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Proposed Co-Counsel to the Debtors

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

|   |   |                      |
|---|---|----------------------|
| In re:                                    | ) | Case No. 07-_____    |
|   | ) | Jointly Administered |
| MOVIE GALLERY, INC., et al., <sup>1</sup> | ) | Chapter 11           |
|   | ) |                      |
| Debtors.                                  | ) |                      |
|   | ) |                      |

**MOTION OF THE DEBTORS FOR AN ORDER (A) AUTHORIZING,  
BUT NOT DIRECTING, THE DEBTORS TO REMIT AND PAY CERTAIN  
TAXES AND FEES AND (B) AUTHORIZING AND DIRECTING BANKS AND  
OTHER FINANCIAL INSTITUTIONS TO HONOR RELATED CHECKS AND  
ELECTRONIC PAYMENT REQUESTS**

The above-captioned debtors (collectively, the “Debtors”) hereby move the Court, pursuant to this motion (the “Motion”), for the entry of an order, substantially in the form of Exhibit A, (a) authorizing, but not directing, the Debtors to remit and pay certain sales, use, franchise, gross receipts, single business, real and personal property and other taxes, as well as

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



fees for licenses, permits and other similar charges and assessments and (b) authorizing and directing banks and other financial institutions to receive, process, honor and pay checks presented for payment and electronic payment requests relating to the foregoing. In support of this Motion, the Debtors respectfully state as follows:<sup>2</sup>

### **Jurisdiction**

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).
2. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The statutory bases for the relief requested herein are sections 105(a), 363(b), 507(a)(8) and 541 of the Bankruptcy Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”).

### **Background**

4. On the date hereof (the “Commencement Date”), each of the Debtors filed a petition with the Court under chapter 11 of the Bankruptcy Code. The Debtors are operating their businesses and managing their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made in these chapter 11 cases, and no committees have been appointed or designated. Concurrently with the filing of this Motion, the Debtors have sought procedural consolidation and joint administration of these chapter 11 cases.

5. The Debtors are the second largest North American home entertainment specialty retailer. They currently operate approximately 4,200 retail stores located throughout all 50

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<sup>2</sup> The facts and circumstances supporting this Motion are set forth in the Affidavit of William C. Kosturos, Chief Restructuring Officer of Movie Gallery, Inc., in Support of First Day Motions (the “First Day Affidavit”), filed contemporaneously herewith.

states. They rent and sell DVDs, videocassettes and video games through three distinct brands — Movie Gallery, Hollywood Video and Game Crazy.

6. In 2006, the aggregate annual revenues of the Debtors and their non-Debtor affiliates, including rental revenue and product sales, exceeded \$2.5 billion. Of this amount, approximately 56% was attributed to DVD rentals, 15% to the sale of previously-rented DVDs, VHS cassettes and video games, 13% to the sale of new and used gaming products, 7% to game rentals, 4% to the sale of concessions and other miscellaneous products, 3% to the sale of movie-related products and merchandise and 2% to VHS cassette rentals. As of September 2, 2007, the Debtors and their non-Debtor affiliates employed approximately 38,800 employees, including approximately 7,500 full-time employees and 31,300 part-time employees.

7. Several factors have led to the filing of these chapter 11 cases. First, the video rental industry is highly competitive. The Debtors face direct competition from competitors such as Blockbuster and Netflix and indirect competition from pay-per-view, cable television and big-box retailers who sell DVDs at increasingly lower prices. Furthermore, recent box office receipts of rental releases have declined over the previous year, contributing to an industry-wide decline in demand for video rentals. Finally, as the Debtors' financial performance has deteriorated, they have experienced contracting trade terms, which have had a negative impact on the Debtors' liquidity, which, in turn, has contributed to the Debtors' inability to comply with certain financial covenants under their credit agreements.

8. In the ordinary course of the Debtors' businesses, the Debtors (a) collect sales taxes from their customers and incur taxes, including, but not limited to, use, franchise, gross receipts, single business, real and personal property and other taxes in operating their businesses

(collectively, the “Taxes”) and (b) charge fees and other similar charges and assessments (collectively, the “Fees”) on behalf of various taxing, licensing and regulatory authorities (collectively, the “Authorities”) and pay Fees to such Authorities for licenses and permits required to conduct the Debtors’ businesses. The Taxes and Fees are paid to the respective Authorities in accordance with all applicable laws and regulations.

9. Each of the Taxes and Fees incurred by the Debtors fall under one of the following categories: (a) sales and use taxes; (b) franchise taxes; (c) real and personal property taxes; and (d) business license fees, annual report taxes and other charges and assessments.

**A. Sales and Use Taxes**

10. The Debtors collect and remit rental and sales taxes in connection with the rental and sale of goods to their customers. Generally, rental and sales taxes collected from customers are remitted to the Authorities in the month following their collection. The Debtors also may be responsible for remitting use taxes on account of the purchase of various supplies and fixtures. Use taxes typically arise if a supplier does not have business operations in the state in which it is supplying goods and does not charge state taxes. The Debtors remit approximately \$12.4 million per month, on average, in sales and use taxes.

**B. Franchise Taxes**

11. Certain Debtors pay franchise taxes to Authorities. Franchise taxes may be based on a flat fee, net operating income or capital employed. Certain jurisdictions assess both franchise taxes and income taxes, while others assess either franchise taxes or income taxes depending on which results in a higher tax. Moreover, some jurisdictions require estimated

franchise tax payments to be remitted on a quarterly basis if the estimated franchise taxes exceed a certain threshold.

**C. Real and Personal Property Taxes**

12. In addition, under applicable law, state and local governments in jurisdictions where the Debtors' operations are located are granted the authority to levy property taxes against the Debtors' real and personal property. The Debtors typically pay the property taxes on their real and personal property in the ordinary course of business as such taxes are invoiced, which typically covers taxes for the prior year or quarter, depending on how the applicable tax is assessed.

**D. Business License Fees, Annual Report Taxes and Other Taxes**

13. The Debtors also are required to obtain business licenses, health permits and second hand dealer permits and pay corresponding fees in many jurisdictions in which they operate. The criteria to obtain these licenses and permits vary significantly by jurisdiction. Moreover, the method of calculating and the deadlines for making payments vary by jurisdiction. In some states, the Debtors are required to pay annual reporting fees to state governments to remain in good standing for purposes of conducting business within the state. Further, the Debtors are required to pay various business taxes in certain states. These taxes may be based on gross receipts, rental receipts or other bases determined by the taxing jurisdiction.

14. The Debtors operate approximately 4,200 retail stores across all 50 states, and any disputes that could impact the Debtors' ability to conduct business in a particular jurisdiction could have a wide-ranging and adverse effect on the Debtors' operations as a whole. In fact, the Debtors' failure to pay the Taxes and Fees could have a material adverse impact on the Debtors'

business operations in several ways: (a) the Authorities may initiate audits of the Debtors, which would divert unnecessarily their attention away from the reorganization process; (b) the Authorities may attempt to suspend the Debtors' operations, file liens, seek to lift the automatic stay and pursue other remedies that will harm the estates; and (c) certain directors and officers might be subject to personal liability, which would likely distract those key employees from their duties related to the Debtors' restructuring.

15. The Debtors estimate that the total amount of prepetition Taxes and Fees owing to the various Authorities will not exceed approximately \$20 million. The Debtors believe that payment of such Taxes and Fees is appropriate in these chapter 11 cases. Some of these outstanding tax liabilities are for trust fund taxes that the Debtors have collected and hold in trust for the benefit of the Authorities. Therefore, the Debtors understand that these funds do not constitute property of their estates and could not otherwise be used by them. In addition, unpaid taxes may result in penalties, the accrual of interest, or both.

#### **Relief Requested**

16. Although the Debtors' records reflect that they are current on all of their Taxes and Fees owed as of the Commencement Date, the Debtors seek the authority, in their sole discretion, to pay the Taxes and Fees without regard to whether such obligations accrued or arose before or after the Commencement Date.

17. The Debtors also request that all applicable banks and other financial institutions be authorized to receive, process, honor and pay all checks presented for payment and to honor all electronic payment requests made by the Debtors related to the foregoing, whether such checks were presented or electronic requests were submitted prior to or after the Commencement

Date. The Debtors further request that all such banks and financial institutions be authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved pursuant to this Motion.

### **Basis for Relief**

18. There are several bases for granting the relief requested in this motion, including because: (a) the Taxes and Fees are not property of the estate; (b) section 105 of the Bankruptcy Code and the Court's general equitable powers permit the Court to grant the relief sought; (c) portions of the Taxes and Fees may be entitled to priority status pursuant to section 507(a)(8) of the Bankruptcy Code; (d) governmental entities may sue the Debtors' directors and officers for unpaid Taxes and Fees distracting them from the Debtors' reorganization efforts; and (e) section 363 of the Bankruptcy Code gives the Debtors authority to remit payment on account of such Taxes and Fees in the ordinary course of business.

19. First, section 541(d) of the Bankruptcy Code provides, in relevant part, that "[p]roperty in which the debtor holds, as of the commencement of the case, only legal title and not an equitable interest . . . becomes property of the estate under subsection (a)(1) or (2) of this section only to the extent of the debtors' legal title to such property, but not to the extent of any equitable interest in such property that the debtor does not hold." 11 U.S.C. § 541(d).

20. Many of the Taxes and Fees constitute "trust fund" taxes, which are required to be collected from their customers by the Debtors and held in trust for payment to the Authorities. See, e.g., Beigier v. Internal Revenue Serv., 496 U.S. 53, 57-60 (1990) (holding that any prepetition payment of trust fund taxes is not a transfer subject to avoidance because such funds are not the debtor's property); DuCharmes & Co., Inc. v. Mich., 852 F.2d 194 (6th Cir. 1988)

(per curiam) (same); In re Shank, 792 F.2d 829, 833 (9th Cir. 1986) (sales tax required by state law to be collected by sellers from their customers is a “trust fund” tax and not released by bankruptcy discharge); DeChiaro v. New York State Tax Comm’n, 760 F.2d 432, 435-36 (2d Cir. 1985) (same); In re Shreve Steel Erection, Inc., 92 B.R. 214 (Bankr. W.D. Mich. 1988) (same); In re Maranatha Trucking Co., Case No. 587-1438, 1988 WL 212742 (Bankr. N.D. Ohio 1988) (same). To the extent these “trust fund” taxes are collected, they are not property of the Debtors’ estates under section 541(d). See, e.g., In re American Int’l Airways, Inc., 70 B.R. 102, 104-105 (Bankr. E.D. Pa. 1987); In re Dameron, 155 F.3d 718, 721-22 (4th Cir. 1998) (funds from various lenders held by closing agent in trust for designated third parties not property of debtor’s estate). The Debtors, therefore, generally do not have an equitable interest in funds held on account of such “trust fund” taxes, and the Debtors should be permitted to pay those funds to the Authorities as they become due. In many chapter 11 cases in this district, courts have authorized similar relief. See, e.g., In re AMF Bowling Worldwide, Case No. 01-61119 (DOT) (Bankr. E.D. Va. July 5, 2001) (order authorizing payment of prepetition sales, use and other “trust fund” taxes); In re Fas Mart Convenience Stores, Inc., Case No. 01-60386 (DOT) (Bankr. E.D. Va. Mar. 9, 2001); In re Heilig-Meyers Co., Case No. 00-34533 (DOT) (Bankr. E.D. Va. Aug. 16, 2000) (same).

21. Moreover, to the extent any of the Taxes and Fees do not constitute “trust fund” taxes in a particular jurisdiction, the Court may rely on its general equitable powers to grant the relief requested in this Motion as codified in section 105(a) of the Bankruptcy Code. Section 105(a) empowers the Court to “issue any order, process, or judgment that is necessary to carry out the provisions of [the Bankruptcy Code].” 11 U.S.C. § 105(a). A bankruptcy court’s use of

its equitable powers to “authorize the payment of pre-petition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept.” In re Ionosphere Clubs, Inc., 98 B.R. 174, 175-176 (Bankr. S.D.N.Y. 1989) (citing Miltenberger v. Logansport, C. & S.W. R.Co., 106 U.S. 286, 1. S.Ct. 140, 27 L.Ed. 117 (1882)). Section 105(a) authorizes a court to “permit pre-plan payment of a pre-petition obligation when essential to the continued operation of the debtor.” In re NVR L.P., 147 B.R. 126, 127 (Bankr. E.D. Va. 1992); see also In re Just for Feet, Inc., 242 B.R. 821, 825 (D. Del. 1999).

22. Application of section 105(a) in the context of this Motion is appropriate because the relief requested herein is consistent with the rehabilitative policy of chapter 11 of the Bankruptcy Code. A debtor in possession is a fiduciary with a duty to protect and preserve the estate, including the value of the business as a going concern. In re CoServ, L.L.C., 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002) (“There are occasions when this [fiduciary] duty can only be fulfilled by the preplan satisfaction of a prepetition claim.”). Granting the relief requested in this Motion will enhance the likelihood of the Debtors’ successful rehabilitation, maximize the value of the estates’ assets and thus benefit the estates’ creditors.

23. In addition, some or all of the Taxes and Fees are or may be entitled to priority status pursuant to section 507(a)(8) of the Bankruptcy Code and, therefore, must be paid in full under section 1129(a)(9)(C) of the Bankruptcy Code to confirm any chapter 11 plan. Thus, the payment of the Taxes and Fees at this time only affects the timing of the payment and should not prejudice the rights of other creditors.

24. Furthermore, in some cases, the Authorities may assert that the Debtors’ directors and officers are personally liable if the Debtors fail to meet the obligations imposed upon them to

remit Taxes and Fees. To the extent such accrued Taxes or Fees were unpaid as of the Commencement Date, the Debtors' directors and officers may be subject to lawsuits in certain jurisdictions during the pendency of these chapter 11 cases, even if the failure to pay such Taxes and Fees was not a result of any malfeasance on their part. Such potential litigation would prove distracting for the Debtors, the named directors and officers and this Court, which may be asked to entertain various motions seeking injunctions relating to potential court actions. Therefore, it is in the best interests of the Debtors' estates to eliminate the possibility of these distractions.

25. The Court also may grant the relief requested herein pursuant to section 363 of the Bankruptcy Code. Section 363(b) provides, in relevant part, that "[t]he [debtor], after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). Under this section, a court may authorize a debtor to pay certain prepetition claims. See In re Ionosphere Clubs, Inc., 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (affirming lower court order authorizing payment of prepetition wages pursuant to section 363(b)). To do so, "the debtor must articulate some business justification, other than mere appeasement of major creditors." Id. at 175. As discussed herein, paying the Taxes and Fees will benefit the estate and its creditors by allowing the Debtors' operations to continue without interruption.

26. The timely payment of the Taxes and Fees is necessary and in the best interest of the Debtors, their estates and their creditors. Moreover, in numerous chapter 11 cases, bankruptcy courts in this district and other districts have exercised their powers to authorize debtors to pay prepetition tax obligations. See, e.g., In re US Airways, Inc., Case No. 04-13819 (SSM) (Bankr. E.D. Va. Sept. 14, 2004); In re NTELOS Inc., Case No. 03-32094 (DOT) (Bankr.

E.D. Va. Mar. 4, 2003); In re US Airways Group, Inc., Case No. 02-83984 (RGM) (Bankr. E.D. Va. Aug. 12, 2002); In re Motient Corp., Case No. 02-80125 (RGM) (Bankr. E.D. Va. Jan. 11, 2002); In re Heilig-Meyers Co., Case No. 00-34533 (DOT) (Bankr. E.D. Va. Aug. 16, 2000); See also In re Dura Auto. Sys., Inc., Case No. 06-11202 (Bankr. D. Del. Oct. 31, 2006); In re Calpine Corp., Case No. 05-60200 (Bankr. S.D.N.Y. Dec. 27, 2005). The Debtors submit that the present circumstances warrant similar relief in these chapter 11 cases.

27. With respect to real and personal property taxes, the law in most, if not all, of the jurisdictions in which the Debtors' operations are located provides for the creation of a statutory lien on the Debtors' real and personal property if the applicable property taxes are not paid. Such statutory tax liens typically arise on or relate back to a date prior to the due date of the tax bill (e.g., the assessment date or tax status date).<sup>3</sup>

28. The relation back of a tax lien to the assessment or tax status date generally does not affect the enforceability of the tax lien against a debtor or violate the automatic stay imposed by section 362(a) of the Bankruptcy Code. See 11 U.S.C. § 362(b)(3). In fact, under section 362(b)(18) of the Bankruptcy Code, for certain taxes even if the tax lien does not arise under applicable law until the tax bill due date (or thereafter) and such date occurs after the Commencement Date, the creation and perfection of such a tax lien does not violate the automatic stay. See 11 U.S.C. § 362(b)(18) (automatic stay does not apply to "the creation or perfection of a statutory lien for an ad valorem property tax, or a special tax or special assessment on real property whether or not ad valorem, imposed by a governmental unit, if such

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<sup>3</sup> The Debtors do not concede that any liens (contractual, common law, statutory or otherwise) described in this Motion are valid, and the Debtors expressly reserve the right to contest the extent, validity or perfection or seek the avoidance of all such liens.

tax or assessment comes due after the date of the filing of the petition.”); see also 3 Collier on Bankruptcy ¶ 362.05[17], at 362-77 (15th ed. rev. 2007) (section 362(b)(18) reversed case law that had held that the creation of a statutory lien for ad valorem property taxes violated the automatic stay). As a result, if applicable law provides for the creation of a lien upon the failure to pay property taxes, that tax lien may be perfected and enforceable against a debtor regardless of the date on which such lien is created. Moreover, certain statutes purport to grant a tax lien priority over all other liens imposed against the property. See, e.g., Tex. Tax Code Ann. § 32.05; 35 Ill. Comp. Stat., § 200/21-75.

29. In light of the foregoing, most of the state and local governmental authorities to which the applicable property taxes are owed may hold oversecured claims on account thereof against the Debtors’ estates. Under section 506(b) of the Bankruptcy Code, such claims may accrue interest. 11 U.S.C. § 506(b). See, e.g., U.S. v. Ron Pair Enters., Inc., 489 U.S. 235, 241-43 (1989) (nonconsensual lienholders may receive interest on their claims under section 506(b) of the Bankruptcy Code). Although neither section 506(b) nor Ron Pair specifies the rate at which such interest shall accrue, many governmental units likely will assert that the interest rates or penalties specified by statute are the appropriate benchmark. The Debtors believe that the applicable statutory rates of interest for most of the jurisdictions in which the Debtors’ operations are located range from 10% per annum to 18% per annum — rates that in some cases substantially exceed the current market interest rates. See, e.g., Tex. Tax Code Ann. § 33.01 (12% per annum); 35 Ill. Comp. Stat., ch. 35, § 200/21-15 (18% per annum).

30. Moreover, even if the applicable property taxes are unsecured, claims for the property taxes most likely would be priority claims entitled to payment prior to general

unsecured creditors. See 11 U.S.C. § 507(a)(8)(B) (i.e., a “property tax incurred before the commencement of the case and last payable without penalty after one year before the date of the filing of the petition”). To the extent that the property taxes are entitled to eighth priority treatment under section 507(a)(8)(B) of the Bankruptcy Code, the governmental units also may attempt to assess penalties. See 11 U.S.C. § 507(a)(8)(G) (granting eighth priority status to “a penalty related to a claim of a kind specified in this paragraph and in compensation for actual pecuniary loss”).

31. Consequently, payment of the property taxes will give the governmental entities no more than that to which they otherwise would be entitled under a chapter 11 plan and will save the Debtors the potential interest expense (and penalties) that otherwise might accrue on the property taxes during these chapter 11 cases. Accordingly, the Debtors seek authority, in the Debtors’ sole discretion, to pay real and personal property taxes to avoid the further accrual of interest and penalties with respect to such taxes. Such payment shall not be deemed to be a waiver of rights regarding the extent, validity, perfection or possible avoidance of liens and payments. The Debtors estimate that, as of September 2, 2007, when the latest accounting period closed, the aggregate amount of accrued but unpaid real and personal property taxes was less than \$5.5 million.

32. Bankruptcy courts routinely have authorized the payment of real and personal property taxes in other large chapter 11 cases. See, e.g., In re Calpine Corp., Case No. 05-60200 (Bankr. S.D.N.Y. Dec. 27, 2005) (authorizing payment of prepetition property taxes); In re NRG Energy, Inc., Case No. 03-13024 (Bankr. S.D.N.Y. Sept. 18, 2003) (same); In re Teleglobe Comm. Corp., Case No. 02-11518 (Bankr. D. Del. May 28, 2002) (authorizing payment of real

and personal property taxes); In re Formica Corp., Case No. 02-10969 (Bankr. S.D.N.Y. Mar. 5, 2002) (authorizing payment of prepetition property taxes); In re Enron Corp., Case No. 01-16034 (Bankr. S.D.N.Y. Dec. 3, 2001) (same); In re USG Corp., Case No. 01-2094 (Bankr. D. Del. Sept. 20, 2001) (authorizing payment of real and personal property taxes).

33. Nothing in this Motion should be construed as impairing the Debtors' right to contest the amounts of any Taxes and Fees allegedly owing to the various Authorities, and the Debtors expressly reserve all of their rights with respect thereto.

#### **Waiver of Memorandum of Points and Authorities**

34. The Debtors respectfully request that this Court treat this Motion as a written memorandum of points and authorities or waive any requirement that this Motion be accompanied by a written memorandum of points and authorities as described in Rule 9013-1(G) of the Local Bankruptcy Rules for the Eastern District of Virginia.

#### **Notice**

The Debtors have provided notice of this Motion to: (a) the Office of the United States Trustee for the Eastern District of Virginia; (b) the entities listed on the Consolidated List of Creditors Holding the 30 Largest Unsecured Claims filed pursuant to Bankruptcy Rule 1007(d); (c) counsel to the agent for the Debtors' proposed postpetition secured lenders; (d) counsel to the agent for the Debtors' prepetition first lien facilities; (e) counsel to the agent for the Debtors' prepetition second lien facility; (f) the trustee for the Debtors' 11% senior unsecured notes; (g) counsel to Sopris Capital Advisors LLC; (h) the trustee for the Debtors' 9.625% senior subordinated unsecured notes; (i) counsel for certain movie studios; (j) the Internal Revenue Service; (k) the Securities and Exchange Commission; and (l) the banks that process

disbursements in the Debtors' cash management system (Bank of America, Canadian Imperial Bank of Commerce and Wachovia Bank). In light of the nature of the relief requested, the Debtors respectfully submit that no further notice is necessary.

WHEREFORE, for the reasons set forth herein and in the First Day Affidavit, the Debtors respectfully request that the Court enter an order, substantially in the form attached hereto as Exhibit A, (a) authorizing, but not directing, the Debtors to remit and pay Taxes and Fees, (b) authorizing and directing banks and other financial institutions to receive, process, honor and pay checks presented for payment and electronic payment requests relating to the foregoing and (c) granting such other and further relief as is just and proper.

Richmond, Virginia

Dated: October 16, 2007

/s/ Peter J. Barrett

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## **EXHIBIT A**

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

|   |   |                      |
|---|---|----------------------|
| In re:                                    | ) | Case No. 07-_____    |
|   | ) | Jointly Administered |
| MOVIE GALLERY, INC., et al., <sup>1</sup> | ) | Chapter 11           |
|   | ) |                      |
| Debtors.                                  | ) |                      |
|   | ) |                      |

**ORDER (A) AUTHORIZING, BUT NOT DIRECTING, THE DEBTORS TO REMIT  
AND PAY CERTAIN TAXES AND FEES AND (B) AUTHORIZING AND DIRECTING  
BANKS AND OTHER FINANCIAL INSTITUTIONS TO HONOR RELATED CHECKS  
AND ELECTRONIC PAYMENT REQUESTS**

Upon the motion (the “Motion”)<sup>2</sup> of the above-captioned debtors (collectively, the “Debtors”) for the entry of an order (the “Order”) (a) authorizing, but not directing, the Debtors to remit and pay certain sales, use, franchise, gross receipts, single business, real and personal property and other taxes, as well as fees for licenses, permits and other similar charges and assessments and (b) authorizing and directing banks and other financial institutions to receive,

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

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Motion.

process, honor and pay checks presented for payment and electronic payment requests relating to the foregoing and the First Day Affidavit; it appearing that the relief requested is in the best interests of the Debtors' estates, their creditors, and other parties in interest; the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); venue being proper before this court pursuant to 28 U.S.C. §§ 1408 and 1409; notice of the Motion having been adequate and appropriate under the circumstances; and after due deliberation and sufficient cause appearing therefor, it is hereby ORDERED

1. The Motion is granted in its entirety.
2. The Debtors are authorized, but not required, to pay and remit to various taxing, licensing and regulatory authorities (collectively, the "Authorities") (a) taxes, including, but not limited to, sales, use, franchise, gross receipts, single business, real and personal property and other taxes incurred or collected by the Debtors from their customers on behalf of the Authorities (collectively, the "Taxes") and (b) fees, licenses, permits and other similar charges and assessments incurred by the Debtors (collectively, the "Fees"), without regard to whether such Taxes or Fees accrued or arose before or after October 16, 2007.

3. The banks and other financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized and directed to receive, process, honor and pay such checks and electronic payment requests when presented for payment, and all such banks and other financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Order.

4. The Debtors are authorized to reissue any check or electronic payment that originally was given in payment of any prepetition amount authorized to be paid under this Order and is not cleared by the applicable bank or other financial institution.

5. Upon the payment of any real and personal property taxes, any lien securing such property taxes shall be immediately released, become void and be of no further force or effect; provided, further, that such payment shall not be deemed to be a waiver of the Debtors' rights regarding the extent, validity, perfection or possible avoidance of the related liens and payments.

6. Nothing in the Motion or this Order, nor as a result of the Debtors' payment of claims pursuant to this Order, shall be deemed or construed as: (a) an admission as to the validity or priority of any claim against the Debtors; (b) a waiver of the Debtors' rights to dispute any claim; or (c) an approval or assumption of any agreement, contract or lease pursuant to section 365 of the Bankruptcy Code.

7. The Debtors do not concede that liens (contractual, common law, statutory or otherwise) described in this Motion are valid, and the Debtors expressly reserve the right to contest the extent, validity or perfection or seek the avoidance of all such liens.

8. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

9. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

10. The Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Richmond, Virginia  
Date: October \_\_\_\_, 2007

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United States Bankruptcy Judge