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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.	)	
	)	

**MOTION OF THE DEBTORS FOR AN ORDER AUTHORIZING AN AUCTION  
PROCESS AND APPROVING BID PROCEDURES FOR THE DISPOSITION OF THE  
DEBTORS' INTERESTS IN CERTAIN NONRESIDENTIAL REAL PROPERTY  
LEASES AND GRANTING RELATED RELIEF**

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, authorizing an auction process and approving bid procedures for the disposition of the

<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.



Debtors' interests in certain nonresidential real property leases and granting related relief (the "Order"). 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, 363 and 365 of the Bankruptcy Code, 11 U.S.C. §§ 101–1532 (the "Bankruptcy Code") and Rules 6004 and 6006 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

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

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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.

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.

### **Relief Requested**

8. As of the Commencement Date, the Debtors operated approximately 4,200 stores across all 50 states. Generally, the Debtors do not own the property on which these stores are or were operated. Instead, the Debtors generally lease nonresidential real property from numerous lessors and other counterparties (each, a "Landlord"). In certain instances, the Debtors also sublease nonresidential real property.

9. On September 25, 2007, the Debtors issued a press release announcing their decision to close approximately 520 store locations (collectively, the “Phase 1 Locations”). Each of the Phase 1 Locations is subject to lease agreements with varying terms and varying durations (each, a “Lease”). Immediately thereafter, the Debtors commenced store closing sales at these locations to liquidate inventory, fixtures and equipment (the “Store Closing Sales”).<sup>3</sup> The Debtors do not intend to conduct any business at the Phase 1 Locations following the Store Closing Sales.

10. The Debtors have examined the costs associated with their obligation to pay rent at the Phase 1 Locations. The Debtors estimate that the annual rental cost of the Phase 1 Locations is approximately \$69.4 million per year. In addition to their obligations to pay rent at the Phase 1 Locations, the Debtors are also obligated to pay certain real estate taxes, utilities, insurance and other related charges associated with such Leases. The Debtors have determined in their reasonable business judgment that such costs, with the concomitant costs of operating these locations, constitute an unnecessary drain on the Debtors’ resources.

11. The Debtors therefore propose to conduct an auction (the “Auction”) for 508 of the Leases and designation rights (the “Designation Rights”) associated with those Leases in accordance with the procedures set forth in Exhibit 1 annexed to the Order (collectively, the “Auction Procedures”).<sup>4</sup> The Designation Rights will consist of the right to compel the Debtors

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<sup>3</sup> The facts and circumstances of the Store Closing Sales are set forth more fully in (a) the Motion of the Debtors for an Order (A) Authorizing the Debtors to Conduct Store Closing Sales, (B) Approving Procedures with Respect to Store Closing Sales and (C) Authorizing the Debtors to Pay Limited Retention Bonuses in Connection with Store Closing Sales and (b) the Motion of the Debtors for an Order Authorizing the Assumption by the Debtors of the Store Closing Consulting Agreement with Great American Group, LLC, each filed contemporaneously herewith.

<sup>4</sup> The Debtors have determined in their sound business judgment that 12 of the Leases associated with the Phase 1 Locations have no significant value, particularly when compared with the costs such Leases would impose on their estates. As a result, the Debtors have sought to reject those 12 Leases pursuant to the Motion of the Debtors for an Order Authorizing the Debtors to Reject Certain Unexpired Leases and Executory Contracts, filed contemporaneously herewith. Consequently, those 12 Leases will not be subject to the Auction.

to assume and assign one or more of the Leases to a party designated by the holder of a Designation Right. The Debtors further intend to reject (a) any or all of the Leases that, in the Debtors' reasonable business judgment, are unlikely to realize any value at the Auction and (b) those Leases that are not actually sold pursuant to the Auction. A timeline of the proposed Auction process is attached hereto as Exhibit B and incorporated herein by reference.

**A. The Auction and Disposition of the Leases**

12. The Debtors will provide notice of the Auction substantially in the form of the notice annexed to the Order as Exhibit 2 (the "Auction Notice"). In addition to the Auction Notice, the Debtors will provide a copy of the Auction Procedures, which, among other things, will specify the procedure for entities to submit a bid, the terms and conditions of bidding and the proposed additional rules for the Auction. The Auction Procedures that are served to prospective bidders will include, among other things, (a) a list of the Leases, (b) the proposed form of the assumption, assignment and sale agreement substantially in the form annexed to the Order as Exhibit 5 (the "Sale Agreement") and (c) the proposed form of the lease termination agreement substantially in the form annexed to the Order as Exhibit 6 (the "Lease Termination Agreement"), that will be used to execute transactions contemplated herein. The Debtors believe that the Auction Procedures will permit the Auction to be held in an efficient manner.

13. The Auction Notice will specify the manner and form in which Landlords and all other parties in interest must file and serve objections to the process set forth in the Bidding and Auction Procedures (each, a "Sale Objection") including, but not limited to, objections to (a) the sale of Designation Rights, (b) the sale, assignment and assumption of the Leases and (c) any other disposition of the Leases contemplated by the Auction (each, a "Disposition").

14. Upon entry of the Order, the Auction Notice will be served on the Auction Notice Parties (as defined herein) as described in the Notice Section of this Motion. The Debtors request that all interested persons be required to comply with the Auction Procedures to participate in the Auction so that, among other things, the Debtors may evaluate bids prior to the Auction. Compliance with the Auction Procedures will ensure an efficient Auction process and maximize the competitive bidding environment.

15. The Debtors respectfully request that the Court schedule the Auction on or about November 15, 2007, at a location to be announced by the Debtors to Qualified Bidders (as defined in the Auction Procedures). The Debtors request the right to adjourn the Auction from time to time, if circumstances warrant such action.

16. Moreover, the Debtors respectfully request that a hearing be set for November 29, 2007, or as near to such date as is convenient for the Court (the “Sale Hearing”) with an objection deadline for Landlords and all other parties in interest to file and serve Sale Objections of November 26, 2007 (the “Sale Objection Deadline”). At the Sale Hearing, the Debtors will seek final approval of the Dispositions. The Debtors further request that any Landlord or other party in interest failing to file a timely Sale Objection shall be barred from objecting to any Disposition of such Lease or Leases by the Debtors pursuant to the Auction.

**B. Lease Cure Procedures**

17. The Debtors respectfully request that the Court approve the following procedures for determining Lease Cure Amounts (as described more fully in the form annexed to the Order as Exhibit 3) (the “Lease Cure Procedures”).

18. The Debtors propose to serve notice to Landlords of the potential Disposition of the Leases substantially in the form annexed to the Order as Exhibit 4 (the “Notice of

Disposition”) no later than two business days following the entry of the Order approving the Auction Procedures.

19. The proposed Notice of Disposition will include the Lease Cure Procedures and identify, among other things, (a) the Debtors’ belief of their outstanding obligations — i.e., the cost to cure such defaults, if any — on the relevant Leases (each, a “Cure Amount”), (b) the date by which Landlords must file an objection to the Cure Amounts (each a “Cure Objection”) and (c) the form and manner in which Cure Objections must be filed.

20. The Debtors request that a hearing be set for November 8, 2007, or as near to such date as is convenient for the Court (the “Cure Hearing”), with an objection deadline for Landlords to file and serve objections to the Cure Amounts of November 2, 2007 (the “Cure Objection Deadline”). At the Cure Hearing, the Debtors will seek final determinations of Cure Amounts subject to Cure Objections, if any.

21. In addition, the Cure Procedures provide that any Landlord failing to file a timely Cure Objection shall be (a) barred from asserting claims for additional Cure Amounts arising from such Leases and (b) barred and estopped from asserting or claiming against the Debtors or their assignees that any additional amounts are due or that there are conditions to the assumption and assignment of such Leases that must be satisfied with respect to Cure Amounts unless otherwise ordered by the Court.

### **C. Sale Agreements**

22. The Debtors respectfully request approval and authorization for the Debtors to enter into Sale Agreements with non-Landlords who are chosen by the Debtors as having submitted the highest or otherwise best bid for a Lease or group of Leases in accordance with the Auction Procedures.

23. The Debtors propose to provide notice of any such Sale Agreements to affected Landlords in substantially the form of the notice annexed to the Order as Exhibit 7 (each, a “Notice of Sale Agreement”). The Notice of Sale Agreement will provide, among other things, (a) the names of the Successful Bidder and the Backup Bidder (as defined in the Auction Procedures), where applicable, (b) evidence of adequate assurance of future performance submitted by the Successful Bidder and the Backup Bidder, where applicable and (c) the proposed use of the premises subject to such Lease.

24. Subject to the Court’s approval at the Sale Hearing, the Debtors respectfully request that, among other things, (a) a transaction documented by an executed Sale Agreement constitutes a sale free and clear of any interest in the Leases as contemplated by section 363(f) of the Bankruptcy Code and (b) any entity with whom the Debtors execute any Sale Agreement be entitled to the protections afforded to good-faith purchasers as contemplated by section 363(m) of the Bankruptcy Code.

**D. Lease Termination Agreements**

25. The Debtors respectfully request approval and authorization for the Debtors to enter into Lease Termination Agreements with Landlords that are chosen by the Debtors as having submitted the highest or otherwise best bid for a Lease or group of Leases in accordance with the Auction Procedures.

**E. Designation Rights Agreements**

26. The Debtors respectfully request approval and authorization to enter into agreements for the sale of Designation Rights for any of the Leases (each, a “Designation Rights Agreement”) with any entity having submitted the highest or otherwise best bid for a given Lease or group of Leases in accordance with the Auction Procedures. These Designation Rights



Agreements will be in form and substance reasonably acceptable to the Debtors and consistent with the proposed Auction Procedures.

27. Subject to the Court's approval at the Sale Hearing, the Debtors further request that, among other things, with respect to each party with whom the Debtors enter into a Designation Rights Agreement, (a) a transaction documented by an executed Designation Rights Agreement constitutes a sale free and clear of any interest in the Leases as contemplated by section 363(f) of the Bankruptcy Code and (b) any entity with whom the Debtors execute a Designation Rights Agreement be entitled to the protections afforded to good-faith purchasers as contemplated by section 363(m) of the Bankruptcy Code.

**F. Rejection of Leases Not Assumed and Assigned or Terminated**

28. The Debtors intend to request authority by separate motion to reject any of the Leases, among other unexpired leases and executory contracts, prior to or after the Auction if the Debtors determine that continued marketing efforts will be commercially impractical.<sup>5</sup>

**Basis for Relief**

**A. The Proposed Transfer of Lease Rights Is a Sound Exercise of the Debtors' Business Judgment**

29. Section 363 of the Bankruptcy Code provides that a 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). An unrejected lease constitutes an asset of the estate. See, e.g., In re US Airways Group, Inc., 287 B.R. 643, 645 (Bankr. E.D. Va. 2002) (Mitchell, J.). Designation rights, the right to direct a debtor to assume and assign such leases, are also assets of

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<sup>5</sup> Shortly after the Commencement Date, the Debtors intend to seek approval from the Court for expedited procedures for the rejection of unexpired leases and contracts.

the estate. See generally In re Ames Dep't Stores, Inc., 287 B.R. 112 (Bankr. S.D.N.Y. 2002). The Debtors believe that this Court should approve the Debtors' decision to sell their rights under the Leases, in accordance with the Auction Procedures, if that decision is supported by a "sound business purpose." See In re W.A. Mallory Co., 214 B.R. 834, 836–38 (Bankr. E.D. Va. 1997) (Adams, J.); see also In re Lionel Corp., 722 F.2d 1063, 1071–72 (2d Cir. 1983).

30. A sound business purpose exists where (a) a legitimate business reason justifies the sale, (b) adequate and reasonable notice of the sale is provided to interested parties, (c) the sale has been proposed in good faith and (d) the purchase price is fair and reasonable. See W.A. Mallory, 214 B.R. at 836; In re WBQ P'ship, 189 B.R. 97, 102 (Bankr. E.D. Va. 1995) (Bostetter, J.).

31. Similarly, a debtor may assume an unexpired lease where assumption is a reasonable exercise of the debtor's business judgment. See 11 U.S.C. § 365(a); In re Extraction Techs., 296 B.R. 393, 399 (Bankr. E.D. Va. 2001) (Tice, J.); see also In re Richmond Metal Finishers, 756 F.2d 1043, 1046–47 (4th Cir. 1985) (Phillips, J.). This requirement is satisfied where a debtor determines in good faith that assumption of a lease will benefit the estate. See In re Gucci, 193 B.R. 411, 414–15 (S.D.N.Y. 1996).

32. Courts generally show great deference to a debtor's decisions when applying the business judgment standard. See In re Global Crossing, Ltd., 295 B.R. 726, 744 n.58 (Bankr. S.D.N.Y. 2003) ("[T]he Court does not believe that it is appropriate for a bankruptcy court to substitute its own business judgment for that of the [d]ebtors and their advisors, so long as they have satisfied the requirements articulated in the caselaw."). Deference is inappropriate only if such business judgment is "so manifestly unreasonable that it could not be based on sound

business judgment, but only on bad faith, or whim or caprice.” Richmond Metal Finishers, 756 F.2d at 1047.

33. The proposed transfers, consummated through the assumption and assignment of the Leases or the Lease Termination Agreements as contemplated herein, are justified by the Debtors’ ongoing business needs. The Debtors are undergoing a significant consolidation of their locations. Following the Store Closing Sales, the Debtors do not intend to conduct business at the Phase 1 Locations. Thus, the Debtors seek to eliminate the costs associated with holding what will be inoperative assets and, instead, potentially generate cash proceeds for the benefit of their estates. See 11 U.S.C. § 365(d)(3); In re TreeSource Indus., 363 F.3d 994, 997 (9th Cir. 2004). The transfer of Leases, where economically beneficial, and the rejection of Leases otherwise, will streamline the Debtors’ operational platform and facilitate their reorganization. See In re Trak Auto Corp., 367 F.3d 237, 244 (4th Cir. 2004) (Michael, J.) (“The assumption and assignment of leases can be an important part of this [reorganization] effort.”).

34. The expedited timeline provided by the proposed Auction process is necessary to curtail the significant expenses associated with holding these locations. The Leases associated with the Phase 1 Locations will impose postpetition costs upon the Debtors’ estates of approximately \$1.3 million per week. The Auction will maximize any residual value associated with the Leases while minimizing their carrying costs. This expediency will not, however, come at the expense of the Landlords or other parties in interest. The Auction Procedures and the Lease Cure Procedures provide such parties ample notice and the opportunity to object, appear and be heard with respect to all Dispositions contemplated by the Auction process. See US Airways, 287 B.R. at 646–49 (approving “fast track” authority to renegotiate or reject executory contracts where rights of interested parties are preserved).

35. The notice provided by the Debtors will provide sufficient notice for the relief requested herein. With respect to a sale of estate assets, notice is sufficient if it includes the terms and conditions of the sale, states the time for filing objections and provides a general description of the property. W.A. Mallory, 214 B.R. at 837; WBQ P'ship, 189 B.R. at 103. Subject to the Court's approval, the Debtors will provide notice of the Auction substantially in the form of the Auction Notice to interested parties. The Auction Notice will clearly identify the deadline for filing objections to any Disposition of the Leases. The Auction Notice will also provide a complete copy of the Auction Procedures, a list of the Leases and forms of the Sale Agreement to, among others, entities known or thought to have a *bona fide* interest in the relief requested, all Landlords, and all parties who have filed requests for notice pursuant to Bankruptcy Rule 2002 in the Debtors' chapter 11 cases. In addition, the Debtors intend to undertake substantial marketing efforts prior to the Auction with the assistance of their advisors, Keen Consultants, the Real Estate Division of KPMG Corporate Finance Realty LLC ("Keen").<sup>6</sup>

36. The proposed Auction Procedures will ensure that each transaction contemplated by the Auction will be conducted in good faith. A purchaser's good faith may be satisfied where a sale is the product of arm's-length negotiations between parties. See WBQ P'ship, 189 B.R. at 103 ("A negotiation conducted at arm's length helps to ensure that the agreed price ultimately will be fair and reasonable."); In re Apex Oil Co., 92 B.R. 847, 870 (Bankr. E.D. Mo. 1988). Alternatively, lack of good faith is typically determined by actions that involve fraudulent

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<sup>6</sup> Contemporaneously herewith, the Debtors have sought approval from the Court to retain Keen pursuant to the Application of the Debtors for an Order Authorizing the Employment and Retention of Keen Consultants, the Real Estate Division of KPMG Corporate Finance LLC as Real Estate Consultant for the Debtors and Debtors in Possession.

conduct, collusion or an attempt to take unfair advantage of other bidders during the sale proceedings. See In re Willemain, 764 F.2d 1019, 1023 (4th Cir. 1985).

37. The Auction Procedures require each Disposition to be an arm's-length transaction. The Debtors intend to undertake significant marketing efforts in conjunction with Keen in order to seek the largest potential buyer pool. The Auction Procedures require each Qualified Bidder (as that term is defined by the Auction Procedures) to submit extensive documentation with respect to its financial ability to satisfy obligations under the Leases. Qualified Bids will be analyzed with respect to the bidder's ability to consummate a transaction swiftly and fulfill its obligations under such Leases. The open Auction will also provide transparency to the bidding process and make reasonably certain that each Successful Bid (as that term is defined by the Auction Procedures) is the highest or otherwise best bid for such Lease.

38. The Auction Procedures will ensure that that any price obtained for the Leases will be fair and reasonable. The competitive bidding process should enable the Debtors to capture value from the Leases by taking full advantage of the potential buyer pool. The financial information required of Qualified Bidders also permits the Debtors to analyze each bid with respect to the potential purchaser's ability to satisfy the financial obligations assumed thereby. Furthermore, the extensive marketing efforts the Debtors intend to undertake prior to the Auction will ensure that any Successful Bids represent a fair value for the Leases in question. See W.A. Mallory, 214 B.R. at 837–38. The flexibility provided by the Auction Procedures is consistent with the discretion typically afforded procedures governing the disposition of assets under section 363(b). See id. at 838 (“Establishing an arbitrary percentage which a proposed purchase price needs to meet before a sale is consummated does not serve the purposes of the Bankruptcy

Code . . . .”). If a party raises legitimate concerns about the extent to which the Auction Procedures will ensure fair value any such purchases, the Debtors intend to present evidence at the Sale Hearing confirming that such a price is reasonable under the circumstances.

39. In sum, the proposed transactions contemplated herein reflect a sound business purpose and are a valid exercise of the Debtors’ business judgment.

**B. The Debtors Will Cure All Defaults Under the Leases and Landlords Will Receive Adequate Assurances of Future Performance**

40. A debtor may assume and assign an unexpired lease only where the debtor has cured all existing defaults under that lease. See 11 U.S.C. § 365(b)(1), (f)(2); see In re Shangra-La, Inc., 167 F.3d 843, 849 (4th Cir. 1999) (Williams, J.). In addition, a debtor must provide adequate assurances of future performance under the assumed lease if the debtor has defaulted on such a lease. See 11 U.S.C. § 365(b)(1), (f)(2); In re Adamson Co., Case No. 94-30676-S, 1995 WL 17213897, at \*4 (Bankr. E.D. Va. May 3, 1995) (Shelley, J.); In re Washington Capital Aviation & Leasing, 156 B.R. 167, 172 (Bankr. E.D. Va. 1993) (Tice, J.). The requirements of “adequate assurance” depend on the facts and circumstances of each case. See, e.g., In re Martin Paint Stores, 199 B.R. 258, 263 (Bankr. S.D.N.Y. 1996). Where a lease of real property is in a shopping center, the debtor may, depending on the terms of the lease, also be required to provide adequate assurances for, among other things, the source of future rent payments, tenant use and tenant mix. See 11 U.S.C. § 365(b)(3); see also Trak Auto, 367 F.3d at 241–44. However, adequate assurance does not require “an absolute guarantee of future performance . . . .” Washington Capital, 156 B.R. at 173; see also Trak Auto, 367 F.3d at 245.

41. If a party requires, at the Sale Hearing, the Debtors will demonstrate that any proposed transfers consummated through the assumption and assignment of the Leases as

contemplated herein will satisfy the requirements of section 365(b) and (f). The Debtors believe that the sale price for any Lease sold pursuant to the Auction will be sufficient to cure any defaults applicable to the relevant Lease. Any Lease that does not obtain bids equal to at least the applicable Cure Amount likely will not be sold. The Auction Procedures also require each potential assignee to provide assurances to satisfy the standards set forth in the Bankruptcy Code. See Ames, 287 B.R. at 115–16. For example, the Auction Procedures require each bidder to provide financial information regarding the bidder’s ability to fulfill its financial obligations. See In re GlycoGenesys, Inc., 352 B.R. 568, 578 (Bankr. D. Mass. 2006) (“[I]t is appropriate to evaluate the financial condition of the assignee and the likelihood that the non-debtor will receive the benefit of its bargain from the assignee.”). Bidders must also identify their proposed use of the premises subject to such Leases and will have an ongoing obligation to reasonably comply with further requests for information regarding such assurances pending this Court’s approval of a transfer at the Sale Hearing. In addition, the Debtors retain the discretion to reject any bid if, among other reasons, future performance is doubtful.

**C. The Auction Will Satisfy the Requirements of Section 363(f) for a Sale Free and Clear**

42. Under section 363(f), a debtor may sell property of its estate free and clear of all interests (including liens, claims and encumbrances) if (a) applicable nonbankruptcy law permits the sale of such property free and clear of such interest, (b) the entity with the interest consents, (c) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property, (d) such interest is in *bona fide* dispute or (e) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of its interest. See 11 U.S.C. § 363(f); see also Precision Indus. v. Qualitech Steel SBQ, LLC, 327

F.3d 537, 545 (7th Cir. 2003). Section 363(f) is drafted in the disjunctive. Satisfaction of any one of the factors set forth in section 363(f) allows a sale, including the Dispositions contemplated herein, to transfer assets of the estate free and clear.

43. The Debtors believe that their creditors with any interest in the Leases will consent to the proposed Dispositions free and clear of liens, claims, encumbrances and other such interests, if applicable, in the Leases. See 11 U.S.C. § 363(f)(2). As noted, above, the Auction should enable the Debtors to realize the highest and best offers, if any, for the Leases. See Ames, 287 B.R. at 118–19. To the extent such creditors do not consent explicitly or implicitly, the Debtors believe that the sale will satisfy one or more of the factors in section 363(f), including by the order entered after the Sale Hearing providing that any relevant interests attach to the applicable proceeds of such sale to the same extent, priority and validity as in the applicable Lease.

**D. The Successful Bidders at the Auction Will Be Entitled to the Protections Afforded to Good Faith Purchasers**

44. A good faith purchaser who has acquired an assignment of rights under a debtor's assumed lease is protected from the untimely reversal or modification of the transaction. See 11 U.S.C. § 363(m); Weingarten Nostat, Inc. v. Serv. Merch. Co., 396 F.3d 737, 743–44 (6th Cir. 2005). “It is elementary that a leasehold is personal property and possibly of value to the debtor's estate, thus the assignment of a lease for a valuable consideration is a sale of property to which § 363(m) applies.” In re Adamson Co., 159 F.3d 896, 898 (4th Cir. 1998) (Widener, J.). A good faith purchaser, in turn, is one who purchases assets for value through an arm's-length transaction. See Willemain, 764 F.2d at 1023.



45. The Auction Procedures ensure that any transaction will be conducted with arm's-length negotiations through which the Debtors will seek to maximize the value available to their estates and relieve the burdens, including the carrying costs, associated with the Leases. The Debtors therefore request that (a) any successful bidders be deemed a purchaser in good faith and (b) afforded all the protections available under section 363(m) of the Bankruptcy Code.

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

46. 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**

47. Notice of the Debtors' Motion. 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; and (k) the Securities and Exchange Commission (collectively, the "Notice Parties").

48. Auction Notice. No later than two business days after entry of the Order, the Debtors intend to serve the Auction Notice upon (a) the Notice Parties; (b) the Landlords;

(c) entities known or thought to have a *bona fide* interest in the relief requested; and (d) entities that have filed requests for service pursuant to Bankruptcy Rule 2002 in these chapter 11 cases (collectively, the “Auction Notice Parties”).

49. Notice of Disposition. No later than two business days after entry of the Order, the Debtors intend to serve notice of the Lease Cure Procedures upon: (a) the Landlords; and (b) entities that have filed requests for service pursuant to Bankruptcy Rule 2002 in these chapter 11 cases through service of the Notice of Disposition or otherwise.

50. Notice of Sale Agreement. No later than two business days after the conclusion of the Auction, the Debtors intend to serve the Notice of Sale Agreement upon Landlords for such Leases where non-Landlords are chosen by the Debtors as having submitted the highest or otherwise best bid for such Leases.

51. In light of the nature of the relief requested, the Debtors respectfully submit that no further notice is required.

WHEREFORE, for the reasons set forth herein and in the First Day Affidavit, the Debtors respectfully request that the Court enter the Order, substantially in the form attached as Exhibit A, (a) authorizing the Debtors to conduct the Auction process, (b) approving the Auction Procedures and terms of the Auction, (c) approving the forms of the Auction Notice, the Notice of Disposition and the Notice of Sale Agreement, (d) approving the Lease Cure Procedures, (e) authorizing the Debtors to enter into Sale Agreements and approving the form of those agreements, (f) authorizing the Debtors to enter into Lease Termination Agreements and approving the form of those agreements, (g) authorizing the Debtors to enter into agreements for the sale of Designation Rights and (h) granting such other and further relief as is just and proper.

Richmond, Virginia  
Dated: October 16, 2007

/s/ Michael A. Condyles

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153 East 53rd Street  
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and

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Proposed Co-Counsel to the Debtors

## **EXHIBIT A**

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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.	)	
	)	

**ORDER AUTHORIZING AN AUCTION PROCESS AND APPROVING BID  
PROCEDURES FOR THE DISPOSITION OF THE DEBTORS' INTERESTS IN  
CERTAIN NONRESIDENTIAL REAL PROPERTY LEASES AND GRANTING  
RELATED RELIEF**

Upon the motion (the "Motion")<sup>2</sup> of the above-captioned debtors (collectively, the "Debtors") for the entry of an order (the "Order") authorizing an auction process (the "Auction") and approving bid procedures for the disposition of the Debtors' interests in certain

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<sup>1</sup> The Debtors in the cases include: Movie Gallery, Inc.; Hollywood Entertainment Corp.; 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 and the Bidding and Auction Procedures (as defined herein).

nonresidential real property leases (the “Leases”) and granting related relief; 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 bidding and auction procedures substantially in the form attached as Exhibit 1 to this Order are hereby authorized and approved and shall govern disposition of the Debtors’ interests in the Leases (the “Auction Procedures”).
3. The Auction substantially in the form provided by the Auction Procedures is hereby authorized and approved.
4. The Auction may be continued, from time to time, without further notice to creditors or parties in interest other than by (a) announcement of the adjournment at the Auction or (b) written notice served on (x) all entities known or thought to have a *bona fide* interest in the Auction, (y) all non-Debtor parties to the relevant Leases (each, a “Landlord”) and (z) entities that have filed requests for service pursuant to Rule 2002 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) in these chapter 11 cases.
5. A hearing is set for November \_\_, 2007 at 10:00 a.m. (prevailing Eastern Time), to consider entry of one or more orders authorizing and approving the relief requested in the

Motion that is not granted herein, including, without limitation, approval of the Sale Agreements (as defined herein), the sale of designation rights (the “Designation Rights”), the Lease Termination Agreements (as defined herein) and such other and further relief as is just and proper (the “Sale Hearing”).

6. An objection deadline is set for November \_\_, 2007, at 5:00 p.m. (prevailing Eastern Time) for all parties in interest, to file and serve objections to the sale of Designation Rights, the Sale Agreements, the Lease Termination Agreements and any other disposition of the Leases and such other and further relief sought at the Sale Hearing (the “Sale Objection Deadline”).

7. The Debtors are authorized, in their sole discretion, to assume all Leases necessary to complete the transactions contemplated by the Auction, subject to approval by this Court at the Sale Hearing.

8. The form of notice substantially in the form attached as Exhibit 2 to this Order is hereby authorized and approved (the “Auction Notice”).

9. The Debtors shall serve the Auction Notice by overnight mail, facsimile, email, or first class mail no later than two business days after entry of the Order, together with such publication notice as the Debtors determine to provide, if any, upon (collectively, the “Auction Notice Parties”):

- 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;
- l. the Landlords;
- m. entities known or thought to have a *bona fide* interest in the relief requested;
- n. and entities that have filed requests for service pursuant to Bankruptcy Rule 2002 in these chapter 11 cases.

10. Service of the Auction Notice upon the Auction Notice Parties as set forth herein is sufficient notice of the Motion, the Auction Procedures, the Auction and the Sale Objection Deadline.

11. The lease cure procedures to determine the Debtors' outstanding obligations on the relevant Leases — i.e., the cost to cure defaults — (each, a "Cure Amount") substantially in the form attached as Exhibit 3 to this Order are hereby authorized and approved (the "Lease Cure Procedures").

12. An objection deadline is set for November \_\_, 2007, at 5:00 p.m. (prevailing Eastern Time) for all Landlords to file and serve objections (each a "Cure Objection") to the Cure Amounts (the "Cure Objection Deadline").

13. A hearing is set for November \_\_, 2007 at 10:00 a.m. (prevailing Eastern Time) to consider the Cure Objections and such other and further relief as is just and proper (the “Cure Hearing”).

14. The notice of disposition substantially in the form attached as Exhibit 4 to this Order is hereby authorized and approved (the “Notice of Disposition”).

15. The Debtors shall serve the Notice of Disposition upon (a) the Landlords (b) and entities that have filed requests for service pursuant to Bankruptcy Rule 2002 in these chapter 11 cases by overnight mail, facsimile, email or first class mail no later than two business days after entry of the Order.

16. Service of the Notice of Disposition as set forth herein is sufficient notice of the Lease Cure Procedures.

17. The sale agreement substantially in the form attached as Exhibit 5 to this Order is hereby approved (the “Sale Agreement”).

18. The lease termination agreement substantially in the form attached as Exhibit 6 to this Order is hereby approved (the “Lease Termination Agreement”).

19. The Debtors are authorized, in their sole discretion, to select the bidder that the Debtors believe has submitted the highest or otherwise best bid for each Lease, group of Leases, or the Designation Rights associated with such Lease or group of Leases (each, a “Successful Bidder,” and each, a “Successful Bid”).

20. The Debtors are authorized, in their sole discretion, to select the bidder that the Debtors believe has submitted the second-highest or otherwise second-best bid for each Lease,

group of Leases, or the Designation Rights associated with such Lease or group of Leases (each, a “Backup Bidder,” and each, a “Backup Bid”).

21. The notice of sale agreement substantially in the form attached as Exhibit 7 to this Order is hereby approved (the “Notice of Sale Agreement”).

22. The Debtors shall serve the Notice of Sale Agreement by overnight mail, facsimile or email no later than two business days after the conclusion of the Auction upon the applicable Landlord of a Lease subject to a disposition pursuant to the Auction, except where such Landlord is the Successful Bidder for such Lease.

23. Service of the Notice of Sale Agreement upon such Landlords shall be deemed good and sufficient notice of the Sale Hearing.

24. The Debtors are authorized, in their sole discretion, to enter into Lease Termination Agreements subject to approval by this Court at the Sale Hearing.

25. The Debtors are authorized, in their sole discretion, to enter into agreements for the sale of their designation rights associated with the Leases (each, a “Designation Rights Agreement”), subject to approval by this Court at the Sale Hearing.

26. Pursuant to section 365(k) of the Bankruptcy Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”), the Debtors shall have no further liability for any breach of a Lease occurring after the closing of a sale, transfer, termination, assignment or other transaction for such Lease (each, a “Closing”).

27. Pursuant to section 363(f) of the Bankruptcy Code and subject to this Court’s approval at the Sale Hearing, any executed Sale Agreement and constitutes a sale free and clear

of any interest including, without limitation, any liens, claims or encumbrances upon the Leases that are the subject of such Sale Agreements.

28. Pursuant to section 363(m) of the Bankruptcy Code and subject to this Court's approval at the Sale Hearing, a purchaser under any executed Sale Agreement shall be entitled to the protections afforded to good-faith purchasers.

29. Pursuant to section 363(m) of the Bankruptcy Code and subject to this Court's approval at the Sale Hearing, a purchaser under a Designation Rights Agreement (each, a "Designation Rights Agreement") shall be entitled to the protections afforded to good-faith purchasers.

30. To the extent any Debtor acts as guarantor of another Debtor's Lease obligations (each, a "Debtor-Guarantor"), such Debtor-Guarantor's obligations with respect to such Lease shall terminate upon the execution of such Sale Agreement or Lease Termination Agreement for that Lease becoming effective.

31. Nothing in this Order is intended to preclude nor shall it be deemed to preclude the Debtors from seeking authority to assume or reject nonresidential real property leases, or other executory contracts or unexpired leases, on terms or procedures other than those approved herein.

32. Nothing in this Order is intended to preclude nor shall it be deemed to preclude the Debtors and their estates from asserting any claims that they have or may have against any non-Debtor party to a Lease, or other executory contracts or unexpired Leases, whether or not such claims are related to the rejection of such Lease.

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

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

35. 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

## **EXHIBIT 1**

### **[Auction Procedures]**

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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.	)	
	)	

**BIDDING AND AUCTION PROCEDURES FOR THE  
DISPOSITION OF THE DEBTORS' INTERESTS IN  
CERTAIN NONRESIDENTIAL REAL PROPERTY LEASES**

**A. Background**

On October 16, 2007 (the "Commencement Date"), the above-captioned debtors (collectively, the "Debtors") filed for relief under chapter 11 of the Bankruptcy Code, 11 U.S.C. §§ 101–1532 (the "Bankruptcy Code") in the United States Bankruptcy Court for the Eastern District of Virginia (the "Bankruptcy Court"), consolidated under Case No. 07-[ ].

On the Commencement Date, the Debtors filed a motion (the "Motion") with the Bankruptcy Court for the entry of an order authorizing an auction process (the "Auction") and

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

approving bid procedures for the disposition of the Debtors' interests in certain nonresidential real property leases (the "Auction Procedures").

On October \_\_, 2007, the Bankruptcy Court entered an Order Authorizing an Auction Process and Approving Bid Procedures for the Disposition of the Debtors' Interests in Certain Nonresidential Real Property Leases and Granting Related Relief [Docket No. ] (the "Order").<sup>2</sup>

On October \_\_, the Bankruptcy Court entered an Order Authorizing the Debtors' Employment and Retention of Keen Consultants, the Real Estate Division of KPMG Corporate Finance Realty LLC as Real Estate Consultant for the Debtors and Debtors in Possession Auction [Docket No. ] ("Keen").

## **B. Sealed Bids**

To bid at the Auction, a bidder (each, a "Bidder") must submit a written bid (a "Bid"), together with the Required Bid Documents (as defined herein). With respect to the leases identified on the document attached hereto (each, a "Lease"), all Bids, together with the Required Bid Documents, must be submitted by no later than 12:00 p.m. (prevailing Eastern Time) on November 12, 2007 (the "Bid Deadline"), which deadline may be extended by the Debtors in their sole discretion. The Bid and Required Bid Documents must be submitted to the following parties (collectively, the "Notice Parties")<sup>3</sup>:

1. Counsel to the Debtors, (a) Kirkland & Ellis LLP, Chicago, Illinois 60601, Attn: Anup Sathy, P.C. and Marc J. Carmel, facsimile: (312) 861-2200 and (b) Kutak Rock LLP, Bank of America Center, 1111 East Main Street, Suite 800, Richmond, Virginia 23219, Attn: Michael A. Condyles and Peter J. Barrett, facsimile: (804) 783-6192; and
2. Keen Consultants, the Real Estate Division of KPMG Corporate Finance Realty LLC, 60 Cutter Mill Road, Suite 214, Great Neck, New York 11021, Attn: Matthew Bordwin, facsimile: (516) 482-5764.

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

<sup>3</sup> All forms to be submitted are available at [www.kccllc.net/moviegallery](http://www.kccllc.net/moviegallery).



### **C. Acknowledgements by Bidders Submitting Bids**

By submitting a Bid, each Bidder shall be deemed to acknowledge and acknowledges that it shall be bound by the following terms and conditions set forth in these Auction Procedures:

1. any sale, assignment or other disposition of each Lease is without representations or warranties of any kind, nature or description;
2. the Bidder had an opportunity to, or waived the right to, inspect and examine the premises subject to each Lease that is the subject of such Bid and to review each applicable Lease and all other pertinent documents relating thereto prior to making its Bid;
3. the Bidder relied exclusively upon its own investigation and inspection of such documents and each premises subject to each Lease that is the subject of such Bid in making the Bid. Copies of Leases will be available for inspection prior to the Auction during regular business hours at the offices of Keen or will be provided to entities upon written request to Keen or are available on Keen's website at <http://www.keenconsultants.com>;
4. the Debtors have retained Keen (the "Debtors' Broker") as their broker and if the Bidder uses a broker (each, a "Purchaser's Broker"), Bidder shall pay any commission, fees and charges charged by the Purchaser's Broker;
5. the Bidder shall indemnify the Debtors and the Debtors' Broker and hold the Debtors and the Debtors' Broker harmless from any claim, loss, liability, damage, cost and expense (including, without limitation, reasonable attorneys' fees, disbursements and court costs) paid or incurred by the Debtors and the Debtors' Broker by reason of any claim to any broker's commission, finder's fee or other fee asserted by the Purchaser's Broker in connection with the Sale Agreement or any other transaction contemplated hereby;
6. the Bidder is not relying upon any written or oral statements, representations or warranties of the Debtors, Debtors' Broker, their agents, representatives, consultants or attorneys; and
7. such Required Bid Documents (as defined herein) may be provided by the Debtors to non-Debtor parties to such Leases (each, a "Landlord") as evidence of such Bidders' ability to provide adequate assurances of future performance by the Bidder (as described below).

## **D. Required Bid Documents**

Each Bid, including Landlord Bids (as defined herein), must be submitted with the following related information and documents, in addition to the Bid and Deposit (as defined herein) no later than the Bid Deadline (collectively, the “Required Bid Documents”):

1. a binding commitment that the Bidder’s offer is irrevocable until the earlier of (a) the Closing (as defined herein) and (b) 60 days following the Auction; and
2. except in the case of a Landlord bidding on a Lease to which such Landlord is a Landlord (each, a “Landlord Bid”):
  - a. a written offer for the purchase of one or more of the Leases, including the full name and identity of the proposed assignee of each individual Lease;
  - b. the Offer and Bidder Registration form (as provided herein);
  - c. the amount being offered for each individual Lease (in the form of an allocation schedule) if a bid is for more than one Lease;
  - d. the intended use of each Leased premises covered by each Lease included in a Bid;
  - e. with respect to each Lease on which a Bidder is submitting a Bid, an executed Sale Agreement;
  - f. financial information and other written evidence (including, without limitation, audited and unaudited financial statements, tax returns, bank account statements or any other documentation that the Debtors, in their sole discretion deem appropriate) demonstrating the Bidder’s ability to promptly consummate the transactions contemplated in the Bid, including evidence of adequate assurance of future performance by the Bidder (as described below); and
  - g. a binding commitment to be obligated for (i) leasehold obligations for such locations from and after the later of the date next following the conclusion of the Auction and the date the premises are vacated following the conclusion of the store closing sales at such premises and (ii) any year-end adjustment payments required under each Lease for calendar year 2007, without recourse to the Debtors or their estates for such adjustment amounts; and

- h. a certified check for a deposit (the “Deposit”) equal to the greater of (i) ten percent (10%) of the Bid amount or (ii) \$5,000, for each Lease on which a Bidder submits a Bid.
- 3. Each Bid, including Landlord Bids, must also fully disclose the identity of each entity that will be bidding for a Lease or otherwise participating in such Bid and the complete terms of any such participation.

**E. Additional Required Bid Documents for Landlord Bids and Additional Landlord Bid Procedures**

- 1. The Required Bid Documents for each Landlord Bid also includes:
  - a. a written offer for the purchase of one or more of such Leases to which such Landlord is a Landlord;
  - b. the gross amount offered for each individual Lease, including a breakdown identifying that portion that is payable in cash to the Debtors and that portion, if any, that is a “credit bid” (representing total outstanding documented and verifiable rental arrears); and
  - c. an executed Lease Termination Agreement for such Lease that must include a waiver and release of any and all claims arising under or related to such Lease that it may have against the Debtors, including claims arising under section 502 of the Bankruptcy Code, unless otherwise agreed to by the Debtors.
- 2. Each Landlord Bid may only credit bid an amount equal to the undisputed Cure Amount (as defined by the Lease Cure Procedures approved pursuant to the Order) unless otherwise agreed to by the Debtors.
- 3. To the extent that there are any amounts owing from the Landlord to the Debtors on account of such a Lease, including, but not limited to, costs related to tenant improvements, refunds of common area maintenance, real estate taxes or any similar obligations (each, a “TI Obligation”), each Landlord Bid, must bid at least the amount of such TI Obligation, excluding any credit bid.
- 4. A Lease Termination Agreement will become effective only if the Landlord executing such Lease Termination Agreement is the Successful Bidder (as defined herein) for the Lease that is the subject of the Landlord Bid and subject to approval by the Bankruptcy Court at the Sale Hearing (as defined herein).

## **F. Additional Disclosure Requirements**

With respect to any Leases for which a Bid is being submitted, each Bidder shall have an ongoing obligation to reasonably comply with the Debtors' further requests to provide additional information regarding such Bidder's ability to provide adequate assurances of future performance as that term is used in section 365 of the Bankruptcy Code.

## **G. Qualified Bids**

Unless such requirement is waived by the Debtors, only Bidders that have submitted "Qualified Bids" will be eligible to participate in the Auction (each, a "Qualified Bidder"). To be a Qualified Bid, the Bid must:

1. include each of the Required Bid Documents as set forth in subsections D and E, as applicable, and executed in form and substance acceptable to the Debtors, as applicable;
2. in the case of Landlord Bids, conform with the additional Landlord Bid procedures set forth in subsection E in form and substance acceptable to the Debtors; and
3. be actually received by the Bid Deadline.

## **H. Individual and Package Bids**

1. At the Bid Deadline, the Debtors will consider Bids for (a) an individual Lease, (b) the right to compel the Debtors to assume and assign an individual Lease to a party designated by the Bidder (each, a "Designation Right") and (c) Bids for a "package" of Leases or Designation Rights (each, a "Package Bid"); provided that an individual Lease included in a Package Bid may remain subject to individual Bids by Qualified Bidders, if any, at the Auction in the Debtors' sole discretion. The Debtors will have no obligation to consider Package Bids, if any, that were not submitted by the Bid Deadline.
2. Any individual Bid or Package Bid for the Debtors' Designation Rights must also conform to the requirements applicable to Qualified Bids for such Leases subject to such Designation Rights.
3. The submission of (a) Bids for individual Leases or Designation Rights or (b) Package Bids submitted by the Bid Deadline does not entitle such Bidder at the Auction to (x) submit additional Bids for additional Leases or Designation Rights or (y) create additional Package Bids that were not submitted by the Bid Deadline.

## **I. Deposit Requirements**

1. Each Deposit shall be remitted to an escrow agent (the “Escrow Agent”) as designated by Keen. The Escrow Agent will hold the Deposit of the Bidder that the Debtors believe has submitted the highest or otherwise best bid for each Lease at the Auction (each, a “Successful Bidder,” and each, a “Successful Bid”) and the Deposit of the Bidder that the Debtors believe has submitted the second-highest or otherwise second-best bid for each Lease at the Auction (each, a “Backup Bidder,” and each, a “Backup Bid”) at the Auction until the earlier to occur of (a) the Closing of a transaction for such Lease and (b) sixty days after the Auction.
2. The Debtors will cause the Escrow Agent to return the Deposits of all other Bidders no later than ten business days after the conclusion of the Sale Hearing. The Debtors’ sole obligation and liability to any Bidder will be to cause the Escrow Agent to refund the Deposit to such Bidder, if applicable.
3. Upon the failure of a Successful Bidder or Backup Bidder, as applicable, to consummate a sale of some or all of the Leases because of a breach or failure on the part of such Successful Bidder with respect to such Leases, the Debtors shall retain the entire Deposit as liquidated damages and, with respect to such a breach or failure on the part of the Successful Bidder, such Deposit will be deemed forfeited to the Debtors by such defaulting Successful Bidder, and no such Deposit will be credited against the purchase price paid by the Backup Bidder.

## **J. Cure Amounts**

Cure amounts, if any, shall be determined according to the Lease Cure Procedures authorized and approved by the Bankruptcy Court pursuant to the Order.

## **K. Auction**

1. Following the receipt of Qualified Bids, the Debtors will conduct an open Auction with respect to some or all of the Leases. The Auction shall commence on November 15, 2007 at 10:00 a.m. (prevailing Eastern Time) at the offices of Kirkland & Ellis LLP, Citigroup Center, 153 East 53rd Street, New York, New York. The Debtors reserve the right to change the location of the Auction in their sole discretion. Qualified Bidders are required to attend the Auction in person or in a manner otherwise approved by the Debtors in their sole discretion.
2. Unless otherwise agreed to by the Debtors, only Qualified Bidders will be allowed to attend and participate at the Auction. Opening bid amounts for each Lease may be announced or posted at the Auction. Such opening bid amounts will be established or modified by the Debtors in their sole discretion. All bidding

shall be in increments determined by the Debtors in their sole discretion. At the conclusion of the Auction, the Debtors will announce, for each Lease, which Bidder is the Successful Bidder and which Bidder is the Backup Bidder.

3. If the Debtors receive only a single Qualified Bid for a particular Lease, such Lease may be, but need not be, subject to bidding at the Auction, and the Debtors may seek to assume and assign such Lease at the Sale Hearing, if such Qualified Bid is acceptable to the Debtors. If the Debtors receive multiple Qualified Bids for a particular Lease, such Lease, unless previously sold, otherwise disposed of or withdrawn, will be offered for sale at the Auction, either as part of a Package Bid or individually.
4. Formal acceptance of a Bid will not occur unless and until the Bankruptcy Court enters an order approving and authorizing the Debtors to consummate such Lease Termination Agreement, Sale Agreement, Designation Rights Agreement, or other such disposition contemplated thereby.

#### **L. Reservation of Rights**

The Debtors reserve the right, in their sole discretion, to (1) determine which Bid, if any, for any or all of the Leases is the Successful Bid or the Backup Bid, (2) reject at any time prior to entry of an order of the Bankruptcy Court approving a Bid, any Bid (including any Landlord Bid) that the Debtors, in their sole and absolute discretion deem to be: (a) inadequate, insufficient or otherwise unacceptable, (b) not in conformity with the requirements of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), the Local Bankruptcy Rules for the United States Bankruptcy Court for the Eastern District of Virginia (the “Local Bankruptcy Rules”) or the Auction Procedures or (c) contrary to the best interests of the Debtors, their estates and creditors and (3) withdraw any Lease from the Auction or enter into appropriate agreements respecting the sale of such Lease, including, without limitation, stalking horse agreements, and seek separate Bankruptcy Court approval for such sales. The Debtors will have no obligation to accept or submit for Bankruptcy Court approval any Bid. The Debtors, at or before the Auction, and in their sole discretion, may impose such other or additional terms and conditions and may modify the Auction Procedures, in their sole discretion, as they determine to be in the best interests of the Debtors, their estates and creditors.

#### **M. Notice to Landlords of Proposed Sale, Assignment and Assumption to Successful Bidder or Backup Bidder**

No later than two business days after the conclusion of the Auction, with respect to all Leases for which there is a Successful Bidder (other than where the Landlord is the Successful Bidder) and a Backup Bidder, if any, the Debtors will promptly provide notice to all affected Landlords with the following information: (1) the names of the Successful Bidder and the Backup Bidder, if any, for the particular Lease; (2) evidence of adequate assurance of future performance that was submitted by the Successful Bidder and the Backup Bidder, if any, as part

of the Required Bid Documents; and (3) the proposed use of the premises by the Successful Bidder and the Backup Bidder, if any. All affected Landlords and any objecting parties will be required to timely submit any objections with respect to the sale, assignment and assumption of such Leases by the Sale Objection Deadline (as defined herein), that shall be heard at the Sale Hearing (as defined herein).

#### **N. Sale Hearing**

1. The Sale Hearing for approval of the proposed disposition of any Lease, including the sale, assignment and assumption of Leases pursuant to Sale Agreements, Lease Termination Agreements, shall be held on November 29, 2007 at 10:00 a.m. (prevailing Eastern Time). Any objections to the sale, assignment, and assumption or other disposition of any Lease to a Successful Bidder or Backup Bidder, if any, shall be filed no later than November 26, 2007 at 5:00 p.m. (prevailing Eastern Time) (the "Sale Objection Deadline"). Unless an objection is filed and served by the Sale Objection Deadline, all such entities shall be forever barred from asserting any additional objections to the sale, assignment, assumption, termination or other disposition of any Lease contemplated by the Auction process.
2. The Debtors shall present for approval at the Sale Hearing both the Successful Bid and the Backup Bid. Subject to Bankruptcy Court approval, the Debtors shall effect the sale, assumption and assignment or the lease termination, where applicable, with the Successful Bidder. If, for any reason, the bid of the Successful Bidder is not approved by the Bankruptcy Court or the Successful Bid does not result in a Closing, then, without notice to any other party or further Bankruptcy Court order, the Debtors shall be authorized to close the sale, assumption and assignment or the lease termination, where applicable, with the Backup Bidder.

#### **O. Closing**

1. The closing of a sale, transfer, termination, assumption, assignment or other disposition such Lease, including the assumption and assignment of a Lease pursuant to a Sale Agreement, a Lease Termination Agreement or the sale of Designation Rights (each, a "Closing"), will take place at a location to be designated by the Debtors on or before the Sale Hearing within the later of five business days (or an earlier date as agreed to by the relevant parties) following (a) the entry of an order by the Bankruptcy Court approving the transaction with the Successful Bidder and (b) the conclusion of the Store Closing Sale at the premises subject to such Lease (or other location mutually acceptable to the relevant parties). If a Successful Bid does not result in a Closing, the Backup Bidder shall proceed to Closing no later than three business days following the date of notification by the Debtors of default by the Successful Bidder.

2. With respect to the Closing, time of performance by the Successful Bidder or Backup Bidder, if applicable, is of the essence. The purchase price for the Leases, minus the Deposit (which shall be released to the Debtors), shall be paid by the Successful Bidder or the Backup Bidder, if applicable, by wire transfer (to an account designated by the Debtors) or by a bank or certified check (made payable to the appropriate entity designated by the Debtors) at the Closing.
3. Except with respect to any unresolved Cure Amount, after the Closing, the Debtors and their estates shall have no further liabilities or obligations with respect to the Leases, including, but not limited to, rent, taxes, insurance and common area maintenance fees (the "Post-Closing Obligations"). The Successful Bidder or the Backup Bidder, if applicable (or its assignee), is expressly responsible for all such Post-Closing Obligations. Provided, further, the Successful Bidder or the Backup Bidder, if applicable, shall pay any and all obligations that accrue, arise, are due or owing or are associated with the time period under the Lease from and after the later of (a) the date next following the conclusion of the Auction or (b) the date the premises are vacated following the conclusion of the Store Closing Sales at such premise.
4. To the extent that any of the Debtors act as a guarantor of another Debtor's Lease obligations (a "Debtor-Guarantor"), the Debtor-Guarantor's obligations with respect to such Lease shall terminate upon the Sale Agreement or Lease Termination Agreement for that Lease becoming effective.

**P. Other Provisions**

Any sale, assignment or other disposition of each of the Leases shall be without representations or warranties of any kind, nature or description. Each of the Leases to be sold or assigned shall be transferred on an "as is" and "where is" basis. Unless otherwise agreed to by the parties and approved by the Bankruptcy Court or abandoned by the Debtors, assignments of any Lease shall not include any personal property, inventory, fixtures, trade fixtures or other furnishings or equipment located in or at the premises and owned by the Debtors. All sales, transfer and recording taxes, stamp taxes or similar taxes, if any, relating to the assignment of the Leases or the sale of real or personal property of the Debtors in connection therewith will be the sole responsibility of the Successful Bidder or the Backup Bidder, if applicable, and will be paid to the Debtors at the Closing of each transaction.



## OFFER AND BIDDER REGISTRATION FORM<sup>4</sup>

\_\_\_\_\_ (“Bidder”) hereby offers to purchase and take assignment of the following leaseholds on an all-cash basis for the consideration allocated below:

Property Number:	Property Location:	Purchase Price:	Proposed Use:

(attach additional pages as necessary)

By submitting a Bid, each Bidder shall be deemed to acknowledge and acknowledges that it shall be bound by the following terms and conditions as set forth in the Auction Procedures:

1. any sale, assignment or other disposition of each Lease is without representations or warranties of any kind, nature or description;
2. the Bidder had an opportunity to, or waived the right to, inspect and examine each premises subject to each Lease that is the subject of such Bid and to review each applicable Lease and all other pertinent documents relating thereto prior to making its Bid;
3. the Bidder relied exclusively upon its own investigation and inspection of such documents and the each premises subject to each Lease that is the subject of such Bid in making the Bid. Copies of Leases will be available for inspection prior to the Auction during regular business hours at the offices of Keen Consultants, the Real Estate Division of KPMG Corporate Finance Realty LLC (“Keen”) or will be provided to entities upon written request to Keen or are available on Keen’s website at <http://www.keenconsultants.com>;

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<sup>4</sup> Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Auction Procedures.

4. the Debtors have retained Keen (the "Debtors' Broker") as their broker and if the Bidder uses a broker (each, a "Purchaser's Broker"), Bidder shall pay any commission, fees and charges charged by the Purchaser's Broker;
5. the Bidder shall indemnify the Debtors and the Debtors' Broker and hold the Debtors and the Debtors' Broker harmless from any claim, loss, liability, damage, cost and expense (including, without limitation, reasonable attorneys' fees, disbursements and court costs) paid or incurred by the Debtors and the Debtors' Broker by reason of any claim to any broker's commission, finder's fee or other fee asserted by the Purchaser's Broker in connection with the Sale Agreement or any other transaction contemplated hereby;
6. the Bidder is not relying upon any written or oral statements, representations or warranties of the Debtors, Debtors' Broker, their agents, representatives, consultants or attorneys; and
7. the Required Bid Documents may be provided by the Debtors to non-Debtor parties to such Leases (each, a "Landlord") as evidence of such Bidders' ability to provide adequate assurances of future performance by the Bidder.

AGREED & ACCEPTED this \_\_\_\_ day of \_\_\_\_\_, 2007.

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Bidder's Address: \_\_\_\_\_

Bidder's Contact: \_\_\_\_\_

Bidder's Phone: \_\_\_\_\_

Bidder's Facsimile Number: \_\_\_\_\_

Bidder's Email Address: \_\_\_\_\_

Bidder's Tax I.D. Number: \_\_\_\_\_

Bidder's Attorney: \_\_\_\_\_

Bidder's Attorney's Address: \_\_\_\_\_

Bidder's Attorney's Phone: \_\_\_\_\_

Bidder's Attorney's Facsimile Number: \_\_\_\_\_

Bidder's Attorney's Email Address: \_\_\_\_\_

Bidder's Bank Name: \_\_\_\_\_  
Bidder's Bank Contact: \_\_\_\_\_  
Bidder's Bank Address: \_\_\_\_\_  
Bidder's Bank Contact's Phone: \_\_\_\_\_  
Bidder's Bank Facsimile Number: \_\_\_\_\_  
Bidder's Bank Email Address: \_\_\_\_\_

## LEASES

## **EXHIBIT 2**

**[Auction Notice]**

Richard M. Cieri (NY 4207122)  
KIRKLAND & ELLIS LLP  
Citigroup Center  
153 East 53rd Street  
New York, New York 10022-4611  
Telephone: (212) 446-4800

and

Anup Sathy, P.C. (IL 6230191)  
Marc J. Carmel (IL 6272032)  
KIRKLAND & ELLIS LLP  
200 East Randolph Drive  
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Telephone: (312) 861-2000

Proposed Co-Counsel to the Debtors

Michael A. Condyles (VA 27807)  
Peter J. Barrett (VA 46179)  
KUTAK ROCK LLP  
Bank of America Center  
1111 East Main Street, Suite 800  
Richmond, Virginia 23219-3500  
Telephone: (804) 644-1700

**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.	)	
	)	

**NOTICE OF AN AUCTION PROCESS AND SOLICITATION OF BIDS FOR THE  
DEBTORS' INTERESTS IN CERTAIN NONRESIDENTIAL REAL PROPERTY  
LEASES AND OF THE TERMS AND CONDITIONS OF SUCH AUCTION**

**PLEASE TAKE NOTICE** that on October 16, 2007, the above-captioned debtors (collectively, the "Debtors") filed with the United States Bankruptcy Court for the Eastern District of Virginia (the "Bankruptcy Court"), a motion (the "Motion")<sup>2</sup> seeking the entry of an order authorizing an auction process and approving bid procedures for the disposition of the Debtors' interests in certain nonresidential real property leases (the "Auction Procedures and the "Leases"). A copy of the Auction Procedures is attached hereto as Attachment I. A list of all

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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 but not otherwise herein shall have the meanings set forth in the Order (as defined herein).

leases subject to the Auction are attached to the Auction Procedures. A copy of the Motion may be obtained at [www.kccllc.net/moviegallery](http://www.kccllc.net/moviegallery).

**PLEASE TAKE FURTHER NOTICE** that, on October \_\_\_\_, 2007, the Bankruptcy Court entered an Order Authorizing an Auction Process and Approving Bid Procedures for the Disposition of the Debtors' Interests in Certain Nonresidential Real Property Leases and Granting Related Relief (the "Order"), including the approval of the Auction Procedures [Docket No. ]. A copy of the Order may be obtained at [www.kccllc.net/moviegallery](http://www.kccllc.net/moviegallery).

**PLEASE TAKE FURTHER NOTICE** that, pursuant to the Order, commencing on November 15, 2007 at 10:00 a.m. (prevailing Eastern Time), the Debtors shall hold one or more auctions (collectively, the "Auction") for the Leases at the offices of Kirkland & Ellis LLP, Citigroup Center, 153 East 53rd Street, New York, New York. Only Qualified Bidders (as defined in the Auction Procedures) may attend and participate in the Auction. Qualified Bidders must participate in the Auction in person or in a manner otherwise approved by the Debtors in their sole discretion.

**PLEASE TAKE FURTHER NOTICE** that the Auction will be subject to the attached Auction Procedures.

**PLEASE TAKE FURTHER NOTICE** that, as part of the Motion, the Debtors have also requested the entry of an order authorizing the Debtors to sell, assume, and assign the Leases, sell designation rights and enter into lease termination agreements, and that this further request for relief is scheduled to be heard (subject to possible adjournment) by the Bankruptcy Court on November 29, 2007 at 10:00 a.m. (prevailing Eastern Time).

**PLEASE TAKE FURTHER NOTICE** that, pursuant to the Order, objections to the transactions contemplated by the Auction (each, a "Sale Objection") must be filed with the Bankruptcy Court and served so as to be actually received by (a) counsel for the Debtors, Kirkland & Ellis LLP, 200 East Randolph Drive, Chicago, Illinois 60601, Attn: Anup Sathy, P.C. and Marc J. Carmel and Kutak Rock LLP, Bank of America Center, 1111 East Main Street, Suite 800, Richmond, Virginia 23219, Attn: Michael A. Condyles and Peter J. Barrett and (b) other parties as required by the Order Establishing Certain Notice, Case Management and Administrative Procedures [Docket No. ] on or before November 26, 2007 at 5:00 p.m. (prevailing Eastern Time) (the "Sale Objection Deadline").

**PLEASE TAKE FURTHER NOTICE** that unless a Sale Objection is filed and served by the Sale Objection Deadline, all such entities shall be forever barred from asserting any additional objections to the sale, assignment, assumption, termination or other disposition of any Lease contemplated by the Auction process.

**PLEASE TAKE FURTHER NOTICE** that you may obtain information with regard to the Leases and the Auction by contacting the Debtors' retained real estate consultants, Keen Consultants, the Real Estate Division of KPMG Corporate Finance Realty LLC, 60 Cutter Mill Road, Suite 214, Great Neck, New York 11021, Telephone: (516) 482-2700, Facsimile: (516) 482-5764, Attn: Matthew Bordwin.



Richmond, Virginia

Dated: October \_\_, 2007

/s/ Michael A. Condyles

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Richard M. Cieri (NY 4207122)

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Citigroup Center

153 East 53rd Street

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and

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Michael A. Condyles (VA 27807)

Peter J. Barrett (VA 46179)

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Telephone: (804) 644-1700

Facsimile: (804) 783-6192

Proposed Co-Counsel to the Debtors

## **EXHIBIT 3**

### **[Lease Cure Procedures]**

Richard M. Cieri (NY 4207122)  
KIRKLAND & ELLIS LLP  
Citigroup Center  
153 East 53rd Street  
New York, New York 10022-4611  
Telephone: (212) 446-4800

and

Anup Sathy, P.C. (IL 6230191)  
Marc J. Carmel (IL 6272032)  
KIRKLAND & ELLIS LLP  
200 East Randolph Drive  
Chicago, Illinois 60601-6636  
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Richmond, Virginia 23219-3500  
Telephone: (804) 644-1700

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.	)	
	)	

**LEASE CURE PROCEDURES RELATED TO THE ORDER AUTHORIZING AN  
AUCTION PROCESS AND APPROVING BID PROCEDURES FOR THE DISPOSITION  
OF THE DEBTORS' INTERESTS IN CERTAIN NONRESIDENTIAL REAL  
PROPERTY LEASES AND GRANTING RELATED RELIEF**

On October \_\_, 2007, the United States Bankruptcy Court for the Eastern District of Virginia (the "Bankruptcy Court") entered the Order Authorizing an Auction Process and Approving Bid Procedures for the Disposition of the Debtors' Interests in Certain Nonresidential Real Property Leases and Granting Related Relief (the "Order") [Docket No. \_\_\_\_]. Pursuant to the Order, the following Lease Cure Procedures were approved for the determination of cure amounts applicable to the Leases during the pendency of these chapter 11 cases.<sup>2</sup>

<sup>1</sup> The Debtors in the cases include: Movie Gallery, Inc.; Hollywood Entertainment Corp.; 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 Order.

1. The Debtors will send notice by facsimile, e-mail, hand or overnight mail of the potential Disposition of the Leases (the “Notice of Disposition”) to Landlords no later than two business days following entry of the Order by the Bankruptcy Court. The Notice of Disposition will contain, among other things, (a) the amount of all the Debtors’ outstanding obligations under the Leases through the Commencement Date (the “Cure Amounts”) and (b) the date by which Landlords must file any objection to the Cure Amounts (each, a “Cure Objection”), on or before November 2, 2007, at 5:00 p.m. (prevailing Eastern Time) (the “Cure Objection Deadline”).
2. Cure Objections, if any, shall be filed with the Bankruptcy Court and served so as to be actually received by (a) counsel for the Debtors: Kirkland & Ellis LLP, 200 East Randolph Drive, Chicago, Illinois 60601, Attn: Anup Sathy, P.C. and Marc J. Carmel and Kutak Rock LLP, Bank of America Center, 1111 East Main Street, Suite 800, Richmond, Virginia 23219, Attn: Michael A. Condyles and Peter J. Barrett and (b) other parties as required by the Order Establishing Certain Notice, Case Management and Administrative Procedures [Docket No. ] on or before the Cure Objection Deadline.
3. Cure Objections must (a) be in writing, (b) identify the Leases to which the objector is a party, (c) to the extent applicable, describe with particularity the Landlord’s belief of the additional amounts due and owing under the relevant Lease in excess of the Cure Amounts (the “Excess Cure Amount”) and identify the bases of the Excess Cure Amount under the Lease and (d) include all relevant documents supporting or evidencing the Excess Cure Amount.
4. Unless a Cure Objection is filed and served by the Cure Objection Deadline with a demand for an Excess Cure Amount, all such Landlords shall be (a) forever barred from asserting any additional Cure Amounts with respect to such Lease and (b) forever barred and estopped from asserting or claiming against the Debtors or any Successful Bidder, Backup Bidder or any other assignee of the relevant Lease that any additional amounts are due or that any defaults exist, or that there are any conditions to assumption and assignment by the Debtors with respect to Cure Amounts that must be satisfied under such Lease unless otherwise ordered by the Bankruptcy Court.
5. Timely filed Cure Objections, if any, shall be heard by the Bankruptcy Court at a hearing scheduled for November 8, 2007, at 10:00 a.m. (prevailing Eastern Time) (the “Cure Hearing”).
6. No later than ten business days after the Closing of the sale, assignment and assumption of a Lease, all undisputed Cure Amounts owed to a Landlord will be paid to the Landlord. No dispute regarding Cure Amounts will delay any Closing, and Successful Bidders or Backup Bidders, where applicable, will be required to

consummate their respective Closings notwithstanding pending disputes, if any, regarding Cure Amounts.

## **EXHIBIT 4**

**[Notice of Disposition]**

Richard M. Cieri (NY 4207122)  
KIRKLAND & ELLIS LLP  
Citigroup Center  
153 East 53rd Street  
New York, New York 10022-4611  
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Michael A. Condyles (VA 27807)  
Peter J. Barrett (VA 46179)  
KUTAK ROCK LLP  
Bank of America Center  
1111 East Main Street, Suite 800  
Richmond, Virginia 23219-3500  
Telephone: (804) 644-1700

and

Anup Sathy, P.C. (IL 6230191)  
Marc J. Carmel (IL 6272032)  
KIRKLAND & ELLIS LLP  
200 East Randolph Drive  
Chicago, Illinois 60601-6636  
Telephone: (312) 861-2000

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.	)	
	)	

**NOTICE OF DISPOSITION OF THE DEBTORS' INTERESTS IN  
CERTAIN NONRESIDENTIAL REAL PROPERTY LEASES**

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**PLEASE TAKE NOTICE** that on October 16, 2007, the above-captioned debtors (collectively, the "Debtors") filed petitions commencing cases under the Bankruptcy Code, 11 U.S.C. §§ 101-1532 (the "Bankruptcy Code"), in the United States Bankruptcy Court for the Eastern District of Virginia (the "Bankruptcy Court").<sup>2</sup>

**PLEASE TAKE FURTHER NOTICE** that on October \_\_, 2007, the Bankruptcy Court entered an Order Authorizing an Auction Process and Approving Bid Procedures for the Disposition of the Debtors' Interests in Certain Nonresidential Real Property

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

<sup>2</sup> Capitalized terms but not otherwise herein shall have the meanings set forth in the Order or the Auction Procedures, where applicable.

Leases and Granting Related Relief (the “Order”) [Docket No. ] authorizing an auction (the “Auction”) and approving bid procedures for the disposition of the Debtors’ interests in certain nonresidential real property leases (the “Auction Procedures”). A copy of the Order is attached hereto as Attachment I. Pursuant to the Order, the Debtors hereby notify you that the Debtors intend to auction their rights under those unexpired leases identified by the Auction Procedures, set forth on Attachment II (collectively, the “Leases”).

**PLEASE TAKE FURTHER NOTICE** that the Debtors may seek to enter into lease termination agreements with the landlords for such Leases pursuant to the Auction (each, a “Landlord”).

**PLEASE TAKE FURTHER NOTICE** that, pursuant to the Order, the Bankruptcy Court authorized certain lease cure procedures for the determination of cure amounts applicable to the Leases during the pendency of these chapter 11 cases (the “Lease Cure Procedures”), set forth on Attachment III.

**PLEASE TAKE FURTHER NOTICE** that the Debtors have identified their outstanding obligations — i.e., the cost to cure such defaults, if any — on the relevant Leases (each, a “Cure Amount”). The Cure Amounts are set forth on Attachment II.

**PLEASE TAKE FURTHER NOTICE** that if any party objects to the Cure Amounts set forth on Attachment II, such objections, if any, shall be filed with the Bankruptcy Court and served so as to be actually received on or before November 2, 2007, at 5:00 p.m. (prevailing Eastern Time) (the “Cure Objection Deadline”) by (a) counsel for the Debtors: Kirkland & Ellis LLP, 200 East Randolph Drive, Chicago, Illinois 60601, Attn: Anup Sathy, P.C. and Marc J. Carmel and Kutak Rock LLP, Bank of America Center, 1111 East Main Street, Suite 800, Richmond, Virginia 23219, Attn: Michael A. Condyles and Peter J. Barrett and (b) other parties as required by the Order Establishing Certain Notice, Case Management and Administrative Procedures [Docket No. ] (each a “Cure Objection”).

**PLEASE TAKE FURTHER NOTICE** that Cure Objections must (a) be in writing, (b) identify the Leases to which the objector is a party, (c) to the extent applicable, describe with particularity the Landlord’s belief of the additional amounts due and owing under the relevant Lease in excess of the Cure Amounts (the “Excess Cure Amount”) and identify the bases of the Excess Cure Amount under the Lease and (d) include all relevant documents supporting or evidencing the Excess Cure Amount.

**PLEASE TAKE FURTHER NOTICE** that unless a Cure Objection objection is filed and served by the Cure Objection Deadline, any such party shall be (a) forever barred from asserting any additional Cure Amounts with respect to such Lease and (b) forever barred and estopped from asserting or claiming against the Debtors or any Successful Bidder, Backup Bidder or any other assignee of the relevant Lease that any additional amounts are due or that any defaults exist, or that there are any conditions to assumption and assignment with respect to Cure Amounts by the Debtors that must be satisfied under such Lease.



**PLEASE TAKE FURTHER NOTICE** that timely filed Cure Objections, if any, will be heard by the Bankruptcy Court at a hearing scheduled for November 8, 2007, at 10:00 a.m. (prevailing Eastern Time) (the “Cure Hearing”).

Richmond, Virginia

Dated: October \_\_, 2007

/s/ Michael A. Condyles

---

Richard M. Cieri (NY 4207122)

KIRKLAND & ELLIS LLP

Citigroup Center

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New York, New York 10022-4611

Telephone: (212) 446-4800

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and

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and

Michael A. Condyles (VA 27807)

Peter J. Barrett (VA 46179)

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Telephone: (804) 644-1700

Facsimile: (804) 783-6192

Proposed Co-Counsel to the Debtors

## **EXHIBIT 5**

**[Sale Agreement]**

### **Sale Agreement**

THIS SALE, ASSIGNMENT AND ASSUMPTION OF LEASE AGREEMENT (the "Agreement") is made this \_\_\_\_ day of \_\_\_\_\_, 2007, by and between \_\_\_\_\_ (the "Assignor"), and \_\_\_\_\_ a, \_\_\_\_\_, (the "Assignee," and collectively, the "Parties").

#### **W I T N E S S E T H:**

WHEREAS, Assignor is a tenant under the lease (or sublease) and amendments, if any, set forth in Exhibit A (the "Lease"). The premises covered by said Lease are described in Exhibit B (the "Demised Premises"); and

WHEREAS, Assignor is a debtor in possession under chapter 11 of the Bankruptcy Code, 11 U.S.C. §§ 101–1532 (the "Bankruptcy Code"), in the United States Bankruptcy Court for the Eastern District of Virginia (the "Bankruptcy Court"), consolidated under Case No. \_\_\_\_\_; and

WHEREAS, subject to the approval of the Bankruptcy Court, Assignor desires to sell, assume, assign, convey and transfer all of its rights, title and interests as tenant under the Lease; and

WHEREAS, Assignee desires to purchase and accept such assignment and assume all rights, title, interests and obligations of Assignor under the Lease, subject to the conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the receipt and sufficiency of which is hereby reciprocally acknowledged, Assignor and Assignee agree as set forth below:

1. Bidding Procedures. This Agreement is made subject to, and in accordance with, those Auction Procedures for the Disposition of the Debtors' Interests in Certain Nonresidential Real Property Leases (the "Auction Procedures") approved by the Bankruptcy Court pursuant to the Order Authorizing an Auction Process and Approving Bid Procedures for the Disposition of the Debtors' Interests in Certain Nonresidential Real Property Leases and Granting Related Relief [Docket No. \_\_\_\_]. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Auction Procedures. In the event of a contradiction between this Agreement and the Auction Procedures, the Auction Procedures shall control.
2. Assignment and Assumption. As of the Effective Date (as defined herein), pursuant to sections 363 and 365 of the Bankruptcy Code, Assignor hereby sells, assumes and assigns to Assignee without representation or warranty of any kind

all of Assignor's right, title, interest, and obligations under the Lease and the security deposit under the Lease, if any, inclusive of any accrued but unpaid interest (the "Security Deposit"), to the extent the Security Deposit has not previously been applied against the obligations of Assignor under the Lease in consideration of which Assignee shall pay Assignor immediately, but not later than the Effective Date, without demand in good funds the sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) (the "Lease Consideration"), and Assignee hereby purchases and assumes all of Assignor's right, title, interest, and obligations as tenant thereunder.

3. Property Consideration. Assignee shall pay to Assignor, without demand, in good funds the sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) (the "Property Consideration") on or before the Effective Date. Such Property Consideration is for tenant improvements, trade fixtures, or personal property, if any, paid for by Assignor (the "Tenant Property"). A list of the Tenant Property is attached as Exhibit C. With respect to any Tenant Property listed on Exhibit C, Assignor does hereby sell, transfer and assign all its right, title and interest therein to Assignee as of the Effective Date.
4. Effective Date. The assignment, assumption and transfer in this Agreement shall take effect on \_\_\_\_\_, but in any event within the later of five (5) business days following the (a) entry of an order by the Bankruptcy Court approving the transaction contemplated herein or (b) conclusion of the Store Closing Sale(s) at the Demised Premises (the "Effective Date"), subject to satisfaction of the conditions precedent set forth in Section 5 below (the "Conditions Precedent"). If the Conditions Precedent are not satisfied on or before the Effective Date, this Agreement may be terminated by either of the Parties upon five (5) business days' written notice.
5. Conditions Precedent. The rights, obligations and duties of the Parties are expressly conditioned upon (a) the Bankruptcy Court entering an order approving this Agreement and the assumption, assignment and transfer contemplated under this Agreement on substantially the terms provided herein, (b) payment by Assignee to Assignor of the Lease Consideration and the Property Consideration, if any, (c) the payment by Assignee to Assignor of the amount of the Security Deposit and (d) the delivery of the Demised Premises and the Tenant Property, if any, by Assignor in the condition specified in Section 8 below.
6. Trade Name. Assignee shall not have the right to operate under the Movie Gallery, Hollywood Entertainment and Game Crazy trade names or to use the marks and other intellectual property of the Assignor or their related or affiliated entities (each, a "Proprietary Mark") absent such rights being granted pursuant to a separate agreement.

7. Notices.

- a. All notice demands required and desired to be given by Assignor or Assignee shall be in writing and served by (i) prepaid overnight courier services, (ii) prepaid United States registered mail or (iii) prepaid certified mail (each, a “Notice”).
- b. Each Notice shall be addressed as provided herein (or as otherwise agreed to in writing by the Parties).

i. **TO ASSIGNOR:**

Movie Gallery, Inc.  
Attn: Jeffry B. Gordon  
900 West Main Street  
Dothan, Alabama 36301  
Facsimile: (334) 836-3626

With a copy thereof, which shall not constitute notice to:

Kirkland & Ellis LLP  
Attn: Anup Sathy, P.C. and Marc J. Carmel  
200 East Randolph St.  
Chicago, Illinois 60601  
Facsimile: (312) 861-2200;

Kutak Rock LLP  
Attn: Michael A. Condyles and Peter J. Barrett  
Bank of America Center  
1111 East Main Street, Suite 800  
Richmond, Virginia 23219  
Facsimile: (804) 783-6192; and

Keen Consultants, the Real Estate Division of KPMG  
Corporate Finance Realty LLC  
Attn: Matthew Bordwin  
60 Cutter Mill Road, Suite 214  
Great Neck, New York 11021  
Facsimile: (516) 482-5764

ii. **TO ASSIGNEE:**

with a copy thereof, which shall not constitute notice, to:

- c. Notices shall be deemed given and served (i) upon receipt or refusal, if delivered personally or by certified or registered mail or (ii) one business day after deposit with an overnight courier service.

8. Delivery; "AS IS" Transaction.

- a. Assignee acknowledges that it has fully inspected or waived the right to inspect the Demised Premises prior to the execution of this Agreement and does hereby assume all of the risks, including, but not limited to, latent defects in the Demised Premises. Assignor shall not be obligated to do any pre-occupancy work or make any repairs in or to the Demised Premises, except that Assignor may remove all equipment and personal property from the Demised Premises that is not part of the Tenant Property, if any. If Assignor abandons any equipment or personal property at the Demised Premises, then Assignee shall remove, and shall not use, any such equipment or personal property that bears any Proprietary Marks. Any work (including demolition) which may be necessary to adapt the Demised Premises for Assignee's occupancy or for the operation of Assignee's business therein shall be the sole responsibility of Assignee and shall be performed by Assignee at its sole cost and expense, in accordance with the terms of the Lease. Immediately following the Effective Date, Assignee, at its sole cost and expense, shall remove any signs and fixtures identifying the Demised Premises that bear any of the Proprietary Marks, and Assignee shall not use any such signs or fixtures that bear any of the Proprietary Marks (the "Proprietary Signs and Fixtures") or use any Proprietary Marks in any advertising or promotions related to the Demised Premises. Assignor shall have the right to enter the Demised Premises after the Effective Date as necessary for Assignor to determine whether Assignee has complied with its obligations under this Section 8(a). If Assignee has not removed all Proprietary Signs and Fixtures, then Assignor shall have the right, at Assignee's cost and expense, to enter the Demised Premises and remove the Proprietary Signs and Fixtures.
- b. ASSIGNEE HEREBY ACKNOWLEDGES AND AGREES THAT ASSIGNOR MAKES NO REPRESENTATIONS OR WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO ANY MATTER RELATED TO THE

LEASE OR THE DEMISED PREMISES OR THE TENANT PROPERTY, IF ANY (INCLUDING, WITHOUT LIMITATION, INCOME TO BE DERIVED FROM OR EXPENSES TO BE INCURRED IN CONNECTION WITH THE DEMISED PREMISES; THE PHYSICAL CONDITION OF THE DEMISED PREMISES; THE PRESENCE OR ABSENCE OF ANY HAZARDOUS MATERIALS IN, ON OR ABOUT THE DEMISED PREMISES OR ANY OTHER MATTER RELATED TO THE ENVIRONMENTAL CONDITION OF THE DEMISED PREMISES; THE ZONING OF THE DEMISED PREMISES; THE POSSIBILITY OF DEVELOPING OR USING THE DEMISED PREMISES IN THE MANNER CONTEMPLATED BY ASSIGNEE OR OBTAINING ANY CONSENTS, APPROVALS, PERMITS, AUTHORIZATIONS OR ENTITLEMENTS IN CONNECTION THEREWITH; THE VALUE OF THE LEASE OR THE DEMISED PREMISES OR THE TENANT PROPERTY, IF ANY; THE FITNESS OF THE DEMISED PREMISES OR THE TENANT PROPERTY, IF ANY, FOR ANY PARTICULAR PURPOSE OR USE; THE ACCURACY, COMPLETENESS, OWNERSHIP OR TRANSFERABILITY OF ANY DOCUMENTS OR OTHER MATERIALS FURNISHED TO ASSIGNEE WITH RESPECT TO THE DEMISED PREMISES OR THE TENANT PROPERTY, IF ANY (OR ANY PORTION THEREOF); TITLE TO THE DEMISED PREMISES OR THE TENANT PROPERTY, IF ANY; OR ANY OTHER MATTER OR THING RELATED TO THE LEASE OR THE DEMISED PREMISES OR THE TENANT PROPERTY, IF ANY). ASSIGNEE ALSO ACKNOWLEDGES THAT ASSIGNEE HAS CONDUCTED OR WAIVED THE RIGHT TO CONDUCT AN INDEPENDENT INSPECTION AND INVESTIGATION OF THE PHYSICAL AND ENVIRONMENTAL CONDITION OF THE DEMISED PREMISES AND ALL SUCH OTHER MATTERS RELATED TO OR AFFECTING THE DEMISED PREMISES AND/OR THE LEASE AND/OR THE TENANT PROPERTY, IF ANY, AS ASSIGNEE DEEMED NECESSARY OR APPROPRIATE AND ASSIGNEE IS ACQUIRING THE LEASE AND THE DEMISED PREMISES AND THE TENANT PROPERTY, IF ANY, BASED SOLELY UPON SUCH INDEPENDENT INSPECTIONS AND INVESTIGATIONS OR ASSIGNEE'S INDEPENDENT JUDGMENT. ACCORDINGLY, ASSIGNEE HEREBY ACCEPTS THE DEMISED PREMISES AND THE TENANT PROPERTY, IF ANY, "AS IS" AND "WITH ALL FAULTS."



9. Assumption by Assignee. In further consideration of the above assignment, Assignee, as and from the Effective Date, hereby accepts the assignment evidenced hereby and assumes and agrees (a) to make all of the payments and perform all of the covenants, conditions and agreements of the Lease as if the Assignee were the original tenant under the Lease and (b) that except as amended by the terms of this Agreement, the Lease shall remain in full force and effect. After the Effective Date, the Assignor shall have no further liabilities or obligations with respect to the Lease, including, but not limited to, rents, taxes, insurance and common area maintenance (the "Post Effective Date Obligations"). Assignee is expressly responsible for all Post Effective Date Obligations. Assignee shall pay any and all obligations that accrue, arise, are due or owing and/or are associated with the time period under the Lease from and after the Effective Date. Assignee shall receive the benefits and burdens for all year-end adjustments for calendar year 2007 and thereafter and shall indemnify and hold harmless Assignor with respect thereto. Assignee agrees that Assignor shall have no further liability whatsoever with respect to the Lease from and after the Effective Date.
10. Release; Indemnity. Pursuant to section 365(k) of the Bankruptcy Code, on and after the Effective Date, Assignee agrees to defend and indemnify Assignor against, and hold Assignor harmless from, any and all claims, actions, proceedings, suits, costs, liabilities, losses, damages or expenses arising or occurring after the Effective Date in connection with the Lease or the Demised Premises or the Tenant Property, if any, including, without limitation, the performance or observance or the failure or refusal to perform or observe any agreement or obligation of the tenant under the Lease or any term or provision thereof required to be performed by the tenant under the Lease after the Effective Date.
11. Successors. This Agreement shall be binding on and inure to the benefit of the Parties and their respective successors and assigns.
12. Ratification. Except as herein modified, the Lease is ratified and confirmed and shall remain in full force and effect.
13. Counterparts. This Agreement may be executed in any number of counterparts and all counterparts shall be construed together and shall constitute but one Agreement.
14. Applicable Law; Jurisdiction and Venue. This Agreement shall be construed under the laws of the Bankruptcy Court, and any disputes shall be resolved by the Bankruptcy Court which shall have exclusive jurisdiction at all times that the Assignor's bankruptcy case is pending. Each of the Parties irrevocably consents

for all purposes of this Agreement to the jurisdiction of the Bankruptcy Court and agrees that venue is proper in the Bankruptcy Court.

15. Brokerage. Assignee shall indemnify and hold Assignor harmless from and against any and all claims for brokerage fees. Any broker retained by or providing services to Assignee in connection with this transaction shall be compensated solely by Assignee without contribution from Assignor.
16. Assignor's Rights. Notwithstanding anything else contained in this Agreement to the contrary, Assignor retains, in its sole discretion, the right to terminate this Agreement without prior notice, without incurring any liability to Assignee with respect to such termination, at or prior to the Auction for any and all reasons. Assignee shall not object to such termination, but provided Assignee is not in default hereunder, shall be entitled to the return of its Deposit if otherwise entitled to the same under this Agreement.
17. Entire Agreement. Subject to Section 1, this Agreement represents the Parties' mutual understandings and supersedes all prior agreements whether in oral or written form.
18. Taxes. Any and all sales, transfer and recording taxes, stamp taxes or similar taxes, if any, relating to the sale, assignment and/or assumption of the Lease pursuant to this Agreement shall be the sole responsibility of Assignee and shall be paid, if applicable, to the proper governing body on the Effective Date.
19. Prevailing Party. If any action is brought by either of the Parties against the other, then the prevailing Party shall be entitled to recover from the other Party court costs and reasonable attorneys' fees and costs actually incurred.
20. Drafting. This Agreement is deemed to have been drafted jointly by the Parties, and any uncertainty or ambiguity shall not be construed for or against either of the Parties as an attribution of drafting to such Party.
21. Additional Instruments. The Parties agree to execute such additional instruments as may be reasonably necessary to carry out the provisions of this Agreement.

[SIGNATURE PAGE FOLLOWS]

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

**ASSIGNOR**

**[Name]**

**ASSIGNEE**

**[Name]**

a **[STATE OF INCORPORATION]**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

[Add Witnesses if Necessary]

## **EXHIBIT 6**

### **[Lease Termination Agreement]**

### **Lease Termination Agreement**

THIS LEASE TERMINATION AGREEMENT (the "Agreement") is made as of this \_\_\_\_ day of \_\_\_\_\_, 2007, by and between \_\_\_\_\_ ("Landlord") and \_\_\_\_\_, a [STATE OF INCORPORATION] \_\_\_\_\_, as debtor and debtor in possession ("Tenant," and collectively, the "Parties").

#### **W I T N E S S E T H:**

WHEREAS, Landlord and Tenant entered into a certain lease dated \_\_\_\_\_ (as the same may have been amended from time to time, the "Lease"), covering certain premises commonly known as \_\_\_\_\_ (the "Premises"), on the terms and conditions set forth therein; and

WHEREAS, Tenant is a debtor in possession under chapter 11 of the Bankruptcy Code, 11 U.S.C. §§ 101–1532 (the "Bankruptcy Code"), in the United States Bankruptcy Court for the Eastern District of Virginia (the "Bankruptcy Court"), consolidated under Case No. \_\_\_\_\_; and

WHEREAS, subject to the approval of the Bankruptcy Court, the Parties desire to terminate the Lease effective as of \_\_\_\_\_ or such later date as may be elected by Tenant (which election shall be made prior to such date), which in any event shall be within the later of five (5) business days following (a) the entry of an order by the Bankruptcy Court approving the transaction contemplated herein (the "Bankruptcy Order") or (b) the conclusion of the Store Closing Sale(s) at the Premises (the "Termination Date").

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the receipt and sufficiency of which is hereby reciprocally acknowledged, Landlord and Tenant agree as set forth below:

1. **Bidding Procedures.** This Agreement is made subject to, and in accordance with, those Auction Procedures for the Disposition of the Debtors' Interests in Certain Nonresidential Real Property Leases (the "Auction Procedures") approved by the Bankruptcy Court pursuant to the Order Authorizing an Auction Process and Approving Bid Procedures for the Disposition of the Debtors' Interests in Certain Nonresidential Real Property Leases and Granting Related Relief [Docket No. \_\_\_\_]. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Auction Procedures. In the event of a contradiction between this Agreement and the Auction Procedures, the Auction Procedures shall control.
2. **Termination Date.** The Lease shall terminate on the Termination Date as if the Termination Date were set forth in the Lease as the expiration date of the term of the Lease.

3. Consideration. Within one (1) business day after the Termination Date, Landlord shall pay to Tenant the sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_).
4. Trade Name. Landlord shall not have the right to operate under the Movie Gallery, Hollywood Entertainment and Game Crazy trade names or to use the marks and other intellectual property of the Tenant or their related or affiliated entities (each, a "Proprietary Mark") absent such rights being granted pursuant to a separate agreement.
5. Delivery; "AS IS" Transaction. As of the Termination Date, Tenant hereby surrenders the Premises to Landlord and does hereby give, grant and surrender unto Landlord all of Tenant's rights, title and interests in and to the Premises, including, without limitation, all of Tenant's rights, title and interests in, to and under the Lease, and Landlord hereby accepts such surrender. Landlord agrees to accept the Premises in "AS IS, WHERE IS" condition, with all faults, whether known or unknown. Landlord hereby acknowledges and agrees that Landlord is not relying on any representation of Tenant regarding the physical condition of the Premises, any environmental matters affecting the Premises or the suitability of the Premises for any particular purpose. Except as otherwise expressly provided herein, each of the Parties acknowledges performance of all obligations of the other party under the Lease or otherwise in connection with the Premises through and including the Termination Date. The Lease is hereby agreed to be null and void and of no further force and effect as of the Termination Date. In addition, any and all rights and obligations of the Parties to each other that may have arisen in connection with the Premises shall be deemed to have expired and terminated as of the Termination Date. Immediately following the Termination Date, Landlord, at its sole cost and expense, shall remove any signs and fixtures identifying the Premises that bear any of the Proprietary Marks, and Landlord shall not use any such signs or fixtures that bear any of the Proprietary Marks (the "Proprietary Signs and Fixtures") or use any Proprietary Marks in any advertising or promotions related to the Premises. Tenant shall have the right to enter the Premises after the Termination Date as necessary for Tenant to determine whether Landlord has complied with its obligations under this Section 5. If Landlord has not removed all Proprietary Signs and Fixtures, then Tenant shall have the right, at Landlord's cost and expense, to enter the Premises and remove the Proprietary Signs and Fixtures.
6. Release. As of the Termination Date, except as to the obligations of Tenant expressly set forth in this Agreement, Landlord, for itself, its successors and assigns, does hereby release and discharge Tenant, Tenant's affiliates, owners, parent companies and subsidiaries, and their respective past, present and future shareholders, officers, directors, employees, agents, attorneys, representatives, guarantors and predecessors (the "Released Parties") from all manner of actions, causes of action, suits, debts, sums of money, accounts, reckonings, bonds, bills,

specialties, covenants, controversies, agreements, promises, variances, trespasses, damages, judgments, claims and demands whatsoever, at law or in equity which Landlord ever had, now has or hereafter can, shall or may have against the Released Parties for, upon or by reason of any matter, cause or thing whatsoever relating to or arising out of the Lease, this Agreement or the Premises, or Tenant's use and occupancy of the Premises, including, but not limited to, all lease rejection claims (whether under section 502 of the Bankruptcy Code or otherwise), administrative expense claims, or claims relating to Tenant's prepetition or postpetition use and occupancy of the Premises.

7. Expungement. To the extent the Landlord has filed or files any proofs of claim with respect to the Lease or the Premises, Landlord consents to the expungement of such claims, with prejudice.
8. Successors. This Agreement and each of its provisions are binding upon and shall inure to the benefit of Tenant's successors and assigns, including, without limitation, a trustee, if any, subsequently appointed under chapter 7 or chapter 11 of the Bankruptcy Code.
9. Authority. Each of the parties hereto warrants and represents that it has the right and authority to enter into this Agreement, subject to the Bankruptcy Order.
10. Entire Agreement. Subject to Section 1, this Agreement represents the Parties' mutual understandings and supersedes all prior agreements whether in oral or written form.
11. Counterparts. This Agreement may be executed in any number of counterparts and all counterparts shall be construed together and shall constitute but one Agreement.
12. Applicable Law; Jurisdiction and Venue. This Agreement shall be construed under the laws of the Bankruptcy Court, and any disputes shall be resolved by the Bankruptcy Court which shall have exclusive jurisdiction at all times that the Assignor's bankruptcy case is pending. Each of the Parties irrevocably consents for all purposes of this Agreement to the jurisdiction of the Bankruptcy Court and agrees that venue is proper in the Bankruptcy Court.
13. Taxes. Any and all sales, transfer and recording taxes, stamp taxes or similar taxes, if any, relating to the termination of the Lease shall be the sole responsibility of Landlord and shall be paid, if applicable, to the proper governing body on the Termination Date.

14. Prevailing Party. If any action is brought by either Party against the other Party, then the prevailing Party shall be entitled to recover from the other Party court costs and reasonable attorneys' fees and costs actually incurred.
15. Drafting. This Agreement is deemed to have been drafted jointly by the Parties, and any uncertainty or ambiguity shall not be construed as an attribution of drafting to either Party.
16. Additional Instruments. The Parties agree to execute such additional instruments as may be reasonably necessary to carry out the provisions of this Agreement.

[SIGNATURE PAGE FOLLOWS]



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

LANDLORD

TENANT

[Name]

[Name]

a [STATE OF INCORPORATION]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

[Add Witnesses if Necessary]

## **EXHIBIT 7**

**[Notice of Sale Agreement]**

Richard M. Cieri (NY 4207122)  
KIRKLAND & ELLIS LLP  
Citigroup Center  
153 East 53rd Street  
New York, New York 10022-4611  
Telephone: (212) 446-4800

and

Anup Sathy, P.C. (IL 6230191)  
Marc J. Carmel (IL 6272032)  
KIRKLAND & ELLIS LLP  
200 East Randolph Drive  
Chicago, Illinois 60601-6636  
Telephone: (312) 861-2000

Proposed Co-Counsel to the Debtors

Michael A. Condyles (VA 27807)  
Peter J. Barrett (VA 46179)  
KUTAK ROCK LLP  
Bank of America Center  
1111 East Main Street, Suite 800  
Richmond, Virginia 23219-3500  
Telephone: (804) 644-1700

**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.	)	
	)	

**NOTICE OF SALE AGREEMENT RELATED TO THE ORDER AUTHORIZING AN  
AUCTION PROCESS AND APPROVING BID PROCEDURES FOR THE DISPOSITION  
OF THE DEBTORS' INTERESTS IN CERTAIN NONRESIDENTIAL REAL  
PROPERTY LEASES**

**PLEASE TAKE NOTICE** that on October 16, 2007, the above-captioned debtors (collectively, the "Debtors") filed petitions commencing cases under the Bankruptcy Code, 11 U.S.C. §§ 101-1532 (the "Bankruptcy Code"), in the United States Bankruptcy Court for the Eastern District of Virginia (the "Bankruptcy Court").<sup>2</sup>

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

<sup>2</sup> Capitalized terms but not otherwise herein shall have the meanings set forth in the Order or the Auction Procedures, where applicable.

**PLEASE TAKE FURTHER NOTICE** that on October \_\_, 2007 the Bankruptcy Court entered an Order Authorizing an Auction Process and Approving Bid Procedures for the Disposition of the Debtors' Interests in Certain Nonresidential Real Property Leases and Granting Related Relief (the "Order") [Docket No. ] authorizing an auction (the "Auction") and approving bid procedures for the disposition of the Debtors' interests in certain nonresidential real property leases (the "Auction Procedures").

**PLEASE TAKE FURTHER NOTICE** that, pursuant to the Order, the Debtors conducted the Auction in accordance with the Auction Procedures on November 15, 2007.

**PLEASE TAKE FURTHER NOTICE** that, pursuant to the Order, the Debtors hereby notify you that the Debtors intend to sell, assume and assign their rights under their lease with you (as identified on Attachment I to this Notice, the "Lease"), its landlord (each, a "Landlord"), to the Successful Bidder or the Backup Bidder, where applicable. The identities of the Successful Bidder and the Backup Bidder are set forth on Attachment II to this notice.

**PLEASE TAKE FURTHER NOTICE** that, pursuant to the Order, the Debtors hereby provide you with information set forth on Attachment II demonstrating, among other things, the proposed use of the premises subject to the Lease by the Successful Bidder and the Backup Bidder, where applicable.

**PLEASE TAKE FURTHER NOTICE** that, pursuant to the Order, the Debtors hereby provide you with information set forth on Attachment II demonstrating adequate assurance of future performance under such Lease by the Successful Bidder and the Backup Bidder, where applicable, as that term is used in section 365 of the Bankruptcy Code.

**PLEASE TAKE FURTHER NOTICE** that a hearing is scheduled for November 29, 2007 at 10:00 a.m. (prevailing Eastern Time) for the Bankruptcy Court to consider entry of one or more orders authorizing and approving the transactions contemplated by the Auction with respect to the Lease (the "Sale Hearing").

**PLEASE TAKE FURTHER NOTICE** that objections to the Auction process or the transactions contemplated herein (each, a "Sale Objection"), if any, must have been filed with the Bankruptcy Court and actually have been received by (a) counsel for the Debtors: Kirkland & Ellis LLP, 200 East Randolph Drive, Chicago, Illinois 60601, Attn: Anup Sathy, P.C. and Marc J. Carmel and Kutak Rock LLP, Bank of America Center, 1111 East Main Street, Suite 800, Richmond, Virginia 23219, Attn: Michael A. Condyles and Peter J. Barrett and (b) other parties as required by the Order Establishing Certain Notice, Case Management and Administrative Procedures [Docket No. ] on November 26, 2007 at 5:00 p.m. (prevailing Eastern Time) (the "Sale Objection Deadline").

**PLEASE TAKE FURTHER NOTICE** that, pursuant to the Order, Sale Objections filed after the Sale Deadline will not be heard at the Sale Hearing, and any additional

objections to the sale, assignment, assumption, termination or other disposition of any Lease contemplated by the Auction process shall be forever barred.

Richmond, Virginia

Dated: October \_\_ 2007

/s/ Michael A. Condyles

---

Richard M. Cieri (NY 4207122)

KIRKLAND & ELLIS LLP

Citigroup Center

153 East 53rd Street

New York, New York 10022-4611

Telephone: (212) 446-4800

Facsimile: (212) 446-4900

and

Anup Sathy, P.C. (IL 6230191)

Marc J. Carmel (IL 6272032)

KIRKLAND & ELLIS LLP

200 East Randolph Drive

Chicago, Illinois 60601-6636

Telephone: (312) 861-2000

Facsimile: (312) 861-2200

and

Michael A. Condyles (VA 27807)

Peter J. Barrett (VA 46179)

KUTAK ROCK LLP

Bank of America Center

1111 East Main Street, Suite 800

Richmond, Virginia 23219-3500

Telephone: (804) 644-1700

Facsimile: (804) 783-6192

Proposed Co-Counsel to the Debtors

## **EXHIBIT B**

### **Proposed Timeline of Auction Process<sup>1</sup>**

<b>Date</b>	<b>Event</b>
Not later than two business days following entry of the Order by the Court	Service of Auction Notice Service of Notice of Disposition
Friday, November 2, 2007 at 5:00 p.m. (prevailing Eastern Time)	Cure Objection Deadline
Thursday, November 8, 2007 at 10:00 a.m. (prevailing Eastern Time)	Cure Hearing
Monday, November 12, 2007 at 12:00 p.m. (prevailing Eastern Time)	Bid Deadline
Thursday, November 15, 2007 at 10:00 a.m. (prevailing Eastern Time)	Auction
On or about Monday, November 19, 2007, but not later than two business days following the Auction	Service of Notice of Sale Agreement
Monday, November 26, 2007 at 5:00 p.m. (prevailing Eastern Time)	Sale Objection Deadline
Thursday, November 29, 2007 at 10:00 a.m. (prevailing Eastern Time)	Sale Hearing

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<sup>1</sup> Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Motion of the Debtors for an Order Authorizing an Auction Process and Approving Bid Procedures for the Disposition of the Debtors' Interests in Certain Nonresidential Real Property Leases and Granting Related Relief (the "Motion").