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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., ¹	)	Chapter 11
)	
Debtors.)	
)	

**MOTION OF THE DEBTORS FOR INTERIM AND FINAL ORDERS
AUTHORIZING, BUT NOT DIRECTING, THE DEBTORS, IN
THEIR DISCRETION, TO ENTER INTO ACCOMMODATION
AGREEMENTS WITH MAJOR MOVIE STUDIO SUPPLIERS AND TO PAY
PREPETITION OBLIGATIONS IN CONNECTION THEREWITH**

The above-captioned debtors (collectively, the “Debtors”) hereby move the Court, pursuant to this motion (the “Motion”), for the entry of interim and final orders, substantially in the forms attached hereto as Exhibit A and Exhibit B (the “Interim Order” and “Final Order,” respectively, and together, the “Orders”), authorizing, but not directing, the Debtors, in their discretion, to enter into accommodation agreements with their major movie studio suppliers (the

¹ 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.



“Studios”)² and to pay prepetition obligations in connection therewith. In support of this Motion, the Debtors respectfully state as follows:³

Jurisdiction

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

2. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory bases for the relief requested herein are sections 105(a), 363 and 364 of the Bankruptcy Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”), and Rule 9019 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

² For purposes of this Motion, the Studios include: Twentieth Century Fox Home Entertainment, Inc.; Video Products Distributors, Inc. (“VPD”); Lions Gate Films, Inc.; Paramount Home Entertainment, Inc.; Sony Pictures Home Entertainment Inc.; Universal Studios Home Video, Inc.; New Line Home Entertainment, Inc.; and Warner Home Video, Inc. Technically, VPD is a distributor, not a studio, but VPD is included in this Motion because the Debtors acquire their Disney product through VPD.

³ The facts and circumstances supporting this Motion are set forth in the Affidavit of William C. Kosturos, Chief Restructuring Officer of Movie Gallery, Inc., in Support of First Day Motions (the “First Day Affidavit”), filed contemporaneously herewith.

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

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

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

A. Overview of Studio Relationships

8. As described in detail herein and in the First Day Affidavit, the Debtors' movie rental business relies on supply relationships with the Studios, among others, for the delivery of

new movie titles (collectively, the “Movies”). Generally, the Debtors can acquire Movies in one of three ways. First, the Debtors can acquire Movies for a single up-front lump sum payment (referred to as a “Fixed Buy Transaction”). Second, the Debtors can acquire Movies for a lower up-front payment coupled with an obligation to return or destroy some percentage of the Movies at the end of a specified term (referred to as a “Copy Depth Program”) rather than selling or continuing to rent the Movies that are delivered pursuant to these programs. Third, the Debtors can acquire Movies for a significantly lower up-front payment coupled with an agreement by the Debtors to share with the studios an agreed-upon percentage of the proceeds of future rentals and sales of previously-viewed videos (referred to as a “Revenue Sharing Agreement”).

9. While Fixed Buy Transactions and Copy Depth Programs are relatively straightforward, Revenue Sharing Agreements are somewhat more complicated. Generally, a Revenue Sharing Agreement requires the Debtors to pay an up-front amount (the “Up-Front Charge”) upon delivery of or within a certain time period following delivery of new Movies. Additionally, for a specific period of time, often approximately six months (the “Revenue Share Term”), the Debtors are obligated to pay the applicable Studio a fixed percentage of the proceeds of any rentals or sales of the Movie (the “Revenue Share Percentage”).⁴ The Debtors’ obligation to make payments to the Studios is not triggered until the Debtors’ Revenue Share Percentage amount owing for a particular Movie exceeds the Up-Front Charge previously paid for that particular Movie. Put another way, the Debtors are typically allowed to credit the Up-Front Charge against their obligation to share rental and sale revenues. The payment obligations for each Movie title, once triggered, are referred to as “Overage Obligations.”

⁴ Revenue Sharing Agreements often require the payment of a guaranteed minimum amount per rental or per sale transaction, effectively setting a floor on the per-transaction amount payable to the Studios.

10. For example, if the Up-Front Charge for a particular Movie is \$5 per copy and the Debtors purchase 100,000 copies of that Movie, the Debtors will pay \$500,000 in Up-Front Charges.⁵ Next, assume that the agreed-upon Revenue Share Percentage is 25% and that the Debtors charge \$4 per rental. Under this scenario, the Revenue Share Payment would equal \$1 per rental (25% of \$4) but, because the Debtors had paid the \$500,000 Up-Front Charge, the Debtors would not owe any Overage Obligations for the first 500,000 rentals. However, for each rental after 500,000, the Debtors would owe \$1 per rental on account of Overage Obligations.

11. Under Revenue Sharing Agreements, therefore, the Debtors accrue payment obligations over time. Generally, the Revenue Share Term is approximately six months. Moreover, accounting for Revenue Sharing Agreements is complicated and requires extensive auditing of title-by-title rental data, often with the assistance of outside auditing firms. The Debtors currently operate approximately 4,200 retail stores throughout all 50 states and average approximately 40 million rental transactions per month.⁶ Overage Obligations are typically calculated on a monthly basis and, given the accounting process, are typically paid four to six weeks in arrears. This means that the Debtors will often accrue Overage Obligations for up to six months following the delivery of a Movie title and will often pay Overage Obligations for up to seven or eight months following the delivery of a Movie title.

12. The Debtors prefer acquiring new Movies through Revenue Sharing Agreements as opposed to Fixed Buy Transactions or Copy Depth Programs for several reasons. Because the

⁵ Currently, many Studios require cash-in-advance for Up-Front Charges. Historically, the Debtors typically received significantly better payment terms for Up-Front Charges.

⁶ The Debtors' rental business is highly seasonal. The Debtors' estimate of approximately 40 million rental transactions per month represents an approximate historical average over the previous 12-month period.

Debtors' per-copy costs under Revenue Sharing Agreements are much lower than the cost of Fixed Buy Transaction and the amounts the Debtors pay are tied to the revenue generated by the title, the Debtors can typically afford to order significantly more copies of any given Movie under a Revenue Sharing Agreement than they can under a Fixed Buy Transaction. Correspondingly, because the per-copy cost under a Fixed Buy Transaction is higher than under a Revenue Sharing Agreement and a Fixed Buy Transaction provides no downside protection in the event that the Movie is not as popular as expected, the Debtors must purchase more conservatively and order fewer copies under Fixed Buy Transaction than they would under a Revenue Sharing Agreement. This, in turn, means that fewer copies of Movies acquired through Fixed Buy Transactions will be available for rental in the Debtors' stores, increasing the likelihood that a title may be "sold out" and be unavailable to the Debtors' customers. Under this scenario, the Debtors are more likely to miss out on potential rental revenue on desirable Movies due to the lower number of copies available, and the Debtors' customers are more likely to be disappointed and, consequently, to seek the title for rental or purchase elsewhere.

B. Lack of Long-Term Supply Agreements with Studios

13. The Debtors historically had written Revenue Sharing Agreements with various Studios, but the Debtors currently have only one active Revenue Sharing Agreement in place and that agreement expires in January, 2008.⁷ Therefore, with the exception of the one Revenue Sharing Agreement currently in place, the Studios are generally under no obligation to make new

⁷ The Debtors currently operate under written Revenue Sharing Agreements with the vast majority of their smaller movie studio suppliers (the "B-Studios"). Pending the outcome of various ongoing negotiations, the Debtors anticipate filing one or more motions in the near future seeking assumption of Revenue Sharing Agreements with B-Studios.

Movies available to the Debtors and are under no obligation to extend trade terms or allow the Debtors to participate in Revenue Sharing Agreements or Copy Depth Programs.

14. In addition to the lack of written supply agreements, the Debtors also have recently suffered a severe contraction, and in many cases elimination, of trade credit. As of the Commencement Date, each of the Studios required cash in advance for Fixed Buy Transactions and, to the extent Studios were still willing to provide Movies under a Revenue Sharing Agreement, such Studios required cash in advance for the Up-Front Charges associated with such purchases.

C. The Debtors Must Ensure an Uninterrupted Supply of Movies on Favorable Terms to Reorganize Successfully

15. To obtain commitments from the Studios to continue to supply Movies and obtain commitments with respect to future trade terms, the Debtors seek the authority, but not direction, to be exercised in their discretion, to enter into agreements or term sheets with the Studios setting forth the parameters of the future relationship between the parties, including, but not limited to, the Studio's commitment to continue to supply Movies and the payment terms for future product deliveries and the terms by which the Debtors will repay prepetition obligations owed to such Studios (each, an "Accommodation Agreement" and collectively, the "Accommodation Agreements"). The Debtors began negotiating the terms of Accommodation Agreements with the Studios prior to the Commencement Date.

Relief Requested

16. **Limited Relief Requested in Interim Order:** By this Motion, and out of an abundance of caution, the Debtors seek the entry of an Interim Order authorizing the Debtors to pay Overage Obligations related to Movies delivered prior to the Commencement Date, in their

discretion, to those Studios who have either executed an Accommodation Agreement or who, in the Debtors' business judgment, are negotiating in good faith towards and have agreed to the principal terms of an Accommodation Agreement.

17. **Relief Requested in Final Order:** Furthermore, the Debtors seek the entry of a Final Order authorizing them to enter into Accommodation Agreements, substantially in the form attached as Exhibit 1 to the Final Order, and to pay, in their discretion, prepetition Up-Front Charges, Overage Obligations and other similar charges under prepetition Revenue Sharing Agreements, regardless of whether such obligations accrued before or after the Commencement Date, and to continue to honor contractual Movie return or destruction obligations.⁸

18. The Debtors further propose that if a Studio enters into an Accommodation Agreement and accepts a postpetition payment on account of a prepetition claim, whether an Overage Obligation, Up-Front Charge or otherwise, and then subsequently refuses to honor its commitments under the Accommodation Agreement, the Debtors have the ability, in their discretion and without further order of the Court, to declare that any payment to such Studio made by the Debtors pursuant to the Orders be deemed to be a postpetition advance that the Debtors may apply to any outstanding postpetition obligations owed to the Studio or, in the absence of any outstanding postpetition obligations, that the Studio must refund to the Debtors. Similarly, an Accommodation Agreement or other commercial agreement between the parties may provide remedies for the Studios in the event of a default by the Debtors under such agreement.

⁸ Nothing contained herein is intended or should be construed as (a) an admission as to the validity of any claim against the Debtors, (b) a waiver of the Debtors' rights to dispute any claim on any grounds, (c) a promise to pay any claim or (d) a request to assume any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code.

19. The Debtors also request authorization, in their discretion, to provide a waiver of all avoidance actions, including causes of action under chapter 5 of the Bankruptcy Code, to any Studio who enters into an Accommodation Agreement conditioned on such studio complying with such Accommodation Agreement, which waiver would be binding on the Debtors, their estates, any committees appointed in these chapter 11 cases, any other party acting on behalf of the Debtors and any successors to the Debtors.

Basis for Relief

20. The Debtors estimate that the Studios are owed approximately \$28 million on account of prepetition Up-Front Charges and similar claims. Because Overage Obligations depend on rental and sale performance over a specified Revenue Sharing Term, which, for many Movies delivered prepetition, is still ongoing, the Debtors are not able to estimate effectively the amount of Overage Obligations that may arise with respect to Movies delivered prepetition. As a general rule, however, for any given Movie, the vast majority of the Debtors' total payment obligations are paid through the Up-Front Charge, and the Overage Obligations represent a relatively small percentage of the Debtors' purchase price for new Movies. The Debtors estimate that for the two months preceding the Commencement Date the Debtors accrued an average of approximately \$8 million per month on account of Overage Obligations. Going forward, the amount of the Debtors' monthly Overage Obligations attributable to Movies delivered prior to the Commencement Date will grow steadily smaller, as Revenue Share Terms expire, and, by approximately seven months after the Commencement Date, the Debtors generally will owe little or no monthly Overage Obligations on account of Movies delivered prior to the Commencement Date.

21. The relief requested in this Motion is essential to preserving good relationships with the Studios and the Debtors' ability to reorganize successfully. If the Debtors' relationships with the Studios deteriorate, the Studios might cease supplying new Movies altogether or might agree to supply new Movies only on relatively less favorable trade terms. These developments could have a significant — and possibly devastating — impact on the Debtors' business operations. Needless to say, a movie rental business is highly reliant on its relationships with movie suppliers.

A. The Court May Allow the Debtors to Pay Prepetition Obligations Under Section 363(b) of the Bankruptcy Code

22. The Court may authorize the Debtors to continue to pay prepetition claims pursuant to Accommodation Agreements under section 363(b) of the Bankruptcy Code, which provides in pertinent part that “[t]he [debtor], after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Under this section, a court may authorize a debtor to pay certain prepetition claims. See In re Ionosphere Clubs, Inc., 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (authorizing payment of prepetition wages pursuant to section 363(b)). To do so, “the debtor must articulate some business justification, other than mere appeasement of major creditors.” Id. at 175.

23. The requested relief meets the standards articulated by the Seventh Circuit Court of Appeals in In re Kmart Corp., 359 F.3d 866 (7th Cir. 2004). Although not binding on this Court, the Kmart decision, in which the Seventh Circuit acknowledges the practical business utility of allowing corporate debtors limited authority to make prepetition trade payments, is particularly instructive in that the Seventh Circuit is the only Federal Court of Appeals to have considered the issue.

24. In Kmart, the Seventh Circuit identified section 363(b)(1) as a potential source of authority for the payment of prepetition trade claims. Id. at 872-73. The Kmart court reasoned that “satisfaction of a pre-petition debt in order to keep ‘critical’ supplies flowing is a use of property other than in the ordinary course of administering an estate in bankruptcy,” and thus is within the literal ambit of the statute’s language. Id. at 872. The court, however, cautioned that “it is prudent to read, and use, § 363(b)(1) to do the least damage possible to the priorities established by contract and by other parts of the Bankruptcy Code.” Id.

25. To that end, the K-Mart court articulated a dual-pronged requirement that debtors must satisfy as a condition to honoring prepetition obligations. First, debtors must establish that the creditors whose claims are to be paid will cease dealing with the debtor if not immediately paid for prepetition goods and services. Second, debtors must establish that “the business will gain enough from continued transactions with the favored [creditors] to provide some residual benefit to the remaining . . . creditors, or at least leave them no worse off.” Id. at 868.

26. Here, the Debtors submit that a failure to continue to honor Overage Obligations and Up-Front Charges under prepetition Revenue Sharing Agreements would very likely cause a deterioration in the Debtors’ relationship with the Studios. While the Studios may not cease dealing with the Debtors entirely, the general lack of supply agreements with the Studios means, at a minimum, that the Studios could negatively alter the terms on which the Studios supply Movies. Furthermore, the Debtors submit that maintaining positive relationships with the Studios is absolutely essential to the Debtors’ ongoing viability and that the value of maintaining good Studio relationships far outweighs the cost of continuing to pay the Overage Obligations and Up-Front Charges at issue in this Motion. The Debtors also submit that all creditors, not just

the Studios, will be benefited from the Debtors negotiating and entering into Accommodation Agreements and such agreements are a key component of the Debtors' restructuring efforts.

B. The Debtors' Commitment to Pay Prepetition Obligations as Part of an Accommodation Agreement Is Permitted by Section 364 of the Bankruptcy Code

27. Because the Debtors will only agree to pay prepetition obligations in connection with Accommodation Agreements that obligate the Studios to continue to supply Movies and to extend trade terms acceptable to the Debtors, the relief requested in this Motion is justified by section 364 of the Bankruptcy Code. Section 364(b) authorizes debtors, with court permission, to obtain credit or incur debt other than in the ordinary course of business. If necessary to obtain trade credit, a debtor may agree to pay prepetition obligations. See In re Payless Cashways, Inc., 268 B.R. 543, 547 (Bankr. W.D. Mo. 2001) (permitting the debtor, an owner of home improvement retail franchises, to pay prepetition claims of lumber vendors who agreed to extend trade credit to the debtor, reasoning "if the debtor is to obtain credit, it may well need to offer something else [other than an administrative expense claim] to its suppliers.>"). See also In re Just for Feet, Inc., 242 B.R. 821, 825 (D. Del. 1999) (court used its equitable powers to authorize payment of prepetition claims of trade creditors who agreed to extend postpetition credit to the debtor).

C. The Court May Rely on Its General Equitable Powers to Grant the Motion

28. The Court's general equitable powers are codified in section 105(a) of the Bankruptcy Code. Section 105(a) empowers the Court to "issue any order, process, or judgment that is necessary to carry out the provisions of [the Bankruptcy Code]." 11 U.S.C. § 105(a). A bankruptcy court's use of its equitable powers to "authorize the payment of pre-petition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept."

Ionosphere Clubs, 98 B.R. at 175 (citing Miltenberger v. Logansport, C. & S.W. R.Co., 106 U.S. 286 (1882)). Section 105(a) authorizes a court to “permit pre-plan payment of a pre-petition obligation when essential to the continued operation of the debtor.” In re NVR L.P., 147 B.R. 126, 127 (Bankr. E.D. Va. 1992).

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

D. The Court May Rely on the Necessity of Payment Doctrine

30. The “doctrine of necessity” is an equitable doctrine dating back to a Supreme Court decision from 1882 that authorized a railroad debtor to pay certain prepetition claims. See Miltenberger v. Logansport, 106 U.S. at 311 (“[m]any circumstances may exist which may make it necessary and indispensable to the business of the [railroad] and the preservation of the property, for the receiver to pay pre-existing debts. . . .”). The doctrine of necessity “endeavors to reconcile two otherwise irreconcilable objectives of chapter 11: the reorganization of otherwise viable entities that have fallen upon hard times into profitable entities and thereby pay pre-petition creditors and preserve jobs; and, at the same time, the equal treatment of all creditors.” See In re United American, Inc., 327 B.R. 776, 781 (Bankr. E.D.Va. 2005). Indeed,

the United American court noted that the doctrine of necessity is particularly appropriate in instances where the debtor cannot contractually compel suppliers to continue doing business with it:

The policy of equal treatment of creditors does not trump freedom of contract. Absent a contractual agreement, there is no obligation to deal with another party, whether a party in bankruptcy or not. Without a contract, suppliers can refrain from dealing with a debtor. . . . A problem arises when the theory of equal treatment meets the reality that, from time to time, certain suppliers are essential to the continued viability of a business and a debtor's ability to reorganize. If the suppliers legitimately decline to have further dealings with the debtor, the reorganization effort will come to an end before it has had an opportunity to begin. In this instance, it is impossible to reconcile the objectives of encouraging reorganizations and assuring the equal treatment of creditors. To insist upon the latter necessarily precludes the former. The Doctrine of Necessity is an attempt to reconcile these principles in these narrow circumstances. The remedy, payment of select pre-petition unsecured claims, flies in the face of all of the notions of equal treatment of creditors. It is, however, a necessary deviation because otherwise there will be no reorganization and no creditor will have an opportunity to recoup any part of its pre-petition claim.

Id.

31. Under the doctrine of necessity, a bankruptcy court may exercise its equitable powers to authorize a debtor to pay the prepetition claims of certain prepetition vendors. See In re Columbia Gas Sys., Inc., 136 B.R. 930, 939 (Bankr. D. Del. 1992) (recognizing that “[i]f payment of a pre-petition claim ‘is essential to the continued operation of [debtor], payment may be authorized’”). Courts have held that to utilize the doctrine of necessity as a basis for the pre-confirmation payment of a prepetition claim: (a) the claimant must be necessary for the successful reorganization of the debtor; (b) the transaction must be in the sound business judgment of the debtor; and (c) the favorable treatment of the claimant must not prejudice other unsecured creditors. See United American, 327 B.R. at 782.

32. Here, payment of the Overage Amounts and Up-Front Charges in exchange for favorable trade terms satisfies all three criteria of the doctrine of necessity set forth in United American.⁹ First, the Studios are absolutely necessary for the Debtors' successful reorganization. A steady flow of new Movies is, obviously, the lifeblood of a movie rental business. Second, paying the Overage Obligations and Up-Front Charges in the ordinary course of business represents a sound exercise of the Debtors' business judgment. The Debtors only propose to make such payments to those Studios who agree to continue to supply Movies to the Debtors on favorable terms. Again, as set forth above, the Debtors typically do not have written supply agreements with the Studios and typically have no ability to compel the Studios to continue to supply Movies. While the Debtors believe that they are also important to the Studios, the Studios may be able to alter the terms and conditions under which they will supply Movies and may require Fixed Buy Transactions or may impose other unfavorable terms or conditions if the relationship deteriorates. Third, payment of the Overage Obligations and Up-Front Charges will not prejudice other creditors. Indeed, the Debtors believe that all creditors and other parties in interest benefit tremendously by the Debtors solidifying their relationship with the Studios and ensuring the continued supply of Movies on favorable terms.

E. The Court May Allow the Debtors to Pay Overage Obligations and Up-Front Charges and Enter into New Revenue Sharing Agreements Pursuant to Bankruptcy Rule 9019

33. Currently, with the exception of the one written, active Revenue Sharing Agreement that remains in place, the Debtors and the Studios operate on a course-of-dealing basis based on agreed terms and conditions. There may be some ambiguity in how exactly the

⁹ The United American opinion is not binding on this Court, but nonetheless provides support for this Court to approve the relief requested herein.

supply relationship between the Debtors and the Studios should be classified. While the Debtors believe that they are essentially purchasing the Movies delivered by the Studios, whether under a Fixed Buy Transaction, Revenue Sharing Agreement or Copy Depth Program, the Studios may take a different view and may argue that they continue to own the Movies during the Revenue Sharing Term.

34. If the Debtors suddenly stopped paying Overage Obligations related to prepetition Revenue Sharing Agreements, the Studios might commence litigation under any number of theories, perhaps arguing that, among other things, (a) the Movies remain the property of the Studios and the Movies should be returned to the Studios or (b) the Movies are leased or licensed to the Debtors and, therefore, the Debtors owe “rent” or licensing payments. While the Debtors do not believe or admit that any such arguments have any merit, the Debtors believe that a hostile relationship with the Studios—marked by litigation—would be extremely detrimental to the Debtors’ operations.

35. The Debtors submit that their proposed payment of Overage Obligations and Up-Front Charges and the entry into new Revenue Sharing Agreements is a compromise supported by Bankruptcy Rule 9019. By conditioning payment on the Studios agreeing to continue to supply new Movies on acceptable terms as set forth herein, the Debtors and the Studios essentially will have reached a compromise on what could have been a bitterly contested legal dispute.

36. Bankruptcy Rule 9019(a) provides, in relevant part, that: “[o]n motion by the [debtor] and after notice and a hearing, the court may approve a compromise and settlement.” Compromises and settlements are “a normal part of the process of reorganization.” Protective

Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 424 (1968) (quoting Case v. Los Angeles Lumber Prods. Co., 308 U.S. 106, 130 (1939)).

37. To approve a compromise and settlement under Bankruptcy Rule 9019, bankruptcy courts generally consider whether the compromise and settlement is fair and equitable, reasonable and in the best interests of the debtor's estate. See, e.g., In re Ionosphere Clubs, Inc., 156 B.R. 414, 426 (S.D.N.Y. 1993), aff'd, 17 F.3d 600 (2d Cir. 1994) (citations omitted).

38. In determining whether to approve a proposed settlement, a bankruptcy court need not decide the numerous issues of law and fact raised by the settlement, but rather should “canvass the issues and see whether the settlement ‘fall[s] below the lowest point in the range of reasonableness.’” In re W.T. Grant Co., 699 F.2d 599, 608 (2d Cir. 1983); In re Austin, 186 B.R. 397, 400 (Bankr. E.D. Va. 1995); see also Purofied Down Prods. Corp., 150 B.R. 519, 522 (S.D.N.Y. 1993) (“the court need not conduct a ‘mini-trial’ to determine the merits of the underlying [dispute]”). A settlement “should be approved if it provides for the best possible realization upon the available assets . . . without undue waste or needless or fruitless litigation.” U.S. ex rel. Rahman v. Oncology Assoc., P.C., 269 B.R. 139, 150 (Bankr. D. Md. 2001) (citations omitted).

39. In deciding whether a particular settlement falls within the “range of reasonableness,” courts consider the following factors: (a) the probability of success in the litigation; (b) the difficulties associated with collection; (c) the complexity of the litigation, and the attendant expense, inconvenience and delay; and (d) the paramount interests of creditors. Id. (citing Drexel v. Loomis, 35 F.2d 800, 806 (8th Cir. 1929)); Austin, 186 B.R. at 400; see also In

re Drexel Burnham Lambert Group, Inc., 960 F.2d 285, 292 (2d Cir. 1992); Six West Retail Acquisition, Inc. v. Loews Cineplex Entm't Corp., 286 B.R. 239, 248 n.13 (S.D.N.Y. 2002).

40. Here, any litigation with the Studios regarding who holds title to the Movies and the proper legal characterization of existing supply relationships would likely be costly and time consuming. More importantly, the Debtors fear that if their relationships with the Studios deteriorate into litigation, the Studios, who generally are not contractually obligated to provide any new Movies to the Debtors and are generally free to set the terms and conditions of any future deliveries, would not deal with the Debtors on favorable terms and may refuse to deal with the Debtors altogether. Any deterioration in trade terms with the Studios would have an immediate and negative impact on the Debtors' operations. Historically, the Debtors have had very strong relationships with the Studios and believe that ongoing strong Studio relationships are key to the Debtors' long-term success.

F. Courts in this District and Other Districts Have Granted Similar Relief

41. Indeed, it is not uncommon for courts to authorize the payment of prepetition trade claims where the payment of such claims is essential to the debtor's continued operations. See, e.g., In re U.S. Airways, Inc., Case No. 04-13819 (SSM) (Bankr. E.D. Va. Sept. 14, 2004) (order authorizing the debtors to continue honor prepetition fuel supply, distribution, storage and other agreements); In re AMF Bowling Worldwide, Inc., Case No. 01-61119 (DHA) (Bankr. E.D. Va. Jul. 3, 2001) (order authorizing the debtors to pay prepetition vendor claims in excess of \$7 million); see also In re Dura Auto. Sys., Inc., Case No. 06-11202 (Bankr. D. Del. Nov. 20, 2006); (order authorizing the debtors to pay prepetition trade claims up to \$29 million); In re J.L. French Auto. Castings, Inc., Case No. 06-10119 (Bankr. D. Del. Mar. 6, 2006) (order authorizing

the debtors to pay prepetition trade claims up to \$10.6 million); In re Dana Corp., Case No. 06-10354 (Bankr. S.D.N.Y. Mar. 3, 2006) (order authorizing the debtors to pay prepetition trade claims up to \$52.1 million); In re Pliant Corp., Case No. 06-10001 (Bankr. D. Del. Jan 4, 2006) (order authorizing debtors to pay prepetition trade claims up to \$18.2 million); In re Delphi Corp., Case No. 05-44481 (Bankr. S.D.N.Y. Oct. 13, 2005) (order authorizing the debtors to pay prepetition trade claims up to \$90 million); In re Tower Auto., Inc., Case No. 05-10578 (Bankr. S.D.N.Y. Mar. 14, 2005) (order authorizing the debtors to pay \$40 million in prepetition trade claims); Just for Feet, 242 B.R. at 826 (authorizing payment of prepetition claims of trade creditors that continue customary trade terms). The Debtors respectfully submit that similar relief is warranted in these chapter 11 cases.

42. The Studios are critically important to the Debtors' ongoing operations. Because all creditors and parties in interest will benefit if this Court approves the Debtors' request for authority to honor Overage Obligations and Up-Front Charges under prepetition Revenue Sharing Agreements as set forth in this Motion, the Court should exercise its powers to grant the relief requested herein.

Waiver of Memorandum of Points and Authorities

43. 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

44. The Debtors have provided notice of this Motion to: (a) the Office of the United States Trustee for the Eastern District of Virginia; (b) the entities listed on the Consolidated List of Creditors Holding the 30 Largest Unsecured Claims filed pursuant to Bankruptcy Rule 1007(d); (c) counsel to the agent for the Debtors' proposed postpetition secured lenders; (d) counsel to the agent for the Debtors' prepetition first lien facilities; (e) counsel to the agent for the Debtors' prepetition second lien facility; (f) the trustee for the Debtors' 11% senior unsecured notes; (g) counsel to Sopris Capital Advisors LLC; (h) the trustee for the Debtors' 9.625% senior subordinated unsecured notes; (i) counsel for certain movie studios; (j) the Internal Revenue Service; (k) the Securities and Exchange Commission; (l) the banks that process disbursements in the Debtors' cash management system (Bank of America, Canadian Imperial Bank of Commerce and Wachovia Bank); and (m) the Movie Studios that are the subject of this Motion. In light of the nature of the relief requested, the Debtors respectfully submit that no further notice is necessary.

WHEREFORE, for the reasons set forth herein and in the First Day Affidavit, the Debtors respectfully request that the Court enter an order, substantially in the form attached hereto as Exhibit A, (a) authorizing the Debtors to enter into Accommodation Agreements, (b) authorizing, but not directing, the Debtors, in their discretion, to pay prepetition claims associated therewith, including Overage Obligations and Up-Front Charges, and (c) granting such other and further relief as is just and proper.

Richmond, Virginia

Dated: October 16, 2007

/s/

Richard M. Cieri (NY 4207122)

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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., ¹	)	Chapter 11
)	
Debtors.)	
)	

**INTERIM ORDER AUTHORIZING, BUT NOT DIRECTING, THE DEBTORS TO
CONTINUE TO PAY PREPETITION OVERAGE OBLIGATIONS IN THE
ORDINARY COURSE OF BUSINESS**

Upon the motion (the “Motion”)² of the above-captioned debtors (collectively, the “Debtors”) for the entry of interim and final orders (the “Interim Order”) authorizing, but not directing, the Debtors in their discretion, to enter into accommodation agreements (the “Accommodation Agreements”) with their major movie studio suppliers (the “Studios”)³ and to

¹ 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.

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

³ For purposes of the Motion and this Order, the Studios include: Twentieth Century Fox Home Entertainment, Inc.; Video Products Distributors, Inc. (“VPD”); Lions Gate Films, Inc.; Paramount Home Entertainment, Inc.; Sony Pictures Home Entertainment Inc.;

pay prepetition obligations in connection therewith and the First Day Affidavit; it appearing that the relief requested is in the best interests of the Debtors' estates, their creditors and other parties in interest; the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); venue being proper before this court pursuant to 28 U.S.C. §§ 1408 and 1409; service 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 Debtors are authorized, but not directed, in their discretion, to pay Overage Obligations to those Studios who have either executed an Accommodation Agreement or who, in the Debtors' business judgment, are negotiating in good faith towards and have agreed to the principle terms of an Accommodation Agreement.

2. Notwithstanding any provision herein to the contrary, no provision of this Interim Order shall be deemed or construed as (a) an admission as to the validity or amount of any claim against the Debtors, (b) a waiver of the Debtors' rights to dispute any claim on any grounds, (c) a promise to pay any claim or (d) a request to assume any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code.

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

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

Universal Studios Home Video, Inc.; New Line Home Entertainment, Inc.; and Warner Home Video, Inc. Technically, VPD is a distributor, not a studio, but VPD is included in this Motion because the Debtors acquire their Disney product through VPD.

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

Richmond, Virginia

Date: October ____, 2007

United States Bankruptcy Judge

EXHIBIT B

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and

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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., ¹	)	Chapter 11
)	
Debtors.)	
)	

**FINAL ORDER AUTHORIZING, BUT NOT DIRECTING, THE DEBTORS IN THEIR
DISCRETION, TO ENTER INTO ACCOMMODATION AGREEMENTS WITH
MAJOR MOVIE STUDIO SUPPLIERS AND TO PAY PREPETITION OBLIGATIONS
IN CONNECTION THEREWITH**

Upon the motion (the “Motion”)² of the above-captioned debtors (collectively, the “Debtors”) for the entry of interim and final orders (the “Order”) authorizing, but not directing, the Debtors, in their discretion, to enter into accommodation agreements (the “Accommodation

¹ 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.

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

Agreements”) with their major movie studio suppliers (the “Studios”)³ and to pay prepetition obligations in connection therewith and the First Day Affidavit; it appearing that the relief requested is in the best interests of the Debtors’ estates, their creditors and other parties in interest; the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); venue being proper before this court pursuant to 28 U.S.C. §§ 1408 and 1409; notice of the Motion having been adequate and appropriate under the circumstances, and after due deliberation and sufficient cause appearing therefor, it is hereby ORDERED

1. The Motion is granted in its entirety.

2. The Debtors are authorized, but not directed, in their discretion, without further order of this Court, to enter into Accommodation Agreements with the Studios, in substantially the form attached hereto as Exhibit 1 (as may be modified by the Debtors, in their discretion) setting forth the parameters of the ongoing and future business relationship between the parties.

3. The Debtors are authorized, but not directed, in their discretion, without further order of this Court, to enter into other agreements that may be contemplated by the Accommodation Agreements, including, but not limited to, new revenue sharing agreements or other supply agreements.

4. In connection with an Accommodation Agreement, the Debtors are authorized, but not directed, in their discretion, to pay prepetition amounts owed to the Studios, including,

³ For purposes of the Motion and this Order, the Studios include: Twentieth Century Fox Home Entertainment, Inc.; Video Products Distributors, Inc. (“VPD”); Lions Gate Films, Inc.; Paramount Home Entertainment, Inc.; Sony Pictures Home Entertainment Inc.; Universal Studios Home Video, Inc.; New Line Home Entertainment, Inc.; and Warner Home Video, Inc. Technically, VPD is a distributor, not a studio, but VPD is included in this Motion because the Debtors acquire their Disney product through VPD.

without limitation, ongoing payment obligations arising from the Debtors' obligation to share a percentage of movie rental and sale receipts with the Studios under revenue sharing agreements (the "Overage Obligations") and unpaid amounts due for prepetition deliveries of Movies (the "Up-Front Charges").

5. The Debtors' obligations under Accommodation Agreements shall be accorded administrative expense priority.

6. The Debtors are also authorized, in their discretion, to comply with contractual obligations to destroy or return copies of Movies or to agree, whether in an Accommodation Agreement or otherwise, to destroy or return Movies.

7. The Debtors are authorized, in their discretion, to provide a waiver of all avoidance actions, including causes of action under chapter 5 of the Bankruptcy Code and any state preferential transfer or fraudulent transfer laws, to any Studio who enters into and complies with an Accommodation Agreement (the "Waiver"). If granted by the Debtors, any such Waiver will be binding on the Debtors, their estates, any committees appointed in these chapter 11 cases, any other party acting on behalf of the Debtors and any successors to the Debtors. If, however, the Studio fails to honor any of its commitments under the Accommodation Agreement the Waiver shall be of no force and effect.

8. A Studio's acceptance of a payment on account of a prepetition obligation is deemed to be consent by such Studio to the terms of this Order. If a Studio enters into an Accommodation Agreement and accepts a postpetition payment on account of a prepetition claim, whether an Overage Obligation or an Up-Front Charge or otherwise, and then subsequently refuses to honor its commitments under an Accommodation Agreement, the

Debtors have the ability, in their discretion, without further order of the Court, to declare that any payment made to such Studio by the Debtors pursuant to this Order be deemed to be a postpetition advance that the Debtors may apply to any outstanding postpetition obligations owed to the Studio or, in the absence of any outstanding postpetition obligations, that the Studio must refund to the Debtors.

9. Notwithstanding any provision herein to the contrary, no provision of this Order shall be deemed or construed as (a) an admission as to the validity or amount of any claim against the Debtors, (b) a waiver of the Debtors' rights to dispute any claim on any grounds, (c) a promise to pay any claim or (d) a request to assume any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code.

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

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

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

Richmond, Virginia
Date: October ____, 2007

United States Bankruptcy Judge

EXHIBIT 1

**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., ¹	)	Chapter 11
)	
Debtors.)	
)	

ACCOMMODATION AGREEMENT

_____, 2007

Movie Gallery, Inc., together with its domestic direct and indirect subsidiaries (collectively, the “Company”) as debtors in the above-captioned chapter 11 cases (the “Chapter 11 Cases”), and _____ (the “Studio”, and with the Company, the “Parties”) hereby enter into this accommodation agreement (the “Agreement”) and stipulate and agree as follows:

RECITALS

WHEREAS, on _____, 2007 (the “Commencement Date”), the Company commenced the Chapter 11 Cases; and

WHEREAS, on the Commencement Date, the Company filed that certain *Motion of the Debtors for Interim and Final Orders Authorizing, But Not Directing the Debtors, in Their Discretion, to Enter into Accommodation Agreements With Major Movie Studio Suppliers and to Pay Prepetition Obligations in Connection Therewith* [Docket No. ____] (the “Studio Accommodation Motion”); and

WHEREAS, on [_____], the Bankruptcy Court entered that certain *Final Order Authorizing, But Not Directing the Debtors, in Their Discretion, to Enter into Accommodation Agreements With Major Movie Studio Suppliers and to Pay Prepetition Obligations in Connection Therewith* [Docket No. ____] (the “Order”)²; and

WHEREAS the Parties have reviewed the Studio Accommodation Motion and the Order and desire to enter into this Agreement pursuant thereto; and

¹ 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.

² Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Studio Accommodation Motion or the Order.

WHEREAS, as of the Commencement Date, the Company owed the Studio, among other amounts, certain Overage Obligations with respect to prepetition revenue sharing obligations; and

WHEREAS, exclusive of Overage Obligations, the balance owed by the Company to the Studio as of the Commencement Date is agreed to be \$_____ (the "Prepetition Balance").

TERMS AND CONDITIONS

NOW, THEREFORE, in consideration of the mutual premises and stipulations and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

(i) **Payment of Prepetition Overage Obligations:** The Company will pay the Studio Overage Obligations in the ordinary course of business without regard to whether such obligations arose or accrued before or after the Commencement Date. Overage Obligations will be paid according to customary terms and procedures in place between the Parties as of the Commencement Date.

(ii) **Payment of Prepetition Balance:** The Company will pay the Studio 50% of the Prepetition Balance on February 1, 2008 (the "First Installment Payment") and will pay the remaining 50% of the Prepetition Balance on the effective date of the plan of reorganization (the "Plan Effective Date") in the Company's Chapter 11 Cases (the "Second Installment Payment").

(iii) **Continued Supply of Movies:** Until the First Installment Payment is made, the Studio will continue to supply Company with Movies that would ordinarily be made available to the Company, in quantities that would ordinarily be available to the Company, on terms no worse than the terms between the Parties immediately prior to the Commencement Date.

(iv) **30 Day Payment Terms Upon Payment of First Installment Payment:** Upon payment by the Company of the First Installment Payment, the Studio shall extend 30 day payment terms to the Company (the "Interim Payment Terms") with respect to Movies ordered on or after the date that the First Installment Payment is made, provided that unless and until the Company pays the Second Installment Payment, the Studio's obligation to extend credit shall be limited to a revolving credit limit of \$_____ (the "Interim Credit Limit").

(v) **60 Day Payment Terms Upon Payment of Second Installment Payment:** Upon payment by the Company of the Second Installment Payment, the Studio shall extend 60 day payment terms to the Company (the "Final Payment Terms" and together with the Interim Payment Terms, the "Agreed Payment Terms") with respect to Movies ordered on or after the date that the Second Installment Payment is made, provided that the Studio's obligation

to extend credit shall be limited to a revolving credit limit of \$_____ (the "Final Credit Limit").

(vi) **No Lump Sum Payment Upon Plan Effective Date:** The Studio agrees that it will not require a lump sum payment upon the Plan Effective Date in these Chapter 11 Cases on account of any administrative expense priority claim that it may assert, but instead agrees that such claims will be paid in the ordinary course of business after the Plan Effective Date on the Interim Payment Terms (subject to the Interim Credit Limit).

(vii) **Extension of Revenue Sharing Terms:** As soon as practicable, but in no event later than the date of the First Installment Payment, the Studio will negotiate written revenue sharing agreements (or other supply agreements acceptable to the Company) with Movie Gallery US, LLC, Movie Gallery Canada, Inc. and Hollywood Entertainment Corporation with customary terms and conditions with a term expiring no earlier than December 31, 2008. The Company's obligation to make the First Installment Payment and the Second Installment Payment under this Agreement are expressly conditioned on negotiation of written revenue sharing agreement with Movie Gallery US, LLC, Movie Gallery Canada, Inc. and Hollywood Entertainment Corporation acceptable to the Company.

(viii) **MFN:** In the event the Company grants any other motion picture studio more favorable treatment with respect to the timing or the percentage of either the First Installment Payment or the Second Installment Payment, this Agreement will be deemed to be amended to include such more favorable treatment for the Studio.

(ix) **Transfer of Revenue Sharing Units:** Revenue sharing product may be transferred between brands at the Company's discretion beginning 28 days after street date.

(x) **Store Closing Sales:** The Studio will not oppose Company's store closing efforts, including Company's use of a third party agent to facilitate store closing sales.

(xi) **Revenue Sharing Audits:** The Studio agrees that the amount of its Prepetition Balance, payable pursuant to the terms of paragraph 2 above, will not be increased for any reason, including but not limited to any revenue sharing audit. Unless incorporated in the Prepetition Balance agreed to above, the Studio waives any claims based on revenue sharing audits for any audit period prior to the Commencement Date.

(xii) **Consequences of Payment of Prepetition Balance:** Payment of the Studio's Prepetition Balance in the manner set forth in this Agreement may only occur upon execution of this Agreement by a duly authorized representative of the Studio and the return of this Agreement to the Company. The Studio's execution of this Agreement and return of the same to the Company constitutes an agreement by the Studio:

1. upon payment of the First Installment Payment, to comply with the Interim Payment Terms (subject to the Interim Credit Limit);

2. upon payment of the Second Installment Payment, to comply with the Final Payment Terms (subject to the Final Credit Limit) for the period following the Plan Effective Date;
3. that Studio has reviewed the terms and provisions of the Studio Accommodation Motion and the Order and that the Studio consents to be bound by such terms; and
4. that if the Studio fails to comply with its commitments under this Agreement, including, but not limited to the commitment to continue to supply Movies set forth in paragraph 3 above and the commitment to extend the Agreed Payment Terms set forth in paragraphs 4 and 5 above, then any payments received by the Studio on account of prepetition Overage Obligations or the Prepetition Balance (i) will be deemed to have been in payment of then-outstanding postpetition obligations owed to the Studio and (ii) the Studio will immediately repay to the Company any payments made to the Studio after the Commencement Date on account of prepetition Overage Obligations or the Prepetition Balance to the extent that the aggregate amount of such payments exceeds the postpetition obligations then outstanding.

(xiii) **Waiver of Avoidance Actions.** The Company agrees to waive all avoidance actions, including causes of action under chapter 5 of the Bankruptcy Code and causes of action under state preferential transfer or fraudulent conveyance laws against the Studio (the “Waiver”), provided, however, that if the Studio fails to honor any of its commitments under this Agreement the Waiver shall be of no force and effect. The Waiver is binding on the Debtors, their estates, any trustee appointed under chapter 11 or chapter 7 of the Bankruptcy Code, any committees appointed in the Chapter 11 Cases, any other party acting on behalf of the Debtors and any successors to the Debtors.

(xiv) **Binding Effect:** This Agreement is binding on the Debtors, their Estates, the Studio and any of their respective affiliates, heirs, executors, administrators and representatives .

(xv) **Bankruptcy Court Jurisdiction.** The Parties also hereby agree that any dispute with respect to this Agreement or the Order shall be determined by the Bankruptcy Court.

Sincerely,

Movie Gallery, Inc.

By: _____
Title: _____
Date: _____, 2007

Agreed and Accepted by:

[Name of Studio]

By: _____

Title: _____

Dated: _____, 2007