

ASSET PURCHASE AGREEMENT

by and among

MOVIE GALLERY, INC.

and

MOVIE GALLERY US, LLC

and

HOLLYWOOD ENTERTAINMENT CORPORATION, as Seller

and

\_\_\_\_\_, as Buyer

Dated as of \_\_\_\_\_, 2010

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## ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this "Agreement"), dated as of November \_\_, 2010 (the "Effective Date"), is made by and among Movie Gallery, Inc., a Delaware corporation ("MGI"), Movie Gallery US, LLC, a Delaware limited liability company ("MGUS"), and Hollywood Entertainment Corporation, a Virginia corporation ("HEC" and, together with MGI and MGUS, collectively, "Seller"), and \_\_\_\_\_, a \_\_\_\_\_ ("Buyer"). Capitalized terms used in this Agreement are defined or cross-referenced in Article 11.

### RECITALS

A. Seller, prior to ceasing business operations, was in the business of renting and selling movies and video games together with activities ancillary thereto that were operated or conducted by Seller online and at its specialty retail stores.

B. Seller commenced voluntary cases for reorganization (the "Bankruptcy Cases") under title 11 of the United States Code, 11 U.S.C. Sections 101–1532 (the "Bankruptcy Code"), in the United States Bankruptcy Court for the Eastern District of Virginia (the "Bankruptcy Court") on February 2, 2010 (the "Commencement Date").

C. Buyer desires to purchase the Acquired Assets and assume the Assumed Liabilities (as defined below) from Seller, and Seller desires to sell, convey, assign and transfer to Buyer, the Acquired Assets together with the Assumed Liabilities, all in the manner and subject to the terms and conditions set forth in this Agreement and in accordance with Sections 105 and 363 and other applicable provisions of the Bankruptcy Code.

D. The Acquired Assets and Assumed Liabilities are assets and liabilities of Seller, which are to be purchased and assumed by Buyer pursuant to an order of the Bankruptcy Court approving such sale pursuant to Sections 105 and 363 of the Bankruptcy Code (the "Sale Order"), all in the manner and subject to the terms and conditions set forth in this Agreement and the Sale Order and in accordance with other applicable provisions of the Bankruptcy Code.

E. The execution and delivery of this Agreement and Seller's ability to consummate the transactions set forth in this Agreement are subject, among other things, to the entry of the Sale Order.

### AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and their respective representations, warranties, covenants and agreements herein contained, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer hereby agree as follows:

#### ARTICLE 1. PURCHASE AND SALE OF THE ACQUIRED ASSETS.

Section 1.1. Transfer of Acquired Assets. At the Closing, and upon the terms and conditions herein set forth, Seller shall sell, assign, transfer and convey to Buyer or its

designees, and Buyer or its designees shall acquire, purchase and accept from Seller all of Seller's right, title and interest in, to and under the following property (collectively, the "Acquired Assets"):

(a) all of Seller's worldwide rights, title and interest in and to all trademarks, trade names, certification marks, service marks, logos, trade dress, copyrights, know-how, and other source indicators used in connection with the property listed on Schedule 1.1(a), and all applications, registrations, and renewals in connection therewith, together with the goodwill of any business symbolized thereby and associated therewith (collectively, the "Trademarks"), as well as the right to bring any action at law or in equity for the infringement of such Trademarks occurring after the Closing Date, including the right to receive all proceeds and damages therefrom;

(b) all of Seller's worldwide rights, title and interest in and to the domain names listed on Schedule 1.1(b) (the "Domain Names"), including the right to receive all proceeds and damages therefrom; and

(c) all of Seller's information databases including customer lists (including mailing addresses, email addresses and certain transaction information, but not including information which would identify a person as having requested or obtained specific video materials or services), and company-wide sales data (including store locations and transaction amounts, but not including customer information which would identify a person as having requested or obtained specific video materials or services) described on Schedule 1.1(c) hereto (the "Information Database").

Section 1.2. Assumption of Liabilities. At the Closing, Buyer shall assume, and Buyer hereby agrees to thereafter pay, perform and discharge when due, only the following liabilities (the "Assumed Liabilities"):

(a) all liabilities of Seller for Transaction Taxes payable in connection with the transactions contemplated by this Agreement; and

(b) all liabilities and obligations arising on or after the Closing Date, other than successor liability claims, relating to or arising out of the Acquired Assets.

Section 1.3. Retention of Liabilities. Buyer is assuming only the Assumed Liabilities and is not assuming any other liability or obligation of whatever nature, whether presently in existence or arising hereafter. All such other liabilities and obligations shall be retained by and remain liabilities and obligations of Seller (all such liabilities and obligations not being assumed being herein referred to as the "Excluded Liabilities").

## **ARTICLE 2. CONSIDERATION**

Section 2.1. Deposit. Concurrently with the execution and delivery of this Agreement, Buyer shall pay to Seller by wire transfer of immediately available funds an aggregate amount equal to \_\_\_\_\_ dollars (\$\_\_\_\_\_.00), representing ten (10) percent of the Purchase Price (the "Deposit"). If this Agreement is terminated without the

Closing occurring, the Deposit shall be disbursed in accordance with Section 8.2. If the Closing occurs, the Deposit shall be applied (without interest) to the Purchase Price.

Section 2.2. Consideration. The aggregate consideration for the sale and transfer of the Acquired Assets is (i) \_\_\_\_\_ dollars (\$\_\_\_\_\_.00) in cash (the “Purchase Price”), which price shall be payable and deliverable in accordance with Section 3.3, and (ii) the assumption by Buyer of the Assumed Liabilities.

### **ARTICLE 3. CLOSING AND DELIVERIES**

Section 3.1. Closing. The consummation of the transactions contemplated hereby (the “Closing”) shall take place, within two (2) Business Days after entry of the Sale Order, or as otherwise may be agreed to by the parties hereto (the “Closing Date”), at the offices of Sellers’ counsel or at a place otherwise agreed upon by the parties.

Section 3.2. Seller’s Deliveries. At the Closing Seller shall deliver to Buyer:

(a) bills of sale, endorsements, assignments and other instruments of transfer and conveyance (including the assignment agreements substantially in the form attached hereto as Exhibit 3.2(a)) necessary to effect the sale, transfer, and assignment of the Acquired Assets to Buyer that are consistent with the terms of this Agreement and reasonably satisfactory in form and substance to counsel for Buyer;

(b) possession of the Acquired Assets (to the extent physically deliverable);  
and

(c) a copy of the Sale Order.

Section 3.3. Buyer’s Deliveries. At the Closing:

(a) Buyer shall pay to Seller the Purchase Price (less the Deposit) by wire transfer of immediately available funds in accordance with wire instructions provided by Seller;  
and

(b) Buyer shall execute and deliver to Seller an instrument of assumption of liabilities with respect to the Assumed Liabilities reasonably satisfactory in form and substance to counsel for Seller. Buyer and Seller may agree that Section 1.2 hereof may stand in lieu of a separate instrument.

### **ARTICLE 4. REPRESENTATIONS AND WARRANTIES**

Section 4.1. Representations and Warranties of Seller. Seller represents and warrants to Buyer as follows:

(a) Organization.

(i) MGI is a Delaware corporation duly organized and validly existing under the laws of the State of Delaware. Subject to any necessary authorization or approval from

the Bankruptcy Court, MGI has all requisite power and authority to own its properties and assets and to consummate the transactions contemplated hereby.

(ii) MGUS is a Delaware limited liability company duly organized and validly existing under the laws of the State of Delaware. Subject to any necessary authorization or approval from the Bankruptcy Court, MGUS has all requisite power and authority to own its properties and assets and to consummate the transactions contemplated hereby.

(iii) HEC is a Virginia corporation duly organized and validly existing under the laws of the Commonwealth of Virginia. Subject to any necessary authorization or approval from the Bankruptcy Court, HEC has all requisite power and authority to own its properties and assets and to consummate the transactions contemplated hereby.

(b) Authorization and Validity. Each Seller has all power and authority to enter into this Agreement and, subject to the Bankruptcy Court's entry of the Sale Order, to carry out its respective obligations hereunder and thereunder. The execution and delivery of this Agreement and its performance of its obligations hereunder have been duly authorized by all necessary corporate action of Seller, and no other action on the part of Seller is necessary to authorize such execution, delivery and performance. This Agreement has been duly executed by Seller and, subject to the Bankruptcy Court's entry of the Sale Order, constitutes Seller's valid and binding obligations, enforceable against Seller in accordance with the terms hereof.

Section 4.2. Representations and Warranties of Buyer. Buyer hereby represents and warrants to Seller as follows:

(a) Corporate Organization. Buyer is a \_\_\_\_\_ duly \_\_\_\_\_, validly existing and in good standing under the laws of the jurisdiction of its incorporation, and has all requisite power and authority to own its properties and assets.

(b) Authorization and Validity of Agreement. Buyer has all requisite power and authority to enter into this Agreement and to carry out its obligations hereunder. The execution and delivery of this Agreement and the performance of Buyer's obligations hereunder have been duly authorized by all necessary action by the board of directors (or equivalent) of Buyer, and no other action on the part of Buyer is necessary to authorize such execution, delivery and performance. This Agreement has been duly executed by Buyer and constitutes the valid and binding obligations of Buyer, enforceable against Buyer in accordance with its terms.

(c) No Conflict or Violation. The execution, delivery and performance by Buyer of this Agreement does not and will not violate or conflict with any provision of the organizational documents of Buyer and does not and will not violate any provision of law, or any order applicable to Buyer, nor will it result in a breach of or constitute (with due notice or lapse of time or both) a default under any contract to which Buyer is a party or by which it is bound or to which any of its properties or assets is subject.

(d) Consents and Approvals. The execution, delivery and performance of this Agreement by Buyer does not and will not require the consent or approval of, or filing with, any government or any other Person except (i) as may be required to be obtained by Buyer after the Closing in order to own or operate any of the Acquired Assets; (ii) entry of the Sale Order by the

Bankruptcy Court; or (iii) for such consents, approvals and filings, of which the failure to obtain or make would not, individually or in the aggregate, have a Material Adverse Effect on the ability of Buyer to consummate the transactions contemplated hereby.

(e) Investigation by Buyer. Buyer has conducted its own independent review and analysis of the Acquired Assets and the Assumed Liabilities. Buyer has conducted its own independent review of all orders of, and all motions, pleadings, and other submissions to, the Bankruptcy Court in connection with the Bankruptcy Cases. In entering into this Agreement, Buyer has relied solely upon its own investigation and analysis, and Buyer (i) acknowledges that neither Seller nor any of its Affiliates or Related Persons makes or has made any representation or warranty, either express or implied, as to the accuracy or completeness of any of the information provided or made available to Buyer or its Affiliates or Related Persons, except for the representations and warranties contained in this Agreement (which are subject to the limitations and restrictions contained in this Agreement); and (ii) agrees, to the fullest extent permitted by law, that none of Seller, its Affiliates or any of their respective Related Persons shall have any liability or responsibility whatsoever to Buyer or its Affiliates or Related Persons on any basis (including, without limitation, in contract or tort, under federal or state securities laws or otherwise) based upon any information provided or made available, or statements made, to Buyer or its Affiliates or Related Persons (or any omissions therefrom), except for Seller's representations and warranties contained in this Agreement and, with respect to such representations and warranties, subject to the limitations and restrictions contained in this Agreement.

Section 4.3. Warranties Exclusive. The parties acknowledge that the representations and warranties contained in Article 4 are the only representations or warranties given by the parties and that all other express or implied warranties are disclaimed. Without limiting the foregoing Buyer acknowledges that the Acquired Assets are conveyed "AS IS", "WHERE IS" and "WITH ALL FAULTS" and that ALL WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE ARE DISCLAIMED. WITHOUT LIMITING THE FOREGOING BUYER ACKNOWLEDGES THAT SELLER AND SELLER'S AFFILIATES AND THEIR RESPECTIVE RELATED PERSONS HAVE MADE NO REPRESENTATION OR WARRANTY CONCERNING (I) ANY USE TO WHICH THE ACQUIRED ASSETS MAY BE PUT, (II) ANY FUTURE REVENUES, COSTS, EXPENDITURES, CASH FLOW, RESULTS OF OPERATIONS, FINANCIAL CONDITION OR PROSPECTS THAT MAY RESULT FROM THE OWNERSHIP, USE OR SALE OF THE ACQUIRED ASSETS OR THE ASSUMPTION OF THE ASSUMED LIABILITIES, (III) ANY OTHER INFORMATION OR DOCUMENTS MADE AVAILABLE TO BUYER OR ITS AFFILIATES OR RELATED PERSONS OR (IV) THE CONDITION OF THE ACQUIRED ASSETS INCLUDING, WITHOUT LIMITATION, COMPLIANCE WITH ANY FEDERAL OR OTHER LAWS.

Section 4.4. Survival of Representations and Warranties. None of the representations or warranties of Seller or Buyer set forth in this Agreement or in any certificate delivered pursuant to Section 7.1(a) or 7.2(a) shall survive the Closing. The parties hereto agree that the representations and warranties of Seller contained in this Agreement shall terminate upon the Closing or upon the earlier termination of this Agreement pursuant to Section 8.1 and Seller shall not have any liability for any breach thereof from and after such termination.

## **ARTICLE 5. COVENANTS AND OTHER AGREEMENTS.**

### **Section 5.1. Covenants of Seller and Buyer.**

#### **(a) Covenants of Seller.**

(i) Approvals. Seller shall use all commercially reasonable efforts to (A) obtain all consents and approvals of all governments, and all other Persons, required to be obtained by Seller to effect the transactions contemplated by this Agreement, and (B) take, or cause to be taken, all actions, and to do, or cause to be done, all things necessary or proper, consistent with applicable law, to consummate and make effective in an expeditious manner the transactions contemplated hereby.

(ii) Further Assurances. At the request and the sole expense of Buyer, at any time after the Closing Date, Seller or its designee, on behalf of Seller, shall execute and deliver such documents as Buyer or its counsel may reasonably request to effectuate the purposes of this Agreement.

(iii) Hollywood Chamber of Commerce License. During the thirty (30) day period following the entry by the Bankruptcy Court of the Sale Order, Buyer shall have the right to provide written notice to Seller instructing Seller to assume and assign to Buyer the License Agreement, dated as of March 1, 1999, between the Hollywood Chamber of Commerce and Hollywood Entertainment Corporation. Buyer agrees that, in connection with the assumption and assignment of such License Agreement, the satisfaction of any cure obligations or any other requirements of Section 365 of the Bankruptcy Code shall be its sole obligation and responsibility.

#### **(b) Covenants of Buyer.**

(i) Approvals. Buyer shall use all commercially reasonable efforts to (A) obtain all consents and approvals of all governments, and all other Persons, required to be obtained by Buyer to effect the transactions contemplated by this Agreement, and (B) take, or cause to be taken, all action, and to do, or cause to be done, all things necessary or proper, consistent with applicable law, to consummate and make effective in an expeditious manner the transactions contemplated hereby.

(ii) Information Database. In connection with its purchase of the Information Database or any other Acquired Assets which contain personally identifiable information within the meaning of Section 363(b) of the Bankruptcy Code, Buyer agrees: (A) to comply with and be bound by the terms of Seller's privacy policies with respect to its customers; (B) to employ appropriate information security controls and procedures (technical, operational, and managerial) to protect such information; (C) to abide by all applicable laws and regulations with respect to such information; and (D) to take such additional reasonable actions as may be agreed between Sellers and Buyer. Buyer further acknowledges and agrees that: (i) the Information Database does not include any data which would identify a person as having requested specific video materials or services and (ii) that any disclosure of such data by Seller is inadvertent and that any such data will promptly be returned to Sellers or destroyed by Buyer.

Section 5.2. Bankruptcy Matters. To the extent that Seller and Buyer enter into this Agreement prior to the entry of the Sale Order, Seller and Buyer shall use commercially reasonable efforts to cooperate, assist and consult with each other to secure the entry of the Sale Order following the date hereof, and to consummate the transactions contemplated by this Agreement, including furnishing affidavits or other documents or information for filing with the Bankruptcy Court.

## **ARTICLE 6. TAXES.**

Section 6.1. Taxes Related to Purchase of Assets. All federal, state and local sales and transfer taxes, including, without limitation, all state and local taxes in connection with the transfer of the Acquired Assets, and all recording and filing fees (collectively, "Transaction Taxes") that may be imposed by reason of the sale, transfer, assignment and delivery of the Acquired Assets, and are not exempt under § 1146(a) of the Bankruptcy Code, shall be paid by Buyer. Transaction Taxes do not include any tax in the nature of an income tax, including without limitation, any capital gains, franchise, excise, inheritance, estate, succession, or gift taxes. Buyer and Seller agree to cooperate to minimize any such Transaction Taxes and to determine appropriate taxing authorities and amount of Transaction Taxes, if any, payable in connection with the transactions contemplated under this Agreement. Seller agrees to assist Buyer reasonably in the preparation and filing of any and all required returns for or with respect to such Transaction Taxes with any and all appropriate taxing authorities.

### Section 6.2. Cooperation on Tax Matters.

(a) Buyer and Seller agree to furnish, or cause to be furnished to each other, (including the execution and delivery of appropriate powers of attorney) as promptly as practicable, such information and assistance relating to the Acquired Assets and the Assumed Liabilities as is reasonably necessary for the preparation and filing of any Tax Return, claim for refund or other filings as required by law relating to tax matters, for the preparation for and proof of facts during any tax audit, for the preparation for any tax protest, for the prosecution or defense of any suit or other proceeding relating to tax matters and for the answer to any governmental or regulatory inquiry relating to tax matters.

(b) Buyer agrees to retain possession, at its own expense, of all accounting, business, financial and tax records and information (i) relating to the Acquired Assets or the Assumed Liabilities that are in existence on the Closing Date and transferred to Buyer hereunder and (ii) coming into existence after the Closing Date that relate to the Acquired Assets or the Assumed Liabilities before the Closing Date, for a period of at least six (6) years from the Closing Date, and will give Seller (or Seller's designated successor) notice and an opportunity to retain any such records in the event that Buyer determines to destroy or dispose of them after such period. In addition, from and after the Closing Date, Buyer agrees that it will provide access to Seller, Seller's designated successor and their respective attorneys, accountants and other representatives (after reasonable notice and during normal business hours and without charge) to the books, records, documents and other information relating to the Acquired Assets or the Assumed Liabilities as Seller or Seller's designated successor may reasonably deem necessary to (x) properly prepare for, file, prove, answer, prosecute and/or defend any such Tax Return, claim, filing, tax audit, tax protest, suit, proceeding or answer or (y) administer or

complete the Bankruptcy Cases. Such access shall include, without limitation, access to any computerized information retrieval systems relating to the Acquired Assets or the Assumed Liabilities.

Section 6.3. Allocation of Purchase Price and Purchase Price Allocation Forms. The Purchase Price and the Assumed Liabilities will be allocated among the Acquired Assets in accordance with the allocation of the Purchase Price (the "Allocation") set forth on Schedule 6.3 to be delivered by Seller, or Seller's designated successor, to Buyer no later than one (1) business day prior to the Closing. Any adjustments to the Purchase Price shall result in an adjustment to the Allocation in accordance with Section 1060 of the Code and the Treasury Regulations thereunder. The Allocation, as so adjusted, shall be binding on the parties for all purposes. Seller and Buyer agree that the transaction will be treated as an asset acquisition for tax purposes. Seller and Buyer will cooperate in filing with the Internal Revenue Service their respective Forms 8594, including any required amendments or supplements thereto, as provided for in Section 1060 of the Code and the Treasury Regulations issued thereunder on a basis consistent with the Allocation, and the Allocation shall be reflected on any Tax Returns required to be filed. Neither Seller, Seller's designated successor, nor Buyer shall, nor shall they permit their respective Affiliates to, take any position inconsistent with the Form 8594, as appropriately adjusted.

## **ARTICLE 7. CONDITIONS PRECEDENT TO PERFORMANCE BY PARTIES.**

Section 7.1. Conditions Precedent to Performance by Seller. The obligation of Seller to consummate the transactions contemplated by this Agreement is subject to the fulfillment, at or before the Closing Date, of the following conditions, any one or more of which (other than the condition contained in Section 7.1(c)) may be waived by Seller in its sole discretion:

(a) Representations and Warranties of Buyer. All representations and warranties made by Buyer in Section 4.2 shall be accurate in all material respects on and as of the Closing Date as if again made by Buyer on and as of such date, except for inaccuracies that do not result in a material adverse effect on Buyer's ability to perform its obligations hereunder, and Seller shall have received a certificate, dated as of the Closing Date and signed by an officer or principal of Buyer to that effect.

(b) Performance of the Obligations of Buyer. Buyer shall have performed in all material respects all obligations required under this Agreement to be performed by it on or before the Closing Date.

(c) Consents and Approvals. The Bankruptcy Court shall have entered the Sale Order and no order staying, reversing, modifying or amending the Sale Order shall be in effect on the Closing Date.

(d) No Violation of Orders. No preliminary or permanent injunction or other order that declares this Agreement invalid or unenforceable in any respect or which prevents the consummation of the transactions contemplated hereby shall be in effect.

Section 7.2. Conditions Precedent to the Performance by Buyer. The obligations of Buyer to consummate the transactions contemplated by this Agreement are subject to the fulfillment, at or before the Closing Date, of the following conditions, any one or more of which (other than the condition contained in Section 7.2(d)) may be waived by Buyer in its sole discretion:

(a) Representations and Warranties of Seller. All representations and warranties made by Seller in Section 4.1 shall be accurate in all material respects on and as of the Closing Date as if again made by Seller on and as of such date, except for inaccuracies that do not result in a Material Adverse Effect, and Buyer shall have received a certificate, dated as of the Closing Date and signed by an officer of Seller to that effect.

(b) Performance of the Obligations of Seller. Seller shall have performed in all material respects all obligations required under this Agreement to be performed by it on or before the Closing Date.

(c) Consents and Approvals. The Bankruptcy Court shall have entered the Sale Order, in form and substance satisfactory to Buyer, and no order staying, reversing, modifying or amending the Sale Order shall be in effect on the Closing Date.

(d) No Violation of Orders. No preliminary or permanent injunction or other order that declares this Agreement invalid in any respect or prevents the consummation of the transactions contemplated hereby shall be in effect.

## **ARTICLE 8. TERMINATION**

Section 8.1. Termination: This Agreement may be terminated at any time prior to the Closing Date:

(a) by either Seller or Buyer if the Closing shall not have occurred by \_\_\_\_\_, 2010; provided, however, that such date may be extended by Seller and Buyer upon mutual agreement;

(b) by either Seller or Buyer upon the entry of an order of the Bankruptcy Court authorizing the sale of the Acquired Assets in a Competing Transaction; provided, however, that Buyer shall not be permitted to terminate this Agreement upon the entry of such an order if Buyer is determined to be the second highest bidder for the Acquired Assets in which case Buyer is required to remain bound by the terms of this Agreement pursuant to Section 9.2 of this Agreement;

(c) by Seller if Buyer shall have breached any of its representations, warranties, covenants or agreements contained in this Agreement which would give rise to the failure of a condition set forth in Article 7, which breach cannot be or has not been cured within ten (10) Business Days after the giving of written notice by Seller to Buyer specifying such breach;

(d) by Buyer if Seller shall have breached any of its representations, warranties, covenants or agreements contained in this Agreement which would give rise to the

failure of a condition set forth in Article 7, which breach cannot be or has not been cured within ten (10) Business Days after the giving of written notice by Buyer to Seller specifying such breach; or

(e) by the mutual written consent of Seller and Buyer.

Section 8.2. Effect of Termination. In the event of termination of this Agreement as provided in Section 8.1, this Agreement shall forthwith become void and there shall be no liability on the part of either party; provided, however, that in the event this Agreement is terminated pursuant to Section 8.1(c) and Seller is not then in breach of Seller's obligations hereunder, then in addition to whatever other rights Seller may have against Buyer, Seller shall be entitled to retain the Deposit and all interest thereon. In the event of termination of this Agreement for any reason other than pursuant to Section 8.1(c), and provided that Buyer is not then in breach of Buyer's obligations hereunder, Buyer shall be entitled to return of the Deposit, without any interest thereon. The return of the Deposit by Seller shall be Buyer's sole remedy in the event of a breach of Sellers' obligation hereunder.

## **ARTICLE 9. BANKRUPTCY COURT MATTERS**

Section 9.1. Submission to Bankruptcy Court. Seller shall file with the Bankruptcy Court this Agreement and such notices as may be appropriate in connection therewith. Buyer shall cooperate with Seller in obtaining Bankruptcy Court approval of this Agreement.

Section 9.2. Buyer's Back-Up Commitment. If a Competing Transaction is approved by the Bankruptcy Court with a bidder or bidders other than Buyer and Buyer has submitted the second highest bid for the Acquired Assets, then Buyer shall remain bound to this Agreement, on its existing terms and at the purchase price bid by Buyer at the auction, unless and until the Competing Transaction is consummated or, if earlier, until the applicable date set forth in Section 8.1(a).

Section 9.3. Sale Order. Seller shall obtain the entry by the Bankruptcy Court of the Sale Order. Buyer agrees that it will promptly take such actions as are reasonably requested by Seller to assist in obtaining entry of a Sale Order, including furnishing affidavits or other documents or information for filing with the Bankruptcy Court for the purposes, among others, of demonstrating that Purchaser is a "good faith" purchaser under Section 363(m) or any other section of the Bankruptcy Code and that the Purchase Price was not controlled by an agreement in violation of Section 363(n) or any other section of the Bankruptcy Code. The Sale Order shall provide that it shall be effective and enforceable immediately upon entry by the Bankruptcy Court notwithstanding Rules 6004(h) and 6006(d) of the Federal Rules of Bankruptcy Procedure.

## **ARTICLE 10. MISCELLANEOUS.**

Section 10.1. Successors and Assigns. Except as otherwise provided in this Agreement, no party hereto shall assign this Agreement or any rights or obligations hereunder without the prior written consent of the other party hereto, and any such attempted assignment without such prior written consent shall be void and of no force and effect. This Agreement shall

inure to the benefit of and shall be binding upon the successors and permitted assigns of the parties hereto, specifically including, without limitation, the designated successor of the Seller.

Section 10.2. Governing Law; Jurisdiction. This Agreement shall be construed, performed and enforced in accordance with, and governed by, the laws of the State of Delaware (without giving effect to the principles of conflicts of laws thereof), except to the extent that the laws of such State are superseded by the Bankruptcy Code. The parties hereto irrevocably elect as the sole judicial forum for the adjudication of any matters or disputes arising under or in connection with the Agreement, and consent to the exclusive jurisdiction of, the Bankruptcy Court.

Section 10.3. Expenses. Each of the parties hereto shall pay its own expenses in connection with this Agreement and the transactions contemplated hereby, including, without limitation, any legal and accounting fees, whether or not the transactions contemplated hereby are consummated. Buyer shall pay the cost of all fees, costs, and expenses associated with recording any assignment of the Acquired Assets.

Section 10.4. Broker's and Finder's Fees. Each of the parties represents and warrants that it has dealt with no broker or finder in connection with any of the transactions contemplated by this Agreement other than Streambank LLC, whose fees and expenses shall, as between the parties hereto, be the responsibility of Seller, and, insofar as such party knows, no other broker or other Person is entitled to any commission, finder's fee or similar payment in connection with any of these transactions.

Section 10.5. Severability. In the event that any part of this Agreement is declared by any court or other judicial or administrative body to be null, void or unenforceable, said provision shall survive to the extent it is not so declared, and all of the other provisions of this Agreement shall remain in full force and effect only if, after excluding the portion deemed to be unenforceable, the remaining terms shall provide for the consummation of the transactions contemplated hereby in substantially the same manner as originally set forth at the later of the date this Agreement was executed or last amended.

Section 10.6. Notices.

(a) All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been duly given: (i) on the date of service, if served personally on the party to whom notice is to be given; (ii) on the day of transmission, if sent via facsimile transmission to the facsimile number given below, and telephonic confirmation of receipt is obtained promptly after completion of transmission; (iii) on the day after delivery to Federal Express or similar overnight courier or the Express Mail service maintained by the United States Postal Service; or (iv) on the fifth day after mailing, if mailed to the party to whom notice is to be given, by first class mail, registered or certified, postage prepaid and properly addressed, to the party as follows:

If to Seller:

Movie Gallery, Inc.  
Attn: General Counsel  
9275 SW Peyton Lane  
Wilsonville, Oregon 97070

Additional copy (that will not constitute notice) to:

SNR DENTON US LLP  
Attn: John A. Bicks  
Louis A. Curcio  
1221 Avenue of the Americas  
New York, NY 10020-1089

If to Buyer:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention:  
Facsimile:

Additional copy (that will not constitute notice) to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention:  
Facsimile:

(b) Any party may change its address for the purpose of this Section 10.6 by giving the other party written notice of its new address in the manner set forth above.

Section 10.7. Amendments; Waivers. This Agreement may be amended or modified, and any of the terms, covenants, representations, warranties or conditions hereof may be waived, only by a written instrument executed by the parties hereto, or in the case of a waiver, by the party waiving compliance. Any waiver by any party of any condition, or of the breach of any provision, term, covenant, representation or warranty contained in this Agreement, in any one or more instances, shall not be deemed to be or construed as a further or continuing waiver of any such condition, or of the breach of any other provision, term, covenant, representation or warranty of this Agreement.

Section 10.8. Entire Agreement. This Agreement contains the entire understanding between the parties hereto with respect to the transactions contemplated hereby and supersedes and replace all prior and contemporaneous agreements and understandings, oral

or written, with regard to such transactions. All schedules hereto and any documents and instruments delivered pursuant to any provision hereof are expressly made a part of this Agreement as fully as though completely set forth herein.

Section 10.9. No Third Party Beneficiaries. Nothing in this Agreement is intended to or shall confer any rights or remedies under or by reason of this Agreement on any Persons other than Seller, Seller's designated successor and Buyer and their respective successors and permitted assigns. Nothing in this Agreement is intended to or shall relieve or discharge the obligations or liability of any third Persons to Seller, Seller's designated successor or Buyer. This Agreement is not intended to nor shall it give any third Persons any right of subrogation or action over or against Seller or Buyer.

Section 10.10. Headings, Interpretation, Gender. Words used herein, regardless of the number and gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine, or neuter, as the context requires. Whenever the words "include," "includes" or "including" are used in this Agreement, they shall be deemed followed by the words "without limitation." Neither this Agreement nor any uncertainty or ambiguity herein shall be construed or resolved against Buyer or Seller, whether under any rule of construction or otherwise. No party to this Agreement shall be considered the draftsman. On the contrary, this Agreement has been reviewed, negotiated and accepted by all parties and their attorneys and shall be construed and interpreted according to the ordinary meaning of the words so as fairly to accomplish the purposes and intentions of all the parties. The captions and section headings contained in this Agreement are for convenience of reference only, do not form a part of this Agreement and shall not affect in any way the meaning or interpretation of this Agreement. All references in this Agreement to "Section" or "Article" shall be deemed to be references to a Section or Article of this Agreement. All references to "herein" or "hereof" or "hereunder" and similar phrases shall be broadly construed to refer to the entire Agreement and not merely to the specific clause, section, or article.

Section 10.11. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute the same instrument. Delivery of an executed counterpart to this Agreement by facsimile or .pdf shall have the same force and effect as delivery of an original executed counterpart of this Agreement.

Section 10.12. Further Action. Pending the Closing, the parties hereto shall use all reasonable efforts to take, or cause to be taken, all appropriate action, to do or cause to be done all things necessary, proper or advisable under applicable law as may be consistent with the terms of this Agreement, or required to carry out the provisions of this Agreement and consummate and make effective the transactions contemplated by this Agreement, including without limitation the transfer and assignment of the Acquired Assets.

## **ARTICLE 11. DEFINITIONS.**

Section 11.1. Certain Terms Defined. As used in this Agreement, the following terms which are not otherwise defined above, shall have the following meanings:

“Affiliate” means, with respect to any Person, any Person directly or indirectly controlling, controlled by or under direct or indirect common control with such other Person.

“Business Day” means any day other than Saturday, Sunday and any day that is a legal holiday or a day on which banking institutions in Richmond, Virginia are authorized by law or other governmental action to close.

“Code” means the Internal Revenue Code of 1986, as amended.

“Competing Transaction” means a transaction (or series of transactions) involving the direct or indirect sale, transfer or other disposition of all or any substantial portion of the Acquired Assets as a single, integrated transaction to a purchaser or as multiple transactions to different purchasers, other than Buyer.

“IRS” means the Internal Revenue Service.

“Material Adverse Effect” means a state of facts, event, change or effect on the value of the Acquired Assets that results in a material adverse effect on the value of the Acquired Assets taken as a whole, but excludes any state of facts, event, change or effect caused by events, changes or developments relating to (A) any action of any or all of Seller pursuant to any order of the Bankruptcy Court entered prior to the date hereof, including, without limitation, orders entered in connection with the sale of Seller’s other assets or the liquidation of Seller’s inventory, the implementation of this Agreement, the transactions contemplated by this Agreement, any ancillary agreements or the announcement thereof; (B) changes or conditions affecting the retail industry generally; (C) changes in economic, regulatory or political conditions generally; (D) the Bankruptcy Cases, including, without limitation, changes resulting from, or from any motion, application, pleading or order filed related to, the Bankruptcy Cases; or (E) any hostilities, acts of war, military actions, sabotage or terrorism.

“Person” means any individual, corporation, partnership, joint venture, limited liability company, association, joint-stock company, trust, unincorporated organization or government.

“Purchase Price” shall have the meaning set forth in Section 2.2 of this Agreement.

“Related Person” means, with respect to any Person, all past, present and future directors, officers, members, managers, stockholders, employees, controlling persons, agents, professionals, attorneys, accountants, investment bankers or representatives of any such Person.

“Tax Return” means any report, return, information return, filing or other information, including any schedules, exhibits or attachments thereto, and any amendments to any of the foregoing required to be filed or maintained in connection with the calculation, determination, assessment or collection of any taxes (including estimated taxes).

*[Signatures are on the following page.]*

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized as of the date first above written.

\_\_\_\_\_, as Buyer

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

Name:

Title:

MOVIE GALLERY, INC., as Seller

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

Name:

Title:

MOVIE GALLERY US, LLC, as Seller

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

Name:

Title:

HOLLYWOOD ENTERTAINMENT  
CORPORATION, as Seller

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

Name:

Title:



**SCHEDULE 1.1(a)-TRADEMARKS**

United States Federal Trademark Registrations

<b>Trademark. Service Mark</b>	<b>App. No.</b>	<b>Reg. No (Serial No.)</b>	<b>Reg./Renewal Date (Filing Data)</b>

Foreign Trademark Registrations

<b>Country</b>	<b>Trademark</b>	<b>App. No.</b>	<b>Reg. No.</b>	<b>Date Reg./Filing Date</b>

Country	Trademark	App. No.	Reg. No.	Date Reg./Filing Date

**SCHEDULE 1.1(b)-DOMAIN NAMES**

DOMAIN NAME	Account No.	Expiration Date

**Schedule 1.1 (c)-Information Database**

### **SCHEDULE 6.3 – PURCHASE PRICE ALLOCATION**

To be delivered by Buyer no later than one business day prior to Closing

### **EXHIBIT 3.2(a)**

#### Form of Assignment Agreements

#### **INTELLECTUAL PROPERTY AND DOMAIN NAME ASSIGNMENT**

This INTELLECTUAL PROPERTY AND DOMAIN NAME ASSIGNMENT (this "Assignment"), effective the \_\_\_\_ day of \_\_\_\_\_, 2010, is made and entered into by and between Movie Gallery, Inc., a Delaware corporation, Movie Gallery US, LLC, a Delaware limited liability company, and Hollywood Entertainment Corporation, a Virginia corporation, each having offices at 9275 SW Peyton Lane, Wilsonville, Oregon 97070, on the one hand, (collectively "Assignor"), and \_\_\_\_\_, a \_\_\_\_\_ having a place of business at \_\_\_\_\_, on the other hand ("Assignee") (each a "Party," and collectively, the "Parties"). Capitalized terms used herein but not otherwise defined herein shall have the meanings set forth in the Purchase Agreement (defined below).

WHEREAS, Assignor is the owner of each of the trademarks (including those which may be entitled to be registered in additional territories), trademark registrations and trademark applications (including any and all goodwill symbolized thereby) set forth on Schedule A hereto, (the "Trademarks"), and any and all copyright subsisting in the subject matter of the Trademarks, including any design or word components (collectively, the "Purchased Intellectual Property");

WHEREAS, Assignor is the registrant of record and owner of each of the Internet domain names (including any and all goodwill symbolized thereby) set forth on Schedule B hereto and the domain name registrations therefor (the "Domain Names");

WHEREAS, the execution and delivery of this Assignment is a condition to Closing.

NOW THEREFORE, for the consideration set forth in the Purchase Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Assignment. Effective upon Closing, Assignor hereby assigns to Assignee:
  - (a) all of Assignor's right, title and interest in, and good will associated with, the Purchased Intellectual Property and the Domain Names, including all rights therein provided by international conventions and treaties, and the right to sue for past, present and future infringement thereof ("Transferred Rights"); and
  - (b) any and all rights to sue at law or in equity for any infringement, imitation, impairment, distortion, dilution or other unauthorized use or conduct in derogation of the Transferred Rights occurring prior to the Closing, including the right to receive all proceeds and damages therefrom;

- (c) any and all rights to royalties, profits, compensation, license fees or other payments or remuneration of any kind relating to the Transferred Rights arising from and after the date of this Assignment; and
- (d) any and all rights to obtain renewals, reissues, and extensions of registrations or other legal protections pertaining to the Transferred Rights.

Assignee, its successors and assigns, shall hold the rights to the foregoing for and during the existence of such Transferred Rights, and all renewals, reissues and extensions thereof, as fully and as entirely as the same would have been held and enjoyed by Assignor had this Assignment not been made.

2. Further Assurances. Assignor shall, at the cost and expense of Assignee, timely execute and deliver any additional documents and perform such additional acts reasonably necessary or desirable to record and perfect the interest of Assignee in and to the Purchased Intellectual Property and the Domain Names, and shall not enter into any agreement in conflict with this Assignment.

3. Governing Law. This Assignment shall be governed by and construed in accordance with the laws of the State of [Delaware], without regard to the conflicts of law rules of such state.

4. Counterparts. This Assignment may be executed by facsimile in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same agreement.

*[Signatures on the following page.]*

IN WITNESS WHEREOF, each Party has caused this Assignment to be executed by its duly authorized representative.

ASSIGNOR:  
Movie Gallery, Inc.

By: \_\_\_\_\_  
Name:  
Title:

ASSIGNOR:  
Movie Gallery US, LLC

By: \_\_\_\_\_  
Name:  
Title:

ASSIGNOR:  
Hollywood Entertainment Corporation

By: \_\_\_\_\_  
Name:  
Title:

ASSIGNEE:

By: \_\_\_\_\_  
Name:  
Title:

SCHEDULE A - TRADEMARKS

United States Federal Trademark Registrations

<b>Trademark. Service Mark</b>	<b>App. No.</b>	<b>Reg. No (Serial No.)</b>	<b>Reg./Renewal Date (Filing Data)</b>

Foreign Trademark Registrations

<b>Country</b>	<b>Trademark</b>	<b>App. No.</b>	<b>Reg. No.</b>	<b>Date Reg./Filing Date</b>

Country	Trademark	App. No.	Reg. No.	Date Reg./Filing Date

SCHEDULE B – DOMAIN NAMES

DOMAIN NAME	Account No.	Expiration Date