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Co-Counsel to the Debtors

**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 PLAN SUPPLEMENT: FORM OF THE  
SEASONAL OVERADVANCE FACILITY**

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**PLEASE TAKE NOTICE THAT** the above-captioned debtors (collectively, the “Debtors”) have filed with the Court the form of the Seasonal Overadvance Facility,<sup>2</sup> which is attached hereto as Exhibit A.<sup>3</sup>

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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.

<sup>3</sup> Exhibit A attached hereto, the form of the Amended and Restated First Amended Lien Credit Agreement, the form of the Amended and Restated Second Lien Credit Agreement and each of the other documents filed as part of the Plan Supplement are subject to continuing review and revision by the Debtors, the First Lien Agents, the First Lien Lenders, the Second Lien Agents, the Second Lien Lenders, Sopris and the Committee.



Richmond, Virginia  
Dated: April 8, 2008

/s/ Marc J. Carmel

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## **EXHIBIT A**

## LETTER OF CREDIT FACILITY AGREEMENT

AGREEMENT, dated as of [\_\_\_\_\_] , 2008, by and between **MOVIE GALLERY, INC.**, a Delaware corporation (the “*Company*”), and **SOPRIS PARTNERS, SERIES A OF SOPRIS CAPITAL PARTNERS, LP** (“*Arranger*”)

### WITNESSETH:

In consideration of the mutual representations, warranties, covenants and agreements set forth herein, the parties hereby agree as follows:

#### 1. Defined Terms, *Etc.*

1.1. *Glossary.* As used herein, the following terms have the following meanings (terms defined in the singular to have the same meaning when used in the plural and *vice versa*).

“*Accommodation Agreements*” means the agreements between the Company or one of its Subsidiaries, on the one hand, and the Studios, on the other, as in effect on the Plan Effective Date, pursuant to which, among other things, each Studio has agreed to provide trade credit to the Company or the applicable Subsidiary, as the same may be modified, amended or supplemented in each case with Arranger’s prior written consent and any similar agreement entered into after the Plan Effective Date and expressly designated by Arranger to be an Accommodation Agreement.

“*Adverse Proceeding*” means any action, suit, proceeding, hearing (whether administrative, judicial or otherwise), governmental investigation or arbitration (whether or not purportedly on behalf of the Company or any of its Subsidiaries) at law or in equity, or before or by any governmental authority, domestic or foreign, whether pending or, to the knowledge of the Company or any of its Subsidiaries, threatened against or adversely affecting the Company or any of its Subsidiaries or any property of the Company or any of its Subsidiaries.

“*Affiliate*” means, as applied to any Person, any other Person directly or indirectly controlling, controlled by, or under common control with, that Person. For the purposes of this definition, “control” (including, with correlative meanings, the terms “*controlling*”, “*controlled by*” and “*under common control with*”), as applied to any Person, means the possession, directly or indirectly, of the power (i) to vote 5% or more of the Securities having ordinary voting power for the election of directors of such Person or (ii) to direct or cause the direction of the management and policies of that Person, whether through the ownership of voting securities or by contract or otherwise.

“*Bankruptcy Code*” means Title 11 of the United States Code entitled “Bankruptcy,” as now and hereafter in effect, or any successor statute.

“*Base Trade Credit Amount*” means (a) in the case of a Studio, the amount of trade credit to be provided by that Studio under its Accommodation Agreement and (b) in the case of a Game

Vendor, the amount of trade credit made available by that Game Vendor to the Company and its Subsidiaries as at March 31, 2008.

“*Business Day*” means (i) any day excluding Saturday, Sunday and any day which is a legal holiday under the laws of the State of New York or is a day on which banking institutions located in such state are authorized or required by law or other governmental action to close.

“*Commitment Period*” means the period commencing September 15, 2008 and ending on January 15, 2009.

“*Confirmation Order*” means the order by the Bankruptcy Court entered on [\_\_\_\_\_] [\_\_\_\_], 2008 confirming the Plan.

“*Contractual Obligation*” means, as applied to any Person, any provision of any security issued by that Person or of any indenture, mortgage, deed of trust, contract, undertaking, agreement or other instrument to which that Person is a party or by which it or any of its properties is bound or to which it or any of its properties is subject.

“*Dollars*” and the sign “\$” mean the lawful money of the United States of America.

“*Facility Warrants*” means warrants to purchase shares of the common stock of the Company for a purchase of \$10.00 per share substantially in the form of Exhibit C.

“*Game Vendors*” means the vendors supplying the Company and its Subsidiaries with computer and video games and related equipment.

“*Incremental Trade Credit*” means, with respect to a Vendor, trade credit made available to the Company and its Subsidiaries in excess of its Base Trade Credit Amount.

“*Indemnified Liabilities*” means, collectively, any and all liabilities, obligations, losses, damages (including natural resource damages), penalties, claims, actions, judgments, suits, costs, expenses and disbursements of any kind or nature whatsoever (including the reasonable fees and disbursements of counsel for Indemnitees in connection with any investigative, administrative or judicial proceeding or hearing commenced or threatened by any Person, whether or not any such Indemnitee shall be designated as a party or a potential party thereto (it being agreed that, such counsel fees and expenses shall be limited to one primary counsel, and any additional special and local counsel in each appropriate jurisdiction, for the Indemnitees, except in the case of actual or potential conflicts of interest between or among the Indemnitees), and any fees or expenses incurred by Indemnitees in enforcing this indemnity), whether direct, indirect or consequential and whether based on any federal, state or foreign laws, statutes, rules or regulations (including securities and commercial laws, statutes, rules or regulations), on common law or equitable cause or on contract or otherwise, that may be imposed on, incurred by, or asserted against any such Indemnitee, in any manner relating to or arising out of (i) this Agreement or the transactions contemplated hereby.

“*Material Adverse Effect*” means a material adverse effect on and/or material adverse developments with respect to the business, operations, properties, assets or condition (financial or otherwise) or prospects of the Company and its Subsidiaries taken as a whole.

“*Material Contract*” means any contract or other arrangement to which the Company or any of its Subsidiaries is a party for which breach, nonperformance, cancellation or failure to renew could reasonably be expected to have a Material Adverse Effect.

“*Person*” means and includes natural persons, corporations, limited partnerships, general partnerships, limited liability companies, limited liability partnerships, joint stock companies, Joint Ventures, associations, companies, trusts, banks, trust companies, land trusts, business trusts or other organizations, whether or not legal entities, and Governmental Authorities.

“*Plan*” means the Second Amended Joint Plan of Reorganization of Movie Gallery, Inc. and Its Debtor Subsidiaries Under Chapter 11 of the Bankruptcy Code (as amended, supplemented or modified from time to time, together with any “*Plan Supplement*” (as defined in the Plan).

“*Plan Effective Date*” means the “Effective Date” as defined in the Plan.

“*Revolving Credit Agreement*” means the Revolving Credit and Guaranty Agreement, of even date herewith among the Company, certain of its Subsidiaries, the Lenders party thereto, Arranger and [\_\_\_\_\_], as Administrative Agent, as the same may be amended, restated, modified or supplemented from time to time.

“*Studios*” means the vendors supplying the Company and its Subsidiaries with video cassette tapes, digital versatile disc (DVD) or video discs (regardless of format) and related equipment.

“*Subsidiary*” means, with respect to any Person, any corporation, partnership, limited liability company, association, joint venture or other business entity of which more than 50% of the total voting power of shares of stock or other ownership interests entitled (without regard to the occurrence of any contingency) to vote in the election of the Person or Persons (whether directors, managers, trustees or other Persons performing similar functions) having the power to direct or cause the direction of the management and policies thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof; *provided*, in determining the percentage of ownership interests of any Person controlled by another Person, no ownership interest in the nature of a “qualifying share” of the former Person shall be deemed to be outstanding.

“*Vendors*” means the Studios and the Game Vendors.

“*Vendor Letter of Credit*” means a standby letter of credit issued (or confirmed) by a United States bank having capital and surplus in excess of \$1,000,000,000 procured by Arranger pursuant to Section 2.1 containing the provisions set forth on Exhibit A and containing the draw conditions set forth in Section 2.3.

## 1.2. *Construction.*

(a) Any of the terms defined herein may, unless the context otherwise requires, be used in the singular or the plural, depending on the reference. References herein to any Section or Exhibit shall be to a Section or an Exhibit, as the case may be, of this Agreement unless

otherwise specifically provided. The use herein of the word “include” or “including”, when following any general statement, term or matter, shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such as “without limitation” or “but not limited to” or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that fall within the broadest possible scope of such general statement, term or matter.

(b) Unless otherwise specified, all references herein to times of day shall be references to prevailing Pacific time (daylight or standard, as applicable).

(c) When the payment of any obligation or the performance of any covenant, duty or obligation is stated to be due or performance required on a day that is not a Business Day, the date of such payment or performance shall extend to the immediately succeeding Business Day.

## **2. Letter of Credit Facility.**

2.1. *Procurement.* During the Commitment Period, Arranger shall procure on behalf of the Company or the applicable Subsidiary standby letters of credit in favor of those Vendors identified by the Company and providing Incremental Trade Credit in an aggregate face amount up to \$25,000,000; *provided* that: (a) each Vendor Letter of Credit shall be denominated in Dollars; (b) the face amount of each Vendor Letter of Credit shall not be less than \$1,000,000 or such lesser amount as is acceptable to Arranger; (c) the aggregate face amount of Vendor Letters of Credit in favor of any particular Vendor shall not be greater than the Incremental Trade Credit provided by that Vendor; and (d) in no event shall any Vendor Letter of Credit have an expiration date later than January 31, 2009. For the avoidance of doubt, the parties confirm that Arranger shall have no obligation to procure a Vendor Letter of Credit in favor of a Vendor unless the delivery thereof was a condition of the Vendor’s willingness to extend Incremental Trade Credit. Vendor Letters of Credit shall not be issued to ensure payment of any Vendor’s Basic Trade Credit Amount. The terms of issuance of Vendor Letter of Credit shall provide that neither the Company nor any of its Subsidiaries shall have any liability to the issuing bank in respect thereof and no assets of the Company shall be used to collateralize Vendor Letters of Credit.

2.2. *Procedure.* Whenever the Company desires the issuance of a Vendor Letter of Credit, it shall deliver to Arranger at least five Business Days in advance of the proposed date of issuance a notice substantially in the form of Exhibit B. Upon satisfaction or waiver of the conditions set forth in Section 3, Arranger shall procure the requested Vendor Letter of Credit in accordance with the standard operating procedures of the issuing bank and shall deliver the Vendor Letter of Credit to the Company by the date of issuance specified in the Company’s notice.

2.3. *Drawings.* Each Vendor Letter of Credit will provide that the Vendor beneficiary thereof will be entitled to draw thereon only if the Company or applicable Subsidiary fails to make timely payment of amounts due that Vendor in respect of extensions of trade credit. Drawings would be equal to the lesser of (1) the past due amount owed to the Vendor and (2) the undrawn portion of the Vendor Letter of Credit.

2.4. *Payments and Warrants.* If there is a drawing under a Vendor Letter of Credit, the Arranger will notify the Company of the amount of the drawing and the Company shall:

(a) pay to Arranger an amount equal to the amount of the drawing (regardless of whether Arranger has itself made any reimbursement or other payment to the issuing bank). Payments to the Arranger in respect of amounts drawn by a Vendor shall be made *pari passu* and *pro rata* with amounts due that Vendor on the date of the drawing in respect of its extensions of trade credit to the Company and its Subsidiaries, unless and until the outstanding balance of trade credit due the Vendor on the drawing date has been reduced to zero, in which case the balance due Arranger in respect of the drawing shall be immediately due and payable. All payments due Arranger under this Section 2.4(a) shall be in dollars and shall be paid by the wire transfer of immediately available funds to such account(s) at such banks as Arranger shall designate from time to time by notice to the Company. The obligation of the Company to make payments to Arranger this Section 2.4(a) shall be unconditional and irrevocable and shall be paid strictly in accordance with the terms hereof under all circumstances including any of the following circumstances: (i) any lack of validity or enforceability of any Vendor Letter of Credit; (ii) the existence of any claim, set-off, defense or other right which the Company or any Subsidiary may have at any time against a beneficiary or any transferee of any Vendor Letter of Credit (or any Persons for whom any such transferee may be acting), Arranger, or any other Person (including any underlying transaction between the Company or one of its Subsidiaries and the beneficiary for which any Vendor Letter of Credit was procured); (iii) any draft or other document presented under any Vendor Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; (iv) payment by the issuing or confirming bank to the beneficiary or as otherwise required by law under any Vendor Letter of Credit against presentation of a draft or other document which does not substantially comply with the terms of such Vendor Letter of Credit; (v) any adverse change in the business, operations, properties, assets, condition (financial or otherwise) or prospects of the Company or any of its Subsidiaries; (vi) any breach hereof by any party thereto; (vii) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing.

(b) issue to Arranger Facility Warrants to purchase that number of shares of common stock of the Company as is equal to the product of:

- (1) the quotient obtained by *dividing* (A) the amount of the drawing by (B) 25,000,000; *multiplied* by
- (2) 86,250.

### **3. Conditions.**

3.1. *Effectiveness.* The effectiveness of this Agreement and the obligation of Arranger to procure any Vendor Letters of Credit is subject to the satisfaction of the following conditions precedent:

(a) Arranger shall have received (1) signature and incumbency certificates of the officers of the Company executing this Agreement; (2) resolutions of the Board of Directors of the Company approving and authorizing, among other things, the execution, delivery and



performance of this Agreement certified as of the Plan Effective Date by its secretary or an assistant secretary as being in full force and effect without modification or amendment; and (3) good standing certificates from the Secretary of State of Delaware and from the appropriate authority in each jurisdiction in which it is qualified as a foreign corporation, each dated a recent date prior to the Plan Effective Date.

(b) The Company shall have issued Facility Warrants to Arranger for 86,250 shares of the common stock of the Company.

(c) There shall not exist any action, suit, investigation, litigation, proceeding, hearing or other legal or regulatory developments, pending or threatened in any court or before any arbitrator or governmental authority that, in the reasonable opinion of Arranger, singly or in the aggregate, materially impairs the Plan or that could have a Material Adverse Effect.

(d) All corporate and other proceedings taken or to be taken in connection with the Plan and the other transactions contemplated hereby and all documents incidental thereto not previously found acceptable by Arranger and its counsel shall be satisfactory in form and substance to Arranger and such counsel, and Arranger and such counsel shall have received all such counterpart originals or certified copies of such documents as Arranger may reasonably request..

(e) The conditions to the initial funding under the Revolving Credit Agreement shall have been satisfied (or waived by Arranger).

(f) The Company shall have delivered to Arranger true, correct and complete copies of the Accommodation Agreements and other documents establishing each Vendor's Base Trade Credit Amount.

3.2. *Procurement.* The obligation of Arranger to procure each Vendor Letter of Credit requested by the Company is subject to the satisfaction of the following conditions precedent:

(a) The Company shall have delivered to Arranger the notice referred to in Section 2.2 together with a confirmation from the applicable Vendor beneficiary, in form and substance reasonably acceptable to Arranger, that it will extend Incremental Trade Credit (or if the Vendor has already been issued a Vendor Letter of Credit, additional Incremental Trade Credit) in an amount not less than the face amount of the requested Vendor Letter of Credit.

(b) As of the date of delivery of such Vendor Letter of Credit, the representations and warranties contained herein shall be true and correct in all material respects on and as of that date to the same extent as though made on and as of that date, except to the extent such representations and warranties specifically relate to an earlier date, in which case such representations and warranties shall have been true and correct in all material respects on and as of such earlier date; and

(c) No Default or Event of Default under, and as defined in, the Revolving Credit Agreement shall have occurred and be continuing.

#### **4. Representations and Warranties.**

The Company hereby represents and warrants to Arranger as follows:

4.1. *Organization; Requisite Power and Authority; Qualification.* Each of the Company and its Subsidiaries (a) is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization as identified in Schedule 4.1, (b) has all requisite power and authority to own and operate its properties, to carry on its business as now conducted and as proposed to be conducted, to enter into this Agreement to which it is a party and to carry out the transactions contemplated thereby, and (c) is qualified to do business and in good standing in every jurisdiction where its assets are located and wherever necessary to carry out its business and operations, except in jurisdictions where the failure to be so qualified or in good standing has not had, and could not be reasonably expected to have, a Material Adverse Effect.

4.2. *Due Authorization.* The execution, delivery and performance of this Agreement have been duly authorized by all necessary action on the part of the Company.

4.3. *No Conflict.* The execution, delivery and performance by the Company of this Agreement, the consummation of the Plan, and the consummation of the transactions contemplated by this Agreement do not and will not (a) violate (i) any provision of any law or any governmental rule or regulation applicable to the Company or any of its Subsidiaries, (ii) any of the Organizational Documents of the Company or any of its Subsidiaries, or (iii) any order, judgment or decree of any court or other agency of government binding on the Company or any of its Subsidiaries; (b) conflict with, result in a breach of or constitute (with due notice or lapse of time or both) a default under any Contractual Obligation of the Company or any of its Subsidiaries except to the extent such conflict, breach or default could not reasonably be expected to have a Material Adverse Effect; (c) result in or require the creation or imposition of any Lien upon any of the properties or assets of the Company or any of its Subsidiaries; or (d) require any approval of stockholders, members or partners or any approval or consent of any Person under any Contractual Obligation of the Company or any of its Subsidiaries, except for such approvals or consents the failure of which to obtain will not have a Material Adverse Effect.

4.4. *Governmental Consents.* The execution, delivery and performance by the Company of this Agreement and the consummation of the Plan and the transactions contemplated by this Agreement do not and will not require any registration with, consent or approval of, or notice to, or other action to, with or by, any governmental authority except as otherwise set forth in the Plan.

4.5. *Binding Obligation.* This Agreement has been duly executed and delivered by the Company and is its legally valid and binding obligation, enforceable against it in accordance with its respective terms, except as may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally or by equitable principles relating to enforceability.

4.6. *No Material Adverse Change.* Since the Closing Date (as defined in the Revolving Credit Agreement), no event, circumstance or change has occurred that has caused or evidences, either in any case or in the aggregate, a Material Adverse Effect.

4.7. *Adverse Proceedings, etc.* There are no Adverse Proceedings, individually or in the aggregate, that could reasonably be expected to have a Material Adverse Effect. Neither the Company nor any of its Subsidiaries (a) is in violation of any applicable laws that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect, or (b) is subject to or in default with respect to any final judgments, orders, writs, injunctions, decrees, rules or regulations of any court or any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

4.8. *No Defaults.* Neither the Company nor any of its Subsidiaries is in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any of its Contractual Obligations under Material Contracts, and, after giving effect to consummation of the transactions contemplated by this Agreement, no condition exists which, with the giving of notice or the lapse of time or both, could constitute such a default, except where the consequences, direct or indirect, of such default or defaults, if any, could not reasonably be expected to have a Material Adverse Effect.

4.9. *Governmental Regulation.* Neither the Company nor any of its Subsidiaries is subject to regulation under the Federal Power Act or the Investment Company Act of 1940 or under any other federal or state statute or regulation which may limit its ability to incur indebtedness or which may otherwise render unenforceable all or any portion of its obligations under this Agreement. Neither the Company nor any of its Subsidiaries is a “*registered investment company*” or a company “*controlled*” by a “*registered investment company*” or a “*principal underwriter*” of a “*registered investment company*” as such terms are defined in the Investment Company Act of 1940.

4.10. *Certain Fees.* No broker’s or finder’s fee or commission will be payable with respect to the transactions contemplated by the Plan or this Agreement, except as payable to the Arranger and the Lenders or as otherwise contemplated by the Plan.

4.11. *Disclosure.* No representation or warranty of the Company contained herein or in any other documents, certificates or written statements furnished to Arranger by or on behalf of the Company or any of its Subsidiaries for use in connection with the transactions contemplated hereby contains any untrue statement of a material fact or omits to state a material fact (known to the Company, in the case of any document not furnished by it) necessary in order to make the statements contained herein or therein not misleading in light of the circumstances in which the same were made. There are no facts known (or which should upon the reasonable exercise of diligence be known) to the Company (other than matters of a general economic nature) that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect and that have not been disclosed herein or in such other documents, certificates and statements furnished to Arranger for use in connection with the transactions contemplated hereby

4.12. *Patriot Act.* To the extent applicable, the Company is in compliance, in all material respects, with the (i) Trading with the Enemy Act, as amended, and each of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) and any other enabling legislation or executive order relating thereto, and (ii) Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct

Terrorism (USA Patriot Act of 2001). To the knowledge of the Company, no Vendor Letter of Credit will be used, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended.

## **5. Miscellaneous.**

5.1. *Amendments.* Neither this Agreement nor any terms hereof may be waived, amended, supplemented or otherwise modified except by a written instrument executed by Arranger and the Company.

5.2. *Notices.* All notices and other communications provided for herein shall be in writing and telecopied, mailed or delivered by overnight courier or by hand to the intended recipient at the telephone number or “*Address for Notices*” specified below its name on the signature pages hereof; or, as to any party, at such other telephone number or address as shall be designated by such party in a notice to each other party. Except as otherwise provided in this Agreement, all notices and other communications hereunder shall be deemed to have been duly given when transmitted by telecopier or delivered to an overnight courier service, in each case addressed as aforesaid or personally delivered or, in the case of a mailed notice, when actually received by the intended recipient. All telecopied notices hereunder shall be confirmed the next Business Day by a copy of such notice delivered personally or by overnight courier service.

5.3. *Remedies Cumulative.* No failure to exercise and no delay in exercising, on the part of Arranger, any right, remedy, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

### *5.4. Expenses and Indemnification.*

(a) Whether or not the transactions contemplated hereby shall be consummated, the Company agrees to pay promptly (1) all the actual and reasonable costs and expenses of the Arranger, in connection with the negotiation, preparation, execution and administration of this Agreement (including letter of credit fees and reasonable attorneys’ fees and expenses) and any consents, amendments, waivers or other modifications hereto and any other documents or matters requested by the Company, including, without limitation, the reasonable fees, expenses and disbursements of counsel and (2) all costs and expenses, including reasonable attorneys’ fees incurred by Arranger in enforcing this Agreement or in collecting any payments due from the Company hereunder or in connection with any refinancing or restructuring of the credit arrangements provided hereunder in the nature of a or pursuant to any insolvency or bankruptcy cases or proceedings.

(d) In addition to the payment of expenses pursuant to Section 5.4(a), whether or not the transactions contemplated hereby shall be consummated, the Company agrees to defend (subject

to Indemnitees' selection of counsel), indemnify, pay and hold harmless Arranger and its officers, partners, members, directors, trustees, advisors, employees, agents, sub-agents and Affiliates (each, an "*Indemnitee*"), from and against any and all Indemnified Liabilities; provided, (1) the Company shall not have any obligation to any Indemnitee hereunder with respect to any Indemnified Liabilities to the extent such Indemnified Liabilities arise from the gross negligence or willful misconduct of that Indemnitee, in each case, as determined by a final, non-appealable judgment of a court of competent jurisdiction, and (2) the Company shall not be liable for any settlement of any claim or proceeding effected by any Indemnitee without the prior written consent of the Company (which consent shall not be unreasonably withheld or delayed), but if settled with such consent or if there shall be a final judgment against an Indemnitee, the Company shall indemnify and hold harmless such Indemnitees from and against any loss or liability by reason of such settlement or judgment in the manner set forth in this Agreement. To the extent that the undertakings to defend, indemnify, pay and hold harmless set forth in this Section 5.4(b) may be unenforceable in whole or in part because they are violative of any law or public policy, the Company shall contribute the maximum portion that it is permitted to pay and satisfy under applicable law to the payment and satisfaction of all Indemnified Liabilities incurred by Indemnitees or any of them.

(e) To the extent permitted by applicable law, the Company shall not assert, and the Company hereby waives, any claim against Arranger and its Affiliates, directors, employees, attorneys, agents or sub-agents, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) (whether or not the claim therefor is based on contract, tort or duty imposed by any applicable legal requirement) arising out of, in connection with, arising out of, as a result of, or in any way related to, this Agreement or any agreement or instrument contemplated hereby or thereby or referred to herein or therein, the transactions contemplated hereby or thereby, any Vendor Letter of Credit or the use of the proceeds thereof or any act or omission or event occurring in connection therewith, and the Company hereby waives, releases and agrees not to sue upon any such claim or any such damages, whether or not accrued and whether or not known or suspected to exist in its favor.

5.5. *Successors and Assigns.* This Agreement shall be binding upon and inure to the benefit of Arranger, Company and their respective successors and assigns. The Company may not assign or transfer any of its rights or obligations under this Agreement..

5.6. *Counterparts.* This Agreement may be executed by one or more of the parties to this Agreement on any number of separate counterparts (including by facsimile transmission), and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

5.7. *Severability.* Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

5.8. *Entire Agreement.* This Agreement and the constitutes the entire agreement of the Company and Arranger with respect to the subject matter hereof and thereof, and there are no

promises, undertakings, representations or warranties by Arranger relative to the subject matter hereof not expressly set forth or referred to herein.

5.9. *Choice of Law.*

**(a) THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK (WITHOUT REGARD TO CONFLICT OF LAW PRINCIPLES. ARRANGER AND THE COMPANY HEREBY IRREVOCABLY AND UNCONDITIONALLY:**

- (1) SUBMITS FOR ITSELF AND ITS PROPERTY IN ANY LEGAL ACTION OR PRECEDING RELATING TO THIS AGREEMENT TO WHICH IT IS A PARTY, OR FOR RECOGNITION AND ENFORCEMENT OF ANY JUDGMENT, IN RESPECT THEREOF, TO THE NON-EXCLUSIVE GENERAL JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK, THE COURTS OF THE UNITED STATES OF AMERICA FOR THE SOUTHERN DISTRICT OF NEW YORK, AND APPELLATE COURTS FROM ANY THEREOF;**
- (2) CONSENTS THAT ANY SUCH ACTION OR PROCEEDING MAY BE BROUGHT IN SUCH COURTS AND WAIVES ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE VENUE OF ANY SUCH ACTION OR PROCEEDING IN ANY SUCH COURT OR THAT SUCH ACTION OR PROCEEDING WAS BROUGHT IN AN INCONVENIENT COURT AND AGREES NOT TO PLEAD OR CLAIM THE SAME;**
- (3) AGREES THAT NOTHING HEREIN SHALL AFFECT THE RIGHT TO EFFECT SERVICE OF PROCESS IN ANY MANNER PERMITTED BY LAW OR SHALL LIMIT THE RIGHT TO SUE IN ANY OTHER JURISDICTION; AND**
- (4) WAIVES, TO THE MAXIMUM EXTENT NOT PROHIBITED BY LAW, ANY RIGHT IT MAY HAVE TO CLAIM OR RECOVER IN ANY LEGAL ACTION OR PROCEEDING REFERRED TO IN THIS SUBSECTION ANY SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES.**

**(b) EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT.**

5.10. *Captions.* Captions and section headings appearing herein are included solely for convenience of reference only and are not intended to affect the interpretation of any provision of this Agreement.

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the day and year first above written.

**MOVIE GALLERY, INC.**

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

Title:

*-Address for Notices-*

900 West Main Street  
Dothan, Alabama 36301  
Attention: S. Page Todd,  
Executive Vice President, Secretary  
and General Counsel  
Facsimile: (334) 836-3626

With a copy to each of:

Kirkland & Ellis LLP  
200 East Randolph Drive  
Chicago, IL 60601-6636  
Attention: Anup Sathy, P.C.  
Facsimile: (312) 861-2200

and

Kirkland & Ellis LLP  
153 East 53rd Street  
New York, NY 10022-4611  
Attention: Leonard Klingbaum  
Facsimile: (212) 446-6460

**SOPRIS PARTNERS, SERIES A  
OF SOPRIS CAPITAL PARTNERS, LP**

By: Sopris Capital LLC, its general partner

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

Title:

*-Address for Notices-*

**Exhibit A**

**[Form of Vendor Letter of Credit]**



**Exhibit B**

**[Form of Notice of Request]**

**Exhibit C**

**[Form of Facility Warrants]**