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

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

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER
CONFIRMING SECOND AMENDED JOINT PLAN OF
REORGANIZATION OF MOVIE GALLERY, INC. AND ITS DEBTOR
SUBSIDIARIES UNDER CHAPTER 11 OF THE BANKRUPTCY CODE
WITH TECHNICAL MODIFICATIONS**

¹ 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.



The above-captioned debtors and (collectively, the “Debtors”) having:²

- on October 16, 2007 (the “Commencement Date”), commenced chapter 11 cases (collectively, the “Chapter 11 Cases”) by filing voluntary petitions for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C §§ 101-1532 (as amended, the “Bankruptcy Code”);
- continued to operate their businesses and manage their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code;
- Filed, on December 22, 2007, the *Joint Plan of Reorganization of Movie Gallery, Inc. and Its Debtor Subsidiaries Under Chapter 11 of the Bankruptcy Code* [Docket No. 1196] and the *Disclosure Statement for the Joint Plan of Reorganization of Movie Gallery, Inc. and Its Debtor Subsidiaries Under Chapter 11 of the Bankruptcy Code* [Docket No. 1198], which plan and related documents were subsequently amended several times;
- Filed, on February 4, 2008, the *First Amended Joint Plan of Reorganization of Movie Gallery, Inc. and Its Debtor Subsidiaries Under Chapter 11 of the Bankruptcy Code* (the “First Amended Plan”) [Docket No. 1404] and the *Disclosure Statement for the First Amended Joint Plan of Reorganization of Movie Gallery, Inc. and Its Debtor Subsidiaries Under Chapter 11 of the Bankruptcy Code* [Docket No. 1406];
- Filed, on February 15, 2008, the *Second Amended Joint Plan of Reorganization of Movie Gallery, Inc. and Its Debtor Subsidiaries Under Chapter 11 of the Bankruptcy Code* (the

² Unless otherwise noted, capitalized terms used but not defined in the *Findings of Fact, Conclusions of Law and Order Confirming Second Amended Joint Plan of Reorganization of Movie Gallery, Inc. and Its Debtor Subsidiaries Under Chapter 11 of the Bankruptcy Code with Technical Modifications* (the “Confirmation Order”) shall have the meanings ascribed to them in the *Second Amended Joint Plan of Reorganization of Movie Gallery, Inc. and Its Debtor Subsidiaries Under Chapter 11 of the Bankruptcy Code with Technical Modifications* [Docket No. 2188] (as the same may have been subsequently amended, supplemented or modified from time to time, including without limitation, the Plan Supplement, the “Plan”). The rules of interpretation set forth in Article I.A of the Plan shall apply to the Confirmation Order.

“Second Amended Plan”) [Docket No. 1471] and 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* (the “Disclosure Statement”) [Docket No. 1472];

- obtained approval of the Disclosure Statement by that certain *Order Approving The Debtors’ Disclosure Statement and Relief Related Thereto* dated February 5, 2008 [Docket No. 1426] (the “Disclosure Statement Order”), which Disclosure Statement Order also approved, among other things, solicitation procedures (the “Solicitation Procedures”) and related notices, forms, Ballots and Master Ballots (collectively, the “Solicitation Materials”);
- Filed, on April 1, 2008, April 3, 2008 and April 8, 2008, the forms of the Amended and Restated First Lien Credit Agreement [Docket Nos. 2104 and 2172] and the Amended and Restated Second Lien Credit Agreement [Docket Nos. 2114 and 2175], as each may be amended;
- Filed, beginning on April 2, 2008 and continuing thereafter, the various documents comprising the Plan Supplement: the form of the Backstop Rights Purchase Agreement [Docket No. 2115]; the forms of the New Organizational Documents [Docket Nos. 2111, 2112, 2133 and 2176]; the Disclosures in Accordance with Section 1129(a)(5) of the Bankruptcy Code [Docket No. 2131]; the list of Non-Released Parties [Docket Nos. 2134 and 2164]; the Schedule of Assumed Executory Contracts and Unexpired Leases [Docket Nos. 2113, 2132 and 2182]; the list of Retained Causes of Action [Docket No. 2130]; the Warrant Agreement [Docket No. 2168]; the form of the Registration Rights Agreement [Docket No. 2166]; the form of the Plan Administrator Agreement [Docket No. 2180]; and the form of the Litigation Trust Agreement [Docket No. 2177] (collectively, with all other Filed documents that are part of the Plan Supplement, the “Plan Supplement”);
- Filed, prior to the Confirmation Hearing, the form of the Exit Facility [Docket No. 2169] and the form of the Seasonal Overadvance Facility [Docket No. 2170];
- Filed, on April 7, 2008, the *Certification of James Sean McGuire with Respect to the Tabulation of Votes on the Debtors’ Second Amended Joint Plan of Reorganization of Movie Gallery, Inc. and Its Debtor Subsidiaries Under Chapter 11 of the Bankruptcy Code* [Docket No. 2135], detailing the results of the Plan voting process (the “Voting Report”);

- Filed, on April 7, 2008, the *Debtors' Memorandum of Law (A) in Support of Confirmation of the Second Amended Joint Plan of Reorganization of Movie Gallery, Inc. and Its Debtor Subsidiaries Under Chapter 11 of the United States Bankruptcy Code with Technical Modifications and (B) in Response to Objections Thereto* [Docket No. 2160] (the "Plan Confirmation Brief"), together with the *Affidavit of William C. Kosturos, Chief Restructuring Officer of Movie Gallery, Inc. in Support of Confirmation of the Second Amended Joint Plan of Reorganization of Movie Gallery, Inc. and Its Debtor Subsidiaries Under Chapter 11 of the United States Bankruptcy Code with Technical Modifications* (the "Kosturos Affidavit"), the *Declaration of S. Page Todd in Support of Confirmation of the Second Amended Joint Plan of Reorganization of Movie Gallery, Inc. and Its Debtor Subsidiaries Under Chapter 11 of the United States Bankruptcy Code with Technical Modifications* (the "Todd Declaration") and the *Affidavit of Jeffry Gordon in Support of Confirmation of the Second Amended Joint Plan of Reorganization of Movie Gallery, Inc. and Its Debtor Subsidiaries Under Chapter 11 of the United States Bankruptcy Code with Technical Modifications* (the "Gordon Affidavit" and with the Kosturos Affidavit and the Todd Declaration, the "Affidavits in Support of Confirmation");
- completed distributing solicitation materials on February 22, 2008, consistent with the Bankruptcy Code, the Bankruptcy Rules, the Disclosure Statement Order and the Solicitation Materials, as evidenced by the *Affidavit of Service of Kurtzman Carson Consultants LLC of Solicitation Packages and Non-Voting Packages on Holders of Claims and Non-Public Securities*, Filed on March 14, 2008 [Docket No. 1974] (the "KCC Affidavit") and the *Affidavit of Service of Financial Balloting Group LLC of Solicitation Packages and Non-Voting Packages on Holders of Public Securities*, Filed on March 14, 2008 [Docket No. 1973] (the "FBG Affidavit");
- published notice of the Confirmation Hearing (the "Confirmation Hearing Notice") in the *USA Today*, the National Edition of *The Wall Street Journal* and *The Washington Post*, consistent with the Disclosure Statement Order, as evidenced by the *Verification of Publication of Marcus Edwards of USA Today*, Filed on March 6, 2008 [Docket No. 1644]; *Proof of Publication of Nicole McKinney of The Washington Post*, Filed on March 6, 2008 [Docket No. 1643]; and the *Affidavit of Publication of Michael Swaim of The Wall Street Journal*, Filed on March 6, 2008 [Docket No. 1642] (collectively, the "Publication Affidavits"); and
- Filed, on April 10, 2008, the Plan [Docket No. 2188].

The Bankruptcy Court having:

- entered the Disclosure Statement Order on February 5, 2008 [Docket No. 1426];
- set April 9, 2008 at 2:00 p.m. prevailing Eastern Time, as the date and time for the commencement of the Confirmation Hearing pursuant to Bankruptcy Rules 3017 and 3018 and sections 1126, 1128 and 1129 of the Bankruptcy Code;
- reviewed the Disclosure Statement, Plan, the Plan Confirmation Brief, the Affidavits in Support of Confirmation, the Voting Report and all Filed pleadings, exhibits, statements and comments in support of Confirmation,
- reviewed those objections, statements and reservations of rights in opposition to Confirmation, including, without limitation, Docket Nos. 1476, 1544, 1822, 1923, 2017, 2022, 2026, 2027, 2029, 2030, 2031, 2032, 2033, 2034, 2037, 2038, 2039, 2041, 2042, 2043, 2044, 2045, 2046, 2066, 2067, 2069, 2088, 2092, 2093 and 2118 (collectively, the “Objections”);
- heard the statements, arguments and objections made by counsel in respect of Confirmation;
- considered all oral representations, testimony, documents, filings and other evidence regarding Confirmation;
- overruled any and all Objections and all statements and reservations of rights not consensually resolved or withdrawn; and
- taken judicial notice of the papers and pleadings Filed in the Chapter 11 Cases.

NOW, THEREFOR, it appearing to the Bankruptcy Court that notice of the Confirmation Hearing and the opportunity for any party in interest to object to Confirmation have been adequate and appropriate as to all Entities affected or to be affected by the Plan and the transactions contemplated thereby, and the legal and factual bases set forth in the documents Filed in support of

Confirmation and presented at the Confirmation Hearing establish just cause for the relief granted herein; and after due deliberation thereon and good cause appearing therefore, the Bankruptcy Court hereby makes and issues the following Findings of Fact, Conclusions of Law and Orders:

I. FINDINGS OF FACT AND CONCLUSIONS OF LAW

IT IS HEREBY DETERMINED, FOUND, ADJUDGED, DECREED AND ORDERED THAT:

A. Jurisdiction and Venue

1. Beginning on the Commencement Date, the Debtors commenced the Chapter 11 Cases. Venue in the United States Bankruptcy Court for the Eastern District of Virginia, Richmond Division (the “Bankruptcy Court”) was proper as of the Commencement Date pursuant to 28 U.S.C. §§ 1408 and 1409 and continues to be proper during the Chapter 11 Cases. Confirmation of the Plan is a core proceeding under 28 U.S.C. § 157(b)(2). The Bankruptcy Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 1334. The Bankruptcy Court has exclusive jurisdiction to determine whether the Plan complies with the applicable provisions of the Bankruptcy Code and should be confirmed.

B. Eligibility for Relief

2. The Debtors were and are Entities eligible for relief under section 109 of the Bankruptcy Code.

C. Commencement and Joint Administration of the Chapter 11 Cases

3. Beginning on the Commencement Date, each of the Debtors commenced a case under chapter 11 of the Bankruptcy Code. By prior order of the Bankruptcy Court [Docket No. 109], the Chapter 11 Cases have been consolidated for procedural purposes only and are being jointly administered pursuant to Bankruptcy Rule 1015. The Debtors have operated their businesses and managed their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Chapter 11 Cases.

D. Judicial Notice

4. The Bankruptcy Court takes judicial notice of (and deems admitted into evidence for Confirmation) the docket of the Chapter 11 Cases, including all Filed pleadings and other documents, the Affidavits, the Voting Report, the disclosures made in accordance with section 1129(a)(5) of the Bankruptcy Code, all orders entered, all hearing transcripts and all evidence and arguments made, proffered or adduced at the hearings held before the applicable court during the pendency of the Chapter 11 Cases. Any resolutions of objections to Confirmation explained on the record at the Confirmation Hearing are hereby incorporated by reference. All unresolved objections, statements and reservations of rights are overruled on the merits.

E. Burden of Proof

5. The Debtors, as proponents of the Plan, (a) have met their burden of proving the elements of section 1129(a) and 1129(b) of the Bankruptcy Code by the applicable evidentiary

standard for the Confirmation and (b) have proven the elements of section 1129(a) and 1129(b) of the Bankruptcy Code by clear and convincing evidence.

F. Disclosure Statement Order

6. On February 5, 2008, the Bankruptcy Court entered the Disclosure Statement Order, which, among other things: (a) approved the Disclosure Statement as containing adequate information within the meaning of section 1125 of the Bankruptcy Code and Bankruptcy Rule 3017; (b) fixed February 5, 2008 at the close of business, as the Voting Record Date (as defined in the Disclosure Statement Order); (c) fixed March 24, 2008 at 4:00 p.m. prevailing Pacific Time, as the Voting Deadline for voting to accept or reject the Plan, which Voting Deadline was extended by the Debtors, in accordance with the Solicitation Procedures, to March 31, 2008 at 4:00 p.m. prevailing Pacific Time, for the Holders of Class 3 First Lien Claims and the Holders of Class 4 Second Lien Claims; (d) fixed March 24, 2008 at 4:00 p.m. prevailing Eastern Time, as the deadline for objecting to the Plan; (e) fixed April 9, 2008 at 2:00 p.m. prevailing Eastern Time, as the date and time for the commencement of the Confirmation Hearing; (e) approved the Solicitation Procedures and the Solicitation Materials; (f) approved the procedures associated with the Rights Offering, including approval of the Subscription Form; (g) authorized the Debtors to include with the Solicitation Materials the Release Opt-Out Form; and (h) approved the Election Form (as defined in the Disclosure Statement).

G. Transmittal and Mailing of Materials; Notice

7. As evidenced by the KCC Affidavit and the FBG Affidavit, due, adequate and sufficient notice of the Disclosure Statement, Plan and Confirmation Hearing, together with all deadlines for voting on or objecting to the Plan, has been given to: (a) all known Holders of Claims and Equity Interests; (b) Entities that properly requested notice (and did not withdraw such request) in accordance with Bankruptcy Rule 2002; and (c) all non-Debtor counterparties to Unexpired Leases and Executory Contracts, in compliance with the Disclosure Statement Order and Bankruptcy Rules 2002(b), 3017 and 3020(b), and no other or further notice is or shall be necessary or required.

8. The Debtors published the Confirmation Hearing Notice once each in *USA Today*, the National Edition of *The Wall Street Journal* and *The Washington Post*, in compliance with the Solicitation Procedures and Bankruptcy Rule 2002(1), as evidenced by the Publication Affidavits.

H. Solicitation

9. Votes for acceptance or rejection of the Plan were solicited in good faith and in compliance with sections 1125 and 1126 of the Bankruptcy Code, Bankruptcy Rules 3017 and 3018, the Disclosure Statement, the Disclosure Statement Order, all other applicable provisions of the Bankruptcy Code and all other applicable rules, laws and regulations. Specifically, the Solicitation Materials approved by the Bankruptcy Court in the Disclosure Statement Order (including the Debtors and the Committee's letters to the Voting Classes, the Disclosure Statement, the Plan, the appropriate Ballots, the Master Ballots, the Release Opt-Out Form and appropriate Voting Instructions (as defined in the Disclosure Statement), the Election Form, the Confirmation Hearing

Notice (as defined in the Disclosure Statement) and the related notices) were transmitted to and served on all Holders of Claims in Classes that were entitled to vote to accept or reject the Plan and appropriate portions of such Solicitation Materials were transmitted to and served on other parties in interest in the Chapter 11 Cases, all in compliance with section 1125 of the Bankruptcy Code, the Disclosure Statement Order, the Solicitation Procedures and the Bankruptcy Rules. Such transmittal and service were adequate and sufficient, and no further notice is necessary or required or shall be required. Certain Non-Voting Status Notices (as used in the Disclosure Statement Order) approved by the Bankruptcy Court and the Confirmation Hearing Notice were transmitted to and served on Holders of Claims and Holders of Equity Interests in Classes that were not entitled to vote to accept or reject the Plan in compliance with the Disclosure Statement Order. Pursuant to the Disclosure Statement Order, the Debtors were excused from mailing Solicitation Materials to those Entities to whom the Debtors attempted to transmit to and serve on a notice regarding the hearing on the Disclosure Statement and received a notice from the United States Postal Service or other carrier that such notice was undeliverable unless such Entity provided the Debtors, through Kurtzman Carson Consultants LLC, an accurate address no later than ten Business Days prior to the Solicitation Date (as defined in the Disclosure Statement Order). If an Entity changed its mailing address after the Commencement Date, the burden was on such Entity, not the Debtors, to advise Kurtzman Carson Consultants LLC of the new address.

10. All processes and procedures used to distribute Solicitation Materials to Holders of Claims were fair and conducted in accordance with the Bankruptcy Code, the Bankruptcy Rules, the Local Bankruptcy Rules and all other applicable rules, laws and regulations.

11. Certain Real Property Lease Notices approved by the Bankruptcy Court were sent to non-Debtor counterparties of Unexpired Leases of nonresidential real property in compliance with the Disclosure Statement Order. Certain Notices to Counterparties to Potentially Assumed Executory Contracts and Unexpired Leases and Notices to Counterparties to Potentially Rejected Executory Contracts and Unexpired Leases approved by the Bankruptcy Court were sent to non-Debtor counterparties of Executory Contracts and Unexpired Leases and such counterparties were provided with notice of a 10-day period to object to such assumption or rejection, as applicable, and such notice was adequate or sufficient, and no further notice is necessary or required.

12. Holders of Claims in Classes 7A, 7B and 7E who made the Cash-Out Election and submitted their Ballot or Election Form, as applicable, by the Voting Deadline shall be deemed to have Filed timely such Ballot or Election Form.

13. Ballots submitted in accordance with the *Notice of Twelfth Omnibus Rejection of Certain Unexpired Leases Filed April 2, 2008 and Related Plan Voting Procedures* [Docket No. 2110] shall be deemed to have been Filed timely.

14. The Debtors have waived any defects or irregularities in (a) the Late Ballots (to the extent included in Exhibit A to the Voting Report), the Electronically Filed Ballots and the Unsigned Ballots (each as defined in the Voting Report) and (b) Ballots of Classes 3 and 4 submitted to KCC

(i) by facsimile, email or other electronic means, (ii) after the respective Voting Deadline (to the extent included in Exhibit A to the Voting Report) and (iii) without a signature. All such Ballots were properly documented in the Voting Report, better facilitated the solicitation process and are approved by the Bankruptcy Court as valid and timely-Filed.

I. Voting Report

15. Prior to the Confirmation Hearing, the Debtors Filed the Voting Report. All procedures used to tabulate the Ballots, Master Ballots, Release Opt-Out Forms, Subscription Forms and Election Forms were fair and conducted in accordance with the Disclosure Statement Order, the Solicitation Procedures, the Bankruptcy Code, the Bankruptcy Rules, the Local Bankruptcy Rules, and all other applicable rules, laws and regulations.

16. Holders of Claims in Classes 8 (Equity Interests in Movie Gallery, Inc.) and 9 (Intercompany Interests) are Impaired, and shall receive no distribution under the Plan on account of their interests. Therefore, Holders of Claims in Classes 8 and 9 are presumed to reject the Plan and are not entitled to accept or reject the Plan (the “Rejecting Classes”).

17. As evidenced by the Voting Report, creditors in each of the Voting Classes—3, 4, 5, 6, 7A, 7B, 7C, 7D, 7E and 7F—voted to accept the Plan (collectively, the “Impaired Accepting Classes”). In addition, Holders of Claims in Classes 1 (Other Priority Claims) and 2 (Other Secured Claims) are Unimpaired and conclusively deemed to accept the Plan and, therefore, are not entitled to vote to accept or reject the Plan.

J. Plan Supplement

18. Beginning on April 2, 2008, and continuing thereafter, the Debtors Filed certain components of the Plan Supplement. The Plan Supplement complies with the terms of the Plan and the Order, and the filing and notice of such documents was good and proper in accordance with the Bankruptcy Code, the Bankruptcy Rules and the Disclosure Statement Order, and no other or further notice is necessary or required or shall be required. The Debtors are authorized to modify the Plan Supplement, including following entry of the Confirmation Order, to make: (a) non-material modifications; (b) material modifications that have been approved by all affected parties; and (c) modifications for which Bankruptcy Court approval has been granted.

K. Modifications to the Plan

19. Subsequent to the Bankruptcy Court's approval of the Disclosure Statement of votes to accept or reject the Plan, the Debtors made certain non-material modifications to the Plan (collectively, the "Technical Modifications"). The Technical Modifications to the Plan are consistent with all of the provisions of the Bankruptcy Code, including, but not limited to, sections 1122, 1123, 1125 and 1127 of the Bankruptcy Code. Except as provided for by law, contract or prior order of the Bankruptcy Court, none of the Technical Modifications adversely affects the treatment of any Holder of a Claim or other Entity under the Plan. Accordingly, pursuant to section 1127(a) of the Bankruptcy Code, none of the Technical Modifications require additional disclosure under section 1125 of the Bankruptcy Code or resolicitation of votes under section 1126 of the Bankruptcy Code.

20. Prior notice regarding the substance of the Technical Modifications was given through the Filing with the Bankruptcy Court of the Plan before the entry of the Confirmation Order, which notice, coupled with the disclosure of the Technical Modifications in the Plan Confirmation Brief and on the record at or prior to the Confirmation Hearing, constitute due and sufficient notice of the Technical Modifications.

21. In accordance with section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, all Holders of Claims who voted to accept the Plan or who are conclusively presumed to have accepted the Plan are deemed to have accepted the Plan as modified by the Technical Modifications. No Holder of a Claim shall be permitted to change its vote as a consequence of the Technical Modifications, unless otherwise agreed to by the Holder of the Claim and the Debtors. The Technical Modifications to the Plan are hereby approved, pursuant to section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019. The Plan as modified by the Technical Modifications shall constitute the Plan submitted for Confirmation.

L. Bankruptcy Rule 3016

22. The Plan is dated and identifies the Entities submitting and filing it, thereby satisfying Bankruptcy Rule 3016(a). The filing of the Disclosure Statement satisfied Bankruptcy Rule 3016(b).

M. Compliance with the Requirements of Section 1129 of the Bankruptcy Code

23. The Plan complies with all applicable provisions of section 1129 of the Bankruptcy Code as follows.

1. Section 1129(a)(1)—Compliance of the Plan with Applicable Provisions of the Bankruptcy Code

24. The Plan complies with all applicable provisions of the Bankruptcy Code as required by section 1129(a)(1) of the Bankruptcy Code, including sections 1122 and 1123 of the Bankruptcy Code.

(i) Section 1122 and 1123(a)(1)—Proper Classification

25. The classification of Claims and Equity Interests under the Plan is proper under the Bankruptcy Code. Pursuant to sections 1122(a) and 1123(a)(1) of the Bankruptcy Code, Article III of the Plan provides for the separate classification of Claims and Equity Interests into 14 Classes, based on differences in the legal nature or priority of such Claims and Equity Interests (other than DIP Facility Claims, Administrative Claims and Priority Tax Claims, which are unclassified and addressed in Article II of the Plan, and which are required not to be designated as separate Classes pursuant to section 1123(a)(1) of the Bankruptcy Code). Valid business, factual and legal reasons exist for the separate classification of the various Classes of Claims and Equity Interests created under the Plan, the classifications were not done for any improper purpose and the creation of such Classes does not unfairly discriminate between or among Holders of Claims or Equity Interests.

26. In addition, the allowance, classification and treatment of Allowed Claims take into account any Causes of Action, whether under the Bankruptcy Code or otherwise under applicable non-bankruptcy law, that may exist: (a) between the Debtors, on the one hand, and the Debtor Releasees, on the other; and (b) as between the Releasing Parties and the Third Party Releasees (to the extent set forth in the Third Party Release).

27. In accordance with section 1122(a) of the Bankruptcy Code, each Class of Claims and Equity Interests contains only Claims or Equity Interests that are substantially similar to the other Claims or Equity Interests within that Class. As a result thereof, the requirements of sections 1122(a), 1122(b) and 1123(a)(1) of the Bankruptcy Code have been satisfied.

(ii) Section 1123(a)(2)—Specification of Unimpaired Classes

28. Article III of the Plan specifies that Claims in Classes 1 and 2 are Unimpaired under the Plan. Additionally, Article II of the Plan specifies that Administrative Claims, DIP Facility Claims and Priority Tax Claims are Unimpaired, and these Claims are not classified under the Plan. As a result thereof, the requirements of section 1123(a)(2) of the Bankruptcy Code have been satisfied.

(iii) Section 1123(a)(3)—Specification of Treatment of Impaired Classes

29. Article III of the Plan specifies the treatment of each Impaired Class under the Plan, including Classes 3, 4, 5, 6, 7A, 7B, 7C, 7D, 7E, 7F, 8 and 9. As a result thereof, the requirements of section 1123(a)(3) of the Bankruptcy Code have been satisfied.

(iv) Section 1123(a)(4)—No Discrimination

30. In accordance with section 1123(a)(4) of the Bankruptcy Code, Article III of the Plan provides for the same treatment of each Claim or Equity Interest in a particular Class, as the case may be, unless the Holder of a particular Claim or Equity Interest has agreed to a less favorable treatment with respect to such Claim or Equity Interest. As a result thereof, the requirements of section 1123(a)(4) of the Bankruptcy Code have been satisfied.

(v) Section 1123(a)(5)—Adequate Means for Plan Implementation

31. Pursuant to section 1123(a)(5) of the Bankruptcy Code, Article V of the Plan and various other provisions of the Plan specifically provide, in sufficient detail, adequate and proper means for the implementation of the Plan, including: (a) the continuation of the corporate existence of the Debtors; (b) the creation of MG Real Estate; (c) the vesting of assets in the Reorganized Debtors; (d) the retention of Intercompany Interests; (e) the entry into the Exit Facility; (f) the entry into the Seasonal Overadvance Facility; (g) the consummation of the Rights Offering; (h) the issuance of the New Common Stock; (i) the issuance of the Warrants; (j) the approval of the Amended and Restated First Lien Credit Agreement; (k) the approval of the Amended and Restated Second Lien Credit Agreement; (l) identification of the sources of cash for distributions under the Plan; (m) the amendment of the certificates of incorporation and bylaws of the Debtors as required to be consistent with the provisions of the Plan and the Bankruptcy Code; (n) the appointment of the New Board of Reorganized Movie Gallery; (o) the establishment of the Litigation Trust; (p) the approval of the Litigation Trust Agreement and the Plan Administrator Agreement; and (q) cancellation of the 9.625% Senior Subordinated Notes, the 11% Senior Notes and the Equity Interests. Moreover, the Reorganized Debtors will have, immediately upon the Effective Date, sufficient Cash to make all payments required to be made on the Effective Date pursuant to the terms of the Plan. As a result thereof, the requirements of section 1123(a)(5) of the Bankruptcy Code have been satisfied.

(vi) Section 1123(a)(6)—Voting Power of Equity Securities

32. Article V.U of the Plan provides that the certificate of incorporation of each of the Reorganized Debtors will prohibit the issuance of non-voting equity securities. As a result thereof, the requirements of section 1123(a)(6) of the Bankruptcy Code have been satisfied.

(vii) Section 1123(a)(7)—Selection of Officers and Directors

33. Article V.V of the Plan describes the manner of selection of directors of Reorganized Movie Gallery. The manner of selection of the directors and officers of the Reorganized Debtors under the Plan is consistent with the interests of Holders of Claims and Equity Interests and public policy. As a result, the requirements of section 1123(a)(7) of the Bankruptcy Code have been satisfied.

34. In addition, Article V.W.5 sets forth the appointment of the Litigation Trustee, William Kaye, who will be appointed on the Effective Date in accordance with the Litigation Trust Agreement. William Kaye will also be retained as of the Effective Date to serve as the Plan Administrator under Article I.B.128 of the Plan and the Plan Administrator Agreement.

(viii) Section 1123(b)—Discretionary Contents of the Plan

35. The Plan contains various provisions that may be construed as discretionary but are not required for Confirmation under the Bankruptcy Code. As set forth below, such discretionary provisions comply with section 1123(b) of the Bankruptcy Code and are not inconsistent with the applicable provisions of the Bankruptcy Code. As a result, section 1123(b) of the Bankruptcy Code is satisfied.

a. Section 1123(b)(1) and 1123(b)(2)—Unimpaired Claims and Executory Contracts and Unexpired Losses

36. Pursuant to section 1123(b)(1) and (b)(2) of the Bankruptcy Code, respectively, Article III of the Plan impairs or leaves unimpaired, as the case may be, each Class of Claims and Equity Interests, and Article VI of the Plan provides for the assumption, assumption and assignment or rejection of the Executory Contracts and Unexpired Leases of the Debtors not previously assumed, assumed and assigned or rejected pursuant to section 365 of the Bankruptcy Code and appropriate authorizing orders of the Bankruptcy Court.

b. Section 1123(b)(3)—Release, Exculpation, Injunction, Discharge and Preservation of Claims and Causes of Action

37. **Compromise and Settlement.** The settlements reflected in the Plan are (a) in the best interests of the Debtors, the Estates and all Holders of Claims, (b) fair, equitable and reasonable, (c) made in good faith and (d) approved pursuant to applicable law, including section 363 of the Bankruptcy Code and Bankruptcy Rule 9019.

38. **Releases by the Debtors.** The Debtor Release set forth in Article X.B of the Plan is an essential provision of the Plan. The Debtor Release is: (a) in exchange for the good and valuable consideration provided by the Debtor Releasees; (b) a good faith settlement and compromise of the Causes of Action released by the Debtor Release; (c) in the best interests of the Debtors and all Holders of Claims; (d) fair, equitable and reasonable; (e) given and made after due notice and opportunity for hearing; and (f) a bar to any of the Debtors or the Reorganized Debtors or any Holder of a Claim or Equity Interest that would have been legally entitled to assert any Cause of

Action on behalf of any of the Debtors or any of the Estates from asserting any Cause of Action released by the Debtor Release against any of the Debtor Releasees.

39. **Releases by Holders of Claims.** The Third Party Release set forth in Article X.C of the Plan is an essential provision of the Plan. The Third Party Release is: (a) in exchange for the good and valuable consideration provided by the Third Party Releasees; (b) a good faith settlement and compromise of the Causes of Action released by the Third Party Release; (c) in the best interests of the Debtors and all Holders of Claims; (d) fair, equitable and reasonable; (e) given and made after due notice and opportunity for hearing; and (f) a bar to any of the Releasing Parties asserting any Cause of Action released by the Third Party Release against any of the Third Party Releasees. Such releases by Holders of Claims that vote in favor of the Plan, who abstain from voting and did not submit timely the Release Opt-Out Form or who have otherwise consented to give a release, are consensual. The Ballots explicitly stated that a vote to accept the Plan or abstention from voting without submitting timely a Release Opt-Out Form opting out of the Third Party Release each constitutes an acceptance and assent to the releases, Exculpation and injunction provisions set forth in Article X of the Plan. Thus, those Holders of Claims voting to accept the Plan or abstaining from voting and not submitting a Release Opt-Out Form opting out of the Third Party Releasees were given due and adequate notice that they would be granting the Third Party Release by acting in such a manner.

40. Notwithstanding anything herein or in the Plan to the contrary, nothing in the Third Party Release shall apply in any action brought by the Commission in exercise of its police and

regulatory powers and the Commission is deemed to have opted out of the Third Party Release and any injunction relating to such release.

41. **Sopris Release.** The release of Sopris set forth in Article X.H of the Plan is an essential provision of the Plan. The Sopris Release is: (a) in exchange for the good and valuable consideration provided by Sopris; (b) in the best interest of the Debtors and all Holders of Claims; (c) fair, equitable and reasonable; (d) given and made after due notice and opportunity for hearing; and (e) a bar to any Holder of a Claim receiving a distribution under the Plan from bringing or maintaining any Cause of Action released by the Sopris Release against Sopris or any of its Affiliates and each of their respective directors, officers, employees, members, attorneys, financial advisors, accountants, investment bankers, investment advisors, actuaries, professionals, agents and representatives, each in their respective capacities as such, and their respective property.

42. **Exculpation.** The Exculpation set forth in Article X.D of the Plan is an essential provision of the Plan. The record in these Chapter 11 Cases fully supports the Exculpation and the Exculpation provisions set forth in Article X.D of the Plan are appropriately tailored to protect the Exculpated Parties from inappropriate litigation. The Exculpation shall have no effect on the liability of any Entity that results from any such act or omission that is determined in a Final Order to have constituted gross negligence or willful misconduct; *provided*, that each Exculpated Party shall be entitled to rely upon the advice of counsel concerning his, her or its duties pursuant to, or in connection with, the Plan; *provided, further*, that the foregoing Exculpation shall not apply to any acts or omissions: (1) expressly set forth in and preserved by the Plan, the Plan Supplement or

related documents; (2) arising from any obligations under the Lock Up Agreement; or (3) relating to any action brought by the Commission in exercise of its police and regulatory powers.

43. **Injunction.** The injunction set forth in Article X.G of the Plan is an essential provision of the Plan, is necessary to preserve and enforce the Debtor Release, the Third Party Release, the Exculpation and the Sopris Release granted by the Plan in Article X.B, X.C, X.D and X.H, respectively, of the Plan, and the discharge provided in Article III.F of the Plan, and such injunction provisions are narrowly tailored to achieve that purpose.

44. Each of the discharge, Debtor Release, the Third Party Release, the Exculpation, the Sopris Release and the injunction set forth in the Plan: (a) is within the jurisdiction of the Bankruptcy Court under 28 U.S.C. § 1334(a), 1334(b) and 1334(d); (b) is an essential means of implementing the Plan pursuant to section 1123(a)(6) of the Bankruptcy Code; (c) is an integral element of the transactions incorporated into the Plan; (d) confers material benefits on, and is in the best interests of, the Debtors, the Estates and the Holders of Claims; (e) is important to the overall objectives of the Plan to finally resolve all Claims among or against the parties in interest in the Chapter 11 Cases with respect to the Debtors; (f) with respect to the Third Party Release, is approved by Holders of Claims who have (i) voted to accept the Plan or (ii) abstained from voting and did not submit timely a Release Opt-Out Form opting out of the Third Party Release; and (g) is consistent with sections 105, 1123 and 1129 of the Bankruptcy Code and other applicable law, including other applicable provisions of the Bankruptcy Code. The record of the Confirmation Hearing and the Chapter 11 Cases is sufficient to support the Debtor Release, the Third Party Release, the

Exculpation, the Sopris Release and the injunction contained in Article X of the Plan and the discharge provisions contained in Article III.F of the Plan.

45. **Preservation of Claims and Causes of Action.** Article X.F of the Plan appropriately provides for the preservation by the Debtors of all claims and Causes of Action against a Holder of a Claim or an Equity Interest or other Entity that have not been expressly waived, relinquished, released, compromised or settled in the Plan or any Final Order (including herein) for later adjudication by the Debtors, the Reorganized Debtors or the Litigation Trust (including, without limitation, claims and Causes of Action not specifically identified or of which the Debtors may presently be unaware or which may arise or exist by reason of additional facts or circumstances unknown to the Debtors at this time or facts or circumstances that may change or be different from those the Debtors now believe to exist), as set forth in the Plan, in accordance with section 1123(b)(3)(B) of the Bankruptcy Code. The provisions regarding retained Causes of Action in the Plan are appropriate and are in the best interests of the Debtors, the Estates and Holders of Claims. Furthermore, preservation of the retained Causes of Action as set forth in the Plan, including, without limitation, those Causes of Action specifically listed in the Plan Supplement [Docket No. 2130], is reasonable and in the best interests of the Debtors, the Estates and Holders of Claims. On the Effective Date, with respect to the Litigation Trust Assets, the Litigation Trustee shall be authorized to exercise and perform the rights, powers and duties held by the Debtors and the Estates as a representative of the Debtors and the Estates pursuant to section 1123(b)(3) of the Bankruptcy

Code to provide for the prosecution, settlement, adjustment, retention and enforcement of the Litigation Trust Assets consistent with and subject to the Litigation Trust Agreement.

2. Section 1129(a)(2)—Compliance of the Debtors with the Applicable Provisions of the Bankruptcy Code

46. The Debtors, as proponents of the Plan, have complied with all applicable provisions of the Bankruptcy Code as required by section 1129(a)(2) of the Bankruptcy Code, including sections 1123, 1125 and 1126 of the Bankruptcy Code and Bankruptcy Rules 3017, 3018 and 3019.

47. The Debtors and their respective present and former members, officers, directors, partners, employees, representatives, advisors, attorneys, professionals, affiliates and agents did not solicit the acceptance or rejection of the Plan after the Commencement Date by any Holders of Claims or Equity Interests prior to the approval and transmission of the Disclosure Statement. Votes to accept or reject the Plan were only solicited by the Debtors and their respective present and former members, officers, directors, partners, employees, representatives, advisors, attorneys, professionals, affiliates and agents after the Commencement Date after disclosure to Holders of Claims of adequate information as defined in section 1125(a) of the Bankruptcy Code.

48. The Debtors and their respective present and former members, officers, directors, partners, employees, representatives, advisors, attorneys, professionals, affiliates and agents have solicited and tabulated votes on the Plan and have participated in the activities described in section 1125 of the Bankruptcy Code fairly, in good faith within the meaning of section 1125(e) of the Bankruptcy Code and in a manner consistent with the applicable provisions of the Disclosure Statement Order, the Solicitation Procedures, the Disclosure Statement, the Bankruptcy Code, the

Bankruptcy Rules and all other applicable rules, laws and regulations, and are entitled to the protections afforded by section 1125(e) of the Bankruptcy Code and the Exculpation set forth in Article X of the Plan.

49. The Debtors and their respective present and former members, officers, directors, partners, employees, representatives, advisors, attorneys, professionals, affiliates and agents have participated in good faith and in compliance with the applicable provisions of the Bankruptcy Code with regard to the offering, issuance and distribution of recoveries under the Plan and, therefore, are not, and on account of such distributions will not be, liable at any time for the violation of any applicable law, rule or regulation governing the solicitation of acceptances or rejections of the Plan or distributions made pursuant to the Plan. As a result thereof, the Exculpation is appropriate under Section 1123(b) of the Bankruptcy Code.

3. Section 1129(a)(3)—Proposal of the Plan in Good Faith

50. The Debtors have proposed the Plan in good faith and not by any means forbidden by law. In determining that the Plan has been proposed in good faith, the Bankruptcy Court has examined the totality of the circumstances surrounding the filing of the Chapter 11 Cases, the Plan itself and the process leading to its formulation. The Debtors' good faith is evident from, among other things, the facts and records of the Chapter 11 Cases, the Disclosure Statement and the hearing thereon and the record of the Confirmation Hearing and other proceedings held in the Chapter 11 Cases. The Plan is the product of comprehensive, arm's-length negotiations between, among other Entities, the Debtors, Sopris, the First Lien Lenders, the Second Lien Lenders, the Holders of 11%

Senior Secured Note Claims, the Committee and the Debtors' Studios and video game suppliers. The Plan itself, and the process leading to its formulation, provide independent evidence of the Debtors' good faith, and that the Plan serves the public interest and assures fair treatment of Holders of Claims. Consistent with the overriding purpose of chapter 11 of the Bankruptcy Code, the Chapter 11 Cases were Filed, and the Plan was proposed, with the legitimate purpose of allowing the Debtors to reorganize and emerge from bankruptcy with a capital structure and business operations that will allow them to satisfy their obligations with sufficient liquidity and capital resources. As a result, the requirements of section 1129(a)(3) of the Bankruptcy Code have been satisfied.

4. Section 1129(a)(4)—Bankruptcy Court Approval of Certain Payments as Reasonable

51. The procedures set forth in the Plan for the Bankruptcy Court's review and ultimate determination of the fees and expenses to be paid by the Debtors in connection with the Chapter 11 Cases, or in connection with the Plan and incident to the Chapter 11 Cases, including the payment of Accrued Professional Compensation, comply with section 1129(a)(4) of the Bankruptcy Code. As a result, the requirements of section 1129(a)(4) of the Bankruptcy Code have been satisfied.

5. Section 1129(a)(5)—Disclosure of Identity of Proposed Management, Compensation of Insiders and Consistency of Management Proposals with the Interests of Creditors and Public Policy

52. The Plan complies with the requirements of section 1129(a)(5) of the Bankruptcy Code because, in the Plan and the Plan Supplement, the Debtors have disclosed (a) the identity and affiliations of each proposed director and officer of the Reorganized Debtors following Confirmation and (b) the identity of and nature of any compensation for any insider who will be employed or

retained by the Reorganized Debtors. The appointment to, or continuance in, the offices of director and officer was consistent with the interests of Holders of Claims and Equity Interests and with public policy. As a result, the requirements of section 1129(a)(5) of the Bankruptcy Code have been satisfied.

6. Section 1129(a)(6)—Approval of Rate Changes

53. The Plan does not contain any rate changes subject to the jurisdiction of any governmental regulatory commission and will not require governmental regulatory approval. Therefore, section 1129(a)(6) of the Bankruptcy Code is inapplicable to the Chapter 11 Cases.

7. Section 1129(a)(7)—Best Interests of Holders of Claims and Equity Interests

54. The liquidation analysis attached as Exhibit D to the Disclosure Statement (the “Liquidation Analysis”) and the other evidence related thereto that was proffered or adduced at or prior to the Confirmation Hearing or in the Affidavits in Support of Confirmation: (a) are reasonable, persuasive, credible and accurate as of the dates such analysis or evidence was prepared, presented or proffered; (b) utilize reasonable and appropriate methodologies and assumptions; (c) have not been controverted by other evidence; and (d) establish that, with respect to each Impaired Class, each Holder of an Allowed Claim in such Class has voted to accept the Plan (as evidenced by the Voting Report) or will receive under the Plan on account of such Claim property of a value, as of the Effective Date, that is not less than the amount such Holder would receive if the Debtors were liquidated on the Effective Date under chapter 7 of the Bankruptcy Code. As a result, the requirements of section 1129(a)(7) of the Bankruptcy Code have been satisfied.

8. Section 1129(a)(8)—Conclusive Presumption of Acceptance by Unimpaired Classes; Acceptance of the Plan by Each Impaired Class

55. Classes 1 and 2 are each an Unimpaired Class and are conclusively presumed to have accepted the Plan under section 1126(f) of the Bankruptcy Code. As set forth in the Voting Report, the Impaired Accepting Classes have voted to accept the Plan.

56. Because the Plan has not been accepted by the Rejecting Classes, the Debtors sought Confirmation under section 1129(b), rather than section 1129(a)(8), of the Bankruptcy Code. As set forth below in Section I.M.14 and as set forth in the Affidavits in Support of Confirmation, although section 1129(a)(8) of the Bankruptcy Code has not been satisfied with respect to the Rejecting Classes, the Plan is confirmable because the Plan does not discriminate unfairly and is fair and equitable with respect to the Rejecting Classes. As a result, the requirements of section 1129(b) of the Bankruptcy Code have been satisfied.

9. Section 1129(a)(9)—Treatment of Claims Entitled to Priority Pursuant to Section 507(a) of the Bankruptcy Code

57. The treatment of Allowed Administrative Claims, Allowed Priority Tax Claims and Allowed Other Priority Claims under Articles II, III, and IX of the Plan, respectively, complies in all respects with section 1129(a)(9) of the Bankruptcy Code. As a result, the requirements of section 1129(a)(9) of the Bankruptcy Code have been satisfied.

10. Section 1129(a)(10)—Acceptance by at Least One Impaired Class

58. As set forth in the Voting Report, the Impaired Accepting Classes have voted to accept the Plan. As such, there is at least one Class of Claims that is Impaired under the Plan and

has accepted the Plan, determined without including any acceptance of the Plan by any insider (as defined by the Bankruptcy Code). As a result, the requirements of section 1129(a)(10) of the Bankruptcy Code have been satisfied.

11. Section 1129(a)(11)—Feasibility of the Plan

59. The Plan satisfies section 1129(a)(11) of the Bankruptcy Code. The evidence proffered or adduced at, or prior to the Confirmation Hearing or in the Affidavits in Support of Confirmation: (a) is reasonable, persuasive, credible and accurate as of the dates such analysis or evidence was prepared, presented or proffered; (b) utilizes reasonable and appropriate methodologies and assumptions; (c) has not been controverted by other evidence; (d) establishes that the Plan is feasible and Confirmation of the Plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the Reorganized Debtors or any successor to the Reorganized Debtors under the Plan except as provided in the Plan; and (e) establishes that the Reorganized Debtors will have sufficient funds available to meet their obligations under the Plan. As a result, the requirements of section 1129(a)(11) of the Bankruptcy Code have been satisfied.

12. Section 1129(a)(12)—Payment of Bankruptcy Fees

60. Article XIII.B of the Plan provides that all fees payable pursuant to 28 U.S.C. § 1930, as determined by the Bankruptcy Court at the Confirmation Hearing, shall be paid prior to the closing of the Chapter 11 Cases when due or as soon thereafter as practicable. As a result, the requirements of section 1129(a)(12) of the Bankruptcy Code have been satisfied.

13. Section 1129(a)(13)—Retiree Benefits

61. Section 1129(a)(13) of the Bankruptcy Code requires a plan to provide for “retiree benefits” (as defined in section 1114 of the Bankruptcy Code) at levels established pursuant to section 1114 of the Bankruptcy Code. The Debtors do not owe any retiree benefits (as defined in section 1114 of the Bankruptcy Code) and therefore, section 1129(a)(13) of the Bankruptcy Code is inapplicable to the Chapter 11 Cases.

14. Section 1129(b)—Confirmation of the Plan Over Nonacceptance of Impaired Classes

62. Notwithstanding the fact that the Rejecting Classes have not accepted the Plan, the Plan may be confirmed pursuant to section 1129(b)(1) of the Bankruptcy Code because: (a) the Impaired Accepting Classes have voted to accept the Plan; and (b) the Plan does not discriminate unfairly and is fair and equitable with respect to the Rejecting Classes. With respect to Class 8 (Equity Interests in Movie Gallery, Inc.), no similar Class of Equity Interests exists and no Holders of Claims or Equity Interests junior to the Holders in such Class will receive or retain any property under the Plan on account of such Claims or Equity Interests. With respect to Class 9 (Intercompany Interests), no similar Class of Intercompany Interests exists and there is no junior Class. As evidenced by the valuations and estimates contained in the Disclosure Statement, no Class of Claims senior to Classes 8 and 9 is receiving more than full payment on account of such Claims. After entry of the Confirmation Order and upon the occurrence of the Effective Date, the Plan shall be binding upon the members of the Rejecting Classes.

63. The Plan does not unfairly discriminate because Holders of Claims receive treatment that fairly and appropriately reflects the differences in legal rights and the differences in relative value between the Claims and interests assigned to the different Classes under the Plan. As a result, the requirements of section 1129(b) of the Bankruptcy Code have been satisfied.

15. Section 1129(c)—Only One Plan

64. Other than the Plan (including previous versions thereof), no other plan has been Filed in the Chapter 11 Cases. As a result, the requirements of section 1129(c) of the Bankruptcy Code have been satisfied.

16. Section 1129(d)—Principal Purpose of the Plan Is Not the Avoidance of Taxes or Application of the Securities Law

65. No governmental unit has requested that the Bankruptcy Court refuse to confirm the Plan on the grounds that the principal purpose of the Plan is the avoidance of taxes or the avoidance of the application of section 5 of the Securities Act. As evidenced by its terms, the principal purpose of the Plan is not such avoidance. As a result, the requirements of section 1129(d) of the Bankruptcy Code have been satisfied.

N. Satisfaction of Confirmation Requirements

66. Based upon the foregoing, the Plan satisfies the requirements for confirmation set forth in section 1129 of the Bankruptcy Code.

O. Good Faith

67. The Debtors, Sopris, the First Lien Lenders, the Second Lien Lenders, the Holders of 11% Senior Secured Note Claims, the First Lien Agents, the Second Lien Agents and the Committee

(and all of their respective present and former members, officers, directors, partners, employees, representatives, advisors, attorneys, professionals, affiliates and agents) have been, are and will continue to act in good faith if they proceed to: (a) consummate the Plan and the agreements, settlements, transactions and transfers contemplated thereby (including, without limitation, the entry into and performance under the Amended and Restated First Lien Credit Agreement, the Amended and Restated Second Lien Credit Agreement, the Registration Rights Agreement, the Backstop Rights Purchase Agreement, the Warrant Agreement, the Seasonal Overadvance Facility, the Exit Facility, the Litigation Trust Agreement and the Plan Administrator Agreement); and (b) take the actions authorized and directed by the Confirmation Order.

P. Disclosure: Agreements and Other Documents

68. The Debtors have disclosed all material facts regarding: (a) the adoption the new certificates of incorporation and bylaws or similar constituent documents, as set forth in the Plan Supplement; (b) the selection of directors and officers for the Reorganized Debtors; (c) the Exit Facility; (d) the Seasonal Overadvance Facility; (e) the Rights Offering; (f) the distribution of Cash; (g) the issuance of the New Common Stock; (h) the issuance of Warrants; (i) the Reorganized Debtors' obligations under the Amended and Restated First Lien Credit Agreement and the Amended and Restated Second Lien Credit Agreement, forms of which were Filed as exhibits to the Notice of Amended and Restated Credit Agreements; (j) the Cash-Out Election; (k) the adoption, execution and implementation of the other matters provided for under the Plan involving corporate action to be taken by or required of the Reorganized Debtors; (l) the Management and Director

Equity Incentive Plan; (m) securities registration exemptions; (n) the Litigation Trust, the Litigation Trust Agreement and the Plan Administrator Agreement; (o) the exemption under section 1146(a) of the Bankruptcy Code; and (p) the adoption, execution and delivery of all contracts, leases, instruments, releases, indentures and other agreements related to any of the foregoing.

Q. Amended and Restated First Lien Credit Agreement

69. The Amended and Restated First Lien Credit Agreement is an essential element of the Plan and entry into and consummation of the transactions contemplated by the Amended and Restated First Lien Credit Agreement is in the best interests of the Debtors, the Estates and Holders of Claims and is approved in all respects. The Debtors have exercised reasonable business judgment in determining to enter into the Amended and Restated First Lien Credit Agreement and have provided sufficient and adequate notice of the Amended and Restated First Lien Credit Agreement. The Debtors are authorized, without further approval of the Bankruptcy Court or any other party, to execute and deliver all agreements, documents, instruments and certificates relating thereto and perform their obligations thereunder, including, without limitation, pay all fees thereunder. The terms and conditions of the Amended and Restated First Lien Credit Agreement have been negotiated in good faith, at arm's-length, are fair and reasonable and are reaffirmed and approved. The Amended and Restated First Lien Credit Agreement shall, upon execution, be valid, binding and enforceable and shall not be in conflict with any federal or state law.

R. Amended and Restated Second Lien Credit Agreement

70. The Amended and Restated Second Lien Credit Agreement is an essential element of the Plan and entry into and consummation of the transactions contemplated by the Amended and Restated Second Lien Credit Agreement is in the best interests of the Debtors, the Estates and Holders of Claims and is approved in all respects. The Debtors have exercised reasonable business judgment in determining to enter into the Amended and Restated Second Lien Credit Agreement and have provided sufficient and adequate notice of the Amended and Restated Second Lien Credit Agreement. The Debtors are authorized, without further approval of the Bankruptcy Court or any other party, to execute and deliver all agreements, documents, instruments and certificates relating thereto and perform their obligations thereunder, including, without limitation, pay all fees thereunder. The terms and conditions of the Amended and Restated Second Lien Credit Agreement have been negotiated in good faith, at arm's-length, are fair and reasonable and are reaffirmed and approved. The Amended and Restated Second Lien Credit Agreement shall, upon execution, be valid, binding and enforceable and shall not be in conflict with any federal or state law.

S. Exit Facility

71. The Exit Facility is an essential element of the Plan and entry into and consummation of the transactions contemplated by the Exit Facility is in the best interests of the Debtors, the Estates and Holders of Claims and is approved in all respects. The Debtors have exercised reasonable business judgment in determining to enter into the Exit Facility and have provided sufficient and adequate notice of the Exit Facility. The Debtors are authorized, without further

approval of the Bankruptcy Court or any other party, to execute and deliver all agreements, documents, instruments and certificates relating thereto and perform their obligations thereunder, including, without limitation, pay all fees thereunder. The Exit Facility has been negotiated in good faith and at arm's-length, and any credit extended, letters of credit issued for the account of and loans made to the Reorganized Debtors pursuant to the Exit Facility shall be deemed to have been extended, issued and made in good faith. The terms and conditions of the Exit Facility are fair and reasonable and are reaffirmed and approved. The Exit Facility shall, upon execution, be valid, binding and enforceable and shall not be in conflict with any federal or state law.

T. Seasonal Overadvance Facility

72. The Seasonal Overadvance Facility is an essential element of the Plan and entry into and consummation of the transactions contemplated by the Seasonal Overadvance Facility is in the best interests of the Debtors, the Estates and Holders of Claims and is approved in all respects. The Debtors have exercised reasonable business judgment in determining to enter into the Seasonal Overadvance Facility and have provided sufficient and adequate notice of the Seasonal Overadvance Facility. The Debtors are authorized, without further approval of the Bankruptcy Court or any other party, to execute and deliver all agreements, documents, instruments and certificates relating thereto and perform their obligations thereunder, including, without limitation, pay all fees thereunder. The terms and conditions of the Seasonal Overadvance Facility have been negotiated in good faith, at arm's-length, are fair and reasonable and are reaffirmed and approved. The Seasonal Overadvance

Facility shall, upon execution, be valid, binding and enforceable and shall not be in conflict with any federal or state law.

U. Implementation of Other Necessary Documents and Agreements

73. All documents and agreements necessary to implement the Plan, including, without limitation, the Registration Rights Agreement, the Backstop Rights Purchase Agreement, the Litigation Trust Agreement, the Plan Administrator Agreement, the Warrant Agreement, the Accommodation Agreements and documents related to the Management and Director Equity Incentive Program, are essential elements of the Plan and entry into and consummation of the transactions contemplated by each such documents and agreements is in the best interests of the Debtors, the Estates and Holders of Claims and is approved in all respects. The Debtors have exercised reasonable business judgment in determining to enter into the Registration Rights Agreement, the Backstop Rights Purchase Agreement, the Litigation Trust Agreement, the Plan Administrator Agreement, the Warrant Agreement, the Accommodation Agreements and the documents related to the Management and Director Equity Incentive Program and have provided sufficient and adequate notice of such documents and agreements. The Debtors and the Reorganized Debtors, as applicable, are authorized, without further approval of the Bankruptcy Court or any other party, to execute and deliver all agreements, documents, instruments and certificates relating to such agreements and perform their obligations thereunder, including, without limitation, pay all fees thereunder. The terms and conditions of such documents and agreements have been negotiated in good faith, at arm's-length, are fair and reasonable and are reaffirmed and approved. The

Registration Rights Agreement, the Backstop Rights Purchase Agreement, the Litigation Trust Agreement, the Plan Administrator Agreement, the Warrant Agreement, the Accommodation Agreements and the documents related to the Management and Director Equity Incentive Program shall, upon execution, be valid, binding and enforceable and shall not be in conflict with any federal or state law.

V. Issuance of New Common Stock and Warrants

74. Certain distributions of New Common Stock and Warrants as contemplated by the Plan will be issued without registration under the Securities Act or any similar federal, state or local law as follows and are exempt from such laws to the maximum extent permitted by law:

i) in reliance upon the exemptions set forth in section 1145 of the Bankruptcy Code, as to the New Common Stock and Warrants to be issued to Holders of Allowed Claims in Classes 6, 7A, 7B and 7E, the Subscription Rights to be issued to Holders of 11% Senior Note Claims and the New Common Stock to be issued pursuant to the exercise of Warrants and the Subscription Rights;

ii) to the extent that the exemptions set forth in section 1145 of the Bankruptcy Code do not apply to the New Common Stock to be issued to Sopris in connection with its Backstop Commitment, in reliance upon the exemptions set forth in section 4(2) of the Securities Act or Regulation D promulgated thereunder and in reliance upon representations by Sopris that it is an “accredited investor” as defined under Rule 501 of Regulation D, the New Common Stock to be issued to Sopris in connection with its Backstop Commitment; and

iii) to the extent the Reorganized Debtors are no longer subject to the reporting requirements of the Exchange Act and in reliance upon the exemption set forth in section 701 of the Securities Act or as a result of the issuance or grant of such equity award not constituting a “sale” under Section 2(3) of the Securities Act, awards under the Management and Director Equity Incentive Plan.

W. Executory Contracts and Unexpired Leases

75. The Debtors have exercised reasonable business judgment in determining whether to assume, assume and assign or reject each of their Executory Contracts and Unexpired Leases as set

forth in Article VI of the Plan. Each assumption, assumption and assignment, and rejection of an Executory Contract or Unexpired Lease as provided in Article VI of the Plan shall be legal, valid and binding upon the applicable Reorganized Debtor and all non-Debtor parties to each such Executory Contract or Unexpired Lease, all to the same extent as if such assumption, assumption and assignment or rejection had been effectuated pursuant to an independent order of the Bankruptcy Court pursuant to section 365 of the Bankruptcy Code.

X. Adequate Assurance

76. The Debtors have provided adequate assurance of future performance for each of the assumed Executory Contracts and Unexpired Leases that are being assumed by the Debtors pursuant to the Plan.

77. The Debtors have cured or provided adequate assurance that the Reorganized Debtors will cure defaults (if any) under or relating to each of the assumed Executory Contracts and Unexpired Leases that are being assumed by the Debtors pursuant to the Plan. As a result, the requirements of section 365 of the Bankruptcy Code have been satisfied.

Y. Transfers by Debtors; Vesting of Assets

78. Except as otherwise provided in the Plan or in any agreement, instrument or other document relating to the Plan including, without limitation, the Litigation Trust Agreement, on or after the Effective Date, all property of each Estate and any property acquired including by any of the Debtors pursuant to the Plan shall vest in each respective Reorganized Debtor, free and clear of all liens, Claims, charges or other encumbrances. Except as expressly provided in the Plan, on and

after the Effective Date, each Reorganized Debtor may operate its business and may use, acquire or dispose of property and compromise or settle any Claims without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules, other than those restrictions expressly imposed by the Plan and the Confirmation Order. Such vesting does not constitute a voidable transfer under the Bankruptcy Code or applicable non-bankruptcy law. Subject to the Plan Administrator's ability to settle certain Claims in accordance with the Plan, each Reorganized Debtor may operate its business and may use, acquire or dispose of property and compromise or settle any Claims or Equity Interests without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules, except those restrictions expressly imposed herein, in the Plan or in the Litigation Trust Agreement and subject to the Plan Administrator Agreement.

79. On or after the Effective Date, the Litigation Trust Assets shall vest in the Litigation Trustee, free and clear of all liens, Claims, charges or encumbrances. Except as expressly provided herein or in the Plan, on and after the Effective Date, the Litigation Trustee may operate its business and may use, acquire or dispose of the Litigation Trust Assets and compromise or settle any Claims without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules, other than those restrictions expressly imposed by the Plan, the Confirmation Order and the Litigation Trust Agreement. Such vesting does not constitute a voidable transfer under the Bankruptcy Code or applicable nonbankruptcy law.

Z. Recovery Analysis

80. The Recovery Analysis contained in the Disclosure Statement is reasonable.

AA. Conditions to Confirmation

81. All provisions, terms and conditions of the Plan are approved.

82. No Termination Event (as defined in the Plan Support Agreement) under the Plan Support Agreement has occurred, unless waived in accordance with the terms thereof and the Plan Support Agreement has not otherwise terminated.

BB. Conditions Precedent to Consummation

83. The Plan and all Plan Supplement documents, including any amendments, modifications or supplements thereto, are in a form and substance reasonably acceptable to the Debtors and Sopris and as provided for in the Plan Support Agreement, and shall satisfy the conditions to Consummation set forth in Article IX.B of the Plan.

84. The Confirmation Order, in a form and substance reasonably acceptable to the Debtors and Sopris and as provided in the Plan Support Agreement, is entered, and shall satisfy the conditions to Consummation set forth in Article IX.B of the Plan.

85. The Debtors have received the Rights Offering Amount, in Cash.

CC. Retention of Jurisdiction

86. The Bankruptcy Court properly may retain jurisdiction over the matters set forth in Article XII and other applicable provisions of the Plan.

* * * * *

II. ORDER

Based on the foregoing, it is hereby ORDERED:

A. Order

1. The Confirmation Order shall and does confirm the Plan. A copy of the Plan is attached hereto as Exhibit A.

B. Objections

2. To the extent that any objections, reservations of rights, statements or joinders to Confirmation have not been resolved, withdrawn, waived or settled prior to entry of the Confirmation Order or otherwise resolved as stated on the record of the Confirmation Hearing, they are hereby overruled on their merits.

C. Findings of Fact and Conclusions of Law

3. The findings of fact and the conclusions of law stated in the Confirmation Order shall constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to the proceeding by Bankruptcy Rule 9014. To the extent any finding of fact shall be determined to be a conclusion of law, it shall be so deemed, and to the extent any conclusion of law shall be determined to be a finding of fact, it shall be so deemed.

D. Confirmation of the Plan

4. The Plan and Plan Supplement (as such may be amended by the Confirmation Order or in accordance with the Plan) and each of their provisions, terms and conditions are approved and confirmed in each and every respect pursuant to section 1129 of the Bankruptcy Code. The

documents contained in the Plan Supplement, and any amendments, modifications and supplements thereto, and all documents and agreements related thereto (including all exhibits and attachments thereto and documents referred to in such papers), and the execution, delivery and performance thereof by the Reorganized Debtors, are authorized and approved as finalized, executed and delivered. Without further order or authorization of the Bankruptcy Court, the Debtors, Reorganized Debtors and their successors are authorized and empowered to make all modifications to all documents included as part of the Plan Supplement that are consistent with the Plan. As set forth in the Plan, once finalized and executed, the documents comprising the Plan Supplement and all other documents contemplated by the Plan shall constitute legal, valid, binding and authorized obligations of the respective parties thereto, enforceable in accordance with their terms and, to the extent applicable, shall create, as of the Effective Date, all liens and other security interests purported to be created thereby.

5. The terms of the Plan, the Plan Supplement and exhibits thereto are incorporated by reference into, and are an integral part of, the Confirmation Order. The terms of the Plan, the Plan Supplement, all exhibits thereto and all other relevant and necessary documents, shall be effective and binding as of the Effective Date of the Plan.

E. Plan Classification Controlling

6. The terms of the Plan shall solely govern the classification of Claims and Equity Interests for purposes of the distributions to be made thereunder. The classifications set forth on the Ballots tendered to or returned by the Holders of Claims or Equity Interests in connection with

voting on the Plan: (a) were set forth on the Ballots solely for purposes of voting to accept or reject the Plan; (b) do not necessarily represent, and in no event shall be deemed to modify or otherwise affect, the actual classification of such Claims and Equity Interests under the Plan for distribution purposes; (c) may not be relied upon by any Holder of a Claim or Equity Interest as representing the actual classification of such Claim or Equity Interest under the Plan for distribution purposes; and (d) shall not be binding on the Debtors and Reorganized Debtors except for voting purposes.

F. Compromise and Settlement

7. As of the Effective Date, any and all contractual, legal and equitable subordination rights relating to the allowance, classification and treatment of Allowed Claims and interests and their respective distribution and treatments under the Plan are settled, compromised and released. In addition, to the extent set forth in the Plan, any and all Causes of Action, whether under the Bankruptcy Code or otherwise under applicable non-bankruptcy law: (a) between the Debtors, on the one hand, and the Debtor Releasees, on the other; and (b) as between the Releasing Parties and the Third Party Releasees (to the extent set forth in Article X.C of the Plan); and (c) as between all Holders of Claims who receive a distribution under the Plan and Sopris (to the extent set forth in Article X.H of the Plan), are settled, compromised and released pursuant to the Plan. The releases by all Entities of all such contractual, legal and equitable subordination rights or Causes of Action that are satisfied, compromised and settled pursuant to the Plan, are hereby approved.

G. The Releases, Injunction, Exculpation and Related Provisions Under the Plan

8. The following releases, injunctions, exculpations and related provisions set forth in Article X of the Plan are essential provisions of the Plan and are hereby approved and authorized in their entirety:

1. Debtor Release

NOTWITHSTANDING ANYTHING CONTAINED IN THE PLAN TO THE CONTRARY, ON THE EFFECTIVE DATE AND EFFECTIVE AS OF THE EFFECTIVE DATE, FOR THE GOOD AND VALUABLE CONSIDERATION PROVIDED BY EACH OF THE DEBTOR RELEASEES AND THE THIRD PARTY RELEASEES, INCLUDING, WITHOUT LIMITATION: (1) THE DISCHARGE OF DEBT AND ALL OTHER GOOD AND VALUABLE CONSIDERATION PAID PURSUANT TO THE PLAN; (2) THE OBLIGATIONS OF THE CONSENTING FIRST LIEN HOLDERS, THE CONSENTING SECOND LIEN HOLDERS AND CONSENTING 11% SENIOR NOTE HOLDERS TO PROVIDE THE SUPPORT NECESSARY FOR CONSUMMATION OF THE PLAN; AND (3) THE SERVICES OF THE DEBTORS' PRESENT AND FORMER OFFICERS, DIRECTORS, MEMBERS (INCLUDING EX OFFICIO MEMBERS) AND ADVISORS IN FACILITATING THE EXPEDITIOUS IMPLEMENTATION OF THE RESTRUCTURING CONTEMPLATED BY THE PLAN, EACH OF THE DEBTORS SHALL PROVIDE A FULL DISCHARGE AND RELEASE TO EACH DEBTOR RELEASEE AND TO EACH THIRD PARTY RELEASEE (AND EACH SUCH DEBTOR RELEASEE AND THIRD PARTY RELEASEE SO RELEASED SHALL BE DEEMED FULLY RELEASED AND DISCHARGED BY THE DEBTORS) AND THEIR RESPECTIVE PROPERTIES FROM ANY AND ALL CAUSES OF ACTION, WHETHER KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, LIQUIDATED OR UNLIQUIDATED, CONTINGENT OR NON-CONTINGENT, EXISTING AS OF THE EFFECTIVE DATE IN LAW, AT EQUITY, WHETHER FOR TORT, FRAUD, CONTRACT, VIOLATIONS OF FEDERAL OR STATE SECURITIES LAWS OR OTHERWISE, ARISING FROM OR RELATED IN ANY WAY TO THE DEBTORS, INCLUDING, WITHOUT LIMITATION, THOSE THAT ANY OF THE DEBTORS OR THE REORGANIZED DEBTORS WOULD HAVE BEEN LEGALLY ENTITLED TO ASSERT IN THEIR OWN RIGHT (WHETHER INDIVIDUALLY OR COLLECTIVELY)

OR THAT ANY HOLDER OF A CLAIM OR AN EQUITY INTEREST OR OTHER ENTITY WOULD HAVE BEEN LEGALLY ENTITLED TO ASSERT ON BEHALF OF ANY OF THE DEBTORS OR ANY OF THE ESTATES, AND FURTHER INCLUDING THOSE IN ANY WAY RELATED TO THE CHAPTER 11 CASES, THE PLAN OR THE ACQUISITION OF HOLLYWOOD ENTERTAINMENT CORPORATION; PROVIDED, HOWEVER, THAT THE FOREGOING “DEBTOR RELEASE” SHALL NOT OPERATE TO WAIVE OR RELEASE ANY CAUSES OF ACTION OF ANY DEBTOR: (1) AGAINST A THIRD PARTY RELEASEE (OTHER THAN ALL CURRENT AND FORMER FIRST LIEN AGENTS, ALL CURRENT AND FORMER SECOND LIEN AGENTS, THE DIP AGENT, THE DIP ARRANGER, THE DIP LENDERS, THE FIRST LIEN LENDERS AND THE SECOND LIEN LENDERS, EACH IN THEIR CAPACITIES AS SUCH) ARISING FROM ANY CONTRACTUAL OBLIGATIONS OWED TO THE DEBTORS; (2) EXPRESSLY SET FORTH IN AND PRESERVED BY THE PLAN, THE PLAN SUPPLEMENT OR RELATED DOCUMENTS; (3) ARISING FROM ANY OBLIGATIONS UNDER THE LOCK UP AGREEMENT OR THE PLAN SUPPORT AGREEMENT; OR (4) ARISING UNDER THE AMENDED AND RESTATED FIRST LIEN CREDIT AGREEMENT OR THE AMENDED AND RESTATED SECOND LIEN CREDIT AGREEMENT. NOTWITHSTANDING ANYTHING CONTAINED IN THE PLAN TO THE CONTRARY, THE PLAN DOES NOT RELEASE ANY CAUSES OF ACTION THAT THE DEBTORS OR THE REORGANIZED DEBTORS HAVE OR MAY HAVE NOW OR IN THE FUTURE AGAINST THE NON-RELEASED PARTIES.

2. Third Party Release

NOTWITHSTANDING ANYTHING CONTAINED IN THE PLAN TO THE CONTRARY, ON THE EFFECTIVE DATE AND EFFECTIVE AS OF THE EFFECTIVE DATE, THE RELEASING PARTIES (REGARDLESS OF WHETHER A RELEASING PARTY IS A THIRD PARTY RELEASEE) SHALL PROVIDE A FULL DISCHARGE AND RELEASE (AND EACH ENTITY SO RELEASED SHALL BE DEEMED RELEASED BY THE RELEASING PARTIES) TO THE THIRD PARTY RELEASEES AND THE DEBTOR RELEASEES AND THEIR RESPECTIVE PROPERTY FROM ANY AND ALL CAUSES OF ACTION, WHETHER KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, LIQUIDATED OR UNLIQUIDATED, CONTINGENT OR NON-CONTINGENT, EXISTING AS OF THE EFFECTIVE DATE IN LAW, AT EQUITY, WHETHER FOR

TORT, FRAUD, CONTRACT, VIOLATIONS OF FEDERAL OR STATE SECURITIES LAWS OR OTHERWISE, ARISING FROM OR RELATED IN ANY WAY TO THE DEBTORS, INCLUDING, WITHOUT LIMITATION, THOSE IN ANY WAY RELATED TO THE CHAPTER 11 CASES, THE PLAN OR THE ACQUISITION OF HOLLYWOOD ENTERTAINMENT CORPORATION; PROVIDED, HOWEVER, THAT THE FOREGOING “THIRD PARTY RELEASE” SHALL NOT OPERATE TO WAIVE OR RELEASE ANY CAUSES OF ACTION OF ANY RELEASING PARTY: (1) AGAINST A THIRD PARTY RELEASEE (OTHER THAN ALL CURRENT AND FORMER FIRST LIEN AGENTS, ALL CURRENT AND FORMER SECOND LIEN AGENTS, THE DIP AGENT, THE DIP ARRANGER, THE DIP LENDERS, THE FIRST LIEN LENDERS AND THE SECOND LIEN LENDERS, EACH IN THEIR CAPACITIES AS SUCH) ARISING FROM ANY CONTRACTUAL OBLIGATIONS OWED TO THE RELEASING PARTY; (2) EXPRESSLY SET FORTH IN AND PRESERVED BY THE PLAN, THE PLAN SUPPLEMENT OR RELATED DOCUMENTS; (3) ARISING FROM ANY OBLIGATIONS UNDER THE LOCK UP AGREEMENT OR PLAN SUPPORT AGREEMENT; OR (4) ARISING UNDER THE AMENDED AND RESTATED FIRST LIEN CREDIT AGREEMENT OR THE AMENDED AND RESTATED SECOND LIEN CREDIT AGREEMENT. NOTWITHSTANDING ANYTHING IN THE PLAN TO THE CONTRARY, THE PLAN DOES NOT RELEASE ANY CLAIMS OR CAUSES OF ACTION THAT THE RELEASING PARTIES, THE DEBTORS OR THE REORGANIZED DEBTORS MAY HAVE NOW OR IN THE FUTURE AGAINST THE NON-RELEASED PARTIES. NOTHING IN THIS PARAGRAPH SHALL APPLY IN ANY ACTION BROUGHT BY THE COMMISSION IN EXERCISE OF ITS POLICE AND REGULATORY POWERS AND THE COMMISSION IS DEEMED TO HAVE OPTED OUT OF THE THIRD PARTY RELEASE PROVIDED FOR IN THIS PARAGRAPH (AND ANY INJUNCTION RELATING TO SUCH RELEASES).

3. Sopris Release

NOTWITHSTANDING ANYTHING CONTAINED IN THE PLAN TO THE CONTRARY, ON THE EFFECTIVE DATE AND EFFECTIVE AS OF THE EFFECTIVE DATE, EACH HOLDER OF A CLAIM WHO RECEIVES A DISTRIBUTION UNDER THE PLAN SHALL PROVIDE A FULL DISCHARGE AND RELEASE (AND EACH ENTITY SO RELEASED SHALL BE DEEMED RELEASED) TO SOPRIS AND ITS AFFILIATES AND EACH

OF THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, MEMBERS, ATTORNEYS, FINANCIAL ADVISORS, ACCOUNTANTS, INVESTMENT BANKERS, INVESTMENT ADVISORS, ACTUARIES, PROFESSIONALS, AGENTS AND REPRESENTATIVES, EACH IN THEIR RESPECTIVE CAPACITIES AS SUCH, AND THEIR RESPECTIVE PROPERTY FROM ANY AND ALL CAUSES OF ACTION, WHETHER KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, LIQUIDATED OR UNLIQUIDATED, CONTINGENT OR NON-CONTINGENT, EXISTING AS OF THE EFFECTIVE DATE IN LAW, AT EQUITY, WHETHER FOR TORT, FRAUD, CONTRACT, VIOLATIONS OF FEDERAL OR STATE SECURITIES LAWS OR OTHERWISE, ARISING FROM OR RELATED IN ANY WAY TO THE DEBTORS, INCLUDING, WITHOUT LIMITATION, THOSE IN ANY WAY RELATED TO THE CHAPTER 11 CASES, THE PLAN, THE RIGHTS OFFERING OR THE CASH-OUT ELECTION, PROVIDED, HOWEVER, THAT THE FOREGOING “SOPRIS RELEASE” SHALL NOT OPERATE TO WAIVE OR RELEASE ANY CAUSES OF ACTION (1) ARISING FROM ANY CONTRACTUAL OBLIGATIONS; (2) EXPRESSLY SET FORTH IN AND PRESERVED BY THE PLAN, THE PLAN SUPPLEMENT OR RELATED DOCUMENTS; (3) ARISING FROM ANY OBLIGATIONS UNDER THE LOCK UP AGREEMENT OR PLAN SUPPORT AGREEMENT; OR (4) ARISING UNDER THE AMENDED AND RESTATED FIRST LIEN CREDIT AGREEMENT OR THE AMENDED AND RESTATED SECOND LIEN CREDIT AGREEMENT. NOTHING IN THIS PARAGRAPH SHALL APPLY IN ANY ACTION BROUGHT BY THE COMMISSION IN EXERCISE OF ITS POLICE AND REGULATORY POWERS AND THE COMMISSION IS DEEMED TO HAVE OPTED OUT OF THE RELEASE PROVIDED FOR IN THIS PARAGRAPH (AND ANY INJUNCTION RELATING TO SUCH RELEASES).

4. Exculpation

The Exculpated Parties shall neither have, nor incur any liability to any Entity for any prepetition or postpetition act taken or omitted to be taken in connection with, or related to formulating, negotiating, preparing, disseminating, implementing, administering, confirming or effecting the Consummation of the Plan, the Disclosure Statement or any contract, instrument, release or other agreement or document created or entered into in connection with the Plan or any other prepetition or postpetition act taken or omitted to be taken in connection with or in contemplation of the restructuring of the Debtors; provided, however, that the foregoing “Exculpation” shall have

no effect on the liability of any Entity that results from any such act or omission that is determined in a Final Order to have constituted gross negligence or willful misconduct; provided, further, that each Exculpated Party shall be entitled to rely upon the advice of counsel concerning his, her or its duties pursuant to, or in connection with, the Plan; provided, still further, that the foregoing Exculpation shall not apply to any acts or omissions: (1) expressly set forth in and preserved by the Plan, the Plan Supplement or related documents; (2) arising from any obligations under the Lock Up Agreement, or (3) relating to any action brought by the Commission in exercise of its police and regulatory powers.

5. Indemnification

On and from the Effective Date and effective as of the Effective Date, and except as prohibited by applicable law, the Reorganized Debtors shall assume all indemnification obligations currently in place, whether in the bylaws, certificates of incorporation or other formation documents in the case of a limited liability company, board resolutions or employment contracts for the current and former directors, officers, members (including *ex officio* members), employees, attorneys, other professionals and agents of the Debtors and such current and former directors, officers and members' respective Affiliates. Without limiting the foregoing and except as forbidden by applicable law, the Reorganized Debtors shall jointly and severally indemnify and hold harmless, except as provided in the Plan Supplement, each of the Indemnified Parties for all costs, expenses, loss, damage or liability incurred by any such Indemnified Party arising from or related in any way to any and all Causes of Action whether known or unknown, whether for tort, fraud, contract, violations of federal or state securities laws or otherwise, based in whole or in part upon any act or omission, transaction or other occurrence or circumstances existing or taking place prior to or on the Effective Date arising from or related in any way to the Debtors, including, without limitation, those arising from or related in any way to: (1) any action or omission of any such Indemnified Party with respect to any indebtedness of or any Equity Interest in the Debtors (including, without limitation, any action or omission of any such Indemnified Party with respect to the acquisition, holding, voting or disposition of any such investment); (2) any action or omission of any such Indemnified Party in such Indemnified Party's capacity as an officer, director, member, employee, partner or agent of, or advisor to any Debtor; (3) any disclosure made or not made by any Indemnified Party to any current or former Holder of any such indebtedness of or any such Equity Interest in the Debtors; (4) any consideration paid to any

such Indemnified Party by any of the Debtors in respect of any services provided by any such Indemnified Party to any Debtor; and (5) any action taken or not taken in connection with the Chapter 11 Cases or the Plan. In the event that any such Indemnified Party becomes involved in any action, proceeding or investigation brought by or against any Indemnified Party, as a result of matters to which the foregoing “Indemnification” may relate, the Reorganized Debtors shall promptly reimburse any such Indemnified Party for its reasonable and documented legal and other expenses (including the cost of any investigation and preparation) incurred in connection therewith as such expenses are incurred and after a request for indemnification is made in writing, with reasonable documentation in support thereof; provided, however, that, notwithstanding anything in the Plan to the contrary, the Plan shall not indemnify nor be deemed to have indemnified any of the Non-Released Parties, whether for any matter to which Article X.E of the Plan pertains or otherwise.

6. Preservation of Rights of Action

Except as otherwise provided in the Plan or herein and except as provided in the Litigation Trust Agreement, after the Effective Date, the Reorganized Debtors shall retain all rights to commence, pursue, litigate or settle, as appropriate, any and all Causes of Actions, including, without limitation, those Causes of Action listed in the Plan Supplement, whether existing as of the Commencement Date or thereafter arising, in any court or other tribunal including, without limitation, in an adversary proceeding Filed in one or more of the Chapter 11 Cases.

No preclusion doctrine, including, without limitation, the doctrines of *res judicata*, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches shall apply to such claims or Causes of Action upon or after the Confirmation or Consummation of the Plan based on the Disclosure Statement, the Plan or the Confirmation Order, except where such claims or Causes of Action have been expressly released in the Plan (including, without limitation, and for the avoidance of doubt, the Debtor Release contained in Article X.B of the Plan) or any other Final Order (including, without limitation, the Confirmation Order). In addition, the Debtors, the Reorganized Debtors and the Litigation Trust expressly reserve the right to pursue or adopt any claims alleged in any lawsuit in which the Debtors are a plaintiff, defendant or an interested party, against any Entity, including, without limitation, the plaintiffs or co-defendants in such lawsuits.

On the Effective Date, with respect to the Litigation Trust Assets, the Litigation Trustee shall be authorized to exercise and perform the rights, powers and duties held by the Debtors and the Estates as a representative of the Debtors and the Estates pursuant to section 1123(b)(3) of the Bankruptcy Code to provide for the prosecution, settlement, adjustment, retention and enforcement of the Litigation Trust Assets.

7. Injunction

EXCEPT AS OTHERWISE PROVIDED IN THE PLAN, ALL ENTITIES WHO HAVE HELD, HOLD OR MAY HOLD CLAIMS, EQUITY INTERESTS, CAUSES OF ACTION OR LIABILITIES THAT: (A) HAVE BEEN RELEASED PURSUANT TO ARTICLE X.B OF THE PLAN; (B) HAVE BEEN RELEASED PURSUANT TO ARTICLE X.C OF THE PLAN; (C) HAVE BEEN RELEASED PURSUANT TO ARTICLE X.H OF THE PLAN; (D) HAVE BEEN DISCHARGED PURSUANT TO ARTICLE III.F OF THE PLAN; OR (E) ARE SUBJECT TO EXCULPATION PURSUANT TO ARTICLE X.D (BUT ONLY TO THE EXTENT OF THE EXCULPATION PROVIDED IN ARTICLE X.D) ARE PERMANENTLY ENJOINED AND PRECLUDED, FROM AND AFTER THE EFFECTIVE DATE, FROM: (1) COMMENCING OR CONTINUING IN ANY MANNER ANY ACTION OR OTHER PROCEEDING OF ANY KIND AGAINST ANY ENTITY SO RELEASED, DISCHARGED OR EXCULPATED (INCLUDING THE REORGANIZED DEBTORS) (OR THE PROPERTY OR ESTATE OF ANY ENTITY SO RELEASED, DISCHARGED OR EXCULPATED) ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH RELEASED, DISCHARGED OR EXCULPATED CLAIMS, EQUITY INTERESTS, CAUSES OF ACTION OR LIABILITIES; (2) ENFORCING, ATTACHING, COLLECTING OR RECOVERING BY ANY MANNER OR MEANS ANY JUDGMENT, AWARD, DECREE OR ORDER AGAINST ANY ENTITY SO RELEASED, DISCHARGED OR EXCULPATED (INCLUDING THE REORGANIZED DEBTORS) (OR THE PROPERTY OR ESTATE OF ANY ENTITY SO RELEASED, DISCHARGED OR EXCULPATED) ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH RELEASED, DISCHARGED OR EXCULPATED CLAIMS, EQUITY INTERESTS, CAUSES OF ACTION OR LIABILITIES; (3) CREATING, PERFECTING OR ENFORCING ANY LIEN, CLAIM OR ENCUMBRANCE OF ANY KIND AGAINST ANY ENTITY SO RELEASED, DISCHARGED OR EXCULPATED (INCLUDING THE REORGANIZED DEBTORS) (OR THE PROPERTY OR ESTATE OF ANY ENTITY SO RELEASED, DISCHARGED

OR EXCULPATED) ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH RELEASED, DISCHARGED OR EXCULPATED CLAIMS, EQUITY INTERESTS, CAUSES OF ACTION OR LIABILITIES; (4) ASSERTING ANY RIGHT OF SETOFF, SUBROGATION, OR RECOUPMENT OF ANY KIND AGAINST ANY OBLIGATION DUE FROM ANY ENTITY SO RELEASED, DISCHARGED OR EXCULPATED (INCLUDING THE REORGANIZED DEBTORS) (OR THE PROPERTY OR ESTATE OF ANY ENTITY SO RELEASED, DISCHARGED OR EXCULPATED) ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH RELEASED, DISCHARGED OR EXCULPATED CLAIMS, EQUITY INTERESTS, CAUSES OF ACTION OR LIABILITIES UNLESS SUCH HOLDER HAS FILED A MOTION REQUESTING THE RIGHT TO PERFORM SUCH SETOFF ON OR BEFORE THE CONFIRMATION DATE, AND NOTWITHSTANDING AN INDICATION IN A PROOF OF CLAIM OR INTEREST OR OTHERWISE THAT SUCH HOLDER ASSERTS, HAS OR INTENDS TO PRESERVE ANY RIGHT OF SETOFF PURSUANT TO SECTION 553 OF THE BANKRUPTCY CODE OR OTHERWISE; AND (5) COMMENCING OR CONTINUING IN ANY MANNER ANY ACTION OR OTHER PROCEEDING OF ANY KIND AGAINST ANY ENTITY SO RELEASED, DISCHARGED OR EXCULPATED (INCLUDING THE REORGANIZED DEBTORS) (OR THE PROPERTY OR ESTATE OF ANY ENTITY SO RELEASED, DISCHARGED OR EXCULPATED) ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH RELEASED, DISCHARGED OR EXCULPATED CLAIMS, EQUITY INTERESTS, CAUSES OF ACTION OR LIABILITIES RELEASED OR SETTLED PURSUANT TO THE PLAN.

H. Administrative Claims

9. Except as provided in Article II.A.2, 3 and 4 of the Plan, requests for payment of Administrative Claims shall be Filed with the Bankruptcy Court and served on the Reorganized Debtors no later than 60 days after the Effective Date (the “Administrative Claims Bar Date”). Holders of Administrative Claims that are required to File and serve a request for payment of such Administrative Claims that do not File and serve such a request by the Administrative Claims Bar Date shall be forever barred, estopped and enjoined from asserting such Administrative Claims

against the Debtors or any Reorganized Debtors or their Estates and property, or the Litigation Trust or the Litigation Trust Assets, and such Administrative Claims shall be deemed discharged as of the Effective Date. Objections to such requests must be Filed and served on the Reorganized Debtors and the requesting party by the later of (a) 180 days after the Effective Date and (b) 90 days after the Filing of the applicable request for payment of Administrative Claims, if applicable.

10. Requests for payment of Administrative Claims, together with accompanying documentation, must be Filed with the Bankruptcy Court and delivered to Movie Gallery Claim Processing Center, c/o Kurtzman Carson Consultants LLC at 2335 Alaska Avenue, El Segundo, California 90245 so as to be received no later than the Administrative Claims Bar Date.

I. Professional Compensation

11. Retained Professionals or other Entities asserting a Fee Claim for services rendered before the Confirmation Date, and Committee Members with respect to their reimbursable expenses, must File and serve on the Reorganized Debtors and such other Entities who are designated by the Bankruptcy Rules, the Confirmation Order or other order of the Bankruptcy Court an application for final allowance of such Fee Claim or expense reimbursement no later than 45 days after the Effective Date; provided that the Reorganized Debtors may pay Retained Professionals or other Entities in the ordinary course of business for any work performed or expenses incurred after the Confirmation Date; provided, further, that any professional who may receive compensation or reimbursement of expenses pursuant to the Ordinary Course Professionals Order, the Order (A) Authorizing the Debtors to Perform Under Restructuring Agreements, (B) Authorizing the Debtors

to Pay Certain Associated Fees to and Reimbursement of Certain Expenses of the Backstop Party and (C) Granting Related Relief [Docket No. 935], the Supplemental Order (A) Authorizing the Debtors to Perform Under Restructuring Agreements, (B) Authorizing the Debtors to Pay Certain Associated Fees to and Reimbursement of Certain Expenses of the Backstop Party and (C) Granting Related Relief [Docket No. 1097] or the Order Authorizing the Debtors to Perform Under the Plan Support Agreement [Docket No. 1430] may continue to receive such compensation and reimbursement of expenses for services rendered before the Effective Date, without further Bankruptcy Court order, pursuant to each such order. Objections to any Fee Claim or Committee Member expense claim must be Filed and served on the Reorganized Debtors and the requesting party by the later of (a) 75 days after the Effective Date and (b) 30 days after the Filing of the applicable request for payment of the Fee Claim. To the extent necessary, the Confirmation Order shall amend and supersede any previously entered order of the Bankruptcy Court regarding the payment of Fee Claims. Each Holder of an Allowed Fee Claim and each Committee Member expense claim shall be paid by the Reorganized Debtors in Cash from the Retained Professional Escrow Account or from the Reorganized Debtors if such account is insufficiently funded.

12. Upon the Effective Date, any requirement that Retained Professionals comply with sections 327 through 331 and 1103 of the Bankruptcy Code in seeking retention or compensation for services rendered after the Confirmation Date shall terminate, and the Reorganized Debtors may employ and pay any Retained Professional in the ordinary course of business without any further notice to or action, order or approval of the Bankruptcy Court.

13. On the Effective Date, the Reorganized Debtors shall establish the Retained Professional Escrow Account and fund such escrow fully with the amounts necessary to ensure the payment of all Accrued Professional Compensation.

J. Creation of MG Real Estate

14. The Debtors or the Reorganized Debtors are authorized to take all actions necessary or appropriate to create MG Real Estate, either by changing the name of an existing entity or by forming a new entity, and to transfer into such entity all real property interests owned or leased by the Debtors as necessary or appropriate to facilitate the collateralization requirements under the Exit Facility, the Amended and Restated First Lien Credit Agreement and the Amended and Restated Second Lien Credit Agreement. In furtherance of and without limiting the foregoing, the Debtors or the Reorganized Debtors are authorized, without limitation, to assign their assumed real property leases to MG Real Estate, as set forth in Article V.B of the Plan. MG Real Estate will be a special purpose entity whose activities will be limited as described in its organizational documents Filed as part of the Plan Supplement. The creation of MG Real Estate, its separate legal existence and the transfer to it of owned and leased real property interests as described in the Plan and herein collectively were material aspects of the First Lien Lenders and the Second Lien Lenders' determination to support the Plan and their agreement to enter into the Amended and Restated First Lien Credit Agreement and the Amended and Restated Second Lien Credit Agreement, respectively. The First Lien Lenders and the Second Lien Lenders are relying on the separate legal existence of

MG Real Estate and the transactions contemplated in the Plan and hereby and would be materially prejudiced by any disregard of MG Real Estate's separate legal form.

K. Intercompany Interests

15. The treatment of Intercompany Interests provided in Article V.D of the Plan is approved in its entirety.

L. Amended and Restated First Lien Credit Agreement

16. The Amended and Restated First Lien Credit Agreement and any related agreements, and the transactions contemplated thereby are approved in their entirety and, upon execution and delivery of the agreements and documents relating thereto by the applicable parties, the Amended and Restated First Lien Credit Agreement shall be in full force and effect and valid, binding and enforceable in accordance with its terms without the need for any further notice to or action, order or approval of the Bankruptcy Court, or other act or action under applicable law, regulation, order or rule. The Debtors are authorized, without further approval of the Bankruptcy Court or any other party, to execute and deliver all agreements, documents, instruments and certificates relating thereto and perform their obligations thereunder, including, without limitation, pay all fees thereunder. The loans and other extensions of credit contemplated by the Amended and Restated First Lien Credit Agreement and the granting of liens to secure such loans and other extensions of credit is approved and authorized in all respects. The granting of such liens, the making of such loans and other extensions of credit and the execution and consummation of the Amended and Restated First Lien

Credit Agreement shall not constitute a fraudulent conveyance or transfer under state or federal law and such liens shall be unavoidable for all purposes.

M. Amended and Restated Second Lien Credit Agreement

17. The Amended and Restated Second Lien Credit Agreement and any related agreements, and the transactions contemplated thereby are approved in their entirety and, upon execution and delivery of the agreements and documents relating thereto by the applicable parties, the Amended and Restated Second Lien Credit Agreement shall be in full force and effect and valid, binding and enforceable in accordance with its terms without the need for any further notice to or action, order or approval of the Bankruptcy Court, or other act or action under applicable law, regulation, order or rule. The Debtors are authorized, without further approval of the Bankruptcy Court or any other party, to execute and deliver all agreements, documents, instruments and certificates relating thereto and perform their obligations thereunder, including, without limitation, pay all fees thereunder. The loans and other extensions of credit contemplated by the Amended and Restated Second Lien Credit Agreement and the granting of liens to secure such loans and other extensions of credit is approved and authorized in all respects. The granting of such liens, the making of such loans and other extensions of credit and the execution and consummation of the Amended and Restated Second Lien Credit Agreement shall not constitute a fraudulent conveyance or transfer under state or federal law and such liens shall be unavoidable for all purposes.

N. Registration Rights Agreement

18. Without limiting the effect of section 1145 of the Bankruptcy Code or any provision of the Plan or the Confirmation Order, the Registration Rights Agreement and the transactions contemplated thereby are approved in their entirety and the Reorganized Debtors are authorized and empowered to enter into the Registration Rights Agreement. Upon execution and delivery of the agreements and documents relating thereto by the applicable parties, the Registration Rights Agreement shall be in full force and effect and valid, binding and enforceable in accordance with its terms without the need for any further notice to or action, order or approval of the Bankruptcy Court, or other act or action under applicable law, regulation, order or rule. The Debtors are authorized, without further approval of the Bankruptcy Court or any other party, to execute and deliver all agreements, documents, instruments and certificates relating thereto and perform their obligations thereunder, including, without limitation, pay all fees thereunder.

O. Exit Facility

19. The Exit Facility and any related agreements, and the transactions contemplated thereby are approved in their entirety and, upon execution and delivery of the agreements and documents relating thereto by the applicable parties, the Exit Facility shall be in full force and effect and valid, binding and enforceable in accordance with its terms without the need for any further notice to or action, order or approval of the Bankruptcy Court, or other act or action under applicable law, regulation, order or rule. The Debtors are authorized, without further approval of the Bankruptcy Court or any other party, to execute and deliver all agreements, documents, instruments

and certificates relating thereto and perform their obligations thereunder, including, without limitation, pay all fees thereunder. The loans and other extensions of credit contemplated by the Exit Facility and the granting of liens to secure such loans and other extensions of credit is approved and authorized in all respects. The granting of such liens, the making of such loans and other extensions of credit and the execution and consummation of the Exit Facility shall not constitute a fraudulent conveyance or transfer under state or federal law and such liens shall be unavoidable for all purposes.

P. Seasonal Overadvance Facility

20. The Seasonal Overadvance Facility and the transactions contemplated thereby are approved in their entirety and, upon execution and delivery of the agreements and documents relating thereto by the applicable parties, the Seasonal Overadvance Facility shall be in full force and effect and valid, binding and enforceable in accordance with its terms without the need for any further notice to or action, order or approval of the Bankruptcy Court, or other act or action under applicable law, regulation, order or rule. The Debtors are authorized, without further approval of the Bankruptcy Court or any other party, to execute and deliver all agreements, documents, instruments and certificates relating thereto and perform their obligations thereunder, including, without limitation, pay all fees thereunder.

Q. Other Essential Documents and Agreements

21. The Backstop Rights Purchase Agreement, the Litigation Trust Agreement, the Plan Administrator Agreement, the Warrant Agreement and documents related to the Management and

Director Equity Incentive Program and the transactions contemplated by each of the foregoing are approved in their entirety and, upon execution and delivery of the agreements and documents relating thereto by the applicable parties, the Backstop Rights Purchase Agreement, the Litigation Trust Agreement, the Plan Administrator Agreement, the Warrant Agreement and documents related to the Management and Director Equity Incentive Program shall be in full force and effect and valid, binding and enforceable in accordance with their terms without the need for any further notice to or action, order or approval of the Bankruptcy Court, or other act or action under applicable law, regulation, order or rule. The Debtors, and after the Effective Date, the Reorganized Debtors, are authorized, without further approval of the Bankruptcy Court or any other party, to execute and deliver all agreements, documents, instruments and certificates relating to such agreements and perform their obligations thereunder, including, without limitation, pay all fees thereunder.

R. Exemption from Securities Laws

22. The provisions of section 1145 of the Bankruptcy Code are applicable to the issuance and distribution of the New Common Stock and Warrants to be issued to Holders of Allowed Claims in Classes 6, 7A, 7B and 7E, the Subscription Rights to be issued to Holders of 11% Senior Note Claims and the New Common Stock to be issued pursuant to the exercise of Warrants and the Subscription Rights in exchange for the Holder's Claim. To the extent that the exemptions set forth in section 1145 of the Bankruptcy Code do not apply to the issuance of New Common Stock to be issued to Sopris in connection with its Backstop Commitment, the exemptions set forth in section 4(2) of the Securities Act or Regulation D promulgated thereunder shall apply to the issuance of

such shares of New Common Stock. To the extent that the Reorganized Debtors are no longer subject to the reporting requirements of the Exchange Act, the exemption set forth in section 701 of the Securities Act is applicable to the distributions under the Management and Director Equity Incentive Plan. Therefore, to the extent that any “sale” is deemed to occur with respect to the above, any such securities are exempt from the requirements of the Securities Act and state or local law requirements.

23. The issuance of shares of New Common Stock under the Plan and any shares issued in connection with the exercise of Warrants that, in each case, are issued under section 1145 of the Bankruptcy Code, will be freely tradable by the recipients thereof, subject to any applicable restrictions of the federal and state securities laws. In addition, all of the shares of New Common Stock issued pursuant to the Plan shall be duly authorized, validly issued and, if applicable, fully paid and non-assessable.

S. Release of Liens, Claims and Equity Interests

24. Except as expressly provided in the Plan or the Confirmation Order, or in any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan or Consummation, on the Effective Date and concurrently with the applicable distributions made pursuant to Article VII of the Plan, all Claims, Equity Interests, mortgages, deeds of trust, liens, and encumbrances or other security interests against the property of any Estate are fully released and discharged.

T. Litigation Trust

25. On the Effective Date, the Litigation Trust shall be established for the primary purpose of liquidating its assets with no objective to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the purpose of the Litigation Trust. Upon the transfer by the Debtors of the Litigation Trust Assets to the Litigation Trust, the Debtors or the Reorganized Debtors, as applicable, will have no reversionary or further interest in or with respect to the Litigation Trust Assets or the Litigation Trust. For all federal income tax purposes, the Litigation Trust Beneficiaries will be treated as grantors and owners thereof and it is intended that the Litigation Trust be classified as a liquidating trust under Section 301.7701-4 of the Treasury Regulations and that such trust is owned by the Litigation Trust Beneficiaries. Accordingly, for federal income tax purposes, it is intended that the Litigation Trust Beneficiaries be treated as if they had received a distribution of an undivided interest in the Litigation Trust Assets and then contributed such interests to the Litigation Trust. Accordingly, the Litigation Trust shall, in an expeditious but orderly manner, liquidate and convert to Cash the Litigation Trust Assets, make timely distributions to Litigation Trust Beneficiaries pursuant to the Plan and the Litigation Trust Agreement and not unduly prolong its duration. The Litigation Trust shall not be deemed a successor in interest of the Debtors for any purpose other than as specifically set forth herein, in the Plan or in the Litigation Trust Agreement; provided, however, that the Litigation Trusts' interest in the Litigation Trust Assets shall be limited to and shall be no greater than the Debtors' interest in the Litigation Trust Assets, after taking into effect the Plan. The Litigation Trust is intended to qualify

as a “grantor trust” for federal income tax purposes with the Litigation Trust Beneficiaries treated as grantors and owners of the trust.

26. On the Effective Date, the Reorganized Debtors, on behalf of the Litigation Trust Beneficiaries, shall execute the Litigation Trust Agreement and shall take all other steps necessary to establish the Litigation Trust pursuant to the Litigation Trust Agreement and consistent with the Plan. On the Effective Date, and in accordance with and pursuant to the terms of the Plan, the Reorganized Debtors shall transfer, assign and deliver to the Litigation Trust all of their rights, title and interests in all of the Litigation Trust Assets, notwithstanding any prohibition of assignability under non-bankruptcy law. In connection with the transfer of such assets, any attorney client privilege, work product privilege or other privilege or immunity attaching to any documents or communications (whether written or oral) relating to a Litigation Trust Asset transferred to the Litigation Trust shall vest in the Litigation Trust and its representatives, and the Debtors and the Litigation Trust are authorized to take all necessary actions to effectuate the transfer of such privileges. The Litigation Trust shall agree to accept and hold the Litigation Trust Assets in the Litigation Trust for the benefit of the Litigation Trust Beneficiaries, subject to the terms of the Plan and the Litigation Trust Agreement. All parties (including the Debtors, the Litigation Trustee and the Litigation Trust Beneficiaries) shall execute any documents or other instruments as necessary to cause title to the Litigation Trust Assets to be transferred to the Litigation Trust.

27. After the Effective Date, Litigation Trust Assets may be prosecuted, withdrawn or settled only by the Litigation Trust. After the Effective Date, the Reorganized Debtors may not prosecute, withdraw or settle any Litigation Trust Assets.

28. The Litigation Trust shall make distributions to the Litigation Trust Beneficiaries in accordance with the terms of the Plan and the Litigation Trust Agreement. The Litigation Trust Committee may authorize the Litigation Trust to retain Litigation Trust Recovery Proceeds to fund additional litigation or other expenses with respect to Litigation Trust Assets.

29. On the Effective Date and in compliance with the provisions of the Plan and the Litigation Trust Agreement, William Kaye, the chairman of the Committee, will be appointed Litigation Trustee in accordance with the Litigation Trust Agreement and, thereafter, any successor Litigation Trustee shall be appointed and serve in accordance with the Litigation Trust Agreement. The Litigation Trustee or any successor thereto will administer the Litigation Trust in accordance with the Litigation Trust Agreement.

30. On the Effective Date, the Reorganized Debtors will deposit with the Litigation Trust an amount in Cash equal to \$300,000 to fund the expenses of the Litigation Trust, provided that the Litigation Trust Committee may request from the Reorganized Debtors up to an additional \$300,000 to fund such expenses which amount may be paid in Sopris' sole discretion, and which additional amount, if paid, shall be repaid to the Reorganized Debtors from Litigation Trust Recovery Proceeds.

31. Notwithstanding Bankruptcy Rules 3020(e), 6004(g) or 7062 or otherwise, upon the occurrence of the Effective Date, the terms of the Plan and the Plan Supplement shall be immediately effective and enforceable and deemed binding upon the Litigation Trustee and the Plan Administrator, who have been identified as William Kaye and who received notice of, among other documents, the Plan (including, without limitation, Article X of the Plan) and the Confirmation Order and, thereafter, upon any successors and assigns and the Litigation Trustee and the Plan Administrator and any of their respective successors or assigns will take no action that is inconsistent with the Plan, including, but not limited to Article X of the Plan.

U. Plan Administrator Agreement

32. On the Effective Date and in compliance with the provisions of the Plan and the Plan Administrator Agreement, William Kaye, the chairman of the Committee, will be appointed Plan Administrator in accordance with the Plan Administrator Agreement; thereafter, any successor Plan Administrator shall be appointed and serve in accordance with the Plan Administrator Agreement.

V. Exemptions from Taxation

33. Pursuant to section 1146(a) of the Bankruptcy Code, any transfer of property pursuant to the Plan including, without limitation, all documents necessary to evidence and implement the provisions of and distributions to be made under the Plan, including the Exit Facility, the Seasonal Overadvance Facility, the Amended and Restated First Lien Credit Agreement (and the providing of security therefor), the Amended and Restated Second Lien Credit Agreement (and the providing of security therefor), the Backstop Rights Purchase Agreement, the issuance of New

Common Stock and Warrants, the Warrant Agreement, the transfer of the Litigation Trust Assets to the Litigation Trust, any transfer of owned and leased real property interests to MG Real Estate as provided for in Article VI.A.7 of the Plan and the maintenance or creation of security therein as contemplated by the Exit Facility, the Seasonal Overadvance Facility, the Amended and Restated First Lien Credit Agreement and the Amended and Restated Second Lien Credit Agreement or other instrument of transfer executed in connection with any transaction arising out of, contemplated by, or in any way related to the Plan, shall not be subject to any stamp tax or other similar tax or governmental assessment in the United States, and the appropriate state or local governmental officials or agents shall forego the collection of any such tax or governmental assessment and accept for filing and recordation instruments or other documents pursuant to such transfers of property without the payment of any such tax or governmental assessment.

W. Assumption and Rejection of Executory Contracts and Unexpired Leases

34. The Executory Contract and Unexpired Lease provisions of Article VI of the Plan are approved. Pursuant to the provisions and requirements of sections 365 and 1123 of the Bankruptcy Code, each Executory Contract or Unexpired Lease shall be deemed automatically rejected as of the Effective Date, unless any such Executory Contract or Unexpired Lease: (a) has been previously assumed by the Debtors by Final Order of the Bankruptcy Court; (b) has been assumed by the Debtors by order of the Bankruptcy Court as of the Effective Date, which order becomes a Final Order after the Effective Date; (c) is the subject of a motion to assume or reject pending as of the Effective Date; (d) is listed on the schedule of “Assumed Executory Contracts and Unexpired

Leases” in the Plan Supplement; (e) is an Employee-Related Agreement; (f) is a D&O Liability Insurance Policy; (g) is an Indemnification Provision; or (h) is otherwise assumed pursuant to the Plan. The Confirmation Order shall constitute an order approving such rejections, pursuant to sections 365 and 1123 of the Bankruptcy Code, as of the Effective Date.

35. All Proofs of Claim arising from the rejection of Executory Contracts or Unexpired Leases must be Filed with the Voting and Claims Agent before the latest of: (a) the applicable Claims Bar Date; (b) the earlier of (i) 60 days after notice of entry of an order of the Bankruptcy Court, including the Confirmation Order, authorizing the rejection of such Executory Contract or Unexpired Lease and (ii) 120 days after entry of such order; and (c) 60 days after the effective date of the rejection of such Executory Contract or Unexpired Lease. Any Entity that is required to File a Proof of Claim arising from the rejection of an Executory Contract or an Unexpired Lease that fails to timely do so shall be forever barred, estopped and enjoined from asserting such Claim, and such Claim shall not be enforceable, against any Debtor or any Reorganized Debtor or the Estates and their property, and the Debtors or the Reorganized Debtors and the Estates and their property shall be forever discharged from any and all indebtedness and liability with respect to such Claim unless otherwise ordered by the Bankruptcy Court or as otherwise provided in the Plan. All such Claims shall, as of the Effective Date, be subject to the permanent injunction set forth in Article X.G of the Plan.

36. Pursuant to the provisions of sections 365 and 1123 of the Bankruptcy Code, as of the Effective Date, the Debtors shall assume the following Executory Contracts and Unexpired

Leases: (a) all of the Executory Contracts and Unexpired Leases listed on the schedule of “Assumed Executory Contracts and Unexpired Leases” in the Plan Supplement; (b) all of the Employee-Related Agreements; (c) all of the D&O Liability Insurance Policies; and (d) all of the Indemnification Provisions. The Confirmation Order shall constitute an order approving such assumptions, pursuant to sections 365 and 1123 of the Bankruptcy Code, as of the Effective Date. Any counterparty to an Executory Contract or Unexpired Lease that fails to object timely to the proposed assumption of such Executory Contract or Unexpired Lease will be deemed to have consented to such assumption. Each of the assumed Executory Contracts and Unexpired Leases shall be assumed only to the extent that any such contract or lease constitutes an Executory Contract or Unexpired Lease. Listing a contract or lease on the schedule of “Assumed Executory Contracts and Unexpired Leases” in the Plan Supplement shall not constitute an admission by a Debtor or Reorganized Debtor that such contract or lease is an executory contract or unexpired lease or that a Debtor or Reorganized Debtor has any liability thereunder.

37. Pursuant to section 365(f) of the Bankruptcy Code, except to the extent otherwise determined by the Debtors with the consent of the First Lien Agents, on the Effective Date, all Unexpired Leases of real property as to which the assumption by the Debtors under sections 365(a) or 1123 of the Bankruptcy Code has been approved herein or by other order of the Bankruptcy Court, shall be assigned to MG Real Estate and such assignments shall be deemed to be so approved. Notwithstanding such assignments, the original Debtor-lessee under any such Unexpired Lease of real property, and any Debtor-guarantor thereof, shall continue to be obligated on the lease to the full

extent of their respective obligations as such obligations existed prior to the assignment to MG Real Estate and the Confirmation Order shall constitute an order approving the assumption and assignment described in Article VI.A.7.

38. With respect to any Unexpired Lease of nonresidential real property (as such term is used in section 365 of the Bankruptcy Code) to be assumed pursuant to Article VI of the Plan, all Cure Claims shall be satisfied: (a) with respect to amounts that are the subject of (i) an order that becomes a Final Order or (ii) an agreement between the Debtors and the non-Debtor counterparty to such Unexpired Lease, in each case in accordance with the procedures approved by the Bankruptcy Court pursuant to the *Order Authorizing and Approving Procedures for Determining Prepetition Cure Amounts for Unexpired Leases of Nonresidential Real Property that May Be Assumed by the Debtors* entered on January 8, 2008 [Docket No. 1248], the Reorganized Debtors that are counterparties to such Unexpired Lease shall pay the amounts that are the subject of such agreement or order no later than 5 Business Days after the latest of (x) the date the aforementioned order becomes a Final Order or the aforementioned agreement is reached, (y) the Effective Date and (z) if such Unexpired Lease is assumed pursuant to an order that becomes a Final Order (other than the Confirmation Order), the date such order becomes a Final Order; provided that the parties to such Unexpired Leases (including, without limitation, the Debtors or Reorganized Debtors, as applicable) may agree to other terms without any further notice to or action, order or approval of the Bankruptcy Court; provided, however, that such amounts must be returned by any non-Debtor counterparty to an Unexpired Lease of nonresidential real property (as such term is used in section 365 of the

Bankruptcy Code) as soon as practicable if such Unexpired Lease is not assumed pursuant to the terms of the Plan or an order of the Bankruptcy Court that becomes a Final Order and the obligation to return such amounts shall thereupon automatically accrue without the need for any further notice to or action, order or approval of the Bankruptcy Court; (b) with respect to all other amounts that constitute the Cure Claim for such Unexpired Lease, the Reorganized Debtors that are counterparties to such Unexpired Lease and MG Real Estate, to the extent such Unexpired Lease has been assigned to MG Real Estate, shall remain liable for such amounts in accordance with the terms of the Unexpired Lease notwithstanding any other provision of the Plan or the Confirmation Order, including under Article X of the Plan, and the Confirmation Order shall constitute an order approving this provision; provided that the parties to such Unexpired Lease may agree to other terms without any further notice to or action, order or approval of the Bankruptcy Court; and (c) if a non-Debtor party to such Unexpired Lease seeks to request payment of Cure Claims other than as set forth in the Plan, such request must be Filed and served on the Reorganized Debtors no later than 60 days after the later of (i) notice of the entry of the order approving assumption of such Executory Contract or Unexpired Lease and (ii) the Effective Date. Holders of Cure Claims with respect to such Unexpired Leases that do not File and serve such a request by such date shall be forever barred, estopped and enjoined from asserting such Cure Claims against the Debtors, the Reorganized Debtors, MG Real Estate or their respective property except as set forth in Article VI.C.1(a) and Article VI.C.1(b) of the Plan, and such Cure Claims shall be deemed discharged as of the Effective Date except as set forth in Article VI.C.1(a) and Article VI.C.1(b) of the Plan. Objections to such

requests must be Filed and served on the Reorganized Debtors and the requesting party by the later of (a) 180 days after the Effective Date and (b) 90 days after the Filing of the applicable request for payment of Cure Claims.

39. With respect to any Executory Contract or Unexpired Lease, other than Unexpired Leases of nonresidential real property (as such term is used in section 365 of the Bankruptcy Code), to be assumed pursuant to the Plan (including pursuant to Article VI.A of the Plan), all Cure Claims shall be satisfied by payment of the Cure Claims in Cash on the Effective Date or as soon as reasonably practicable thereafter as set forth in the Plan or on such other terms as the parties to each such Executory Contract or Unexpired Lease may otherwise agree without any further notice to or action, order or approval of the Bankruptcy Court. With respect to each such Executory Contract and Unexpired Lease listed on the schedule of “Assumed Executory Contracts and Unexpired Leases” in the Plan Supplement, the Debtors shall have designated a proposed amount of the Cure Claim, and the assumption of such Executory Contract and Unexpired Lease may be conditioned upon the disposition of all issues with respect to such Cure Claim.

X. Resolution of Contingent, Unliquidated and Disputed Claims

40. Except as expressly provided in the Plan or ordered by the Bankruptcy Court prior to the Effective Date, no Claim shall become an Allowed Claim unless and until such Claim is deemed Allowed under the Plan or the Bankruptcy Code or the Bankruptcy Court has entered a Final Order allowing such Claim. Any Claim that is not an Allowed Claim shall be determined, resolved or adjudicated in accordance with the terms of the Plan. After the Confirmation Date but before the

Effective Date, the Debtors (in consultation with Sopris and, with respect to General Unsecured Claims, with the consent of the Committee), and after the Effective Date, the Reorganized Debtors (subject to the Plan Administrator Agreement and under the supervision of the Plan Administrator as to General Unsecured Claims), shall have the exclusive authority to File objections to Claims, settle, compromise, withdraw or litigate to judgment objections to any and all Claims, regardless of whether such Claims are in a Class or otherwise. From and after the Effective Date, the Reorganized Debtors (subject to the Plan Administrator Agreement and under the supervision of the Plan Administrator as to General Unsecured Claims) may settle or compromise any Disputed Claim without any further notice to or action, order or approval of the Bankruptcy Court. The Reorganized Debtors (subject to the Plan Administrator Agreement and under the supervision of the Plan Administrator as to General Unsecured Claims) shall have the sole authority to administer and adjust the Claims Register to reflect any such settlements or compromises without any further notice to or action, order or approval of the Bankruptcy Court. With respect to all Tort Claims, an objection is deemed to have been Filed timely, thus making each such Claim a Disputed Claim as of the Claims Objection Bar Date. Each such Tort Claim shall remain a Disputed Claim unless and until it becomes an Allowed Claim. The relationship between the Reorganized Debtors and the Plan Administrator is set forth in the Plan Administrator Agreement.

Y. Stock and Warrant Reserve and Cash Reserve

41. On the Effective Date, the Reorganized Debtors shall maintain in reserve shares of New Common Stock and Warrants as the Stock and Warrant Reserve, and upon receipt of

distributions of money from the Litigation Trust and in accordance with the Litigation Trust Agreement, the Reorganized Debtors shall maintain in reserve money as the Cash Reserve, to pay Holders of Allowed Claims pursuant to the terms of the Plan. The amount of New Common Stock, Warrants and money withheld as a part of the Stock and Warrant Reserve or the Cash Reserve, as appropriate, for the benefit of a Holder of a Disputed Claim shall be equal to the lesser of the amount set forth in the following clause (a) and the amount set forth in the following clause (b): (a) (i) if no estimation is made by the Bankruptcy Court pursuant to Article VIII.A.3 of the Plan, the number of shares of New Common Stock and Warrants and the amount of money necessary to satisfy the distributions required to be made pursuant to the Plan based on the asserted amount of the Disputed Claim or, if the Claim is denominated as contingent or unliquidated as of the Distribution Record Date, the number of shares and Warrants and the amount of money that the Debtors elect to withhold on account of such Claim in the Stock and Warrant Reserve or the Cash Reserve, as appropriate or (ii) the number of shares of New Common Stock and Warrants and money necessary to satisfy the distributions required to be made pursuant to the Plan for such Disputed Claim based on an amount as estimated by and set forth in an order of the Bankruptcy Court for purposes of allowance and distributions; and (b) the number of shares of New Common Stock , Warrants and money necessary to satisfy the distributions required to be made pursuant to the Plan based on an amount as may be agreed upon by the Holder of such Disputed Claim and the Reorganized Debtors. As Disputed Claims are Allowed, the Distribution Agent shall distribute, in accordance with the terms of the Plan,

New Common Stock, Warrants and money to Holders of Allowed Claims, and the Stock and Warrant Reserve or the Cash Reserve, as appropriate shall be adjusted accordingly.

Z. Return of Deposits

42. All utilities, including any Person who received a deposit or other form of adequate assurance of performance pursuant to section 366 of the Bankruptcy Code during these Chapter 11 Cases (collectively, the “Deposits”), including, without limitation, gas, electric, telephone, trash and sewer services, shall return such Deposits to the Debtors and/or the Reorganized Debtors, as applicable, either by setoff against postpetition indebtedness or by cash refund, within 45 days following the Effective Date and as of the Effective Date, such utilities are not entitled to make requests for or receive Deposits.

AA. Reports

43. After the Effective Date, the Debtors have no obligation to File with the Bankruptcy Court or serve on any parties reports that the Debtors were obligated to File under the Bankruptcy Code or a Bankruptcy Court order, including, without limitation, monthly operating reports (even for those periods for which a monthly operating report was not Filed prior to the Effective Date), ordinary course professional reports or monthly or quarterly reports for Retained Professionals.

BB. Current Board of Directors

44. On the Effective Date and effective as of the Effective Date, all directors on the boards of directors and all members or managers of each Debtor shall be deemed to resign from such positions, including, without limitation, from their positions on any committees of the boards of

directors without the need for any further notice to or action, order or approval of the Bankruptcy Court, or other act or action under applicable law, regulation, order or rule.

CC. New Board of Directors

45. On the Effective Date and effective as of the Effective Date, the new members of the boards of directors and managers of each Reorganized Debtor shall be deemed appointed, including, without limitation, the directors of the New Board without the need for any further notice to or action, order or approval of the Bankruptcy Court, or other act or action under applicable law, regulation, order or rule.

DD. Directors and Officers' Liability Insurance

46. Prior to the Effective Date, the Debtors are authorized to enter into agreements and purchase insurance policies that provide coverage for directors and officers' liability sufficient to cover the members of the boards of directors and managers of the Reorganized Debtors, including without limitation, the directors of the New Board.

EE. Automatic Stay

47. The stay in effect in the Chapter 11 Cases pursuant to section 362(a) of the Bankruptcy Code shall continue in effect until the Effective Date and at that time shall be dissolved and shall be of no further force or effect, subject to the injunction contained in Article X of the Plan and/or sections 524 and 1141 of the Bankruptcy Code; provided, however, that nothing herein shall bar the filing of financing documents or the taking of such other actions as are necessary to

effectuate the transactions specifically contemplated by the Plan or by the Confirmation Order prior to the Effective Date.

FF. Binding Effect

48. Notwithstanding Bankruptcy Rules 3020(e), 6004(g) or 7062 or otherwise, upon the occurrence of the Effective Date, the terms of the Plan and the Plan Supplement shall be immediately effective and enforceable and deemed binding upon (a) the Debtors, (b) the Reorganized Debtors, (c) any and all Holders of Claims and Holders of Equity Interests (notwithstanding whether any such Holders failed to vote to accept or reject the Plan or voted to reject the Plan), (d) all Entities that are parties to or are subject to the settlements, compromises, discharges, Debtor Release, Third Party Release, Sopris Release and injunctions described in the Plan or herein, (e) any and all Entities acquiring property under the Plan, (f) any and all non-Debtor parties to Executory Contracts and Unexpired Leases with the Debtors, (g) any Entity making an appearance in these Chapter 11 Cases and (h) any other party-in-interest.

49. The rights, benefits and obligations of any Entity named or referred to in the Plan shall be binding on, and shall inure to the benefit of any heir, executor, administrator, successor or assign of such Entity.

GG. Governing Law

50. Except to the extent that the Bankruptcy Code or Bankruptcy Rules apply, and subject to the provisions of any contract, lease, instrument, release, indenture or other agreement or document entered into in connection with the Plan, the rights and obligations arising under the Plan

shall be governed by, and construed and enforced in accordance with, the laws of the State of New York, without giving effect to the principles of conflict of laws thereof.

HH. Effectiveness of All Actions

51. Except as set forth in the Plan, all actions authorized to be taken pursuant to the Plan shall be effective on, prior to or after the Effective Date pursuant to the Confirmation Order, without the need for any further notice to or action, order or approval of the Bankruptcy Court, or other act or action under applicable law, regulation, order or rule except those expressly required pursuant to the Plan.

52. The Debtors or the Reorganized Debtors, as applicable, are authorized and directed to take all actions necessary or appropriate to consummate the Plan, including, without limitation, entering into, implementing and consummating the contracts, instruments, releases, leases, indentures and other agreements or documents created in connection with or described in the Plan.

II. Approval of Consents and Authorization to Take Acts Necessary to Implement Plan

53. The Debtors or the Reorganized Debtors, as applicable, may take all actions to execute, deliver, File or record such contracts, instruments, releases, leases, indentures and other agreements or documents and take such actions as may be necessary or appropriate to effectuate and implement the provisions of the Plan, including, without limitation, the distribution of the securities to be issued pursuant to the Plan in the name of and on behalf of the Reorganized Debtors, without the need for any further notice to or action, order or approval of the Bankruptcy Court, or other act or action under applicable law, regulation, order or rule except for those expressly required pursuant to

the Plan. The secretary and any assistant secretary of any Debtor are authorized to certify or attest to any of the foregoing actions.

54. All matters provided for pursuant to the Plan that would otherwise require approval of the shareholders, directors or members of the Debtors shall be deemed to have been so approved and shall be in effect prior to, on or after the Effective Date (as appropriate) pursuant to applicable law and without any requirement of further action by the shareholders, directors, managers or partners of the Debtors, or the need for any approvals, authorizations, actions or consents.

55. The Confirmation Order shall constitute all approvals and consents required, if any, by the laws, rules and regulations of all states and any other governmental authority with respect to the implementation or consummation of the Plan and any documents, instruments or agreements, and any amendments or modifications thereto, and any other acts and transactions referred to in or contemplated by the Plan, the Plan Supplement, the Disclosure Statement, and any documents, instruments or agreements and any amendments or modifications thereto.

JJ. Modifications to Plan

56. Subject to certain restrictions and requirements set forth in section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019 and those limitations and rights contained in the Plan, the Lock Up Agreement and the Plan Support Agreement, after the entry of the Confirmation Order, the Debtors or the Reorganized Debtors, as applicable, may upon order of the Bankruptcy Court, amend or modify the Plan, in accordance with section 1127(b) of the Bankruptcy Code or remedy any defect or omission or reconcile any inconsistency in the Plan in such manner as may be

necessary to carry out the purposes and intent of the Plan. Any such modification shall be subject to the approval rights set forth in the Plan Support Agreement. Entry of the Confirmation Order means that all modifications or amendments to the Plan since the solicitation thereof, including the Technical Modifications, are approved pursuant to section 1127(a) of the Bankruptcy Code and do not require additional disclosure or resolicitation under Bankruptcy Rule 3019.

KK. Severability

57. The provisions of this Order and the agreements approved herein are non-severable and mutually dependant, except to the extent that any modification does not affect the legal or economic substance of the transactions contemplated by or the provisions of the Plan.

LL. References to Plan Provisions

58. Captions and headings to Articles of the Plan are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of the Plan. The failure specifically to include or to refer to any particular article, section or provision of the Plan or any related document in the Confirmation Order shall not diminish or impair the effectiveness of such article, section or provision, it being the intent of the Bankruptcy Court that the Plan and any related documents be confirmed in their entirety.

MM. Effect of Conflict Between Plan and Confirmation Order

59. If there is any direct conflict between the terms of the Plan or the Plan Supplement and the terms of the Confirmation Order, the terms of the Confirmation Order shall control.

NN. Authorization to Consummate

60. The Debtors are authorized to Consummate the Plan at any time after the entry of the Confirmation Order subject to satisfaction or waiver (by the required parties) of the conditions precedent to Consummation set forth in Article IX.B of the Plan.

OO. Effect of Non Occurrence of Conditions to Consummation

61. If the Consummation of the Plan does not occur, the Plan shall be null and void in all respects and nothing contained in the Plan or the Disclosure Statement shall: (1) constitute a waiver or release of any claims by or Claims against or Equity Interests in the Debtors; (2) prejudice in any manner the rights of the Debtors, any Holders or any other Entity; or (3) constitute an admission, acknowledgment, offer or undertaking by the Debtors, any Holders or any other Entity in any respect.

PP. Retention of Jurisdiction

62. Pursuant to sections 105(a) and 1142 of the Bankruptcy Code, and notwithstanding the entry of the Confirmation Order or the occurrence of the Effective Date, the Bankruptcy Court shall retain exclusive jurisdiction as provided in the Plan over all matters arising out of, and related to, the Chapter 11 Cases and the Plan to the fullest extent permitted by law, including, without limitation, jurisdiction over those matters set forth in Article XII of the Plan.

QQ. Final Confirmation Order

63. The Confirmation Order is a Final Order and the period in which an appeal must be Filed shall commence upon the entry hereof.

RR. Resolutions of Objections and Concerns of Non-Debtor Parties

64. **Boards Video Company.** The Reorganized Debtors shall comply with the terms of the Boards Settlement Order [Docket No. 2071].

65. **Massachusetts Department of Revenue.** In resolution of the objection Filed by the Massachusetts Department of Revenue [Docket No. 1476], the Massachusetts Department of Revenue shall be entitled to interest for any Claim to the extent such Claim is an Allowed Priority Tax Claim, from and after the Effective Date through the payment thereof at the annual rate of seven (7%) percent for the unpaid balance thereof, compounded daily.

66. **EVP I, LLC.** The Stipulation Resolving Objection of EVP I, LLC to Debtors' Second Amended Joint Plan of Reorganization [Docket No. 2163] is approved.

67. **Maricopa County Treasurer.** Notwithstanding anything in the Plan to the contrary: (a) the Debtors or Reorganized Debtors, as appropriate, may object to the Proofs of Claim Filed by the Maricopa County Treasurer in the Chapter 11 Cases asserting secured or priority Claims in the amounts of \$193,469.80 (assigned Claim No. 316), \$36,266.69 (assigned Claim No. 317), \$2,227.28 (assigned Claim No. 226) and \$1,925.59 (assigned Claim No. 335) through one or more Claims objections or adversary proceedings, as appropriate; (b) to the extent Debtors do not object or the Claims of the Maricopa County Treasurer are deemed Allowed, secured or priority Claims by the Bankruptcy Court, such Claims will be treated as secured or priority Claims under the Plan and paid interest, if any, in accordance with the Plan and applicable law; (c) to the extent the Maricopa County Treasurer receives any distribution on account of its Claims pursuant to the Plan and

applicable law and to the extent such Claims are Allowed as Secured Claims under section 506 of the Bankruptcy Code or priority Claims under section 507 of the Bankruptcy Code, the Maricopa County Treasurer shall be paid only in United States legal tender; and (d) to the extent such Claims are Secured Claims, such Claims are entitled to interest at the Arizona state law rate of 16% per annum in accordance with section 511 of the Bankruptcy Code.

68. **Virginia Department of Taxation.** In resolution of the objection Filed by the Virginia Department of Taxation [Docket No.2027], the Virginia Department of Taxation shall be entitled to interest for any Claim to the extent such Claim is an Allowed Priority Tax Claim, from and after the Effective Date through the payment thereof at the annual rate of eight (8%) percent for the unpaid balance thereof. All payments made by the Debtors to the Virginia Department of Taxation on account of any Allowed Claims shall be sent to the following address: Commonwealth of Virginia, Department of Taxation; c/o Mark K. Ames, Taxing Authority Consulting Services, P.C.; P.O. Box 71476; Richmond, Virginia 23255.

69. **Terramar Retail Centers.** Notwithstanding anything in the Plan to the contrary, the Cure Statements Filed by Terramar Retail Centers [Docket Nos. 1758, 1760, 1761, 1763, 1764 and 1767] shall be deemed to be timely Filed Cure Claims to the extent such Cure Statements are on account of Unexpired Leases that are assumed by the Debtors which shall be paid, if at all, in accordance with Article VI.C.1(c) of the Plan; provided that all parties, including, without limitation, the Debtors and Reorganized Debtors reserve their rights to object to such Cure Claims. Terramar Retail Center's withdrawals of its objections to Confirmation of the Plan [Docket Nos. 2029, 2030,

2031, 2032, 2033 and 2034] and Confirmation of the Plan shall not affect Terramar Retail Center's right to seek subsequent orders requiring the Debtors or Reorganized Debtors to pay the cure amounts set forth in the Cure Statements plus any additional postpetition Unexpired Lease obligations and other pecuniary losses suffered by Terramar Retail Centers including, without limitation, any reasonable attorneys' fees and costs incurred to date; provided that all parties, including, without limitation, the Debtors and Reorganized Debtors reserve their rights to object to such requests.

70. **Aronov Realty Management, et al.** The Stipulation Resolving Objection of Aronov Realty Management, American Resurgens, Centro Properties Group, Developers Diversified Realty Corporation, Federal Realty Investment Trust, General Growth Management, Inc., Investment Properties, LLC, Levin Management Corporation, The Morris Companies Affiliates, WP Realty and Regency Centers L.P. to Confirmation of the Second Amended Joint Plan of Reorganization of Movie Gallery, Inc. and Its Debtor Subsidiaries Under Chapter 11 of the Bankruptcy Code [Docket No. 2153] is approved.

71. **The Macerich Company, et al.** The Stipulation Resolving Limited Objection of The Macerich Company, RREEF Management Company, West Valley Properties, Westwood Financial Corporation, Watt Management Company, SYWEST Development, J.H. Snyder Company, Sol Hoff Company, LLC, Beverly Wilcox Properties, LLC and Jones Lang LaSalle Americas, Inc. to Plan [Docket No. 2173] is approved.

72. **Darien Associates, LP.** The Stipulation Resolving Joinder of Darien Associates, LP to Limited Objection of The Macerich Company; RREEF Management Company; West Valley Properties; Westwood Financial Corporation; Watt Management Company; SYWEST Development; J.H. Snyder Company; Sol Hoff Company, LLC; Beverly Wilcox Properties, LLC; and Jones Lang LaSalle Americas, Inc. to the Second Plan of Reorganization of Movie Gallery, Inc. and Its Debtor Subsidiaries Under Chapter 11 of the Bankruptcy Code [Docket No. 2140] is approved.

73. **Internal Revenue Service.** Notwithstanding anything in the Plan or the Confirmation Order to the contrary, (a) the Internal Revenue Service of the United States of America (the “Service”) is not a Releasing Party under the Plan and does not provide the Third Party Release set forth in Article X.C of the Plan, (b) nothing in the Exculpation set forth in Article X.D of the Plan shall impair the police or regulatory powers of the Service, (c) the injunction provision set forth in Article X.G of the Plan shall be modified with respect to the Service to effectuate the relief requested in this paragraph of the Confirmation Order and (d) nothing in the Plan or Confirmation Order will operate to prevent the Service from pursuing any other taxpayer for any liabilities that may be related to any liabilities in these proceedings to the extent provided under applicable non-bankruptcy law.

74. **Teachers Insurance and Annuity Association of America.** The objection of Teachers Insurance and Annuity Association of America, for the Benefit of its Separate Real Estate Account, (“Teachers”) [Docket No. 2043] (the “Teachers Objection”) shall be withdrawn upon the entry of the Confirmation Order; provided that the Teachers Objection shall be deemed to be an

application for allowance and payment of administrative expenses under section 365(d)(3) of the Bankruptcy Code (the “Teachers Application”) on account of the Unexpired Leases listed on the Teachers Objection, and any objection to the relief requested in the Teachers Application must be Filed by any party, including, without limitation, the Debtors and the Reorganized Debtors, with the Bankruptcy Court no later than May 10, 2008 (unless such deadline is extended by the Teachers).

75. **Publix Super Markets, Inc.** The Stipulation Resolving Limited Objection of Landlord Publix Super Markets, Inc. to Confirmation of the Debtors’ Amended Plan of Reorganization [Docket No. 2137] is approved.

76. **LITH Shopping Center LLC.** The Stipulation Resolving LITH Shopping Center LLC’s Concurrence in the Objection of Aonov Realty Management, American Resurgens, Centro Properties Group, Developers Diversified Realty Corporation, Federal Realty Investment Trust, General Growth Management, Inc., Investment Properties, LLC, Levin Management Corporation, The Morris Companies Affiliates, WP Realty and Regency Centers L.P. to Confirmation of the Second Amended Joint Plan of Reorganization of Movie Gallery, Inc. and Its Debtor Subsidiaries Under Chapter 11 of the Bankruptcy Code [Docket No. 2145] is approved.

77. **Hampton Village Associates LLC and BLDG-ICS Olney Inc.** The Stipulation Resolving Joinder of Hampton Village Associates LLC and BLDG-ICS Olney Inc. to the Objection of Aronov Realty Management, American Resurgens, Centro Properties Group, Developers Diversified Realty Corporation, Federal Realty Investment Trust, General Growth Management, Inc., Investment Properties, LLC, Levin Management Corporation, the Morris Companies Affiliates,

WP Realty and Regency Centers L.P. to Confirmation of Second Amended Plan of Reorganization [Docket No. 2138] is approved.

78. **Texas Comptroller of Public Accounts.** In resolution of the objection Filed by the Texas Comptroller of Public Accounts (the “Texas Comptroller”) [Docket No. 2092], the Texas Comptroller shall be entitled to interest for any Claim to the extent such Claim is an Allowed Priority Tax Claim, from and after the Effective Date through the payment thereof at the annual rate of 8.25% percent for the unpaid balance thereof. Notwithstanding anything in the Plan or the Confirmation Order to the contrary, the setoff rights of the Texas Comptroller, if any, under state law shall be fully preserved and unimpaired, and the rights of all parties to contest any right of setoff shall be fully preserved and unimpaired. The provisions of Article VIII.A.3 of the Plan relating to estimation procedures shall not apply to any Claims of the Texas Comptroller. Notwithstanding anything to the contrary in the Plan or the Confirmation Order, to the extent that the Texas Comptroller has a right to distribution under the Plan on account of its Claims and such distribution is not timely made to the Texas Comptroller in accordance with the Plan, the Texas Comptroller may (a) enforce the entire amount of its claim, (b) exercise any and all rights and remedies under applicable non-bankruptcy law, and (c) seek such relief as may be appropriate in the Bankruptcy Court, but only after no less than 20 days written notice by the Texas Comptroller to the Reorganized Debtors to make such distribution.

79. **DeltaCom, Inc.** One or more of the Debtors, as appropriate, is or are assuming each of the twelve executory contracts (the “Deltacom Executory Contracts”) with Deltacom, Inc.,

formerly known as ITC Deltacom Communications, Inc., (“Deltacom”). Deltacom shall have a Cure Claim (the “Deltacom Cure Claim”) equal to the sum of (a) \$69,230.79 on account of all obligations under all of its Deltacom Executory Contracts arising prior to the Commencement Date (calculated as the agreed pre-petition amount outstanding of \$102,106.07 less the \$38,875.28 adequate assurance deposit provided to Deltacom by the Debtors), and (b) the outstanding amount of all obligations under all of the Deltacom Executory Contracts arising after the Commencement Date; provided that assumption of all of the Deltacom Executory Contracts shall be conditioned upon agreement between the Debtors and Deltacom with respect to such amounts, which agreement and payment in full of the Deltacom Cure Claim shall occur, if at all, no later than 30 days from the date hereof.

80. **MRT Landlords.** Notwithstanding anything to the contrary in the Plan, landlords SEMLAK, LLC, Imperial 1999, LP, Century Associates Auburndale, LLC, Cedav Associates, Princeton (East River) WMS, LLC, Pocomoke (East Town) WMG, LLC, Bluefield (Ridgeview) WMS, LLC, Lexington (East Towne) WMB, LLC, Widewaters Connellsville Company, LLC, Widewaters Garner Company, LLC, Widewaters Uniontown Company, LLC, Vestal Property, LLC and Boston Road Property, LLC, (collectively, the “MRT Landlords”) shall have until the date that is sixty (60) days after the Effective Date to amend the Proofs of Claim that the MRT Landlords have Filed on account of any adjustments or reconciliations of any obligations that accrued prior to October 16, 2007 under any leases rejected in the Chapter 11 Cases to which any MRT Landlord is a counterparty; provided that all parties reserve their rights to dispute such Claims, including that

amounts included in such amended Proof of Claim are improper because such amounts were asserted after the applicable Claims Bar Date (the MRT Landlords assert that such claims would be timely).

81. **GE Commercial Finance Business Corporation.** Notwithstanding anything in the Plan or the Confirmation Order to the contrary but subject to the Third Party Release, nothing in the Plan or the Confirmation Order shall authorize a party that is not a Debtor or Reorganized Debtor to breach (or excuse such party that is not a Debtor or Reorganized Debtor from liability on account of such breach except as set forth in the Third Party Release) any obligations to GE Commercial Finance Business Corporation on account of any abandoned furniture, fixtures, equipment, inventory and other personal property located at the premises of Unexpired Leases of nonresidential real property (as such term is used in section 365 of the Bankruptcy Code) for which rejection is first effective on or after the Effective Date.

82. **Marjack Company Inc.** Notwithstanding anything contained in the Plan or the Confirmation Order to the contrary, Marjack Company Inc. shall be deemed to have an allowed Cure Claim equal to \$211,069 to be paid no later than 10 days after the Effective Date; provided that all Proofs of Claim on account of its Executory Contracts with the Debtors shall be disallowed and expunged upon payment of such amount.

83. **Christian & Barton L.L.P. Lessors.** Notwithstanding anything contained in the Plan to the contrary, (a) the provisions of Article X.G.4 of the Plan shall not preclude the assertion at

any time of a right of setoff or a right of recoupment or any defense (affirmative or otherwise) by the Lessors for which Christian & Barton, L.L.P. has Filed pleadings in the Chapter 11 Cases,³ however the same may arise, if any, including those types of matters described in Article X.G.4 of the Plan; provided that all parties, including, without limitation, the Debtors and Reorganized Debtors, reserve all rights to contest such right of setoff or right of recoupment or such defense; and (b) such rights and/or defenses are preserved and are not reduced or impacted by the Plan.

84. **Certain Landlords.** The Stipulation Resolving Objection of Certain Landlords with Respect to Whether the Debtors Are Permitted to Reject or Assume Leases After the Date of Entry of a Confirmation Order [Docket No. 2178] is approved.

IT IS SO ORDERED.

³ Plus the following landlord clients of Christian & Barton and Morgan, Lewis & Bockius, for some of which Christian & Barton may not have filed an appearance or a pleading: Hillsboro Partners, LLC; PK I Country Fair SC LP; Pan Pacific (Bel Air Village), LLC; PK I Fullerton Town Center LP; PK I Northridge Plaza LP; PK Sale LLC; Monterey Plaza LP; Redhawk Towne Center II, LLC; Tustin Heights SC LP; Kimco Westlake L.P.; Bay-Gar Ltd.; Bonita Grande II Investment, LLC; Kimco Realty Corporation; Kimco of North Miami, Inc.; KIR Augusta I 044, LLC; Glenn Cohen, as Trustee of Kimco North Trust II; Perry Hall Square LLC; Passive Investors, Inc.; Kimco Company of Indiana; KIR Bridgewater 573, LLC; Edgewater Retail Partners, LLC; CT (Renaissance West), LLC; Galena Junction SC, LP; Kimco Homeport 1131, Inc.; Smithtown Venture Limited Liability Company; PK I Gresham Town Fair LLC; MashCommons, LLC; KIR Smoketown Station L.P.; Auburn North Shopping Center, LLC; PK II Sunset Square LLC; PK II Frontier Village SC LLC; PK I Silverdale Shopping Center LLC; PK III Tacoma Central LLC; State Farm Realty Investment Company (Debtors listed LL as C.S. and Alice Roberts) (Kimco manages the property); Kimco Carlisle, LP; KROP MART Pottstown, L.L.C.; PK III San Dimas Marketplace LP; Kimco Mineola, LLC; PK I Canyon Ridge Plaza LLC; Bustleton Partners; GBR Spencerport Limited Liability Company and Brockport 31 L.P.; GBR Ballston Avenue Limited Liability Company and Plaza South Resources, L.P.; and Parkchester Preservation Company, L.P.

Date: Apr 10 2008

/s/ Douglas O. Tice Jr.

United States Bankruptcy Judge

Entered on docket; 4/10/08

We ask for this:

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