notwithstanding the foregoing, regardless of any assignment under this Section 8.3, any assigning Backstop Party shall remain obligated under this Agreement and this Agreement shall remain fully enforceable against such Backstop Party.

**8.4 Entire Agreement.** This Agreement contains the entire agreement by and among the Company and the Backstop Parties with respect to the transactions contemplated by this Agreement and supersedes all prior agreements and representations, written or oral, with respect thereto (including the rights offering term sheets attached to the Lock Up Agreement and Plan Support Agreement, respectively).

**8.5 Waivers and Amendments.** This Agreement may be amended, modified, superseded, cancelled, renewed or extended, and the terms and conditions of this Agreement may be waived, only by a written instrument signed by the Company and each Backstop Party. No delay on the part of any party in exercising any right, power or privilege pursuant to this Agreement will operate as a waiver thereof, nor will any waiver on the part of any party of any right, power or privilege pursuant to this Agreement, nor will any single or partial exercise of any right, power or privilege pursuant to this Agreement, preclude any other or further exercise thereof or the exercise of any other right, power or privilege pursuant to this Agreement. The rights and remedies provided pursuant to this Agreement are cumulative and are not exclusive of any rights or remedies which any party otherwise may have at law or in equity.

**8.6 Governing Law; Jurisdiction; Venue; Process.** THIS AGREEMENT WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO ANY CHOICE OF LAW OR CONFLICT OF LAW PROVISION OR RULE THAT WOULD CAUSE THE APPLICATION OF THE LAWS OF ANY JURISDICTION OTHER THAN THE STATE OF NEW YORK. EACH PARTY HEREBY IRREVOCABLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE EXCLUSIVE JURISDICTION OF THE UNITED STATES BANKRUPTCY COURT FOR THE EASTERN DISTRICT OF VIRGINIA, RICHMOND DIVISION, FOR PURPOSES OF ALL LEGAL PROCEEDINGS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY. EACH PARTY HERETO IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUCH PROCEEDING BROUGHT IN SUCH COURT AND ANY CLAIM THAT ANY SUCH PROCEEDING BROUGHT IN SUCH A COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

**8.7 Counterparts.** This Agreement may be executed in two or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument. All such counterparts will be deemed an original, will be construed together and will constitute one and the same instrument.

**8.8 Headings.** The headings in this Agreement are for reference purposes only and will not in any way affect the meaning or interpretation of this Agreement.

**8.9 Severability.** In the event that any one or more of the provisions contained herein, or the application thereof in any circumstances, is held invalid, illegal or unenforceable in any respect for any reason, the validity, legality and enforceability of any such provision in every other respect and of the remaining provisions contained herein will not be in any way impaired thereby, it being intended that all of the rights and privileges of the parties hereto will be enforceable to the fullest extent permitted by law.

**8.10 Expiration.** This Agreement shall expire on upon the termination of the DIP Credit Agreement, as it may be extended from time to time (the "Expiration Date").

**8.11 Termination.**

(a) Termination by the Backstop Parties.

(i) The Backstop Parties shall have the right, but not the obligation, to terminate this Agreement by notice to the Company if:

(1) the Debtors file any pleading or document with the Bankruptcy Court with respect to a Topping Proposal (as defined in the Plan Support Agreement);

(2) the Debtors fail to pay any requested Expense Reimbursement to the Backstop Party within thirty days after the Backstop Party notifies the Debtors in writing of their failure to pay such Expense Reimbursement; provided that, in the event that the parties dispute whether amounts are "reasonable," the Debtors shall separate the disputed amount and pay the remainder pursuant to the terms hereof; or

(3) the Plan Support Agreement has been terminated by reason of the occurrence of a Termination Event (as defined in the Plan Support Agreement), other than with respect to a Termination Event arising under section 8.1(k) of the Plan Support Agreement due to a breach by Sopris.

(ii) In the event of termination of this Agreement by the Backstop Parties as provided above, the provisions of this Agreement shall immediately become void and of no further force and effect (other than this Section 8.11, Section 2.1(c)(ii), Sections 8.1 through 8.9 and Section 8.12).

(b) Termination by the Company.

(i) The Company shall have the right, but not the obligation, to terminate this Agreement by notice to Sopris (at the address listed on Schedule 1 attached hereto) if any Backstop Party materially breaches this Agreement, and such breach is not cured after a notice period of five (5) business days (which may be extended by the Debtors) during which the breaching Backstop Parties may negotiate in good faith regarding any such cure.

(ii) In the event of termination of this Agreement by the Company as provided above, the provisions of this Agreement shall immediately become void and of no further force and effect (other than this Section 8.11, Sections 8.1 through 8.8 and Section 8.12).

**8.12 Conflict with Confirmation Order and Plan.**

(a) Conflict with the Confirmation Order. In the event there is a conflict between the terms of this Agreement and the terms of the Confirmation Order, the terms of the Confirmation Order shall control.

(b) Conflict with the Plan. In the event there is a conflict between the terms of this Agreement and the terms of the Plan, the terms of the Plan shall control.

*[Signature Pages Follow]*

**SCHEDULE 1**

**Backstop Parties Party Hereto**

Sopris Capital Advisors LLC  
152 West 57th Street  
New York, NY 10019  
Attn: Mr. Nikos Hecht

With a copy to (which shall not constitute notice):

Sonnenschein Nath & Rosenthal LLP  
1221 Avenue of the Americas  
New York, New York 10022  
Attn: Peter D. Wolfson, John Bicks, Jeffrey Geron  
Facsimile: (212) 768-6800

SCHEDULE 6(e)

Documents Required to be Executed On or Prior To the Effective Date

Amended and Restated First Lien Credit Agreement  
Amended and Restated Second Lien Credit Agreement  
Exit Facility  
Registration Rights Agreement  
Seasonal Overadvance Facility