

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION

_____	)	
In re:	)	Chapter 11
	)	
MOVIE GALLERY, INC., et al., <sup>1</sup>	)	Case No. 10-30696 (DOT)
	)	
Debtors.	)	(Jointly Administered)
	)	
_____	)	

**DISCLOSURE STATEMENT WITH RESPECT TO JOINT PLAN OF LIQUIDATION  
OF MOVIE GALLERY, INC. AND ITS AFFILIATED DEBTORS AND DEBTORS IN  
POSSESSION**

**THIS IS NOT A SOLICITATION OF ACCEPTANCES OR REJECTIONS OF THE  
PLAN. ACCEPTANCES OR REJECTIONS MAY NOT BE SOLICITED UNTIL THE  
DISCLOSURE STATEMENT HAS BEEN APPROVED BY THE BANKRUPTCY  
COURT. THIS DISCLOSURE STATEMENT IS BEING SUBMITTED FOR  
APPROVAL TO THE BANKRUPTCY COURT BUT HAS NOT YET BEEN APPROVED  
BY THE BANKRUPTCY COURT AT THIS TIME.**

John A. Bicks (NY 2032498)  
Linda Bechutsky (NY 4642476)  
Louis A. Curcio (NY 4016267)  
SONNENSCHN NATH & ROSENTHAL LLP  
1221 Avenue of the Americas  
New York, NY 10020-1089  
Telephone: (212) 768-6700

Michael A. Condyles (VA 27807)  
Peter J. Barrett (VA 46179)  
Jeremy S. Williams (VA 77469)  
KUTAK ROCK LLP  
Bank of America Center  
1111 East Main Street, Suite 800  
Richmond, Virginia 23219-3500  
Telephone: (804) 644-1700

*Attorneys for Debtors and Debtors in Possession*

Dated: Richmond, Virginia  
July 21, 2010

<sup>1</sup> The Debtors in these cases are: Movie Gallery, Inc.; Hollywood Entertainment Corporation; Movie Gallery US, LLC; MG Real Estate, LLC; and HEC Real Estate, LLC.



**THE DEBTORS PROVIDE NO ASSURANCE THAT THE DISCLOSURE STATEMENT (AND THE EXHIBITS HERETO) THAT IS ULTIMATELY APPROVED IN THE CHAPTER 11 CASES (A) WILL CONTAIN ANY OF THE TERMS IN THIS CURRENT DOCUMENT OR (B) WILL NOT CONTAIN DIFFERENT, ADDITIONAL, MATERIAL TERMS THAT DO NOT APPEAR IN THIS DOCUMENT.**

**THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT, THE PLAN AND ANY EXHIBITS ATTACHED HERETO SHOULD NOT BE RELIED UPON IN MAKING INVESTMENT DECISIONS WITH RESPECT TO (A) THE DEBTORS OR (B) ANY OTHER ENTITIES THAT MAY BE AFFECTED BY THE CHAPTER 11 CASES.**

**THE VOTING DEADLINE TO ACCEPT OR REJECT THE PLAN IS   :00   M   ,   , 2010 PREVAILING EASTERN TIME, UNLESS EXTENDED BY THE DEBTORS. TO BE COUNTED, THE CLAIMS AGENT MUST ACTUALLY RECEIVE YOUR BALLOT ON OR BEFORE THE VOTING DEADLINE.**

**THE DEBTORS ARE PROVIDING THE INFORMATION IN THIS DISCLOSURE STATEMENT FOR THE JOINT PLAN OF LIQUIDATION OF MOVIE GALLERY, INC. AND ITS AFFILIATED DEBTORS UNDER CHAPTER 11 OF THE BANKRUPTCY CODE TO HOLDERS OF CLAIMS FOR PURPOSES OF SOLICITING VOTES TO ACCEPT OR REJECT THE PLAN. NOTHING IN THIS DISCLOSURE STATEMENT MAY BE RELIED UPON OR USED BY ANY ENTITY FOR ANY OTHER PURPOSE.**

**THIS DISCLOSURE STATEMENT WAS NOT FILED WITH THE SECURITIES AND EXCHANGE COMMISSION OR ANY STATE SECURITIES AUTHORITY AND NEITHER THE SECURITIES AND EXCHANGE COMMISSION NOR ANY STATE SECURITIES AUTHORITY HAVE PASSED UPON THE ACCURACY OR ADEQUACY OF THIS DISCLOSURE STATEMENT OR UPON THE MERITS OF THE PLAN.**

**THIS DISCLOSURE STATEMENT HAS BEEN PREPARED PURSUANT TO SECTION 1125 OF THE BANKRUPTCY CODE AND RULE 3016(B) OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE AND IS NOT NECESSARILY IN ACCORDANCE WITH FEDERAL OR STATE SECURITIES LAWS OR OTHER SIMILAR LAWS.**

**THIS DISCLOSURE STATEMENT MAY CONTAIN “FORWARD LOOKING STATEMENTS” WITHIN THE MEANING OF THE PRIVATE SECURITIES LITIGATION REFORM ACT OF 1995. SUCH STATEMENTS CONSIST OF ANY STATEMENT OTHER THAN A RECITATION OF HISTORICAL FACT AND CAN BE IDENTIFIED BY THE USE OF FORWARD LOOKING TERMINOLOGY SUCH AS “MAY,” “EXPECT,” “ANTICIPATE,” “ESTIMATE” OR “CONTINUE” OR THE NEGATIVE THEREOF OR OTHER VARIATIONS THEREON OR COMPARABLE TERMINOLOGY. THE READER IS CAUTIONED THAT ALL FORWARD LOOKING STATEMENTS ARE NECESSARILY SPECULATIVE AND THERE ARE CERTAIN RISKS AND UNCERTAINTIES THAT COULD CAUSE ACTUAL EVENTS OR RESULTS TO DIFFER MATERIALLY FROM THOSE REFERRED TO IN SUCH FORWARD LOOKING STATEMENTS. THE LIQUIDATION ANALYSIS, DISTRIBUTION PROJECTIONS AND OTHER INFORMATION CONTAINED HEREIN AND ATTACHED HERETO ARE ESTIMATES ONLY, AND THE TIMING AND AMOUNT OF ACTUAL DISTRIBUTIONS TO HOLDERS OF ALLOWED CLAIMS MAY BE AFFECTED BY MANY FACTORS THAT CANNOT BE PREDICTED. THEREFORE, ANY ANALYSES, ESTIMATES OR RECOVERY PROJECTIONS MAY OR MAY NOT TURN OUT TO BE ACCURATE.**

**NO LEGAL OR TAX ADVICE IS PROVIDED TO YOU BY THIS DISCLOSURE STATEMENT. THE DEBTORS URGE EACH HOLDER OF A CLAIM OR AN INTEREST TO CONSULT WITH ITS OWN ADVISORS WITH RESPECT TO ANY LEGAL, FINANCIAL, SECURITIES, TAX OR BUSINESS ADVICE IN REVIEWING THIS DISCLOSURE STATEMENT, THE PLAN AND EACH OF THE PROPOSED TRANSACTIONS CONTEMPLATED THEREBY. FURTHERMORE, THE BANKRUPTCY COURT’S APPROVAL OF THE ADEQUACY OF DISCLOSURE**

**CONTAINED IN THIS DISCLOSURE STATEMENT DOES NOT CONSTITUTE THE BANKRUPTCY COURT'S APPROVAL OF THE MERITS OF THE PLAN.**

**IT IS THE DEBTORS' POSITION THAT THIS DISCLOSURE STATEMENT DOES NOT CONSTITUTE, AND MAY NOT BE CONSTRUED AS, AN ADMISSION OF FACT, LIABILITY, STIPULATION OR WAIVER. RATHER, HOLDERS OF CLAIMS AND INTERESTS AND OTHER ENTITIES SHOULD CONSTRUE THIS DISCLOSURE STATEMENT AS A STATEMENT MADE IN SETTLEMENT NEGOTIATIONS RELATED TO CONTESTED MATTERS, ADVERSARY PROCEEDINGS AND OTHER PENDING OR THREATENED LITIGATION OR ACTIONS.**

**THIS DISCLOSURE STATEMENT CONTAINS, AMONG OTHER THINGS, SUMMARIES OF THE PLAN, CERTAIN STATUTORY PROVISIONS, CERTAIN EVENTS IN THE DEBTORS' CHAPTER 11 CASES AND CERTAIN DOCUMENTS RELATED TO THE PLAN THAT ARE ATTACHED HERETO AND INCORPORATED HEREIN BY REFERENCE. ALTHOUGH THE DEBTORS BELIEVE THAT THESE SUMMARIES ARE FAIR AND ACCURATE, THESE SUMMARIES ARE QUALIFIED IN THEIR ENTIRETY TO THE EXTENT THAT THE SUMMARIES DO NOT SET FORTH THE ENTIRE TEXT OF SUCH DOCUMENTS OR STATUTORY PROVISIONS OR EVERY DETAIL OF SUCH EVENTS. IN THE EVENT OF ANY INCONSISTENCY OR DISCREPANCY BETWEEN A DESCRIPTION IN THIS DISCLOSURE STATEMENT AND THE TERMS AND PROVISIONS OF THE PLAN OR ANY OTHER DOCUMENTS INCORPORATED HEREIN BY REFERENCE, THE PLAN OR SUCH OTHER DOCUMENTS WILL GOVERN FOR ALL PURPOSES. FACTUAL INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT HAS BEEN PROVIDED BY THE DEBTORS' MANAGEMENT EXCEPT WHERE OTHERWISE SPECIFICALLY NOTED. THE DEBTORS DO NOT REPRESENT OR WARRANT THAT THE INFORMATION CONTAINED HEREIN OR ATTACHED HERETO IS WITHOUT ANY MATERIAL INACCURACY OR OMISSION.**

**THE DEBTORS' MANAGEMENT HAS REVIEWED THE FINANCIAL INFORMATION PROVIDED IN THIS DISCLOSURE STATEMENT. ALTHOUGH THE DEBTORS HAVE USED THEIR REASONABLE BUSINESS JUDGMENT TO ENSURE THE ACCURACY OF THIS FINANCIAL INFORMATION, THE FINANCIAL INFORMATION CONTAINED IN OR INCORPORATED BY REFERENCE INTO THIS DISCLOSURE STATEMENT HAS NOT BEEN AUDITED.**

**THE DEBTORS ARE MAKING THE STATEMENTS AND PROVIDING THE FINANCIAL INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT AS OF THE DATE HEREOF, UNLESS OTHERWISE SPECIFICALLY NOTED. ALTHOUGH THE DEBTORS MAY SUBSEQUENTLY UPDATE THE INFORMATION IN THIS DISCLOSURE STATEMENT, THE DEBTORS HAVE NO AFFIRMATIVE DUTY TO DO SO. HOLDERS OF CLAIMS AND INTERESTS REVIEWING THIS DISCLOSURE STATEMENT SHOULD NOT INFER THAT, AT THE TIME OF THEIR REVIEW, THE FACTS SET FORTH HEREIN HAVE NOT CHANGED SINCE THE DISCLOSURE STATEMENT WAS FILED. HOLDERS OF CLAIMS ENTITLED TO VOTE TO ACCEPT OR REJECT THE PLAN MUST RELY ON THEIR OWN**

**EVALUATION OF THE DEBTORS AND THEIR OWN ANALYSIS OF THE TERMS OF THE PLAN, INCLUDING, WITHOUT LIMITATION, ANY RISK FACTORS CITED HEREIN, IN DECIDING WHETHER TO VOTE TO ACCEPT OR REJECT THE PLAN.**

**THE DEBTORS HAVE NOT AUTHORIZED ANY ENTITY TO GIVE ANY INFORMATION ABOUT OR CONCERNING THE PLAN OTHER THAN THAT WHICH IS CONTAINED IN THIS DISCLOSURE STATEMENT. THE DEBTORS HAVE NOT AUTHORIZED ANY REPRESENTATIONS CONCERNING THE DEBTORS OR THE VALUE OF THEIR PROPERTY OTHER THAN AS SET FORTH IN THIS DISCLOSURE STATEMENT.**

**PRIOR TO DECIDING WHETHER AND HOW TO VOTE ON THE PLAN, EACH HOLDER OF A CLAIM IN A VOTING CLASS SHOULD CONSIDER CAREFULLY ALL OF THE INFORMATION IN THIS DISCLOSURE STATEMENT, INCLUDING THE RISK FACTORS DESCRIBED IN GREATER DETAIL IN ARTICLE VII HEREIN, “PLAN-RELATED RISK FACTORS AND ALTERNATIVES TO CONFIRMATION AND CONSUMMATION OF THE PLAN.”**

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## **EXHIBITS**

- A Joint Plan Of Liquidation of Movie Gallery, Inc. and Its Affiliated Debtors and Debtors in Possession
- B Liquidation Analysis [**To Come**]

## I. SUMMARY

Movie Gallery, Inc., a debtor and debtor in possession (“Movie Gallery”<sup>2</sup> and with its affiliates organized in the United States, all of which are also debtors and debtors in possession, the “Debtors”), on behalf of itself and the other Debtors, submits this Disclosure Statement pursuant to section 1125 of the Bankruptcy Code, to Holders of Claims in connection with: (a) the solicitation of votes to accept or reject the *Joint Plan of Liquidation of Movie Gallery, Inc. and Its Affiliated Debtors and Debtors in Possession*, dated July 13, 2010, as the same may be amended from time to time (the “Plan”), which was Filed by the Debtors with the United States Bankruptcy Court for the Eastern District of Virginia, Richmond Division (the “Bankruptcy Court”) and (b) the Confirmation Hearing (the “Confirmation Hearing”), which is scheduled for [ ], 2010 at [ :00 \_\_.m.] prevailing Eastern Time (the “Confirmation Hearing Date”). A copy of the Plan is attached hereto as Exhibit A and incorporated herein by reference.

On February 2, 2010 (the “Commencement Date”), each of the Debtors Filed a voluntary petition with the Bankruptcy Court commencing voluntary bankruptcy cases under chapter 11 of the Bankruptcy Code (collectively, the “Chapter 11 Cases”). The Debtors are operating their business 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. On February 3, 2010, the Bankruptcy Court entered an order directing the joint administration of the Debtors’ Chapter 11 Cases pursuant to Bankruptcy Rule 1015(b). On February 8, 2010, the United States Trustee for the Eastern District of Virginia appointed an official committee of unsecured creditors pursuant to section 1102 of the Bankruptcy Code (the “Committee”).

### A. PURPOSE AND EFFECT OF THE PLAN

#### 1. Liquidation

The Plan is a liquidating Plan. Pursuant to prior orders of the Bankruptcy Court, the Debtors have terminated their remaining business operations and have liquidated or are in the process of liquidating their remaining assets. The Plan provides for the continuation and completion of that liquidation process, and also provides some recovery for holders of unsecured claims against the Debtors, even though the claims of many of the Debtors’ pre-petition secured creditors will not be paid in full. Subject to the rights of certain parties in interest to object to the allowance and/or priority of such claims as set forth in the Plan, to the extent not inconsistent with the Term Sheet, the Plan also provides for the payment in full to holders of allowed administrative claims and priority claims and for the creation and the funding of two liquidating trusts, one for the primary benefit of the Debtors’ first lien secured creditors (the “First Lien Term Lenders Liquidating Trust”), and the other for the Debtors’ unsecured creditors (the “GUC Liquidating Trust,” each of the First Lien Term Lenders Liquidating Trust and the GUC Liquidating Trust being a “Liquidating Trust” and collectively being the “Liquidating Trusts.”)

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<sup>2</sup> All capitalized terms used but not otherwise defined herein shall have the meanings set forth in Section IX herein entitled, “Glossary of Key Terms.” To the extent that a definition of a term in the text of this Disclosure Statement and the definition of such term in the “Glossary of Key Terms” is inconsistent, the definition included in the Glossary of Key Terms shall control.

The trust for the Debtor's general unsecured creditors will be funded with \$5 million of cash on the Effective Date. The trust for the Debtors' first lien secured creditors, unpaid administrative priority, pre-petition priority or miscellaneous secured claim senior to the first lien secured creditors will receive all other assets, consisting primarily of cash and certain inventory located in the Debtors' sole remaining distribution center. To the extent provided in the Plan, the first lien secured creditors are not asserting any deficiency claim against the GUC Liquidating Trust on account of their first lien secured claims.

The Plan further provides for the termination of all Interests in the Debtors, the substantive consolidation of the Debtors, the dissolution and wind-up of the affairs of the Debtors, the payment of the Revolver Effective Date Cash on the Effective Date, the implementation of the liquidating trusts, and distributions from the respective liquidating trusts as further provided in the Plan.

## **B. OVERVIEW OF CHAPTER 11**

Chapter 11 is the principal business reorganization chapter of the Bankruptcy Code. In addition to permitting debtor rehabilitation, chapter 11 promotes equality of treatment for similarly situated holders of claims and interests, subject to the priority of distributions prescribed by the Bankruptcy Code.

The commencement of a chapter 11 case creates an estate that comprises all of the legal and equitable interests of the debtor as of the commencement of the chapter 11 case. The Bankruptcy Code provides that the debtor may continue to operate its business and remain in possession of its property as a "debtor in possession."

Consummating a plan is the principal objective of a chapter 11 case. A bankruptcy court's confirmation of a plan binds the debtor, any entity acquiring property under the plan, any holder of a claim or interest in a debtor and all other entities as may be ordered by the bankruptcy court in accordance with the applicable provisions of the Bankruptcy Code, to the terms and conditions of the confirmed plan. Subject to certain limited exceptions, the order issued by the bankruptcy court confirming a plan provides for the treatment of claims and interests in accordance with the terms of the confirmed plan.

Prior to soliciting acceptances of a proposed chapter 11 plan, section 1125 of the Bankruptcy Code requires a debtor to prepare a disclosure statement containing information of a kind, and in sufficient detail, to enable a hypothetical reasonable investor to make an informed judgment regarding acceptance of the chapter 11 plan. This Disclosure Statement is being submitted in accordance with the requirements of section 1125 of the Bankruptcy Code.

## **C. SUMMARY TREATMENT OF CLAIMS AND INTERESTS UNDER THE PLAN**

**THE FOLLOWING CHART IS A SUMMARY OF THE CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS AGAINST THE PLAN AND THE POTENTIAL DISTRIBUTIONS TO EACH UNDER THE PLAN. THE AMOUNTS SET FORTH BELOW ARE ESTIMATES ONLY. REFERENCE SHOULD BE MADE TO THE ENTIRE DISCLOSURE STATEMENT AND THE PLAN FOR A COMPLETE DESCRIPTION OF THE CLASSIFICATION AND TREATMENT OF CLAIMS AND**

**INTERESTS. THE RECOVERIES SET FORTH BELOW ARE PROJECTED RECOVERIES AND ARE THEREFORE SUBJECT TO CHANGE. THE ALLOWANCE OF CLAIMS MAY BE SUBJECT TO LITIGATION OR OTHER ADJUSTMENTS, AND ACTUAL ALLOWED CLAIM AMOUNTS MAY DIFFER MATERIALLY FROM THESE ESTIMATED AMOUNTS.**

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**SUMMARY OF EXPECTED RECOVERIES**

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<b>Class</b>	<b>Type of Claim or Interest</b>	<b>Treatment of Claim/Interest</b>	<b>Projected Recovery Under the Plan</b>
1	Non-Tax Priority Claims	Paid out of the First Lien Term Lenders Liquidating Trust, in full and final satisfaction, settlement and release of and in exchange for such Allowed Non-Tax Priority Claim, (i) Cash equal to the unpaid portion of such Allowed Non-Tax Priority Claim or (ii) such other treatment as to which such Holder and the Debtor and/or the First Lien Term Lenders Liquidating Trustee shall have agreed upon in writing. Debtors expect that there will be few Non-Tax Priority Claims allowed.	100%
2	Miscellaneous Secured Claims	At the Debtors' option (if prior to the Effective Date) or at the First Lien Term Lenders Liquidating Trustee's option (if after the Effective Date) in full and final satisfaction, settlement and release of and in exchange for, such Allowed Miscellaneous Secured Claim, (i) Cash equal to the unpaid portion of such Allowed Miscellaneous Secured Claim, to be paid out of the First Lien Term Lenders Liquidating Trust, (ii) a return of the Holder's Collateral securing the Miscellaneous Secured Claim or (iii) such other treatment as to which such Holder and the Debtors and/or the First Lien Term Lenders Liquidating Trustee shall have agreed upon in writing. To the extent any Holder of a Claim that is secured by a valid and perfected Lien on property of a Debtor's estate which Lien is, whether by operation of law, contract, court order, or otherwise, junior and subordinate to the Lien of the Pre-petition Secured Parties and/or the Claims of the Revolver Secured Claims or the First Lien Term Loan Claims, then such Claim shall be treated as a Class 5 Claim under the Plan.	100%

- |   |  |  |         |
|---|--|--|---------|
| 3 | Revolver Secured Claims                          | <p>On the Effective Date, the Debtors shall pay Cash equal to the full amount of unpaid and outstanding Revolver Pre-Effective Date Secured Claims to the Pre-petition First Lien Revolver Administrative Agent (such Cash, the “Revolver Effective Date Cash”). As soon as practicable upon receipt of the Revolver Effective Date Cash, the Pre-petition First Lien Revolver Administrative Agent shall distribute the Revolver Effective Date Cash on a Pro Rata basis to the Pre-petition First Lien Revolver Lenders net of fees and expenses payable to the Pre-petition First Lien Revolver Agent, its professionals and professionals of the Pre-petition First Lien Revolver Lenders. The payment of the Revolver Effective Date Cash by the Debtors to the Pre-petition First Lien Revolver Administrative Agent on the Effective Date shall be in full and final satisfaction, settlement and release of and in exchange for all Revolver Pre-Effective Date Secured Claims so paid on such date; provided, however, that the First Lien Term Lenders Liquidating Trustee may review such Revolver Post-Effective Date Secured Claims and reserves the right to object in good faith in whole or part to the payment thereof.</p> | 100%    |
| 4 | Pre-petition First Lien Term Loan Secured Claims | <p>Subject to the occurrence of the Effective Date, the transfer of the Creditor Funds to the GUC Liquidating Trust as provided in the Plan, periodic payments of Available Cash from the First Lien Term Lenders Liquidating Trust, distributed on a Pro Rata basis, after making adequate provision for: (i) the expenses of administering the First Lien Term Lenders Liquidating Trust; (ii) any Allowed Class 3 Claims to the extent not paid in full in Cash on the Effective Date; (iii) the payment in full of all Allowed Administrative Claims that are unpaid as of the Effective Date; and (iv) the payment in full of all Allowed Priority Claims.</p>  | [_____] |
| 5 | General Unsecured Claims                         | <p>Pro Rata share of the beneficial interests in the GUC Liquidating Trust, after making adequate provision for: (i) the expenses of administering the GUC Liquidating Trust; and (ii) for Disputed General Unsecured Claims, if any.</p>  | [_____] |

6	Intercompany Claims	All Intercompany Claims are to be deemed eliminated, cancelled and/or extinguished.	0%
7	Interests	All Interests are to be cancelled.	0%

**D. ENTITIES ENTITLED TO VOTE ON THE PLAN**

Under the provisions of the Bankruptcy Code, not all holders of claims against and interests in a debtor are entitled to vote on a chapter 11 plan. Holders of Claims that are not Impaired by the Plan are deemed to accept the Plan under section 1126(f) of the Bankruptcy Code and, therefore, are not entitled to vote on the Plan.

The Classes of Claims and Interests classify Claims and Interests for all purposes, including voting, Confirmation and distribution pursuant to the Plan and sections 1122 and 1123(a)(1) of the Bankruptcy Code. The Plan deems a Claim or an Interest to be classified in a particular Class only to the extent that the Claim or the Interest qualifies within the description of that Class and will be deemed classified in a different Class to the extent that any remainder of the Claim or Interest qualifies within the description of a different Class.

The following sets forth the Classes that are entitled to vote on the Plan and the Classes that are not entitled to vote on the Plan:

<b>SUMMARY OF STATUS AND VOTING RIGHTS</b>			
<b>Class</b>	<b>Claim</b>	<b>Status</b>	<b>Voting Rights</b>
1	Non-Tax Priority Claims	Unimpaired	Not entitled to vote/deemed to accept
2	Miscellaneous Secured Claims	Unimpaired	Not entitled to vote/deemed to accept
3	Revolver Secured Claims	Unimpaired	Not entitled to vote/deemed to accept
4	Pre-petition First Lien Term Loan Secured Claims	Impaired	Entitled to vote
5	General Unsecured Claims	Impaired	Entitled to vote
6	Intercompany Claims	Impaired	Not entitled to vote/deemed to reject
7	Interests	Impaired	Not entitled to vote/deemed to reject
	<ul style="list-style-type: none"> <li>• The Debtors are <b>NOT</b> seeking votes from the Holders of Claims in Classes 1, 2 and 3 because those Classes, and the Claims of any Holders in those Classes, are Unimpaired under the Plan. Pursuant to section 1126(f) of the Bankruptcy Code, those Classes are conclusively presumed to have accepted the Plan.</li> <li>• The Debtors are <b>NOT</b> seeking votes from the Holders of Claims in Class 6 and the Holders of Interests in Class 7. Instead, the Debtors request Confirmation of the Plan under section 1129(b) of the Bankruptcy Code with respect to Classes 6</li> </ul>		



and 7. Holders of Claims in Classes 6 and 7 are Impaired and will receive no distribution under the Plan. Pursuant to section 1126(g) of the Bankruptcy Code, Classes 6 and 7 are presumed to have rejected the Plan.

- The Debtors **ARE** soliciting votes to accept or reject the Plan from Holders of Claims in Classes 4 and 5 (the “Voting Classes”), because Claims in the Voting Classes are Impaired under the Plan and will receive distributions under the Plan. Accordingly, Holders of Claims in the Voting Classes have the right to vote to accept or reject the Plan.

For a detailed description of the Classes of Claims and the Interests, as well as their respective treatment under the Plan, see Article III of the Plan.

## **E. VOTING PROCEDURES**

### **1. Voting Record Date**

**The Record Date is [ ] , 2010.** The Record Date is the date on which the following will be determined: (a) the Holders of Claims (including holders of bonds, debentures, notes and other securities) that are entitled to receive the Solicitation Package in accordance with the Solicitation Procedures; (b) the Holders of Claims that are entitled to vote to accept or reject the Plan; and (c) whether Claims have been properly assigned or transferred to an assignee pursuant to Bankruptcy Rule 3001(e) such that the assignee can vote as the Holder of such Claim.

### **2. Voting Deadline**

**The Voting Deadline is [ ]:00 [ ]m. prevailing Eastern Time on [ ] , 2010.** To ensure that a vote is counted, Holders of Allowed Claims must: (a) complete the Ballot; (b) indicate a decision either to accept or reject the Plan; and (c) sign and return the Ballot to the address set forth on the pre-addressed envelope provided in the Solicitation Package or by delivery by first class mail, overnight courier or personal delivery, so that all Ballots are **actually received** no later than the Voting Deadline, by Kurtzman Carson Consultants LLC (the “Claims Agent”).

The following Ballots will **not** be counted in determining the acceptance or rejection of the Plan: (a) any Ballot that is illegible or contains insufficient information to permit the identification of the Holder of the Claim or the Interest; (b) any Ballot cast by an Entity that does not hold a Claim or an Interest in a Class that is entitled to vote on the Plan; (c) any Ballot cast for a Claim scheduled as contingent, unliquidated or disputed for which the applicable Claims Bar Date has passed and no Proof of Claim was timely-Filed; (d) any unsigned Ballot; (e) any Ballot not marked to accept or reject the Plan or marked both to accept and reject the Plan; and (f) any Ballot submitted by any Entity not entitled to vote pursuant to the Solicitation Procedures.

### **3. Voting Instructions for Holders of Claims**

Under the Plan, Holders of Claims in Voting Classes are entitled to vote to accept or reject the Plan, and may do so by completing and returning a Ballot so that it is **actually received** on or before the Voting Deadline by the Claims Agent at: Movie Gallery, Inc., c/o Kurtzman Carson Consultants LLC, 2335 Alaska Avenue, El Segundo, California 90245.

**IF A BALLOT IS RECEIVED AFTER THE VOTING DEADLINE, IT WILL NOT BE COUNTED UNLESS THE DEBTORS DETERMINE OTHERWISE.**

**ANY BALLOT THAT IS PROPERLY EXECUTED BY THE HOLDER OF A CLAIM, BUT THAT DOES NOT CLEARLY INDICATE AN ACCEPTANCE OR REJECTION OF THE PLAN WILL BE COUNTED AS AN ACCEPTANCE OF THE PLAN. ANY BALLOT THAT IS PROPERLY EXECUTED BY THE HOLDER OF A CLAIM, BUT THAT INDICATES BOTH AN ACCEPTANCE AND A REJECTION OF THE PLAN WILL NOT BE COUNTED.**

**EACH HOLDER OF A CLAIM MUST VOTE ALL OF ITS CLAIMS WITHIN A PARTICULAR CLASS EITHER TO ACCEPT OR REJECT THE PLAN AND MAY NOT SPLIT SUCH VOTES. BY SIGNING AND RETURNING A BALLOT, EACH HOLDER OF A CLAIM WILL CERTIFY TO THE BANKRUPTCY COURT AND THE DEBTORS THAT NO OTHER BALLOTS WITH RESPECT TO SUCH CLAIM HAVE BEEN CAST OR, IF ANY OTHER BALLOTS HAVE BEEN CAST WITH RESPECT TO SUCH CLASS OF CLAIMS, SUCH OTHER BALLOTS INDICATED THE SAME VOTE TO ACCEPT OR REJECT THE PLAN.**

**IT IS IMPORTANT TO FOLLOW THE SPECIFIC INSTRUCTIONS PROVIDED ON EACH BALLOT WHEN SUBMITTING A VOTE.**

#### **F. CONFIRMATION HEARING**

Section 1128(a) of the Bankruptcy Code requires the bankruptcy court, after notice, to hold a hearing on confirmation of a plan filed under chapter 11 of the Bankruptcy Code. Section 1128(b) of the Bankruptcy Code provides that any party in interest may object to confirmation of the plan.

##### **1. Confirmation Hearing Date**

**The Confirmation Hearing will commence on [xx], 2010 at [xx:00 .m.] prevailing Eastern Time**, before the Honorable Chief Justice Douglas O. Tice, Jr., United States Bankruptcy Judge, in the United States Bankruptcy Court for the Eastern District of Virginia, Richmond Division, Courtroom 5100, United States Bankruptcy Court, 701 East Broad Street, Richmond, Virginia 23219. The Confirmation Hearing may be continued from time to time without further notice other than an adjournment announced in open court or a notice of adjournment filed with the Bankruptcy Court and served on the Core Group, the 2002 List and the Entities who have filed Plan Objections, without further notice to parties in interest. The Bankruptcy Court, in its discretion and prior to the Confirmation Hearing, may put in place additional procedures governing the Confirmation Hearing. The Plan may be modified, if necessary, prior to, during, or as a result of the Confirmation Hearing, without further notice to parties in interest.

##### **2. Plan Objection Deadline**

**The Plan Objection Deadline is [ ] [ ] .m. prevailing Eastern Time on [ ], 2010.** All Plan Objections must be filed with the Bankruptcy Court and served on the Debtors and certain

other parties in accordance with the Disclosure Statement Order on or before the Plan Objection Deadline. In accordance with the Confirmation Hearing Notice Filed with the Bankruptcy Court, Plan Objections or requests for modifications to the Plan, if any, must:

- be in writing;
- conform to the Bankruptcy Rules and the Local Rules;
- state the name and address of the objecting Entity and the amount and nature of the Claim or Interest of such Entity;
- state with particularity the basis and nature of the Plan Objection and, if practicable, a proposed modification to the Plan that would resolve such Plan Objection; and
- be Filed, contemporaneously with a proof of service, with the Bankruptcy Court and served so that it is **actually received** by the notice parties identified in the Confirmation Hearing Notice on or prior to the Plan Objection Deadline.

The Debtors' proposed schedule will provide Entities sufficient notice of the Plan Objection Deadline, which will be more than the 25 days required by Bankruptcy Rule 2002(b). The Debtors believe that the Plan Objection Deadline will afford the Bankruptcy Court, the Debtors and other parties in interest reasonable time to consider the Plan Objections prior to the Confirmation Hearing.

**THE BANKRUPTCY COURT WILL NOT CONSIDER PLAN OBJECTIONS UNLESS THEY ARE TIMELY SERVED AND FILED IN COMPLIANCE WITH THE DISCLOSURE STATEMENT ORDER.**

#### **G. CONFIRMATION AND CONSUMMATION OF THE PLAN**

It will be a condition to Confirmation of the Plan that all provisions, terms and conditions of the Plan are approved in the Confirmation Order unless otherwise satisfied or waived pursuant to the provisions of Article VIII of the Plan. Following Confirmation, the Plan will be consummated on the Effective Date.

#### **H. RISK FACTORS**

**PRIOR TO DECIDING WHETHER AND HOW TO VOTE ON THE PLAN, EACH HOLDER OF A CLAIM IN A VOTING CLASS SHOULD CONSIDER CAREFULLY ALL OF THE INFORMATION IN THIS DISCLOSURE STATEMENT, INCLUDING THE RISK FACTORS DESCRIBED IN ARTICLE VII HEREIN ENTITLED, "PLAN-RELATED RISK FACTORS AND ALTERNATIVES TO CONFIRMATION AND CONSUMMATION OF THE PLAN."**

## **II. BACKGROUND TO THESE CHAPTER 11 CASES**

### **A. DEBTORS' BUSINESS**

#### **1. Summary of the Debtors' Business**

At the commencement of these chapter 11 cases, the Debtors were the second largest North American home entertainment specialty retailer. As of the Commencement Date, the Debtors operated approximately 2,600 retail stores located throughout all 50 states that rented and sold new and used movie titles (collectively, the "Movies") and new and used video game hardware, software and accessories (collectively, the "Video Games"). The vast majority of the Debtors' retail stores were leased, not owned. The Debtors operated three distinct brands — Movie Gallery, Hollywood Video and Game Crazy. Through a subsidiary, Movie Gallery Canada, Inc., the Debtors also operated approximately 180 Movie Gallery stores throughout Canada. The Debtors' Canadian stores are also being liquidated in a separate Canadian insolvency proceeding.

Following Movie Gallery's initial public offering in 1994, the Debtors grew from a footprint of 97 stores to a high of nearly 4,800 stores through a combination of acquisitions and new store openings. In April 2005, the Debtors completed the acquisition of Hollywood Entertainment Corporation ("Hollywood"), which included the Hollywood Video and Game Crazy-branded stores. The rationale behind that acquisition was that Movie Gallery's eastern-focused, rural and secondary market presence and Hollywood's western-focused, prime urban and suburban superstore locations would combine to form a strong nationwide geographical store footprint. Prior to and in connection with the 2007 Bankruptcy Cases, the Debtors closed over 1,700 stores. Moreover, between the conclusion of the 2007 Bankruptcy Cases and the Commencement Date, the Debtors closed approximately 715 additional stores, bringing the Debtors to a Commencement Date operating store count of approximately 2,600 stores in North America.

The Movie Gallery-branded stores were primarily located in small towns and suburban areas of cities with populations between 3,000 and 20,000, where the primary competitors were independently owned stores and small regional chains. The typical size of a Movie Gallery store was approximately 4,200 square feet and the store usually carried a broad selection of between 2,700 and 16,000 movies and video games for rental, as well as new and used movies and games for sale at competitive prices.

Hollywood Video-branded stores were typically located in high-traffic, high-visibility, urban and suburban locations with convenient access and parking. Hollywood Video focused on providing a superior selection of movies and games for rent, as well as new and used movies and video games for sale. The typical Hollywood Video store was approximately 6,600 square feet and carried over 25,000 movies and video games for rental.

The Game Crazy-branded locations were dedicated game retail stores where game enthusiasts could buy, sell and trade new and used video game hardware, software and accessories. The Game Crazy locations were located primarily within Hollywood Video stores.

As of the Commencement Date, approximately 257 Hollywood Video stores included an in-store Game Crazy department. A typical Game Crazy department carried approximately 9,000 new and used video games, as well as hardware and accessories and occupied an area of approximately 700 to 900 square feet within the store. In addition, as of the Commencement Date, the Debtors operated approximately 14 free-standing Game Crazy stores.

In addition to the Debtors' retail stores, the Debtors also operated approximately 65 kiosks located mainly in grocery stores. A kiosk was essentially a Movie vending machine that allowed consumers to rent a Movie within minutes by touching the screen of the kiosk to select the Movie and then swiping either a credit card or debit card to consummate the selection.

## **2. Overall Revenue**

In 2009, the aggregate annual revenues of the Debtors and their non-Debtor affiliates, including rental revenue and product sales, exceeded \$1.4 billion. Of this amount, approximately 52% was attributed to DVD or BluRay rentals, 21% to the sale of new and used gaming products, 12% to the sale of previously-rented DVDs and video games, 7% to game rentals, 5% to the sale of concessions and other miscellaneous products, and 3% to the sale of movies and movie-related products and merchandise.

## **3. Debtors' Employees**

As of the Commencement Date, the Debtors employed approximately 19,082 employees, including approximately 3,970 full-time employees and 15,112 part-time employees. None of the Debtors' employees are represented by a labor union.

## **4. Store Operations**

The Movie Gallery and Hollywood Video brands were managed by separate store operations management teams. Within each brand, store managers reported to district managers who in turn reported to regional managers who in turn reported to Vice Presidents of Operations. Within the Game Crazy brand, store managers reported to district managers. In fiscal 2005, the Game Crazy regional managers and Vice President of Operations were consolidated into the Hollywood Video store operations management organization, resulting in a reduction of management headcount and cost savings.

# **B. HOME VIDEO RETAIL INDUSTRY**

## **1. Movie Distribution**

The home video retail industry includes the rental and sale of Movies by traditional video store retailers, online retailers, subscription rental retailers, mass merchants and other retailers. The Debtors' Movie rental business relied on supply relationships with the various movie studio suppliers and Video Game vendors for the delivery of new Movies and Video Games. Generally, new Movies and Video Games were shipped in bulk from the movie studios and Video Game vendors to the Debtors' distribution centers, where the Movies and Video Games were allocated and distributed to the Debtors' retail store locations.

The Debtors' pricing policies, marketing strategies and fundamental business operations relied on their ability to receive and rent or sell the Movies and Video Games in a timely fashion. Indeed, in many instances, particularly in the case of "new release" titles, the timing of deliveries was essential. In the Debtors' industry, the date that Movies and Video Games would become available to the public for rent or purchase is known as the "street date." For any given new release, the Debtors typically announced the street date in their stores. A substantial majority of the Debtors' rental revenues were derived from the rental of new release Movies and Video Games.

## **2. Exclusive Window for Home Video Distribution of Movies**

Studios distribute Movies to distribution channels in a specific sequence to maximize revenues on each title they release. The order of distribution of Movies is typically as follows: (a) movie theaters; (b) home video retailers; (c) video-on-demand, "VOD" and pay-per-view; and (d) all other sources, including cable and syndicated television. Home video rental serves an important role for the Studios as a key risk mitigation tool. On average, box office receipts do not cover a Movie's production and marketing costs. As a result, the Studios provide the home video industry with an exclusive window during which the home video industry can rent and sell the Movies before the Movies are made available to other downstream distribution channels.

Many movie studios' current movie distribution strategies provide an exclusive window for the packaged media channel before a movie is available to pay-per-view, video-on-demand and other television distribution channels. This period of exclusivity has been in place since the mid-1980s. The exclusive period typically begins after a Movie finishes its domestic theatrical run (usually three to five months after its debut), or upon its release to video in the case of direct-to-video releases, and lasts for approximately 45 to 60 days thereafter. This period of exclusivity is intended to maximize revenue to the movie studio in the packaged media channel prior to a movie being released to other distribution channels, including pay-per-view, video-on-demand, premium or pay cable and other television distribution. Exclusive windows have historically been used to protect each distribution channel from downstream channels, principally protecting theaters from home video, home video from pay-per-view and video-on-demand, and pay-per-view or video-on-demand from premium cable and other television channels. Recently, certain major studios established another exclusive window during which movies are available for sale and rental at "brick and mortar" retail locations such as those formerly operated by the Debtors, but not through online channels and automated kiosks.

## **3. New Release Movie Pricing**

The Debtors would historically acquire movies in one of three ways. First, the Debtors would acquire movies for a single up-front lump sum payment (referred to as a "Fixed Buy"). Second, the Debtors would 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 (a "Copy Depth Program"). Third, the Debtors would 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").

While Fixed Buy transactions and Copy Depth Programs are relatively straightforward, Revenue Sharing Agreements were somewhat more complicated. Generally, a Revenue Sharing Agreement required 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 (6) months (the “Revenue Share Term”), the Debtors were obligated to pay the studio a fixed percentage of the proceeds of any rentals or sales of the movie (the “Revenue Share Percentage”).<sup>3</sup> In most cases, the Debtors’ obligation to make payments to the studio was not triggered until the Debtors’ Revenue Share Percentage amount owing for a particular movie exceeded the Up-Front Charge previously paid for that particular movie. These payment obligations, once triggered, were referred to as “Overage Obligations.”

In 1998, the major studios and the larger home video retailers, including Movie Gallery and Hollywood, began entering into Revenue Sharing Agreements. The Debtors generally preferred acquiring new movies through Revenue Sharing Agreements as opposed to Fixed Buy transactions. Because the Debtors’ per-copy cost under Revenue Share Agreements was much lower than under Fixed Buy and the amounts the Debtors paid were tied to the revenue generated by the title, the Debtors could typically afford to order significantly more copies of any given movie under a Revenue Sharing Agreement than they could under a Fixed Buy transaction. Correspondingly, because the per-copy cost under a Fixed Buy was higher than under a Revenue Share Agreement and a Fixed Buy provided no downside protection in the event that the movie was not as popular expected, the Debtors would purchase more conservatively and order fewer titles under Fixed Buy than they would under a Revenue Sharing Agreement. This, in turn, meant that fewer copies of Fixed Buy titles would be available for rental in the Debtors’ stores, increasing the likelihood that a title might be “sold out” and be unavailable to the Debtors’ customers. Under this scenario, the Debtors were more likely to miss out on potential rental revenue on desirable movies due to the lower number of copies available, and the Debtors’ customers were more likely to be disappointed and would seek the title for rentals or purchase elsewhere.

In 2009, more than 75% of the Debtors’ new release movie rental revenue was generated by titles acquired under Revenue Sharing Agreements. Maintaining good relations with their studio suppliers, including ongoing access to Revenue Sharing Agreements for new movie releases, was critical to the Debtors’ business operations early in the Debtors’ Bankruptcy Cases.

In addition to the Revenue Sharing Agreements, the Debtors also purchased Movies and Video Games from certain “B studios” and smaller video games vendors pursuant to Fixed Buy purchase arrangements. These relationships had traditionally been profitable for the Debtors. Unlike many of the major studios, the B studios and smaller video games vendors generally did not eliminate the Debtors’ trade credit prior to the Commencement Date.

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<sup>3</sup> Revenue Sharing Agreements often required 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.

#### **4. Video Game Industry**

The Debtors estimate that the sale of new and used Video Games accounted for approximately 21% of the Debtors' total revenue in 2009.

### **C. DEBTORS' CORPORATE AND CAPITAL STRUCTURE**

#### **1. General Corporate Structure**

Movie Gallery was co-founded in 1985 by J.T. Malugen and H. Harrison Parrish. While Movie Gallery grew steadily larger through a series of acquisitions and new store openings, it virtually doubled in size in 2005 with its acquisition of Hollywood.

At the time of the commencement of the 2007 Bankruptcy Cases, Movie Gallery was a publicly held Delaware Corporation which functioned as the parent holding company for: (a) the Affiliate Debtors; and (b) non-Debtor affiliate Movie Gallery Canada, Inc.

#### **2. Acquisition of Hollywood**

On April 27, 2005, Movie Gallery completed a Cash acquisition of Hollywood. At the time of the acquisition, the Debtors' combined pro-forma annual revenue was in excess of \$2.6 billion and the combined enterprise included approximately 4,800 stores located in all 50 states, Canada and Mexico. The acquisition substantially increased the Debtors' presence on the West Coast and in urban areas. Hollywood's predominantly West Coast urban superstore locations did not overlap significantly with Movie Gallery's rural and suburban store locations concentrated in the Eastern half of the United States.

The Debtors paid \$862 million to purchase all of Hollywood's outstanding common stock and refinanced approximately \$380 million of Hollywood's debt.

The Hollywood acquisition was financed using Hollywood's cash on-hand of approximately \$180 million, the issuance of new senior secured credit facilities guaranteed by all of the Debtors' domestic subsidiaries in an aggregate principal amount of \$870 million (the "2005 Credit Facilities"), and the issuance of \$325 million of 11% senior unsecured notes (the "11% Senior Notes"). As part of the refinancing of Hollywood's debt, Hollywood also executed a tender offer for its \$225 million principal amount 9.625% Senior Subordinated Notes due 2011 (the "9.625% Senior Subordinated Notes"), pursuant to which \$224.6 million of the notes were tendered.

Thus, the Hollywood acquisition effectively doubled the size of the Debtors by store count, but also left them with a significantly more leveraged capital structure and significantly increased operating expenses.

Integration efforts following the Hollywood acquisition initially focused on consolidating the leadership functions in the brands. To that end, the Debtors integrated their human resources and benefits, legal, real estate, construction and lease administration, accounting and finance, payroll, loss prevention and collections, distribution and product purchasing functions across both the Movie Gallery and Hollywood Brands. The Debtors merged senior field leadership responsibilities for the Hollywood and Movie Gallery brands in early 2008, but Game Crazy



remained a separate operating unit. In January 2009, the Debtors realigned the field management organization to allow field leadership to assume responsibility for all three brands, including Game Crazy.

## **D. DEBTORS' PRINCIPAL ASSETS**

### **1. Inventory, Fixtures and Equipment**

As of the Commencement Date, the Debtors' principal assets consisted of rental inventory, merchandise inventory and property, furnishings and equipment in the retail store locations. On a consolidated basis, the Debtors owned approximately \$78.9 million and \$160.5 million of merchandise and rental inventory respectively. Property, furnishings and equipment is primarily comprised of equipment and leasehold improvements. As of year-end 2009, the Debtors owned approximately \$30.6 million in net property, furnishings and equipment.

### **2. Debtors' Retail Stores**

As of the Commencement Date, the Debtors operated approximately 2,600 retail stores located throughout all 50 states and Canada. Generally, the Debtors did not own the property on which these stores were operated. Instead, the Debtors leased or subleased these nonresidential real properties from numerous lessors and other counterparties pursuant to various leases, the terms of which generally ranged from approximately one month to nine years and generally cost between \$5,400 and \$347,970 per year.

## **E. SUMMARY OF PRE-PETITION INDEBTEDNESS AND PRE-PETITION FINANCING**

### **1. 2008 Credit Facilities Under the 2008 Plan**

Prior to the commencement of the 2007 Bankruptcy Cases, the Debtors had obtained (a) approximately \$725 million in secured loans, advances and other credit accommodations pursuant to the terms and conditions set forth in the First Lien Credit and Guaranty Agreement, dated as of March 8, 2007 (the "Old First Lien Credit Agreement"), among the respective Debtors as borrower and the guarantors party thereto, the banks, financial institutions and other lenders parties thereto, Goldman Sachs Credit Partners L.P. ("GSCLP"), as lead arranger and syndication agent, and Wachovia Bank, National Association, as collateral agent and documentation agent, and (b) an additional \$175 million in secured term loans pursuant to the terms and conditions set forth in the Second Lien Credit and Guaranty Agreement, dated as of March 8, 2007 (the "Old Second Lien Credit Agreement"), among the respective Debtors as borrower and the guarantors party thereto, the banks, financial institutions and other lenders parties thereto, GSCLP as lead arranger and syndication agent, and Wells Fargo Bank, National Association, as successor administrative agent and collateral agent.

During the 2007 Bankruptcy Cases, the revolving credit loans under the Old First Lien Credit Agreement were refinanced by the Debtors' debtor-in-possession financing (the "2007 DIP Facility"). On February 15, 2008, the Debtors filed the Second Amended Joint Plan of Reorganization of Movie Gallery, Inc. and its Debtor Subsidiaries under Chapter 11 of the Bankruptcy Code (the "2008 Plan") and accompanying disclosure statement. As part of the

consummation of the 2008 Plan, the 2007 DIP Facility was repaid out of the proceeds of the Pre-petition First Lien Revolving Credit Facility.

The Old First Lien Credit Agreement also provided for a term loan facility and a synthetic letter of credit facility. These facilities were continued as part of the consummation of the 2008 Plan pursuant to the Pre-petition First Lien Term Facility. On the consummation of the 2008 Plan, there were outstanding under the Pre-petition First Lien Term Credit Agreement (a) term loans in the aggregate principal amount of \$602,988,750 and (b) letters of credit in the aggregate face amount of \$21,900,000.

As part of the consummation of the 2008 Plan, the term loan facility under the Old Second Lien Credit Agreement was continued pursuant to the Amended and Restated Second Lien Credit and Guaranty Agreement, dated as of May 20, 2008 (as amended by Amendment No. 1 thereto, dated as of July 21, 2009 the "Pre-petition Second Lien Term Credit Agreement"), by and among the Debtors, the lenders party thereto from time to time, and Wells Fargo Bank, N.A., as administrative and collateral agent. On the consummation of the 2008 Plan there were outstanding under the Pre-petition Second Lien Term Credit Agreement term loans in the aggregate principal amount of \$117,141,029.56.

As of the Commencement Date, the Debtors were indebted to the Pre-petition First Lien Revolver Secured Parties in respect of all outstanding obligations under the Pre-petition First Lien Revolving Credit Documents in the aggregate principal amount of not less than \$100 million and all interest, fees and charges accrued and accruing thereon and chargeable with respect thereto, and to the extent provided for in the Pre-petition First Lien Revolving Credit Documents, all costs and expenses of the lenders and agents thereunder (including, without limitation, attorneys' fees and legal expenses). As of the Commencement Date, the Pre-petition First Lien Revolving Credit Facility was in default and bearing interest at a daily rate equal to the "Base Rate" plus 8.75% per annum

As of the Commencement Date, the Debtors were indebted to the Pre-petition First Lien Term Secured Parties in respect of all outstanding obligations under the Pre-petition First Lien Term Credit Documents in the aggregate principal amount of not less than \$394,369,000 consisting of (a) term loans in the aggregate principal amount of \$370,869,000, (b) reimbursement obligations in respect of synthetic letters of credit of approximately \$20,729,000 and (c) all interest, fees and charges accrued and accruing thereon and chargeable with respect thereto, and to the extent provided for in the Pre-petition First Lien Term Credit Documents, all costs and expenses of the Pre-petition First Lien Parties (including, without limitation, attorneys' fees and legal expenses). As of the Commencement Date, the Pre-petition First Lien Term Credit Facility was in default and bearing interest at a daily rate equal to the "Base Rate" plus 8.75% per annum for term loans, and the "Adjusted Eurodollar Rate" plus 5.9% per annum, for letters of credit.

As of the Commencement Date, the Debtors were indebted to the lenders and agents under the Pre-petition Second Lien Loan Agreement in respect of all outstanding obligations under the Pre-petition Second Lien Credit Agreement and the "Credit Documents" thereunder (the "Pre-petition Second Lien Loan Documents") in the aggregate principal amount of not less than \$146,325,000 million, consisting of (a) term loans in the aggregate principal amount of \$146,325,000 and (b) all interest, fees and charges accrued and accruing thereon and chargeable

with respect thereto, and to the extent provided for in the Pre-petition Second Lien Loan Documents, all costs and expenses of the Pre-petition Second Lien Loan Parties (including, without limitation, attorneys' fees and legal expenses). As of the Commencement Date, the indebtedness under the Pre-petition Second Lien Loan Documents was in default and bearing interest (all of which interest is payable in kind) at the "Base Rate" plus 14% per annum.

## **2. Store Closing Initiatives**

Prior to the Commencement Date, the Debtors conducted an extensive review of their store portfolio with the objective of identifying and closing unprofitable store locations. Throughout the third and fourth quarters of 2009, the Debtors closed approximately 560 store locations. Upon the commencement of these Chapter 11 Cases, the Debtors sought to continue the process of identifying and closing unprofitable stores and, accordingly, filed various First Day motions for authority to commence store closing sales and for approval of streamlined procedures to reject unprofitable store leases.

On February 3, 2010, the Debtors filed their Motion of the Debtors for an Order (A) Authorizing the Debtors to Conduct Store Closing Sales, (B) Approving Procedures with Respect to Store Closing Sales (C) Authorizing the Debtors to pay Limited Liquidation and Closure Performance Bonuses, and (D) Authorizing the Debtors to Abandon Certain De Minimis Assets in Connection with Store Closing Sales (Docket No. 20; the "Store Closing Motion"). On February 4, 2010, the Bankruptcy Court granted the Debtors' Store Closing Motion (Docket No. 94) and on May 11, 2010 entered its Final Order (A) Authorizing the Debtors to Conduct Store Closing Sales (B) Approving Procedures with Respect to Store Closing Sales, (C) Authorizing the Debtors to Pay Limited Liquidation and Closure Performance Bonuses, and (D) Authorizing the Debtors to Abandon Certain De Minimis Assets in Connection with Store Closing Sales (Docket No. 1099; the "Store Closing Procedures Order"). The Store Closing Procedures Order, among other things: (i) authorizes the Debtors or their agents to conduct store closing sales ("GOB Sales") notwithstanding provisions in any of the Debtors leases limiting the Debtors' ability to do so (Store Closing Procedures Order at ¶ 8); (ii) permits the sale of inventory and other property in connection with such GOB Sales free and clear of all liens, claims and encumbrances (*id.* at ¶ 9); and (iii) establishes a procedure for the resolution of disputes regarding the application of, and the Debtors' and their agents' compliance with, consumer protection laws governing GOB Sales (*id.* at ¶¶ 20-21).

In early April 2010, the Debtors, in consultation with the Committee, the Studios, and the Pre-petition Secured Parties, determined that it was in the best interests of the Debtors, their estates, the Debtors' stakeholders, and the other parties in interest to terminate the Debtors' remaining business operations, liquidate the Debtors' remaining assets, and wind-down the Debtors' affairs in an orderly process under chapter 11 of the Bankruptcy Code.

Following the entry of the Store Closing Procedures Order, the Debtors closed approximately 1,400 stores, and liquidated the inventory located in such stores pursuant to the Store Closing Procedures Order. More recently, as described in greater detail below, the Debtors

began the process of liquidating all of their remaining stores in the U.S. and in Canada.<sup>4</sup> The Debtors anticipate that the all of their U.S. stores will have been closed (and any related store inventory liquidated) by July 31, 2010.

### **III. EVENTS LEADING TO THESE CHAPTER 11 CASES**

#### **A. CHALLENGING INDUSTRY CONDITIONS LEADING UP TO THE 2007 BANKRUPTCY FILING**

In the years following the Hollywood acquisition, the Debtors -- with their highly-leveraged capital structure -- struggled with steadily increasing competition from direct competitors such as Blockbuster and Netflix as well as indirect competition from pay-per-view and cable television. During the same period, a number of industry-wide factors also combined to negatively impact the store-based rental market: cannibalization of rentals by low-priced movies available for sale; growth of the mail delivery and online rental segment; the standard DVD format nearing the end of its life cycle; competing high definition DVD formats delaying content release and consumer acceptance; growth of DVD dispensing kiosk machines operated by the Debtors' competitors and the proliferation of alternative consumer entertainment options including movies available through video-on-demand, TIVO/DVR, digital cable, satellite TV, broadband, internet and broadcast television.

While this increased competition and the negative industry trends had been apparent for some time, both became more pronounced during the first half of 2007. As a result, the Debtors experienced significantly greater than expected declines in revenue during the second quarter of 2007, primarily resulting from competitive pricing and increased marketing activities by Blockbuster and Netflix relating to their competing on-line subscription rental services; a greater than expected customer acceptance of Blockbuster's "Total Access" program, which combined elements of in-store and online movie rentals; increased marketing activities by the "brick and mortar" operations of Blockbuster and a disparate group of smaller local and regional operations as well as competitors who operate DVD dispensing kiosk machines, such as RedBox; and continued competition from mass merchants, downloading services, supermarkets, pharmacies, convenience stores, bookstores and other retailers selling both new and previously viewed movies. These factors, along with the trends discussed above, had a significant negative impact on the Debtors' business during the first half of 2007.

During the second quarter of 2007, the Debtors incurred significant losses from operations as a result of the industry conditions and increased competition described above. The Debtors' operating results caused them to breach certain of the financial covenants contained in the 2005 Credit Facilities. Subsequent to the end of the second quarter of 2007, the Debtors also experienced a severe contraction in trade terms, including decisions by many of the Debtors' significant vendors, including many of the movie studios, to cease extending the Debtors' trade credit and, instead, require cash-in-advance for new deliveries. Consequently, the Debtors' liquidity was significantly and adversely affected.

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<sup>4</sup> On May 7, 2010, the Debtors' affiliate Movie Gallery Canada, Inc. (which operates all of the Movie Gallery and Hollywood Video stores located in Canada) filed a Notice of Intention in the District of Ontario, Toronto Division (Estate No. 31-1357202), commencing voluntary insolvency proceedings in Canada.

As a result of the business, liquidity and related challenges described above, by the third quarter of 2007, the Debtors concluded that they needed to restructure its balance sheet, bring in significant new capital, and close a large number of underperforming locations. Thus the Debtors, in consultation with their legal and financial advisors, determined at that time to pursue a pre-negotiated plan of reorganization which would permit it to meet all of these objectives, and which would be implemented -- to the largest extent possible on a consensual basis -- through the Chapter 11 process.

Through pre-filing discussions with key creditor constituents, the Debtors secured their agreement to the principal terms of a plan of reorganization which would, among other things: (i) convert approximately \$400 million of then-existing funded debt into equity of the reorganized Debtors; (ii) raise \$50 million of new capital for the Debtors through a rights offering; (iii) provide the Debtors with a \$100 million exit financing facility; and (iv) provide for the conversion into equity of substantially all of the unsecured claims against the Debtors. Another critical component of the agreed plan was the agreement of the Debtors' major studio vendors to enter into accommodation agreements with the Debtors whereby the studio vendors would continue to supply the Debtors with product on agreed credit terms in return for the Debtors' agreement (subject to the approval of the bankruptcy court) to pay all of the outstanding pre-petition amounts owed to the studio vendors.

Having negotiated the material terms of the proposed reorganization, the Debtors commenced the 2007 Bankruptcy Cases in the Bankruptcy Court on October 16, 2007. On or about February 15, 2008, the Debtors filed the 2008 Plan and accompanying disclosure statement. Thereafter, the Debtors solicited votes on the 2008 Plan, which was ultimately approved by the requisite holders of every voting class. The Bankruptcy Court confirmed the 2008 Plan on April 9, 2008. Thereafter, the 2008 Plan became effective and was substantially consummated, including: (i) the funding of the \$100 million exit facility; (ii) the closing of the \$50 million rights offering; (iii) the closing of the loan transactions required to reinstate all of the Debtors' first-lien secured debt and approximately \$117 million of its second-lien secured debt on amended terms; (iv) the conversion to equity of \$325 million of the Debtors' 11% Senior Notes; and (v) the conversion to equity of \$72 million of second-lien secured debt held by Sopris Capital Advisors LLC ("Sopris")<sup>5</sup>.

As part of the Bankruptcy Court's Order confirming the 2008 Plan (the "2008 Confirmation Order"), the Bankruptcy Court made certain findings of fact and conclusions of law related to the indebtedness under the Pre-petition First Lien Revolving Credit Facility, the Pre-petition First Lien Term Credit Facility and the Pre-petition Second Lien Loan Documents. Specifically, the Confirmation Order set forth the Bankruptcy Court's findings, among other things, with respect to each of those three credit facilities that (i) the facilities were each an essential element of the 2008 Plan, (ii) the Debtors' entry into and consummation of the transactions contemplated by each of the facilities was in the best interests of the Debtors and their creditors, (iii) that the Debtors had exercised reasonable business judgment in determining to enter into each of the facilities, and (iv) the terms and conditions of each of the credit facilities had been negotiated in good faith, at arm's-length, and were fair and reasonable. Based upon these findings of fact and conclusions of law in the Confirmation Order, the Bankruptcy Court

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<sup>5</sup> Subsequent to the 2007 Bankruptcy Cases, Sopris changed its name to Lenado Capital Advisors, LLC.

expressly reaffirmed and approved the terms and conditions of each of the three credit facilities, and further ordered that, upon execution and delivery of the agreements and documents relating to each of the three facilities, each such facility would thereby be in full force and effect and valid, binding and enforceable in accordance with its terms without the need for any further notice to or action, order or approval of the Bankruptcy Court, or other act or action under applicable law, regulation, order or rule. This reaffirmation and approval of the terms of the three credit facilities by the Bankruptcy Court thus also approved, *inter alia*, the intercreditor provisions of those facilities, including the repayment priority of the Pre-petition Revolver Indebtedness over the Pre-petition First Lien Indebtedness, and the rights of the holder of the Pre-petition Revolver Indebtedness to exercise a “sweep” of all cash in excess of \$15 million in the event of a default. Finally the Bankruptcy Court held in the Confirmation Order (i) that the loans and other extensions of credit contemplated by each of the credit facilities and the granting of liens to secure such loans and other extensions of credit was approved and authorized in all respects, and (ii) that the granting of such liens, the making of such loans and other extensions of credit and the consummation of the transactions contemplated by each of the credit facilities did not constitute a fraudulent conveyance or transfer under state or federal law and that such liens would be unavoidable for all purposes.

As described above, the 2008 Plan provided that substantially all of the general unsecured claims outstanding against the Debtors as of the commencement of the 2007 Bankruptcy Cases were to be converted into equity of reorganized Movie Gallery.<sup>6</sup> Also pursuant to the 2008 Plan, William Kaye was appointed as the Plan Administrator (the “Plan Administrator”) for the 2008 Plan, and in that capacity was charged with, *inter alia*, supervising the reconciliation of outstanding, unresolved pre-petition claims asserted against the Debtors. Upon information and belief, that claims reconciliation process is ongoing, but has yet to be completed by the Plan Administrator. As a result, pursuant to the consummation of the 2008 Plan, common shares of the reorganized Debtors have at this point only been issued to (i) former holders of the Debtors’ now-extinguished 11% Senior Notes, and (ii) Sopris, on account of (a) the second lien debt which Sopris voluntarily converted to equity under the 2008 Plan and (b) the \$50 million rights offering (backstopped by Sopris) which was consummated in connection with the 2008 Plan. Upon information and belief, no common shares of the prior reorganized Debtors have yet been issued to any other parties in interest in connection with the consummation of the 2008 Plan.<sup>7</sup> Under the Plan in these Bankruptcy Cases, all such shares of common stock in the prior reorganized Debtors are being eliminated and receiving no distribution.

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<sup>6</sup> The 2008 Plan also provided holders of general unsecured claims in certain classes with the option (to be exercised at the time they voted their claims) to elect to receive a cash payment (defined in the 2008 Plan as the “Cash-Out Election”) in lieu of stock in the reorganized Debtors, in an amount equal to 50% of the pro forma value attributed to the reorganized Debtors’ stock. Pursuant to the 2008 Plan, the funds to make payments for the Cash-Out Election were to be provided by Sopris, in return for which Sopris would acquire the shares attributable to the claims that elected to receive the Cash-Out Election treatment. A number of eligible unsecured creditors timely elected the Cash-Out Election, and Sopris subsequently transferred a cash amount sufficient to cover the required payments (approximately \$6 million) into an escrow account maintained by counsel to the official committee of unsecured creditors appointed in the 2007 Bankruptcy Cases.

<sup>7</sup> As described below, following consummation of the 2008 Plan, certain holders of First Lien Debt voluntarily exchanged that First Lien Debt for common shares of the Debtors. As a result, some common shares of the Debtors were also issued to those debt holders in connection with those debt-for-equity exchanges.

## **B. EVENTS SUBSEQUENT TO THE CONSUMMATION OF THE 2008 PLAN**

Following the confirmation and consummation of the 2008 Plan, the Debtors emerged from chapter 11 with a somewhat less leveraged capital structure and approximately 3,000 operating stores. However the reorganized Debtors still had a total of more than \$750 million in outstanding secured debt. Moreover, the reorganized Debtors also continued to face significant and ongoing operational challenges, including steadily increasing competition from DVD-dispensing kiosk machines operated by Redbox as well as a widening array of media and entertainment outlets, compounded by the dramatic economic downturn that began in earnest in the fall of 2008.

As a result, despite the deleveraging and underperforming store closures that had been achieved through the implementation of the 2008 Plan, the Debtors' financial performance continued to deteriorate through the end of 2008 and into the first two quarters of 2009. The Debtors' total revenue deteriorated from \$2.0 billion in 2008, to \$1.4 billion in 2009, dramatically decreasing the Debtors' cash flow from operations over the same period. Operating loss for the fourth quarter of 2009 was \$129.3 million compared to an operating loss of \$84.8 million for the fourth quarter of 2008.

The Debtors worked diligently throughout late 2008 and 2009 to identify and implement steps across every aspect of its business operations to improve its financial performance. Those steps included the implementation of new marketing and customer programs and ongoing efforts by the Debtors to identify underperforming store locations and either take available steps to improve their performance, or if necessary, take appropriate steps to close and exit those locations. As a result of those efforts directed at underperforming stores, throughout 2009 the Debtors was able to achieve total negotiated annualized rent reductions in excess of \$7.5 million on more than 600 stores.

In addition to pursuing opportunities to improve the financial performance of the business, the Debtors also identified and pursued opportunities to continue to improve its capital structure. In particular, during 2008, the Debtors retired over \$158 million of First Lien Debt through agreements with the holders of that debt to convert the debt into common equity of the Debtors. Also, during 2008 and 2009, the Debtors purchased and retired over \$88 million of its outstanding First Lien Debt at significant discounts to face value, through a series of cash purchases at prices ranging from \$0.35 to \$0.59 on the dollar. Through these efforts, the Debtors reduced its total outstanding First Lien Debt by over \$246 million during 2008 and 2009.

Nevertheless, the Debtors' overall financial performance continued to deteriorate and liquidity began to suffer significantly by the third quarter of 2009. As a result of the liquidity challenges, by the beginning of the fourth quarter of 2009 the Debtors were delinquent on a significant amount of its payables and faced the prospect of looming defaults under its loan agreement covenants.

## **C. EVENTS LEADING UP TO THE FILING OF THESE CHAPTER 11 CASES**

A number of factors led to the filing of these chapter 11 Cases. First, the video rental and retail sale industry remained highly competitive. The Debtors continued to face direct competition from competitors such as Blockbuster, Netflix and Redbox, indirect competition

from cable television and internet sources which provide on-demand and streaming videos, as well as competition from big-box retailers who continued to sell DVDs at increasingly cheaper prices. The Debtors' video game business had also been hurt by a decline in sales of Wii software and hardware as well as games in the music genre. At the same time, the number of high-profile video game titles launched in 2009 was significantly lower than in previous years.

The Debtors competed with national, regional and local video retail operations, including: "brick and mortar" operations of Blockbuster and a disparate group of smaller local and regional operations; mail-delivery video rental subscription services such as Netflix; DVD-dispensing kiosks operated by Redbox; mass merchants, downloading services, supermarkets, pharmacies, convenience stores, bookstores and other retailers; and non-commercial sources such as libraries. Substantially all of the Debtors' Hollywood Video-branded stores competed with stores operated by Blockbuster, most in very close proximity, as well as numerous Redbox kiosks. The Debtors' Movie Gallery brand stores generally operated in smaller, less competitive markets and competed against regional and local competitors.

One of the most significant industry-wide factors affecting the Debtors' performance since the 2007 Bankruptcy Cases was cannibalization of rentals by DVD-dispensing kiosks operated by Redbox, which offer low-priced rentals and convenience. From mid-2008 through the third quarter of 2009, Redbox more than doubled the number of kiosks in its network while its revenues increased from \$390 million in 2008 to an estimated \$760 million in 2009. During this same period, the Debtors' performance continued to be affected by the negative industry trends that had led to the 2007 Bankruptcy Cases, many of which had become even more pronounced.

The Debtors also continued to compete with cable, satellite and pay-per-view television systems as well as a growing number of internet video providers. Digital cable and digital satellite services continued to increase household penetration. The Debtors estimated that cable or satellite television was available in over 90 million households. These systems offer multiple channels dedicated to pay-per-view and, in many cases, video-on-demand, and allow the Debtors' competitors to transmit a significant number of movie titles to consumers' homes at the touch of a button.

Finally, since 2007, an entirely new front of competition has developed in the form of internet services, such as iTunes and Google's YouTube, which permit customers to access an ever-growing number of streaming video titles for rental or sale directly over the internet. With the continued growth and proliferation of high speed internet access into American homes, this sector of video distribution continued to negatively impact the Debtors' overall business.

Collectively, these factors had a significant negative impact on the Debtors' business, and were expected to continue to have a negative impact on the Debtors should it continue to operate, as well as the overall video retail industry.

Throughout 2009, the Debtors incurred significant losses from operations as the decline in revenue resulting from the changing industry conditions and increased competition described above outpaced the Debtors' ability to reduce its fixed cost structure of store rent, labor costs and corporate general and administrative expense. During 2009, the Debtors' revenue decreased by over \$546.3 million and despite numerous initiatives, the Debtors were only able to cut operating



expenses by \$186.7 million. By the fourth quarter of 2009, it was apparent to the Debtors' management that these operating results would cause the Debtors to breach certain of the financial covenants contained in the Pre-petition First Lien Term Credit Agreement. Indeed, by the beginning of the fourth quarter of 2009, the Debtors had determined that more than half of their operating store locations were operating at a negative cash flow. Ultimately, these and other factors led to the decision to terminate the Debtors' remaining business operations and to liquidate their remaining assets.

#### **IV. ADMINISTRATION OF THE CHAPTER 11 CASES**

##### **A. FIRST DAY MOTIONS AND CERTAIN RELATED RELIEF**

On the Commencement Date and in the days thereafter, the Debtors filed numerous motions seeking immediate relief, and the Bankruptcy Court entered numerous "first day orders" (the "First Day Orders") approving the relief requested by the Debtors. The First Day Orders were intended to facilitate the transition between the Debtors' pre-petition and post-petition business operations by approving certain regular business practices that may not be specifically authorized under the Bankruptcy Code or as to which the Bankruptcy Code requires prior approval by the Bankruptcy Court. Many of the First Day Orders obtained in these Chapter 11 Cases are typical for large chapter 11 cases and many were similar to First Day Orders entered in the 2007 Bankruptcy Cases. .

##### **1. Procedural Motions**

To facilitate a smooth and efficient administration of these Chapter 11 Cases and to reduce the administrative burden associated therewith, the Bankruptcy Court entered the following procedural Orders: (a) approving the notice, case management and administrative procedures to govern these Chapter 11 Cases [Docket No. 118]; (b) authorizing the joint administration of the Debtors' Chapter 11 Cases [Docket No. 64]; (c) allowing the Debtors to prepare a list of creditors and File a consolidated list of the Debtors' 30 largest unsecured creditors [Docket No. 116];(d) approving June 14, 2010 as the general Claims Bar Date and certain other bar dates with respect to specific categories of Claims and approving the form and manner of both the notice of commencement of the Chapter 11 Cases and the Claims Bar Date (discussed in greater detail below) [Docket No. 1043]; (d) granting the Debtors an extension to File their Schedules [Docket No. 120]; (e) authorizing the form, manner and notice commencement of the cases [Docket No. 117] and (f) approving an expedited hearing on the First Day Motions [Docket No. 8]. On April 2, 2010, the Debtors filed their Schedules with the Bankruptcy Court.

##### **2. Employment and Compensation of Advisors**

To assist the Debtors in carrying out their duties as debtors in possession and to otherwise represent the Debtors' interests in the Chapter 11 Cases, the Bankruptcy Court entered various Orders authorizing the Debtors to retain and employ the following advisors: (a) Kurtzman Carson Consultants LLC, as Claims Agent to the Debtors [Docket No. 73]; (b) Moelis & Company, as financial advisors to the Debtors [Docket No. 936]; (c) Corliss, Moore & Associates, LLC as restructuring advisors to the Debtors [Docket No. 81]; (d) Gordon Brothers Retail Partners, LLC , as store closing sales consultant to the Debtors [Docket No. 74]; (e) DJM

Realty Services, LLC, as real estate consultant to the Debtors [Docket No. 75]; (f) Burr, Pilger & Mayer, Inc. as independent auditors to the Debtors [Docket No. 523]; (g) Sonnenschein Nath & Rosenthal LLP, as counsel to the Debtors [Docket No. 421]; and (h) Kutak Rock LLP, as co-counsel to the Debtors [Docket No. 419]. In addition, the Bankruptcy Court approved the Debtors' motion to retain and compensate certain professionals utilized in the ordinary course of the Debtors' business [Docket No. 119]. On February 26, 2010, the Bankruptcy Court entered an Order approving certain procedures for the interim compensation and reimbursement of Retained Professionals in the Chapter 11 Cases [Docket No. 427].

### **3. Stabilizing Operations**

In addition to the relief described above, the Debtors also sought authority with respect to a multitude of matters designed to assist in the administration of the Chapter 11 Cases and to maximize the value of the Debtors' Estates. Set forth below is a brief summary of certain of the principal motions the Debtors have filed during the pendency of the Chapter 11 Cases.

#### **a. Shippers, Warehousemen and Other Lien Claimants**

In the period immediately prior to the Commencement Date, certain of the Debtors' products were in transit. The Debtors believed that, unless they were authorized to pay certain shippers and warehousemen, it would have been highly unlikely the Debtors would have received delivery of these goods on a timely basis. The Debtors were concerned that the warehousemen and the other lien claimants possessed lien rights or the ability to exercise "self-help" remedies to secure payment of their claims, and, as such, any failure by the Debtors to satisfy outstanding shipping charges and the miscellaneous lien claims could have had a material adverse impact on the Debtors' business. Accordingly, the Debtors sought, and the Bankruptcy Court entered an Order authorizing, among other things, the Debtors to pay certain pre-petition claims of shippers, warehousemen and other lien claimants [Docket No. 71].

#### **b. Employee Compensation**

The Debtors relied on their employees for their day-to-day business operation. The Debtors believed that absent the ability to honor pre-petition wages, salaries, benefits, commissions and the like, their employees might have sought alternative employment opportunities, perhaps with the Debtors' competitors, thereby depleting the Debtors' workforce, and hindering the Debtors' ability to meet their customer obligations. The loss of valuable employees would have been distracting at a critical time when the Debtors were focused on stabilizing their operations. Accordingly, the Bankruptcy Court entered an Order authorizing the Debtors to pay, among other things, pre-petition claims and obligations for (1) wages, salaries, bonuses, commissions and other compensation, (2) deductions and payroll taxes, (3) reimbursable employee expenses and (4) employee medical and similar benefits. [Docket No. 65].

#### **c. Fees and Taxes**

The Debtors believed that, in some cases, certain authorities had the ability to exercise rights that would be detrimental to the Debtors' restructuring if the Debtors failed to meet the obligations imposed upon them to remit certain taxes and fees. Accordingly, the Debtors sought, and the Bankruptcy Court entered, an Order authorizing the Debtors to pay fees and taxes,

including sales and use, franchise, real and property and annual report taxes as necessary or appropriate to avoid harm to the Debtors' business operations. [Docket No. 124].

**d. Cash Management Systems**

As part of a smooth transition into these Chapter 11 Cases, and in an effort to avoid administrative inefficiencies, maintaining the Debtors' integrated cash management system with a multitude of banks and various depository functions was of critical importance. Thus, the Debtors sought and the Bankruptcy Court entered an Order authorizing the Debtors to continue using their existing cash management system, bank accounts and business forms. Further, the Bankruptcy Court deemed the Debtors' bank accounts to be debtor in possession accounts and authorized the Debtors to maintain and continue using these accounts in the same manner and with the same account numbers, styles and document forms as those employed before the Commencement Date [Docket No. 60].

**e. Utilities**

Section 366 of the Bankruptcy Code protects debtors from utility service cutoffs upon a bankruptcy filing while providing utility companies with adequate assurance that the debtors will pay for post-petition services. The Debtors felt that their cash on hand, along with the Debtors' clear incentive to maintain their utility services, provided the adequate assurance required by the Bankruptcy Code. Consequently, the Bankruptcy Court entered an interim order and a Final Order approving procedures for, among other things, determining adequate assurance for utility providers and prohibiting utility providers from altering, refusing or discontinuing services without further Bankruptcy Court order [Docket Nos. 122 and 418, respectively]. Additionally, to resolve certain objections Filed by certain utility providers, the Bankruptcy Court entered a stipulation and consent order resolving such objections and determining adequate assurance of payment for future utility services.

**f. Customer Programs**

Prior to the Commencement Date, the Debtors engaged in certain customer programs to develop customer loyalty, encourage repeat business and ensure customer satisfaction. The Debtors believed that these customer programs assisted them in retaining customers, attracting new ones and, ultimately, increasing revenue. Accordingly, the Bankruptcy Court entered a Final Order authorizing, but not requiring, the Debtors to continue their customer programs and honor the pre-petition commitments owed with respect thereto [Docket No. 123].

**4. Store Closing and Lease Rejection Motions**

On February 3, 2010, the Debtors filed a series of related motions to implement their store closing program. Moreover, to reduce post-petition administrative costs, as part of their First Day Motions the Debtors sought authority to reject certain leases and other executory contracts and to establish procedures for the rejection of leases and other executory contracts after the Commencement Date [Docket No. 19; the "Rejection Procedures Motion"]. The Debtors also filed the Store Closing Motion, seeking authority to implement store closing procedures and to sell or abandon assets located in its closing stores, and to retain Gordon Brothers Retail Partners LLC ("Gordon Brothers") as the Debtors' consultant in connection with such store closings [Docket No. 22].

On February 3, 2010, the Bankruptcy Court granted the Rejection Procedures Motion [Docket No. 72; the “Rejection Procedures Order”. Between the entry of the Rejection Procedures Order and July [ ], 2010, the Debtors have rejected approximately 2,100 of their unexpired leases and executory contracts.

On February 4, 2010, the Bankruptcy Court granted the Debtors’ Store Closing Motion (Docket No. 94) and on May 11, 2010 entered its Final Store Closing Procedures Order. The Store Closing Procedures Order, among other things: (i) authorizes the Debtors or its agents to conduct GOB Sales; (ii) permits the sale of inventory and other property in connection with such GOB Sales free and clear of all liens, claims and encumbrances; and (iii) establishes a procedure for the resolution of disputes regarding the application of, and the Debtors’ and its agents’ compliance with, consumer protection laws governing GOB Sales.

As described in more detail in Article IV.E. herein, in April 2010, the Debtors -- in consultation with the Committee, the Pre-petition Secured Parties and representatives of the major movie studios and certain landlords -- concluded that it was in the best interests of their estates, their stakeholders, and the other parties in interest to terminate the Debtors’ remaining business operations, liquidate the Debtors’ remaining assets, and wind-down the Debtors’ affairs in an orderly process under chapter 11 of the Bankruptcy Code. To facilitate an effective and orderly liquidation, the Debtors retained Great American Group (“Great American”) to act as the Debtors’ exclusive agent to conduct going-out-of-business sales and to sell the Debtors’ remaining assets, including the Debtors’ inventory of movies in their remaining store locations (collectively, the “Movie Inventory”).

## **B. UNSECURED CREDITORS**

### **1. Appointment of the Committee**

On February 8, 2010, the United States Trustee appointed the Committee pursuant to section 1102 of the Bankruptcy Code. The members of the Committee are: (a) Warner Home Video; (b) Sony Pictures Home Entertainment Inc.; (c) Twentieth Century Fox Home Entertainment LLC; (d) Universal Studios Home Entertainment, LLC; (e) Paramount Home Entertainment Inc.; (f) Realty Income Corporation; (g) RR Donnelley & Sons; (h) Weingarten Realty Investors and (i) Regency Centers LP.

The Committee retained Hunton & Williams, LLP, as local counsel to the Committee, Pachulski Stang Ziehl & Jones, LLP, as counsel to the Committee and Kelley Drye & Warren LLP as conflicts counsel to the Committee. The Bankruptcy Court entered Final Orders approving the retention of Hunton & Williams LLP, Pachulski Stang Ziehl & Jones, LLP and Kelley Drye & Warren LLP [Docket Nos. 866, 853 and 852, respectively].

### **2. Meeting of Creditors**

The meeting of creditors pursuant to section 341 of the Bankruptcy Code was held on April 9, 2010. In accordance with Bankruptcy Rule 9001(5) (which requires, at a minimum, that one representative of the Debtors appear at such meeting of creditors for the purpose of being examined under oath by a representative of the United States Trustee and by any attending parties in interest), three representatives of the Debtors as well as counsel to the Debtors attended

the meeting and answered questions posed by the United States Trustee and other parties in interest present at the meeting.

### **C. CLAIMS BAR DATES**

On April 27, 2010, the Bankruptcy Court entered the Claims Bar Date Order [Docket No. 1043] pursuant to Bankruptcy Rule 3003(c)(3): (1) setting June 14, 2010, as the Claims Bar Date (except for governmental units and certain Claims arising from the rejection of unexpired leases and executory contracts); and (2) setting August 1, 2010, as the Governmental Bar Date.

In accordance with the Claims Bar Date Order, written notice of the applicable Claims Bar Date was mailed to, among others, all Holders of Claims listed on the Schedules. In addition, the Debtors published notice of the Claims Bar Date in the National Edition of *The Wall Street Journal*, *The New York Times* and *The Washington Post*.

A deadline by which requests for allowance of Administrative Claims (except to the extent such Claims are asserted pursuant to section 503(b)(9) of the Bankruptcy Code, which are subject to the Claims Bar Date) are required to be Filed with the Bankruptcy Court has not been established as of the date of this Disclosure Statement. The Debtors have filed a motion, however, seeking to establish a deadline (the "Administrative Claims Bar Date") by which Holders of Administrative Claims (other than Administrative Claims asserted pursuant to section 503(b)(9) of the Bankruptcy Code) must file a request for allowance and payment of such Administrative Claims to the extent such Administrative Claims accrued prior to fifteen (15) days before the Administrative Claims Bar Date. With respect to Administrative Claims which accrue thereafter, the Debtors are requesting that the Bankruptcy Court set a filing deadline as part of the Confirmation of the Plan.

### **D. EXCLUSIVITY**

Pursuant to an order of the Bankruptcy Court dated May 27, 2010 (Docket No. 1185), the Bankruptcy Court extended the Debtors' exclusive periods to propose a plan and to solicit acceptances of such plan through August 1, 2010 and September 30, 2010, respectively.

### **E. NEGOTIATIONS CONCERNING THE PLAN**

The Debtors have been involved in discussions and negotiations with the Pre-petition Secured Parties, the Committee and representatives of the Studios and landlords to address their concerns in the Plan and procure their support for the Plan. The Debtors have kept the Pre-petition Secured Parties, the Committee and representatives of the Studios and landlords informed about their business operations and have sought the concurrence of the Pre-petition Secured Parties, the Committee and representatives of the Studios and landlords in connection with certain actions taken by the Debtors outside of the ordinary course of business.

In April, 2010, the Debtors, the Pre-petition Secured Parties, the Committee and representatives of the landlords, Studios and Warner Home Video held a series of all-hands meetings to discuss the potential reorganization of the Debtors' business around a smaller footprint of ongoing stores. Based upon those meetings, and the parties' review and analysis of the business plan proposed by the Debtors, all parties concluded that it was in the best interests of the Debtors, their estates, the Debtors' stakeholders, and the other parties in interest to

terminate the Debtors' remaining business operations, liquidate the Debtors' remaining assets, and wind-down the Debtors' affairs in an orderly process under chapter 11 of the Bankruptcy Code. Pursuant to the agreement of the Pre-petition Secured Parties, that process would also provide some recovery for holders of general unsecured claims against the Debtors, even though the claims of the Pre-petition Secured Parties will not be paid in full.

On May 7, 2010, the Debtors, the Pre-petition Secured Parties, the Committee, the Studios and Warner Home Video executed and filed a stipulation and related term sheet outlining their agreement as described above. (Docket No. 1093; the "Term Sheet"). The Term Sheet details the agreement among the Debtors' key constituents regarding, among other things: (i) the Debtors' alleged default under the Cash Collateral Order asserted by the Pre-petition Secured Parties, (ii) the agreement of the Pre-petition Secured Parties to permit \$5,000,000 of cash to be made available for holders of general unsecured claims against the Debtors, and to permit their collateral to be used to fund certain payments to the Studios and Warner Home Video in connection with the ongoing liquidation of the Debtors' Movie Inventory (as defined below), (iii) the agreement of the Studios and Warner Home Video not to challenge the continued liquidation of the Debtors' remaining Movie Inventory subject to the provisions of the Term Sheet, and (iv) the timing for filing of a plan of liquidation consistent with the agreement set forth in the Term Sheet. The Term Sheet requires that the Effective Date of a plan, which must be consistent with the terms of the Term Sheet, must occur on or before December 8, 2010.

## **F. TRANSACTIONS OUTSIDE OF THE ORDINARY COURSE OF BUSINESS**

### **1. Selection of Great American as the Debtors' Exclusive Agent**

In the midst of the discussions and negotiations leading to the execution of the Term Sheet, the Debtors received a bid from Great American to act as the Debtors' exclusive agent to conduct GOB Sales and to sell the Debtors' remaining assets, including the Movie Inventory. Great American is one of the largest liquidators of retail inventory in the United States, having liquidated the retail inventories of Circuit City, Eaton's, Hancock Fabrics, Jo-Ann Stores, Linens 'N Things, Kmart, Office Max and Tower Records, among others. Indeed, Great American previously liquidated \$180 million of the Debtors' inventory in stores closed prior to the Commencement Date. Consistent with their obligations to maximize value for the Debtors' stakeholders, the Debtors immediately entered into discussions and negotiations with Great American to explore that proposal further.

During the course of the Debtors' negotiations with Great American, the Debtors began to receive other unsolicited offers from other liquidators seeking, generally, to either purchase the Debtors' remaining Movie Inventory outright or offering to act as an agent for the Debtors in the liquidation of the Movie Inventory. The Debtors also received requests for access to due diligence materials from still other liquidators. Based upon all these discussions, the Debtors determined that engaging a liquidator to act as the Debtors' exclusive agent charged with selling the Debtors' remaining Movie Inventory and other assets was the most effective and efficient method to wind up the Debtors' operations, generate maximum value for stakeholders and bring about an expeditious completion of the Debtors' bankruptcy cases in accordance with the fully-consensual agreement reflected in the Term Sheet.

The Debtors believed, in the exercise of their business judgment, that Great American's offer to act as the Debtors' exclusive agent to sell the Debtors' Movie Inventory and other assets on the terms and conditions set forth in the agreement between the Debtors and Great American (the "Great American Agreement") was the highest and best offer that the Debtors had received as of May 13, 2010. Accordingly, the Debtors executed the Great American Agreement on that date, subject to the Bankruptcy Court's approval of the terms of the Great American Agreement and of the consummation of the transactions described therein -- including the payment by Great American of \$62.3 million to the Debtors for the right to act as the Debtors' agent. In the Debtors' motion seeking approval of the Great American Agreement, the Debtors also sought approval of a break-up fee and expense reimbursement for Great American's agreement to act as a stalking horse bidder for the right to act as the Debtors' agent.

The Bankruptcy Court held a hearing on May 19, 2010 to consider the Debtors' request to approve a break-up fee in favor of Great American and Gordon Brothers' objections thereto. At the hearing, Gordon Brothers submitted a bid for the right to act as the Debtors' agent with respect to GOB Sales and other asset dispositions. Ultimately, the Bankruptcy Court denied the Debtors' request to pay a break-up fee to Great American and an auction followed the hearing. At the auction, Gordon Brothers, Great American and a third bidder submitted various qualified bids. Great American was declared the successful bidder at the end of the auction agreeing, among other things, to increase the amount of consideration to be paid to the Debtors by \$11.9 million over its initial bid for total transaction consideration consisting primarily of \$74.2 million. The Bankruptcy Court entered an Order approving the terms of the Great American Agreement and the consummation of the transactions described therein on May 20, 2010 [Docket No. 1125].

## **2. Other Dispositions of Assets**

The Debtors solicited bids -- or received indications of interest -- from a number of parties for the purchase of the inventory remaining in the Debtors' distribution center in Nashville, Tennessee (the "Distribution Center"), including from Great American, Gordon Brothers and others. Some of those parties indicated an interest in acquiring the entire inventory in the Distribution center, while others expressed an interest in acquiring only certain portions of that inventory.

### **a. Asset Purchase Agreement with VPD**

Ultimately, and based on their discussions and negotiations with the parties who expressed interest in acquiring some or all of the inventory located in the Distribution Center, the Debtors determined that VPD IV, Inc.'s ("VPD") bid for a portion of the movie inventory located in the Distribution Center was the highest and best offer received by the Debtors for those assets, and that a sale of those assets to VPD would likely generate a better return for the estate than including such movie inventory in a larger transaction for the acquisition of all or substantially all of the remaining inventory in the Distribution Center.

On June 11, 2010, the Debtors and VPD entered into an Asset Purchase Agreement (Docket No. 1257; the "VPD Asset Purchase Agreement"). The VPD Asset Purchase Agreement provides, among other things that VPD would pay the Debtors \$5,057,227 to acquire the movie inventory which consists of approximately 1.2 million Blu-ray and DVD movies in the

Distribution Center and certain related rights, subject to the Bankruptcy Court's approval of the Asset Purchase Agreement and the consummation of the transaction described therein. The Bankruptcy Court approved the Debtors' proposed transaction with VPD on June 24, 2010, and the transaction closed on June 25, 2010.

**b. COKeM Sale Agreement**

In addition to soliciting bids for the Debtors' movie inventory in the Distribution Center, the Debtors also solicited bids for their remaining video game-related inventory from potential buyers in the video games market, including GameStop Corporation and Gamers Factory, Inc, two of the largest new and used video game retailers in the home entertainment industry.

On June 10, 2010, the Debtors and COKeM International Ltd. ("COKeM") entered into a letter agreement (Docket No. 1267; the "COKeM Sale Agreement"). The COKeM Sale Agreement provides, among other things that COKeM would pay the Debtors \$3,025,000 to acquire certain of the Debtors' video game inventory located in the Distribution Center, subject to the Bankruptcy Court's approval of the terms of such Agreement and of the consummation of the transaction described therein. The Bankruptcy Court approved the Debtors' proposed transaction with COKeM on June 24, 2010, and that transaction closed on June 28, 2010.

**G. USE OF CASH COLLATERAL**

On February 3, 2010, the Debtors filed the Motion of Debtors for Interim and Final Orders Pursuant to 11 U.S.C. §§ 105, 361, 363, 364(e) and 552 and Fed. R. Bankr. P. 2002, 4001 and 9014 (A) Authorizing the Use of Cash Collateral, (B) Granting Adequate Protection to Certain Pre-Petition Secured Parties, (C) Granting Related Relief, (D) Scheduling an Interim Hearing and (E) Scheduling a Final Hearing. (Docket No. 33; the "Cash Collateral Motion"). In the Cash Collateral Motion, the Debtors described their pre-petition credit facilities and the terms under which they sought to use Cash Collateral (as defined in the Cash Collateral Motion) pledged to the Debtors pre-petition secured lenders.

On February 3, 2010, the Bankruptcy Court held an interim hearing following which the Bankruptcy Court entered the Interim Order (Docket No. 68) authorizing the Debtors to use Cash Collateral on an interim basis and scheduling the Final Hearing on the Cash Collateral Motion. On February 22, 2010, the Bankruptcy Court held a final hearing and approved the Debtors' use of Cash Collateral on a final basis as provided in the Cash Collateral Order.

The Cash Collateral Order contemplates that the Debtors would continue to close stores and liquidate inventory. Pursuant to paragraph 15(e)(vi) of the Cash Collateral Order, it constitutes an Event of Default if the cumulative net proceeds of store liquidations for any period from the Commencement Date through the end of a particular calculation period are less than the cumulative amount set forth in the Budget (as defined in the Cash Collateral Order) for such period by more than 10% (the "Liquidation Proceeds Covenant").

Since their respective entry, the Debtors had been in substantial compliance with both the Interim Order and the Cash Collateral Order. In early April, however, the Debtors advised the Pre-petition Secured Parties of the occurrence of a breach of the Liquidation Proceeds Covenant of the Budget. As a result, an event of default occurred pursuant to paragraph 15(e)(vi) of the Cash Collateral Order. The Pre-petition Secured Parties did not exercise any remedies with



respect to that default. Indeed, in connection with the Term Sheet, the Pre-petition Secured Parties waived their rights, subject to certain exceptions set forth in the Term Sheet, with respect to the Debtors' breach of the Liquidation Proceeds Covenant.

Consistent with the Term Sheet, the Debtors submitted an amending Order to the Cash Collateral Order, which the Bankruptcy Court entered on May 20, 2010 (Docket No. 1151, the "Amended Cash Collateral Order"). The Amended Cash Collateral Order incorporates the terms reflected in the Term Sheet, the Great American Agreement and includes a revised budget which takes into account the full liquidation of the Debtors and provides for the reasonable costs and expenses of such liquidation.

## **V. SUMMARY OF THE JOINT PLAN**

### **A. ADMINISTRATIVE CLAIMS AND PRIORITY CLAIMS**

#### **1. Unclassified Claims**

In accordance with section 1123(a)(1) of the Bankruptcy Code, certain Claims against the Debtors have not been classified. The respective treatment of such Unclassified Claims is set forth immediately below.

##### **a. Administrative Claims**

Except as otherwise provided herein, and subject to the requirements of the Plan, on, or as soon as reasonably practicable after, the date that is fifteen (15) days after the date on which such Administrative Claim becomes an Allowed Administrative Claim, a Holder of an Allowed Administrative Claim shall receive, to be paid out of the First Lien Term Lenders Liquidating Trust, in full and final satisfaction, settlement and release of and in exchange for such Allowed Administrative Claim, (i) Cash equal to the unpaid portion of such Allowed Administrative Claim or (ii) such other treatment as to which such Holder and the Debtors and/or the First Lien Term Lenders Liquidating Trustee shall have agreed upon in writing; provided, however, that Allowed Administrative Claims with respect to liabilities incurred by a Debtor in the ordinary course of business during the Chapter 11 Cases may be paid in the ordinary course of business in accordance with the terms and conditions of any agreements relating thereto (a) prior to the Effective Date, by the Debtors and (b) subsequent to the Effective Date, by the First Lien Term Lenders Liquidating Trustee. Notwithstanding the foregoing, the payment of Administrative Claims shall be subject, if prior to the Effective Date, to Lenado's and/or the Pre-petition First Lien Term Administrative Agent's rights to object (to the extent not inconsistent with the Term Sheet), and if after the Effective Date, the First Lien Term Lenders Liquidating Trustee's right to object (to the extent not inconsistent with the Term Sheet), in good faith on any grounds to the validity, amount or administrative priority of any such Claims.

##### **(1) Bar Date for Administrative Claims**

All requests for payment of an Administrative Claim arising between \_\_\_\_\_, 2010 and the Final Administrative Claims Bar Date (other than Professional Fee Claims) must be filed with the Bankruptcy Court and served on counsel for the Debtors no later than the Final Administrative Claims Bar Date. All requests for payment of an Administrative Claim arising prior to \_\_\_\_\_, 2010, must have been filed no later than the Initial Administrative Claims

Bar Date. Unless the First Lien Lenders Liquidating Trustee or any other party in interest objects to an Administrative Claim by the Administrative Claims Objection Deadline, such Administrative Claim shall be deemed allowed in the amount requested. In the event that the First Lien Term Lenders Liquidating Trustee or any other party in interest objects to an Administrative Claim, the Bankruptcy Court shall determine the allowed amount of such Administrative Claim.

## **(2) Professional Compensation**

The Final Fee Applications must be filed no later than forty-five (45) days after the Effective Date. Objections, if any, to Final Fee Applications of such Professionals must be filed and served on the First Lien Term Lenders Liquidating Trustee and its counsel, the requesting Professional and the Office of the U.S. Trustee no later than ten (10) days from the date on which each such Final Fee Application is served and filed. After notice and a hearing in accordance with the procedures established by the Bankruptcy Code and prior orders of the Bankruptcy Court, the allowed amounts of such Professional Fee Claims shall be determined by the Court. No objections to Final Fee Applications may be asserted after ten (10) days from the date on which such Final Fee Application was served and filed.

## **(3) Employment of Professionals after the Effective Date**

Except as otherwise provided for in the Liquidating Trust Agreements, from and after the Effective Date, any requirement that Professionals comply with Bankruptcy Code sections 327 through 331 or any order previously entered by the Bankruptcy Court in seeking retention or compensation for services rendered or expenses incurred after such date shall terminate.

## **(4) Other Administrative Claims**

All other requests for allowance and payment of an Administrative Claim arising after the Initial Administrative Claims Bar Date, up to and through the Effective Date, other than Professional Fee Claims, must be filed with the Bankruptcy Court and served on counsel for the Debtors and the Pre-petition Secured Parties no later than the Final Administrative Claims Bar Date. Unless the First Lien Term Lenders Liquidating Trustee or the Debtors objects to an Administrative Claim by the Administrative Claims Objection Deadline, such Administrative Claim shall be deemed allowed in the amount requested. In the event that the First Lien Term Lenders Liquidating Trustee or the Debtors objects to an Administrative Claim, the Bankruptcy Court shall determine the allowed amount of such Administrative Claim.

## **(5) Ordinary Course Liabilities**

Holders of Administrative Claims based on liabilities incurred by the Debtors in the ordinary course of their business are not required to File or serve any request for payment of such Administrative Claims and such Administrative Claims will be paid in the ordinary course.

## **2. Priority Tax Claims**

Except to the extent that an Allowed Priority Tax Claim has been paid prior to the Distribution Date, a Holder of an Allowed Priority Tax Claim shall be entitled to receive, from the First Lien Term Lenders Liquidating Trust, in full and final satisfaction, settlement and

release of and in exchange for such Allowed Priority Tax Claim, (i) regular installment Cash payments, occurring not less frequently than quarterly over a period not exceeding five (5) years after the Commencement Date, in an aggregate principal amount equal to the unpaid portion of such Allowed Priority Tax Claim, plus interest on the unpaid portion thereof at the Case Interest Rate from the Effective Date through the date of payment thereof or (ii) such other treatment as to which such Holder and the First Lien Term Lenders Liquidating Trustee shall have agreed upon in writing; provided, however, that the First Lien Term Lenders Liquidating Trustee shall have the right to pay any Allowed Priority Tax Claim, or any remaining balance of any Allowed Priority Tax Claim, in full at any time on or after the Effective Date without premium or penalty. Priority Tax Claimholders will be paid in full on account of their Allowed Priority Tax Claims and are not entitled to vote on the Plan. Notwithstanding the foregoing, the payment of Priority Tax Claims shall be subject, if prior to the Effective Date, to Lenado's and/or the Pre-petition First Lien Term Lender Administrative Agent's rights to object, and if after the Effective Date, the First Lien Term Lenders Liquidating Trustee's rights to object, in good faith on any grounds to the validity, amount or priority of any such Claims.

**B. CLASSIFICATION AND TREATMENT OF CLASSIFIED CLAIMS AND INTERESTS**

**1. Summary**

The categories of Claims and Interests listed below classify Claims and Interests for all purposes, including, without limitation, voting, Confirmation and distribution pursuant to the Plan and pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code. The Plan deems a Claim or Interest to be classified in a particular Class only to the extent that the Claim or Interest qualifies within the description of that Class and will be deemed classified in a different Class to the extent that any remainder of such Claim or Interest qualifies within the description of such different Class. A Claim or an Interest is in a particular Class only to the extent that any such Claim or Interest is Allowed in that Class and has not been paid or otherwise settled prior to the Effective Date.

**2. Summary of Classification and Treatment of Classified Claims and Interests**

<b>SUMMARY OF STATUS AND VOTING RIGHTS</b>			
<b>Class</b>	<b>Claim</b>	<b>Status</b>	<b>Voting Rights</b>
1	Non-Tax Priority Claims	Unimpaired	Not entitled to vote/deemed to accept
2	Miscellaneous Secured Claims	Unimpaired	Not entitled to vote/deemed to accept
3	Revolver Secured Claims	Unimpaired	Not entitled to vote/deemed to accept
4	Pre-petition First Lien Term Loan Secured Claims	Impaired	Entitled to vote
5	General Unsecured Claims	Impaired	Entitled to vote

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**SUMMARY OF STATUS AND VOTING RIGHTS**

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6	Intercompany Claims	Impaired	Not entitled to vote/deemed to reject
7	Interests	Impaired	Not entitled to vote/deemed to reject

Any Class of Claims that does not consist, as of the date of the Confirmation Hearing, of at least one Allowed Claim, Disputed Claim or Claim temporarily Allowed under Rule 3018 of the Bankruptcy Rules, shall be deemed deleted from the Plan for all purposes.

Except as set forth in Articles III.C and III.E of the Plan, (i) the First Lien Term Lenders Liquidating Trustee shall only make Distributions to Holders of Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Class 1 Claims, Allowed Class 2 Claims, Allowed Class 3 Claims, and Allowed Class 4 Claims and (ii) the GUC Liquidating Trustee shall only make Distributions to Holders of Allowed Class 5 Claims. No Holder of a Disputed Claim will receive any Distribution on account thereof until (and then only to the extent that) its Disputed Claim becomes an Allowed Claim; provided, however, that if the only dispute regarding a Disputed Claim is to the amount of the Disputed Claim, the Holder of a Disputed Claim shall be entitled to receive a Distribution on account of that portion of the Disputed Claim, if any, which the applicable Liquidating Trustee does not dispute, which Distribution shall be made by the applicable Liquidating Trustee at the same time and in the same manner that such Liquidating Trustee makes Distributions to Holders of Allowed Claims pursuant to the provisions of the Plan. Each Liquidating Trustee may, in its respective discretion, withhold Distributions otherwise due and payable by such Liquidating Trustee hereunder to any applicable Claimholder until the Claims Objection Deadline, to enable a timely objection thereto to be filed. Any Holder of a Claim that becomes an Allowed Claim after the Effective Date will receive its Distribution in accordance with the terms and provisions of the Plan and the applicable Liquidating Trust Agreement.

**3. Classification and Treatment of Claims and Interests**

**a. Class 1—Non-Tax Priority Claims**

Classification: Class 1 consists of Non-Tax Priority Claims against the Debtors. The Debtors expect that there will be few Non-Tax Priority Claims allowed.

Treatment: On, or as soon as reasonably practicable after, the date that is ninety (90) days after the date on which a Non-Tax Priority Claim becomes an Allowed Non-Tax Priority Claim, a Holder of an Allowed Non-Tax Priority Claim shall receive, from the First Lien Term Lenders Liquidating Trust, in full and final satisfaction, settlement and release of and in exchange for such Allowed Non-Tax Priority Claim, (i) Cash equal

to the unpaid portion of such Allowed Non-Tax Priority Claim or (ii) such other treatment as to which such Holder and the Debtor and/or the First Lien Term Lenders Liquidating Trustee shall have agreed upon in writing. Notwithstanding the foregoing, the payment of Non-Tax Priority Claims shall be subject to, if prior to the Effective Date, Lenado's and/or the Prepetition First Lien Term Lender Administrative Agent's rights to object, and if after the Effective Date, the First Lien Term Lenders Liquidating Trustee's right to object, in good faith on any grounds to the validity, amount or priority of any such Claims. Class 1 is presumed to have accepted the Plan and, therefore, Holders of Class 1 Claims are not entitled to vote to accept or reject the Plan.

Voting: Class 1 is an Unimpaired Class, and the Holders of Class 1 Claims are conclusively deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 1 Claims are not entitled to vote to accept or reject the Plan.

**b. Class 2—Miscellaneous Secured Claims**

Classification: Class 2 consists of Miscellaneous Secured Claims against the Debtors. To the extent that an asserted Miscellaneous Secured Claim is found to be subordinate in priority to a Class 3 or Class 4 Claim or its collateral is found to be worth less than the face amount of its claim, such deficiency shall be treated as a Class 5 Claim below. Debtors expect that there will be few Miscellaneous Secured Claims allowed.

Treatment: On, or as soon as reasonably practicable after, the date that is sixty (60) days after the date on which a Miscellaneous Secured Claim becomes an Allowed Miscellaneous Secured Claim, a Holder of an Allowed Miscellaneous Secured Claim shall receive, at the Debtors' option (if prior to the Effective Date) and at the First Lien Term Lenders Liquidating Trustee's option (if after the Effective Date) in full and final satisfaction, settlement and release of and in exchange for, such Allowed Miscellaneous Secured Claim, (i) Cash equal to the unpaid portion of such Allowed Miscellaneous Secured Claim, to be paid out of the First Lien Term Lenders Liquidating Trust, (ii) a return of the Holder's Collateral securing the Miscellaneous Secured Claim, or (iii) such other treatment as to which such Holder and the Debtors or the First Lien Term Lenders Liquidating Trustee shall have agreed upon in writing. Any Holder of a Miscellaneous Secured Claim shall retain its Lien in the Collateral or the proceeds of the Collateral (to the extent that such Collateral is sold by the Debtors or the First Lien Term Lenders Liquidating Trustee free and clear of such Lien) to the same extent and with the same priority as such Lien held as of the Commencement Date (after giving effect to the Cash Collateral Order) until such time as (a) such Miscellaneous Secured Claim has been satisfied pursuant to the preceding sentence; or (b) such purported Lien has been determined by an order of the Bankruptcy Court to be invalid or otherwise avoidable. Notwithstanding the foregoing, or

anything to the contrary in the Plan, no Distributions shall be made to the Holder of any Allowed Miscellaneous Secured Claim unless either (a) the First Lien Term Lenders Liquidating Trust has sufficient Available Cash to pay, or reserve for, as the case may be, the Face Amount of all Miscellaneous Secured Claims or (b) the First Lien Term Lenders Liquidating Trustee consents to all or any portion of such Distribution. Notwithstanding the foregoing, the payment of Miscellaneous Secured Claims shall be subject to the First Lien Term Lenders Liquidating Trustee's right to object, in good faith on any grounds to the validity, amount or priority of any such Claims or the validity, perfection, enforceability or priority of the Lien purported to secure any such Claim or portion thereof. Class 2 is presumed to have accepted the Plan and, therefore, Holders of Class 2 Claims are not entitled to vote to accept or reject the Plan.

To the extent a Miscellaneous Secured Claim is secured by a valid and perfected Lien on property of a Debtor's estate which Lien is, whether by operation of law, contract, court order, or otherwise, junior and subordinate to the Lien of the Pre-petition Secured Parties and/or the Claims of the Revolver Secured Claims or the First Lien Term Loan Claims, then such Miscellaneous Secured Claim shall be treated as a Class 5 Claim under the Plan.

Voting: Class 2 is an Unimpaired Class, and the Holders of Class 2 Claims are conclusively deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 2 Claims are not entitled to vote to accept or reject the Plan.

**c. Class 3— Revolver Secured Claims**

Classification: Class 3 consists of the Revolver Secured Claims against the Debtors.

Treatment: On the Effective Date, the Debtors shall pay Cash equal to the full amount of the then unpaid and outstanding Revolver Secured Claims to the Pre-petition First Lien Revolver Administrative Agent (such Cash, the "Revolver Effective Date Cash") without prejudice to any Revolver Post-Effective Date Secured Claim. As soon as practicable upon receipt of the Revolver Effective Date Cash, the Pre-petition First Lien Revolver Administrative Agent shall distribute the Revolver Effective Date Cash on a Pro Rata basis to the Pre-petition First Lien Revolver Lenders net of fees and expenses payable to the Pre-petition First Lien Revolver Agent, its professionals and professionals of the Pre-petition First Lien Revolver Lenders, which fees and expenses the Pre-petition First Lien Revolver Administrative Agent shall apply or remit based on invoices presented to the Pre-petition First Lien Revolver Administrative Agent. The payment of the Revolver Effective Date Cash by the Debtors to the Pre-petition First Lien Revolver Administrative Agent on the Effective Date shall be in

full and final satisfaction, settlement and release of and in exchange for all Revolver Pre-Effective Date Secured Claims paid on the Effective Date and the portion of any other Revolver Secured Claims paid on the Effective Date; provided, however, that if and to the extent any Revolver Pre-Effective Date Secured Claim is not paid in full in Cash on the Effective Date, such Revolver Pre-Effective Date Secured Claim, or any portion thereof, shall retain the applicable priority under the Pre-petition First Lien Credit Documents and shall be paid in full in Cash by the First Lien Term Lenders Liquidating Trustee from the Available Cash held by the First Lien Term Lenders Liquidating Trust promptly upon presentation of such Revolver Pre-Effective Date Secured Claim by any Pre-petition First Lien Revolving Secured Party. Revolver Post-Effective Date Secured Claims, if any, shall be paid by the First Lien Term Lenders Liquidating Trustee from the Available Cash held by the First Lien Term Lenders Liquidating Trust promptly upon presentation of such Revolver Pre-Effective Date Secured Claim and shall retain the applicable priority under the Pre-petition First Lien Credit Documents until so paid. The payment of any Revolver Post-Effective Date Secured Claim by the First Lien Term Lenders Trustee to the Pre-petition First Lien Revolver Administrative Agent thereafter shall be in full and final satisfaction, settlement and release of and in exchange for that portion of the Revolver Post-Effective Date Secured Claims so paid on such date; provided, however, that the First Lien Term Lenders Liquidating Trustee may review such Revolver Post-Effective Date Secured Claims and reserves the right to object in good faith in whole or part to the payment thereof.

Except as provided in the Plan with respect to the Creditor Funds, the Pre-petition Joint Collateral Agent, on its own behalf and on behalf of any Holder of a Revolver Secured Claim shall retain its Lien in the Collateral or the proceeds of the Collateral (to the extent that such Collateral is sold by the Debtors or the Liquidating Trustee free and clear of such Lien) to the same extent and with the same priority as such Lien held as of the Commencement Date until the termination of the First Lien Term Lenders Liquidating Trust. Nothing in the Plan or the Confirmation Order shall, or shall be deemed to reduce any payment due to or adversely affect any right of the Pre-petition First Lien Revolver Secured Parties under the Cash Collateral Order including, without limitation under Section 7(d) of the Cash Collateral Order.

All Distributions paid by the Debtors, on or prior to the Effective Date, or the First Lien Term Lenders Liquidating Trustee after the Effective Date to the Pre-petition First Lien Revolver Administrative Agent shall be final, and absent manifest error, shall immediately vest in and become the property of the Holders of Revolver Secured Claims.

Voting: Class 3 is an Unimpaired Class, and the Holders of Class 3 Claims are conclusively deemed to have accepted the Plan pursuant to

section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 3 Claims are not entitled to vote to accept or reject the Plan.

**d. Class 4—Pre-petition First Lien Term Loan Claims**

Classification: Class 4 consists of Pre-petition First Lien Term Loan Claims against the Debtors.

Treatment: Subject to the occurrence of the Effective Date and the transfer of the Creditor Funds to the GUC Liquidating Trust as provided in the Plan, each Holder of a Pre-petition First Lien Term Loan Claim shall receive its Pro Rata share of the beneficial interests in the First Lien Term Lenders Liquidating Trust, which shall make distributions to the Holders of such beneficial interests of all Available Cash and other property held by the First Lien Term Lenders Liquidating Trust in installments on the Initial Distribution Date and on each Periodic Distribution Date thereafter, after making adequate provision for: (i) the expenses of administering the First Lien Term Lenders Liquidating Trust; (ii) after two (2) Business Days receipt of written notice from Lenado or the Pre-petition First Lien Revolver Administrative Agent of the existence of any Revolver Post-Effective Date Secured Claim, the amount of any such Revolver Post-Effective Date Secured Claim to the extent not paid in full in Cash to the Pre-petition First Lien Revolver Administrative Agent on the Effective Date or any Distribution Date; (iii) the payment in full of all Allowed Administrative Claims that have not been paid and any Disputed Priority Administrative Claims that have not been Disallowed; and (iv) the payment in full of all Allowed Priority Claims and any Disputed Claims that have not been Disallowed (collectively, the “Adequate Provision”). Any payment of an Allowed Claim by the First Lien Term Lenders Liquidating Trustee will reduce the amount of Adequate Provision for such Claim on a dollar for dollar basis equal to the amount of such payment. The First Lien Lenders Liquidating Trustee may, but shall not be required to, request that the Bankruptcy Court review and approve the First Lien Term Lenders Liquidating Trustee’s Adequate Provision. Nothing in the Plan or the Confirmation Order shall, or shall be deemed to, reduce any payment due to or adversely affect any right of the Pre-petition First Lien Term Secured Parties under the Cash Collateral Order, including, without limitation under Section 7(d) of the Cash Collateral Order, except as set forth in the Term Sheet.

Except as provided in the Plan with respect to the Creditor Funds, the Pre-petition Joint Collateral Agent, on its own behalf and on behalf of any Holder of a Pre-petition First Lien Term Secured Claim shall retain its Lien in the Collateral or the proceeds of the Collateral (to the extent that such Collateral is sold by the Debtors or the First Lien Term Lenders Liquidating Trustee free and clear of such Lien) to the same extent and with the same priority as such Lien held as of the Commencement Date until the termination of the First Lien Term Lenders Liquidating Trust.



All Distributions paid by the First Lien Term Lenders Liquidating Trustee to the Holders of Pre-petition First Lien Term Loan Secured Claims shall be final, and absent manifest error, shall immediately vest in and become the property of such Holders.

Voting: Class 4 is Impaired, and Holders of Class 4 Claims are entitled to vote to accept or reject the Plan.

**e. Class 5—General Unsecured Claims**

Classification: Class 5 consists of General Unsecured Claims against the Debtors.

Treatment: Each Holder of an Allowed General Unsecured Claim shall receive from the GUC Liquidating Trust, in full and final satisfaction, settlement and release of and in exchange for such Allowed General Unsecured Claim, its Pro Rata share of the beneficial interests in the GUC Liquidating Trust, which shall make distributions to the Holders of such beneficial interests of the Creditor Funds held by the GUC Liquidating Trust, after making adequate provision for: (i) the expenses of administering the GUC Liquidating Trust; and (ii) Disputed General Unsecured Claims, if any.

Upon the occurrence of the Effective Date, the Pre-petition Joint Collateral Agent, on its own behalf and on behalf of the Holders of Revolver Secured Claims and Pre-petition First Lien Term Loan Claims shall be deemed to release its Lien on the Creditor Funds.

Upon the occurrence of Effective Date, the Holders of Pre-petition First Lien Term Loan Claims shall be deemed to have waived their rights to receive any distribution on account of their unsecured deficiency claims under the Pre-petition First Lien Term Credit Facility or any other General Unsecured Claims arising from the Pre-petition First Lien Term Credit Facility that they may assert against the Debtors (without prejudice to any other General Unsecured Claims or other Claims that any such Holder may have).

All Distributions paid by the GUC Liquidating Trustee to the Holders of Allowed General Unsecured Claims shall be final, and absent manifest error, shall immediately vest in and become the property of such Holders. .

Voting: Class 5 is Impaired, and Holders of Class 5 Claims are entitled to vote to accept or reject the Plan.

**f. Class 6—Intercompany Claims**

Classification: Class 6 consists of Intercompany Claims held by one or more Debtors and/or non-debtor affiliates against the Debtors.

Treatment: In connection with, to the extent of and as a result of, the substantive consolidation of the Debtors' Estates and the Chapter 11 Cases, on the Confirmation Date or such other date as may be set by an order of the Bankruptcy Court, but subject to the occurrence of the Effective Date, all Intercompany Claims shall be deemed eliminated, cancelled and/or extinguished and the Holders of Class 6 Claims shall not be entitled to, and shall not receive or retain any property or interest in property on account of such Claims.

Voting: Class 6 is Impaired, and the Holders of Class 6 Claims are deemed to have rejected the Plan and, therefore, Holders of Class 6 Claims are not entitled to vote to accept or reject the Plan.

**g. Class 7—Interests**

Classification: Class 7 consists of Interests in the Debtors.

Treatment: On the Effective Date, all Interests shall be cancelled and each Holder thereof shall not be entitled to, and shall not receive or retain any property or interest in property on account of, such Interests.

Voting: Class 7 is Impaired, and the Holders of Class 7 Interests are deemed to have rejected the Plan and, therefore, Holders of Class 7 Interests are not entitled to vote to accept or reject the Plan.

**C. ACCEPTANCE OR REJECTION OF THE PLAN**

**1. Impaired Classes of Claims Entitled to Vote**

Classes 4 and 5 are Impaired by the Plan. Subject to Article II.D. of the Plan, the votes of Holders of Claims in Class 4 and Class 5 [who are entitled to vote under the Solicitation Procedures Order] will be solicited for acceptance or rejection of the Plan.

**2. Acceptance by an Impaired Class**

In accordance with Bankruptcy Code section 1126(c) and except as provided in Bankruptcy Code section 1126(e), each of Class 4 and Class 5, as Impaired Classes, shall have accepted the Plan if the Plan is accepted by the Holders of at least two-thirds (2/3) in dollar amount and more than one-half (1/2) in number of the Claims of such Class that are entitled to vote and have timely and properly voted to accept or reject the Plan.

**3. Presumed Acceptances by Unimpaired Classes**

Classes 1, 2 and 3 are Unimpaired by the Plan. Under Bankruptcy Code section 1126(f), Holders of Claims in Classes 1, 2 and 3 are conclusively presumed to accept the Plan, and the votes of such Claimholders will not be solicited.

#### **4. Classes Deemed to Reject Plan**

Claimholders in Class 6 and Interest Holders in Class 7 are not entitled to receive or retain any property under the Plan. Under Bankruptcy Code section 1126(g), Holders of Claims in Class 6 and Holders of Interests in Class 7 are deemed to reject the Plan, and the votes of such Claimholders or Interest Holders will not be solicited.

#### **5. Summary of Classes Voting on the Plan**

Pursuant to Article IV of the Plan, the votes of Holders of Claims in Class 4 and Class 5 that are not subject to an objection or who have filed a motion under Bankruptcy Rule 3018(a) and obtained temporary allowance of their Claims for voting purposes, all as further set out in the Solicitation Procedures Order, will be solicited with respect to the Plan.

#### **6. Confirmation Pursuant to Bankruptcy Code Section 1129(b)**

The Debtors will seek confirmation of the Plan from the Court by employing the “cramdown” procedures set forth in section 1129(b) of the Bankruptcy Code.

#### **7. Amendment of the Plan**

Subject to the prior written consent of the Requisite Lenders under both Pre-petition First Lien Credit Agreements, the Debtors reserve the right to alter, amend, modify, revoke, or withdraw the Plan or any Plan Exhibit or schedule, including to amend or modify the Plan or such Exhibits or schedules to satisfy the requirements of Bankruptcy Code section 1129(b), if necessary. To the extent any such alteration, amendment, modification, revocation, or withdrawal of the Plan or any Plan Exhibit or schedule would be inconsistent with rights of and the benefits conferred upon the Committee, Holders of General Unsecured Claims, Holders of Administrative Claims, the Studios, or Warner Home Video pursuant to the Global Plan Settlement or would adversely effect the payment of General Unsecured Claims or Administrative Claims, then the Committee (if prior to the Effective Date) or the GUC Liquidating Trustee (if after the Effective Date) shall be entitled to consent in writing to such amendment.

### **D. MEANS FOR IMPLEMENTATION OF THE PLAN**

#### **1. Global Plan Settlement**

The Plan is predicated upon the agreements entered into among the Debtors, the Committee, certain of the Pre-petition Secured Parties, the Studios and Warner Home Video as set forth in the Term Sheet (the “Global Plan Settlement”). In accordance with the Global Plan Settlement: (i) the Pre-petition Secured Parties shall (a) release their Liens upon the Creditor Funds upon the occurrence of the Effective Date, and (b) without prejudice to the rights of certain parties in interest to object to Administrative Claims to the extent provided in the Plan, to consent to the payment of Allowed Administrative Claims incurred prior to the Effective Date, all as set forth in the Term Sheet, (ii) the Studios and Warner Home Video shall waive or amend certain obligations owed to them by the Debtors pursuant the terms of various revenue sharing agreements, and shall forbear from taking certain other actions, all as set forth in the Term Sheet, and (iii) the Committee shall suspend and, subject to the Confirmation Order becoming a Final

Order, terminate the Committee Investigation, as defined in, and subject to, the terms of the Term Sheet and the Cash Collateral Order. In addition, on and subject to the occurrence of the Effective Date: (a) the Revolver Pre-Effective Date Secured Claims will be paid in full in Cash; (b) the GUC Liquidating Trustee shall take possession of the Creditor Funds; and (c) all of the Debtors' Other Assets will be deemed transferred to the First Lien Term Lenders Liquidating Trust. Thereafter, the GUC Liquidating Trustee shall be responsible for administering the GUC Liquidating Trust, including distributing the Creditor Funds in accordance with the Plan. The First Lien Term Lenders Liquidating Trustee shall be responsible for administering the First Lien Term Lenders Liquidating Trust and liquidating the Debtors' Other Assets and distributing Cash in accordance with the Plan and resolving all Claims other than General Unsecured Claims.

The Plan also contemplates, and is predicated upon, the entry of an order substantively consolidating the Debtors' Estates and the Chapter 11 Cases. Accordingly, on the Effective Date: (i) all Intercompany Claims by, between and among the Debtors shall be deemed eliminated, (ii) all assets and liabilities of the Affiliate Debtors shall be merged or treated as if they were merged with the assets and liabilities of Movie Gallery, Inc., (iii) any obligation of a Debtor and all guarantees thereof by one or more of the other Debtors shall be deemed to be one obligation of Movie Gallery, Inc., (iv) the Interests shall be cancelled, and (v) each Claim filed or to be filed against any Debtor shall be deemed filed only against the consolidated Movie Gallery, Inc. and shall be deemed a single Claim against and a single obligation of the consolidated Movie Gallery, Inc. On the Effective Date, in accordance with the terms of the Plan, all Claims based upon guarantees of collection, payment, or performance made by the Debtors as to the obligations of another Debtor shall be released and of no further force and effect. The Debtors' subsidiary, MG Canada, shall not be subject to substantive consolidation with the other Debtors and, after the Effective Date, all of the Debtors' right, title and interest in and to MG Canada shall be deemed and considered to be and constitute Other Assets; provided, however, that the First Lien Term Lenders Liquidating Trust shall not be liable in any way for any liabilities, obligations, or guarantees of the Debtors, whether contingent or actual, express or implied, in and to or arising from the Debtors' relationship with MG Canada.

The Plan and Disclosure Statement, jointly, shall serve as, and shall be deemed to be, a motion for entry of an order under Bankruptcy Rule 9019 approving the Global Plan Settlement and the substantive consolidation of the Debtors' Chapter 11 Cases. If no objection to the Global Plan Settlement or to substantive consolidation is timely filed and served by any Holder of an Impaired Claim affected by the Plan as provided therein on or before the Voting Deadline or such other date as may be established by the Bankruptcy Court, the Global Plan Settlement and substantive consolidation may be approved by the Bankruptcy Court; *provided, however*, that, pursuant to the terms of the Term Sheet, no party thereto may object to the Global Plan Settlement. If any objections are timely filed and served, a hearing with respect to the Global Plan Settlement and/or substantive consolidation and the objections thereto shall be scheduled by the Bankruptcy Court, which hearing may, but is not required to, coincide with the Confirmation Hearing.

## **2. Substantive Consolidation**

Substantive consolidation of the estates of multiple debtors in bankruptcy effectuates a combination of the assets and liabilities of the involved debtors for certain purposes. The common effects of consolidation are (i) the pooling of the assets of, and claims against, the

consolidated debtors; (ii) satisfying liabilities from a common fund; and (iii) combining the creditors of the debtors for purposes of voting on plans of reorganization or liquidation. The Plan contemplates and is predicated upon entry of an order substantively consolidating the Debtors' Estates and the Chapter 11 Cases consistent with the Global Plan Settlement.

Substantive consolidation of multiple debtors under a plan is expressly permitted by section 1123(a)(5)(C) of the Bankruptcy Code. *See, e.g., In re Stone & Webster, Inc.*, 286 B.R. 532, 546 (Bankr. D. Del. 2002) (“§ 1123(a)(5)(C) clearly authorizes a bankruptcy court to confirm a Chapter 11 plan containing a provision that substantively consolidates the estates of two or more debtors.”); *see also Schnellig v. Crawford (In re James River Coal Co., Inc.)*, 360 B.R. 139, 148, n.1 (Bankr. E.D. Va. 2007) (Huennekens, J.) (noting that “it is not unusual for bankruptcy courts to confirm plans of reorganization to call for the ‘substantive consolidation’ of the different corporate entities comprising the corporate group”).

Accordingly, the Debtors seek Bankruptcy Court approval of the Global Plan Settlement, set forth in Article V.A. of the Plan. Through the Global Plan Settlement, the Plan will effect a consensual substantive consolidation of the Chapter 11 Cases. Specifically, the Global Plan Settlement provides that the Debtors' Estates and Chapter 11 Cases will be substantively consolidated and all Claims based upon guarantees of collection, payment, or performance made by the Debtors as to the obligations of another Debtor shall be released and of no further force and effect.

### **3. Vesting of Assets in the Liquidating Trusts**

Upon the Effective Date: (a) the members of the board of directors or managers, as the case may be, of each of the Debtors shall be deemed to have resigned; (b) each of the Debtors shall cause all of its Other Assets and the Other Assets of its Estate to be transferred to the First Lien Term Lenders Liquidating Trust in accordance with the Plan; and (c) each of the Debtors shall cause the Creditor Funds to be transferred to the GUC Liquidating Trust in accordance with the Plan.

Upon the payment of the Revolver Effective Date Cash to the Pre-petition First Lien Revolver Administrative Agent, the transfer of the Other Assets to the First Lien Term Lenders Liquidating Trust in accordance with the Plan and the transfer of the Creditor Funds to the GUC Liquidating Trust in accordance with the Plan, the Debtors shall have no further duties or responsibilities in connection with the implementation of the Plan.

### **4. Dissolution of the Debtors and Contribution of Assets to Liquidating Trusts**

On the Effective Date, each of the Debtors shall be deemed dissolved for all purposes without the necessity for any other or further actions to be taken by or on behalf of the Debtors or payments to be made in connection therewith.

As soon as practicable after the payment of the Revolver Effective Date Cash to the Pre-petition First Lien Revolver Administrative Agent and the transfer of the Other Assets to the First Lien Term Lenders Liquidating Trust and the Creditor Funds to the GUC Liquidating Trust, the First Lien Term Lenders Liquidating Trustee shall provide for the retention and storage of the books, records and files that shall have been delivered to the First Lien Term Lenders Liquidating Trust until such time as all such books, records and files are no longer required to be

retained under applicable law, or otherwise as determined by the First Lien Term Lenders Liquidating Trustee. The First Lien Term Lenders Liquidating Trustee shall provide the GUC Liquidating Trustee with reasonable access during normal business hours to the Debtors' books, records and files to the extent necessary to carry out the GUC Liquidating Trustees' obligations under the Plan and the GUC Liquidating Trust Agreement.

The Professionals employed by the Debtors and the Committee shall be entitled to reasonable compensation and reimbursement by the First Lien Term Lenders Liquidating Trust of actual, documented, reasonable and necessary expenses for post-Effective Date activities, related to the preparation, filing, and prosecution of Final Fee Applications, upon the submission of invoices to the First Lien Term Lenders Liquidating Trustee. Any time or expenses incurred in the preparation, filing, and prosecution of Final Fee Applications shall be disclosed by each Professional in its Final Fee Application and shall be subject to approval of the Bankruptcy Court. Notwithstanding the foregoing, the First Lien Term Lenders Liquidating Trustee reserves the right to object, in good faith, to any Final Fee Application.

#### **5. Legal Representation of the Debtors and the Committee after the Effective Date**

Upon the Effective Date, the attorney-client relationship between the Debtors and their current counsel, Sonnenschein Nath & Rosenthal LLP and Kutak Rock, LLP, and between the Committee and its current counsel, Pachulski Stang Ziehl & Jones LLP, Kelley Drye & Warren LLP, and Hunton & Williams LLP, shall be deemed terminated on a going forward basis. Upon the Effective Date, none of the Debtors' or the Committee's current counsel shall have any further obligation or responsibility with respect to the Bankruptcy Cases.

#### **6. Cancellation of Existing Securities and Agreements**

Except as otherwise provided in the Plan, and in any contract, instrument or other agreement or document created in connection with the Plan, on the Effective Date, the Interests in the Debtors and any other promissory notes, share certificates, whether for preferred or common stock (including treasury stock), other instruments evidencing any Claims against or payable by the Debtors or Interests in the Debtors shall be deemed cancelled and of no further force and effect, without any further act or action under any applicable agreement, law, regulation, order, or rule, and the obligations and liabilities of the Debtors under the notes, share certificates, and other agreements and instruments governing such Claims and Interests shall be released and forever discharged; provided, however, that certain instruments, documents, and credit agreements related to Claims shall continue in effect solely for the purposes of allowing the applicable Liquidating Trust to make Distributions to the Holders of such Claims. The holders of or parties to such canceled notes, share certificates and other agreements and instruments shall have no rights arising from or relating to such notes, share certificates and other agreements and instruments or the cancellation thereof, except the rights provided pursuant to the Plan, the Confirmation Order, the Cash Collateral Order, and the Global Plan Settlement. Notwithstanding anything in the foregoing to the contrary, the Global Plan Settlement, the Pre-petition First Lien Revolving Credit Documents, and the Pre-petition First Lien Term Credit Documents shall remain in full force and effect and shall not be cancelled until the entry of the Final Decree. In the event of any conflict between the terms of the Global Plan Settlement and the Plan, the Plan shall govern.

## **7. No Further Action**

Each of the matters provided for under the Plan involving the corporate or limited liability company structure of the Debtors or corporate or limited liability company action to be taken by or required of the Debtors shall, as of the Effective Date, be deemed to have occurred and be effective as provided therein, and shall be authorized and approved in all respects without any requirement of further action by any Person, including but not limited to, the Liquidating Trusts, the Liquidating Trustees, Holders of Claims or Interests against or in the Debtors, or directors or officers of the Debtors.

## **8. Sources of Cash for Plan Distributions**

Subject to and only to the extent provided in the Global Plan Settlement, all Cash necessary for the Debtors and/or the Liquidating Trustees to make payments of Cash pursuant to the Plan shall be obtained from the following sources: (a) Cash on hand as of the Effective Date, with respect to the payment by the Debtors of the Revolver Effective Date Cash and Distributions to be made by the Debtors to the Holders of Administrative Claims or Priority Claims that are Allowed Claims as of the Effective Date; (b) the Creditor Funds, with respect to the Distributions to be made by the GUC Liquidating Trustee to the Holders of Allowed Class 5 Claims or to pay the costs and expenses of the GUC Liquidating Trustee and the GUC Liquidating Trust; and (c) the Other Assets (to the extent reduced to Cash) with respect to the Distributions to be made by the First Lien Term Lenders Liquidating Trustee to the Holders of Allowed Priority Claims, Allowed Class 2 Claims, Allowed Class 3 Claims to the extent not paid in full in Cash on the Effective Date, Allowed Class 4 Claims, Administrative Claims that become Allowed Claims on or after the Effective Date or to pay the costs and expenses (including the costs and fees of professionals) of the First Lien Term Lenders Liquidating Trustee and the First Lien Term Lenders Liquidating Trust.

## **9. Liquidating Trusts**

### *Establishment of the Liquidating Trusts*

On the Effective Date, the First Lien Term Lenders Liquidating Trustee shall execute and deliver the First Lien Term Lenders Liquidating Trust Agreement and accept the Other Assets on behalf of and for the benefit of the Pre-petition First Lien Term Secured Parties and any other beneficiaries thereof pursuant to the Pre-petition First Lien Liquidating Trust Agreement and for the other uses provided in the Plan, and shall be authorized to obtain, liquidate, and collect all of the Other Assets of the Estates not in its possession and pursue all of the Causes of Action (except to the extent waived or released by the Plan). The First Lien Term Lenders Liquidating Trust will upon such execution and delivery be deemed created and effective without any further action by the Bankruptcy Court or any other Person. All Distributions to the Holders of Allowed Priority Claims, Allowed Class 2 Claims, Allowed Class 3 Claims to the extent not paid in full in Cash on the Effective Date, Allowed Class 4 Claims and Administrative Claims that become Allowed Claims on or after the Effective Date shall be from Available Cash on hand at the First Lien Term Lenders Liquidating Trust on the date any such Distribution is made. The beneficiaries and transferees of the First Lien Term Lenders Liquidating Trust, including without limitation, the Pre-petition Secured Parties and Lenado and their respective Related Parties, shall not be personally liable, or otherwise deemed to be liable, in any manner whatsoever, for any

obligation, liability, action, or omission of the First Lien Term Lenders Liquidating Trust or First Lien Term Lenders Liquidating Trustee, and the sole recourse for any liabilities of the First Lien Term Lenders Liquidating Trust shall be limited to the assets of the First Lien Term Lenders Liquidating Trust.

On the Effective Date, the GUC Liquidating Trustee shall execute and deliver the GUC Liquidating Trust Agreement and accept the Creditor Funds on behalf of and for the benefit of the Holders of General Unsecured Claims as beneficiaries thereof. The GUC Liquidating Trust will upon such execution and delivery be deemed created and effective without any further action by the Bankruptcy Court or any party. All Distributions to the Holders of Allowed Class 5 Claims shall be from the GUC Liquidating Trust. The beneficiaries and transferees of the GUC Liquidating Trust shall not be personally liable, or otherwise deemed to be liable, in any manner whatsoever, for any obligation, liability, action, or omission of the GUC Liquidating Trust or GUC Liquidating Trustee, and the sole recourse for any liabilities of the GUC Liquidating Trust shall be limited to the assets of the GUC Liquidating Trust.

The Liquidating Trusts shall hold and administer the following assets:

- (a) The First Lien Term Lenders Liquidating Trust shall hold and administer the Debtors' Other Assets and the proceeds thereof.
- (b) The GUC Liquidating Trust shall hold and administer the Creditor Funds.

The Pre-petition First Lien Term Lenders Liquidating Trust is created for the primary purpose of liquidating the Other Assets, with no objective to conduct a trade or business except to the extent reasonably necessary to, and consistent with, the liquidating purposes of the Pre-petition First Lien Term Lenders Liquidating Trust.

#### Trust Distributions

Each Liquidating Trustee shall distribute any Cash in their respective Liquidating Trust, and shall liquidate their respective assets (to the extent that such assets are other than Cash) and shall distribute such Cash and the Net Proceeds of such liquidation from the applicable Liquidating Trust in accordance with the Plan and the applicable Liquidating Trust Agreement.

#### Duration of Trust

Each Liquidating Trust shall have an initial term of five (5) years; provided, however, that, if warranted by the facts and circumstances, and subject to the approval of the Bankruptcy Court with jurisdiction over the Chapter 11 Cases, upon a finding that an extension of the term of a Liquidating Trust is necessary to accomplish the liquidating purpose of such Liquidating Trust, the Liquidating Trust's term may be extended for a finite term based on appropriate facts and circumstances. Each extension of the term of a Liquidating Trust must be approved by the Bankruptcy Court within six (6) months of the beginning of the extended term. A Liquidating Trust may be terminated earlier than its scheduled termination if (a) the Bankruptcy Court has entered a Final Order closing the Chapter 11 Cases pursuant to Bankruptcy Code section 350(a) and (b) the applicable Liquidating Trustee has administered all assets of the applicable Liquidating Trust and performed all other duties required by the Plan and the Liquidating Trust Agreement. As soon as practicable after the Final Trust Distribution Date, the First Lien Term



Lenders Liquidating Trustee shall seek entry of a Final Order closing the Chapter 11 Cases pursuant to Bankruptcy Code section 350.

#### Liquidation of Causes of Action

The Debtors shall have, prior to the Effective Date and in consultation with the Pre-petition Secured Parties, and the First Lien Term Lenders Liquidating Trustee shall have, on and after the Effective Date, sole authority and responsibility for investigating, analyzing, commencing, prosecuting, litigating, compromising, collecting, and otherwise administering the Causes of Action that are not released or waived under the Plan, the Confirmation Order, the Cash Collateral Order, or any other Final Order of the Bankruptcy Court; provided, however, that all Avoidance Actions and Released Claims are released and waived, and neither the Debtors nor any Liquidating Trustee shall pursue any such Avoidance Actions or Released Claims.

#### Liquidating Trustees

The appointment of each Liquidating Trustee shall be effective as of the Effective Date. Successor Liquidating Trustee(s) shall be appointed as set forth in the applicable Liquidating Trust Agreement.

Unless a Liquidating Trustee resigns or dies earlier, each Liquidating Trustee's term shall expire upon termination of the applicable Liquidating Trust pursuant to the Plan and/or the applicable Liquidating Trust Agreement.

#### Powers of the Liquidating Trustees

Each Liquidating Trustee shall have the rights and powers set forth in the applicable Liquidating Trust Agreement including, but not limited to, the powers of a debtor-in-possession under Bankruptcy Code sections 1107 and 1108. Each Liquidating Trustee shall be governed in all things by the terms of the applicable Liquidating Trust Agreement and the Plan. Each Liquidating Trustee shall administer its respective Liquidating Trust, and its assets, and make Distributions from the proceeds of its respective Liquidating Trust in accordance with the Plan and the applicable Liquidating Trust Agreement. In the event a provision of the Plan or the Confirmation Order conflicts with a provision of the applicable Liquidating Trust Agreement, the provision of the Plan or the Confirmation Order, as applicable, shall control. In addition, the First Lien Term Lenders Liquidating Trustee shall, in accordance with the terms of the Plan, take all actions (other than the Distributions of the Creditor Funds) necessary to wind down the affairs of the Debtors consistent with the Plan and applicable non-bankruptcy law. Without limitation, each Liquidating Trustee shall file final federal, state, foreign and, to the extent applicable, local, tax returns. Subject to the limitations set forth in the following clauses (i) through (xvii) and any other limitations, releases, or waivers set forth in the Plan, each Liquidating Trustee shall be authorized, empowered and directed to take all actions necessary with respect to their Liquidating Trust to comply with the Plan and exercise and fulfill the duties and obligations arising thereunder, including, without limitation, to:

- (i) employ, retain, and replace one or more attorneys, accountants, auctioneers, brokers, managers, consultants, other professionals, agents, investigators, expert witnesses, consultants, and advisors

as necessary to discharge the duties of the Liquidating Trustee under the Plan and the applicable Liquidating Trust Agreement;

- (ii) solely with respect to the First Lien Term Lenders Liquidating Trustee, object to the allowance of Administrative Claims, Priority Claims, and Miscellaneous Secured Claims in accordance with the terms of the Term Sheet and the Plan;
- (iii) solely with respect to the GUC Liquidating Trustee, object to the allowance of General Unsecured Claims in accordance with the terms of the Term Sheet and the Plan;
- (iv) open, maintain and administer bank accounts as necessary to discharge the duties of the Liquidating Trustee under the Plan and the applicable Liquidating Trust Agreement;
- (v) pay reasonable and necessary professional fees, costs, and expenses of the Liquidating Trust as set forth in the Plan; *provided* that neither Liquidating Trust is liable for the professional fees, costs, and expenses of the other Liquidating Trust's professionals;
- (vi) solely with respect to the First Lien Term Lenders Liquidating Trustee, investigate, analyze, commence, prosecute, litigate, compromise, and otherwise administer the Causes of Action, other than the Avoidance Actions and the Released Claims, and all related Liens for the benefit of the First Lien Term Lenders Liquidating Trust and the Pre-petition First Lien Term Secured Parties, as set forth in the Plan, and take all other necessary and appropriate steps to collect, recover, settle, liquidate, or otherwise reduce to Cash such Causes of Action, including all receivables, and to negotiate and effect settlements and lien releases with respect to all related Claims and all related Liens; *provided, that for the avoidance of doubt*, the First Lien Term Lenders Liquidating Trustee shall not be empowered and shall have not right to investigate, analyze, commence, prosecute, litigate, compromise, or otherwise administer any Cause of Action or Lien covered by a release or waiver in favor of any Debtor Releasee or Third Party Releasee under the Plan, the Confirmation Order, the Cash Collateral Order, or any other Final Order of the Bankruptcy Court;
- (vii) solely with respect to the First Lien Term Lenders Liquidating Trustee and the Other Assets transferred to the First Lien Term Lenders Liquidating Trust, administer, sell, liquidate, or otherwise dispose of the Other Assets (including, without limitation, all Collateral) of the Estates in accordance with the terms of the Term Sheet and the Plan;

- (viii) solely with respect to the First Lien Term Lenders Liquidating Trustee: (a) exercise all of the Debtors' rights as the owner of the equity interests of Movie Gallery Canada Inc., including, without limitation, the right to direct counsel to Movie Gallery Canada Inc. with regard to the voluntary bankruptcy proceedings filed in the District of Ontario, Toronto Division (Estate No. 31-1357202), (b) act as the successor to the Debtors with regard to any of the Debtors' rights as a secured creditor of Movie Gallery Canada Inc.; and (c) act as the successor to the Debtors with regard to any other rights or interests that the Debtors may possess with respect to Movie Gallery Canada Inc.;
- (ix) solely with respect to the First Lien Term Lenders Liquidating Trust, represent the Estate before the Bankruptcy Court and other courts of competent jurisdiction with respect to matters concerning the Estate, other than with regard to General Unsecured Claims, including any Disputed General Unsecured Claims, and the payment and Distributions of the Creditors Funds, with respect to which the GUC Liquidating Trust may represent the Estate before the Bankruptcy Court and other courts of competent jurisdiction;
- (x) seek, at the sole cost and expense of the Liquidating Trust so seeking, the examination of any entity under and subject to the provisions of Bankruptcy Rule 2004 except in connection with or concerning a Cause of Action released or waived under the Plan, the Confirmation Order, the Cash Collateral Order, or any other Final Order of the Bankruptcy Court;
- (xi) comply with applicable orders of the Bankruptcy Court and any other court of competent jurisdiction over the matters set forth herein;
- (xii) solely with respect to the First Lien Term Lenders Liquidating Trustee, follow the written instructions of the Requisite Lenders under the Pre-petition First Lien Term Credit Agreement; *provided* that such written instructions are not inconsistent with the terms of the Plan or the Confirmation Order;
- (xiii) comply with all applicable laws and regulations concerning the matters set forth herein;
- (xiv) exercise such other powers as may be vested in a Liquidating Trustee pursuant to the applicable Liquidating Trust Agreement, the Plan, or other Final Orders of the Bankruptcy Court;
- (xv) execute any documents, instruments, contracts, and agreements necessary and appropriate to carry out the powers and duties of the

applicable Liquidating Trust;

- (xvi) solely with respect to the First Lien Term Lenders Liquidating Trustee, stand in the shoes of the Debtors for all purposes consistent with the administration of the First Lien Term Lenders Liquidating Trustees and the Plan; and
- (xvii) solely with respect to the GUC Liquidating Trustee, stand in the shoes of the Debtors for all purposes consistent with the administration of the GUC Liquidating Trust and the Plan.

Except as otherwise provided in the Plan, compensation of each Liquidating Trustee and the costs and expenses of each Liquidating Trustee and their respective Liquidating Trust (including, without limitation, professional fees and expenses including attorneys' fees and expenses) shall be paid solely from the particular Liquidating Trust's assets. For the avoidance of doubt: (i) compensation of the First Lien Term Lenders Liquidating Trustee and the costs and expenses of the First Lien Term Lenders Liquidating Trustee and the First Lien Term Lenders Liquidating Trust (including, without limitation, professional fees and expenses including attorneys' fees and expenses) shall be paid solely from the Other Assets; and (ii) compensation of the GUC Liquidating Trustee and the costs and expenses of the GUC Liquidating Trustee and the GUC Liquidating Trust (including, without limitation, professional fees and expenses including attorneys' fees and expenses) shall be paid solely from the Creditor Funds. Each Liquidating Trustee shall pay, without further order, notice, or application to the Bankruptcy Court, the reasonable fees and expenses of the Liquidating Trustee professionals, as necessary to discharge the Liquidating Trustee's duties under the Plan and the applicable Liquidating Trust Agreement to the extent provided in the applicable Liquidating Trust Agreement. Payments to the applicable Liquidating Trustee, or to the Liquidating Trustee professionals, shall not require notice to any party, or an order of the Bankruptcy Court approving such payments except as required in the Global Plan Settlement and/or the applicable Liquidating Trust Agreement.

On and after the Effective Date, subject to the terms of the applicable Liquidating Trust Agreement, each Liquidating Trustee may engage such professionals and experts as may be deemed necessary and appropriate by the Liquidating Trustee to assist the Liquidating Trustee in carrying out the provisions of the Plan and the applicable Liquidating Trust Agreement, including, but not limited to, Professionals retained prior to the Effective Date by the Debtors, the Pre-petition Secured Parties or the Committee. Subject to the terms of the applicable Liquidating Trust Agreement, for services performed from and after the Effective Date, the Liquidating Trustee Professionals shall receive compensation and reimbursement of expenses in a manner to be determined by agreement between the applicable Liquidating Trustee and such Liquidating Trustee Professional consistent with the applicable Liquidating Trust Agreement. For the avoidance of doubt: (i) compensation of the First Lien Term Lenders Liquidating Trustee and the costs and expenses of the First Lien Term Lenders Liquidating Trustee and the First Lien Term Lenders Liquidating Trust (including, without limitation, professional fees and expenses including attorneys' fees and expenses) shall be paid solely from the Other Assets; and (ii) compensation of the GUC Liquidating Trustee and the costs and expenses of the GUC Liquidating Trustee and the GUC Liquidating Trust (including, without limitation, professional fees and expenses including attorneys' fees and expenses) shall be paid solely from the Creditor Funds.

### First Lien Term Lenders Liquidating Trustee as Successor

Pursuant to Bankruptcy Code section 1123(b), the First Lien Term Lenders Liquidating Trustee shall be the successor to the Debtors for all purposes consistent with the Plan, the Global Plan Settlement and the First Lien Term Lenders Liquidating Trust Agreement; provided, however, that solely for purposes of objecting to the allowance of, or making Distributions with respect to, General Unsecured Claims, the GUC Liquidating Trustee shall be deemed to be the successor to the Debtors. For the avoidance of doubt, upon the Effective Date, the First Lien Term Lenders Liquidating Trustee shall have all rights and remedies of the Debtors under the Global Plan Settlement.

### Compromising Claims

Pursuant to Bankruptcy Rule 9019(b), the Plan and the Liquidating Trust Agreements, as of the Effective Date, each of the Liquidating Trustees are authorized to approve compromises of Claims, Disputed Claims, and Liens relating to their respective Liquidating Trust and to execute necessary documents, including Lien releases and stipulations of settlement or release, without notice to any party (except, where required, to the other Liquidating Trustee or to the extent required by the Plan) and without further order of the Bankruptcy Court, except as otherwise provided in the Liquidating Trust Agreement; provided, however, that (1) the First Lien Term Lenders Liquidating Trustee shall have the sole authority to compromise and settle all Claims other than Class 5 Claims; and (2) the GUC Liquidating Trustee shall have the sole authority to compromise and settle Class 5 Claims.

### Investment Powers

The powers of a Liquidating Trustee to invest any Cash that is held by the applicable Liquidating Trust, other than those powers reasonably necessary to maintain the value of the assets and to further such Liquidating Trust's liquidating purposes, shall be limited to powers to invest in demand and time deposits, such as short-term certificates of deposit, in banks or other savings institutions, or other temporary liquid investments, such as treasury bills. Each Liquidating Trustee is prohibited from continuing or engaging in the conduct of a trade or business, except to the extent reasonably necessary to and consistent with the liquidating purpose of the applicable Liquidating Trust.

### Distributions

Except as otherwise provided in the Plan, each Liquidating Trustee is required to distribute at least annually to beneficiary Claimholders qualifying for Distributions from the applicable Liquidating Trust under the Plan the applicable Liquidating Trust's Available Cash, net income and all net proceeds from the sale of any non-Cash assets held by the applicable Liquidating Trust, except that the Liquidating Trust shall retain an amount of Cash, Net Proceeds or net income reasonably necessary to maintain the value of its assets or to meet Claims and contingent liabilities (including Disputed Claims). The First Lien Term Lenders Trust shall be in compliance with the requirements of the foregoing sentence so long as it has made Adequate Provision pursuant to Article III.C.1 of the Plan. The First Lien Term Lenders Liquidating Trustee shall make continuing efforts to liquidate any non-Cash assets held by the First Lien Term Lenders Liquidating Trust. Each Liquidating Trustee shall make timely Distributions and

not unduly prolong the duration of the applicable Liquidating Trust. All Distributions to the Holders of Allowed Class 2 Claims, Allowed Class 3 Claims to the extent not paid in full in Cash on the Effective Date, Allowed Class 4 Claims, Administrative Claims and Priority Claims that become Allowed Claims on or after the Effective Date shall be from the First Lien Term Lenders Liquidating Trust. All Distributions to the Holders of Allowed Class 5 Claims shall be from the GUC Liquidating Trust and solely from Creditor Funds.

#### Transfer and Vesting of Assets

On the Effective Date, the Other Assets, including any minutes, and general corporate records of Debtors, and any books and records relating to the foregoing not otherwise treated by the Plan, shall be transferred to and vest in the First Lien Term Lenders Liquidating Trust subject only to the Liens created by the Pre-petition First Lien Credit Facilities and free and clear of all other Liens, Claims (other than Allowed Claims payable by the First Lien Term Lenders Liquidating Trust pursuant to the Plan), encumbrances, and other interests and shall thereafter be administered, liquidated by sale, collection, recovery, or other disposition and distributed by the First Lien Term Lenders Liquidating Trust in accordance with the terms of the First Lien Term Lenders Liquidating Trust Agreement and the Plan; provided, however, that the First Lien Term Lenders Liquidating Trust shall make the Debtors' books and records reasonably available during business hours on a Business Day to the GUC Liquidating Trust as provided in Article V.D.5.k of the Plan. In addition, on the Effective Date, the Creditor Funds shall vest in the GUC Liquidating Trust free and clear of all Liens, Claims (other than Allowed Class 5 Claims), encumbrances, and other interests and shall thereafter be administered and distributed by the GUC Liquidating Trust in accordance with the terms of the GUC Liquidating Trust Agreement and the Plan. The property of the Debtors' Estates shall not be vested in the Debtors following the Effective Date. On the Effective Date, and following payment of the Revolver Effective Date Cash to the Pre-petition First Lien Revolver Administrative Agent, the Other Assets shall be distributed to and vested in the First Lien Term Lenders Liquidating Trust as set forth in the Plan and shall continue to be subject to the jurisdiction of the Bankruptcy Court until such property is distributed to Holders of Allowed Claims payable by the First Lien Term Lenders Liquidating Trust in accordance with the provisions of the Plan, the First Lien Term Lenders Liquidating Trust Agreement, and the Confirmation Order. On the Effective Date, the Creditor Funds shall be distributed to and vested in the GUC Liquidating Trust as set forth in the Plan and shall continue to be subject to the jurisdiction of the Bankruptcy Court until such property is distributed to Holders of Allowed Claims in accordance with the provisions of the Plan, the GUC Liquidating Trust Agreement and the Confirmation Order.

#### Cooperation Among Liquidating Trustees

Each of the Liquidating Trustees shall reasonably cooperate with the other in connection with the administration of such Liquidating Trustee's Liquidating Trust including, without limitation, sharing information regarding Claims. The First Lien Term Lenders' Liquidating Trust shall make the Debtors' books and records reasonably available to the GUC Liquidating Trust during business hours on a Business Day to the extent necessary to administer the GUC Liquidating Trust.

First Lien Term Lenders Liquidating Trust Oversight Board.

The First Lien Term Lenders Liquidating Trust Oversight Board shall be comprised of five (5) members consisting of representatives of the Pre-petition First Lien Term Lenders chosen pursuant to the terms of the First Lien Term Lenders Liquidating Trust Agreement. The rights and duties of the First Lien Term Lenders Trust Oversight Board shall be set forth with specificity in the First Lien Term Lenders Liquidating Trust Agreement. The First Lien Term Lenders Liquidating Trustee shall consult regularly with the First Lien Term Lenders Liquidating Trust Oversight Board when carrying out the implementation of the Plan. The members of the First Lien Term Lenders Liquidating Trust Oversight Board shall not receive compensation, but shall be reimbursed for their reasonable and necessary expenses by the First Lien Term Lenders Liquidating Trustee.

GUC Liquidating Trust Oversight Committee

The GUC Liquidating Trust Oversight Committee shall be comprised of [ ] members consisting of representatives of the Committee chosen pursuant to the terms of the GUC Liquidating Trust Agreement. The rights and duties of the GUC Liquidating Trust Oversight Committee shall be set forth with specificity in the GUC Liquidating Trust Agreement.

Liability, Indemnification

Neither of the Liquidating Trustees, the First Lien Term Lenders Liquidating Trust Oversight Board, the GUC Liquidating Trust Oversight Committee, their respective members, designees or professionals, or any duly designated agent or representative of the Liquidating Trustees, the First Lien Term Lenders Liquidating Trust Oversight Board, or the GUC Liquidating Trust Oversight Committee or any of the respective employees of any of the foregoing (all of the foregoing, individually and collectively, the “Respective Liquidating Trust Parties”) shall be liable for the acts or omissions of any other Respective Liquidating Trust Party, nor shall a Respective Liquidating Trust Party be liable for any act or omission taken or omitted to be taken in its capacity as Respective Liquidating Trust Party, respectively, other than for specific acts or omissions resulting from such Respective Liquidating Trust Party’s willful misconduct, gross negligence or fraud. Each Liquidating Trustee, the First Lien Term Lenders Liquidating Trust Oversight Board, or the GUC Liquidating Trust Oversight Committee may, in connection with the performance of its functions, and in its sole and absolute discretion, consult with its attorneys, accountants, financial advisors and agents, and shall not be liable for any act taken, omitted to be taken, or suffered to be done in accordance with advice or opinions rendered by such Persons, regardless of whether such advice or opinions are provided in writing. Notwithstanding such authority, neither of the Liquidating Trustees, the First Lien Term Lenders Liquidating Trust Oversight Board and its individual members, or the GUC Liquidating Trust Oversight Committee and its individual members shall be under any obligation to consult with its attorneys, accountants, financial advisors or agents, and their determination not to do so shall not result in the imposition of liability on such Liquidating Trustee, First Lien Term Lenders Liquidating Trust Oversight Board, or GUC Liquidating Trust Oversight Committee or their respective members and/or designees, unless such determination is based on willful misconduct, gross negligence, or fraud. Each Liquidating Trust shall indemnify and hold harmless its Liquidating Trustee and its designees and professionals, and all duly designated agents and representatives thereof (in their capacity as such), the First Lien Term Lenders Liquidating Trust

shall indemnify and hold harmless the First Lien Term Lenders Liquidating Trust Oversight Board and its members, designees and professionals, and all duly designated agents and representatives thereof (in their capacity as such), and the GUC Liquidating Trust shall indemnify and hold harmless the GUC Liquidating Trust Oversight Committee and its members, designees and professionals, and all duly designated agents and representatives thereof (in their capacity as such), in each case, from and against and in respect of all liabilities, losses, damages, claims, costs and expenses (including, without limitation, reasonable attorneys' fees, disbursements, and related expenses) which such parties may incur or to which such parties may become subject in connection with any action, suit, proceeding or investigation brought by or threatened against such parties arising out of or due to their acts or omissions, or consequences of such acts or omissions, with respect to the implementation or administration of the applicable Liquidating Trust or the Plan or the discharge of their duties hereunder; provided, however, that no such indemnification will be made to such persons for actions or omissions as a result of willful misconduct, gross negligence, or fraud.

#### Federal Income Taxation of Liquidating Trusts

##### **a. Treatment of Liquidating Trusts and Asset Transfers**

For federal income tax purposes, the Debtors, the Liquidating Trusts, the Liquidating Trustees and the beneficiary Claimholders shall treat the Liquidating Trusts as liquidating trusts within the meaning of Treasury Income Tax Regulation Section 301.7701-4(d) and Internal Revenue Service ("IRS") Revenue Procedure 94-45, 1994-2 C.B. 684. For federal income tax purposes, the applicable transfer of assets to a Liquidating Trust under the Plan is treated as a deemed transfer to the beneficiary Claimholders of such Liquidating Trust in satisfaction of their Claims followed by a deemed transfer of the assets by the beneficiary Claimholders to such Liquidating Trust. For federal income tax purposes, the beneficiary Claimholders of an applicable Liquidating Trust will be deemed to be the grantors and owners of such Liquidating Trust and its assets. For federal income tax purposes, each Liquidating Trust, with respect to the assets of the Debtors and the Estates transferred to it under the Plan, will be taxed as a grantor trust within the meaning of IRC Sections 671-677 (a non-taxable pass-through tax entity) owned by the beneficiary Claimholders of such Liquidating Trust. Each Liquidating Trust will file federal income tax returns as a grantor trust under IRC Section 671 and Treasury Income Tax Regulation Section 1.671-4 and report, but not pay tax on, such Liquidating Trust's tax items of income, gain, loss deductions and credits ("Tax Items"). The beneficiary Claimholders of a Liquidating Trust will report such Tax Items on their federal income tax returns and pay any resulting federal income tax liability. The Debtors, each Liquidating Trustee and the beneficiary Claimholders of each Liquidating Trust will use consistent valuations of the assets transferred to the applicable Liquidating Trust for all federal income tax purposes, such valuations to be determined by the applicable Liquidating Trustee owning such assets.

##### **b. Reserves that may be Established by the Liquidating Trustees**

The Plan permits each Liquidating Trustee to create separate reserves for Disputed Claims for which the applicable Liquidating Trust may be liable. Each Liquidating Trustee may, at its sole discretion, file a tax election to treat any such reserve as a Disputed Ownership Fund ("DOF") within the meaning of Treasury Income Tax Regulation Section 1.468B-9 for federal income tax purposes rather than to tax such reserve as a part of its applicable Liquidating Trust.



If such an election is made, the applicable Liquidating Trust shall comply with all federal and state tax reporting and tax compliance requirements of the DOF, including but not limited to the filing of a separate federal income tax return for the DOF and the payment of federal and/or state income tax due thereon.

#### **10. Accounts**

Each Liquidating Trustee shall, with respect to the assets of its Liquidating Trust, (a) establish one or more general accounts into which shall be deposited all funds not required to be deposited into any other account or reserve and (b) create, fund, and withdraw funds from, as appropriate, any reserves or other accounts maintained or established by the Liquidating Trustees.

#### **11. Release of Liens, Claims and Interests**

Except as otherwise provided in the Plan, the Confirmation Order, or in any document, instrument, or other agreement created in connection with the Plan, on the Effective Date, all mortgages, deeds of trust, liens, or other security interests against the property of the Estates shall be released; *provided, however*, that, except with respect to the Creditor Funds, the Liens established pursuant to the Pre-petition First Lien Credit Facilities shall not be released unless and until the Pre-petition First Lien Secured Claims are satisfied in full; provided, further, that with respect to the Creditor Funds, the Liens established pursuant to the Pre-petition First Lien Credit Facilities shall not be released unless and until the Effective Date has occurred.

#### **12. Exemption from Certain Transfer Taxes**

Pursuant to Bankruptcy Code section 1146(a), any transfers from any of the Debtors or the Liquidating Trustees to the Liquidating Trusts or to any other Person pursuant to the Plan and/or the Liquidating Trust Agreements in the United States shall not be subject to any stamp tax or similar tax, and the Confirmation Order shall direct the appropriate state or local governmental officials or agents to forgo the collection of any such tax or governmental assessment and to accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment.

#### **13. Preservation of Causes of Action; Settlement of Causes of Action**

In accordance with section 1123(b)(3) of the Bankruptcy Code or any corresponding provision of similar federal or state laws, and except as otherwise provided in the Plan, the Confirmation Order, the Cash Collateral Order, or other Final Order of the Bankruptcy Court on and after the Effective Date, (a) the First Lien Term Lenders Liquidating Trustee shall be deemed to be a representative of the Debtors as the party in interest in the Chapter 11 Cases and any adversary proceeding in the Chapter 11 Cases, under the Plan or in any judicial proceeding or appeal as to which any of the Debtors is a party and (b) the First Lien Term Lenders Liquidating Trustee shall retain all of the Causes of Action of the Debtors and their Estates that are not waived or released hereunder. For the avoidance of doubt and subject to the provisions of and priorities established by Article VI.H of the Plan, the First Lien Term Lenders Liquidating Trustee and the GUC Liquidating Trustee shall have standing to assert all of the Debtors' setoff rights as provided in the Plan. The First Lien Term Lenders Liquidating Trustee and/or the First Lien Term Lenders Liquidating Trust may, in accordance with the First Lien Term Lenders

Liquidating Trust Agreement, enforce, sue on, settle or compromise (or decline to do any of the foregoing) any or all of the Causes of Action that are not waived or released under the Plan, the Confirmation Order, the Cash Collateral Order, or other Final Order of the Bankruptcy Court.

In connection with the Global Plan Settlement, the Debtors, the Pre-petition Secured Parties, the Committee, the Studios and Warner Home Video have agreed that all Avoidance Actions and Released Claims shall be waived as of the Effective Date. With respect to any Causes of Action that are not waived or released hereunder, the substantive consolidation of the Debtors and their Estates as set forth in Article V.A. of the Plan shall not, and shall not be deemed to, prejudice any of such Causes of Action, which shall survive entry of the Confirmation Order for the benefit of the Debtors and their Estates, and, upon the Effective Date, for the benefit of the First Lien Term Lenders Liquidating Trust.

Subject to the terms of the First Lien Term Lenders Liquidating Trust Agreement, at any time after the Confirmation Date but before the Effective Date, notwithstanding anything in the Plan to the contrary, the Debtors may settle Causes of Action with the approval of the Court pursuant to Bankruptcy Rule 9019. After the Effective Date, the First Lien Term Lenders Liquidating Trustee, in accordance with the terms of the Plan and the First Lien Term Lenders Liquidating Trust Agreement, will determine whether to bring, settle, release, compromise, enforce or abandon such rights (or decline to do any of the foregoing) in accordance with Article V.D.5(g) of the Plan, and may do so without any further required action by, or Order of, the Court.

#### **14. Effectuating Documents; Further Transactions**

Subject to the terms and conditions of the Plan, the Pre-petition First Lien Credit Facilities, the Cash Collateral Order and other Final Orders of the Bankruptcy Court, prior to the Effective Date, any appropriate officer of the applicable Debtor shall, in consultation with the Pre-petition Secured Parties, be authorized to execute, deliver, file or record such contracts, instruments, releases, indentures and other agreements or documents, and take such actions as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan. Subject to the terms and conditions of the Plan and the Liquidating Trust Agreements, after the Effective Date, the Liquidating Trusts shall be authorized to execute, deliver, file or record such contracts, instruments, releases, indentures and other agreements or documents, and take such actions as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan.

### **E. TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

#### **1. Rejected Contracts and Leases**

Except as otherwise provided in the Confirmation Order, the Plan, or any other Plan Document, the Confirmation Order shall constitute an order under Bankruptcy Code section 365 rejecting all pre-petition executory contracts and unexpired leases to which any Debtor is a party, to the extent such contracts or leases are executory contracts or unexpired leases, on and subject to the occurrence of the Effective Date, unless such contract or lease (a) previously shall have been assumed, assumed and assigned, or rejected by the Debtors, (b) previously shall have expired or terminated pursuant to its own terms before the Effective Date, (c) is the subject of a

pending motion to assume or reject on the Confirmation Date, or (d) is identified in Exhibit C to the Plan; *provided, however*, that the Debtors may amend such Exhibit C at any time prior to the Confirmation Date; *provided further however*, that listing an insurance agreement on such Exhibit shall not constitute an admission by a Debtor that such agreement is an executory contract or that any Debtor has any liability thereunder. Nothing in the Plan or in the Confirmation Order shall be deemed to provide for or permit the rejection of the Tail Coverage or any other Existing D&O Insurance Policy and the Tail Coverage and the Existing D&O Insurance Policies shall remain in full force in effect on and after the Effective Date.

## **2. Bar Date for Rejection Damages**

If the rejection of an executory contract or unexpired lease gives rise to a Claim by the other party or parties to such contract or lease, such Claim shall be forever barred and shall not be enforceable against the applicable Debtor or its Estate, the Liquidating Trusts, or their respective successors or properties unless a Proof of Claim is filed and served on the GUC Liquidating Trust and counsel for the GUC Liquidating Trustee within thirty (30) days after service of a notice of the Effective Date or such other date as is prescribed by the Bankruptcy Court.

## **3. Assumed and Assigned Contracts and Leases**

Except as otherwise provided in the Confirmation Order, the Plan, or any other Plan Document entered into after the Commencement Date or in connection with the Plan, the Confirmation Order shall constitute an order under Bankruptcy Code section 365 assuming, as of the Effective Date, those contracts listed on Exhibit C to the Plan; *provided, however*, that the Debtors may amend such Exhibit at any time prior to the Confirmation Date; *provided further, however*, that listing an insurance agreement on such Exhibit shall not constitute an admission by a Debtor that such agreement is an executory contract or that any Debtor has any liability thereunder.

# **F. PROVISIONS GOVERNING DISTRIBUTIONS**

## **1. Distributions for Claims Allowed as of the Effective Date**

Except as otherwise provided in the Plan or as ordered by the Bankruptcy Court, all Distributions to be made on account of Claims that are Allowed Claims as of the Effective Date shall be made on the applicable Distribution Date by the applicable Liquidating Trustee. Distributions on account of Claims that first become Allowed Claims after the Effective Date shall be made pursuant to the terms and conditions of the Plan. Notwithstanding any other provision of the Plan to the contrary, no Distribution shall be made on account of any Claim or portion thereof that (i) has been (and remains) satisfied after the Commencement Date pursuant to an order of the Bankruptcy Court; (ii) is listed in the Schedules as contingent, unliquidated, disputed or in a zero amount, and for which a Proof of Claim has not been timely filed or deemed filed; or (iii) is evidenced by a Proof of Claim that has been amended by a subsequently filed Proof of Claim that purports to amend the prior Proof of Claim (provided that the foregoing shall have no effect on such amended Proof of Claim).

## **2. Liquidating Trustee as Disbursing Agent**

Each Liquidating Trustee shall make all Distributions required under the Plan to their respective beneficiaries and Holders of Allowed Claims, subject to the terms and provisions of the Plan and the Liquidating Trust Agreements. Each Liquidating Trustee shall be required to post a bond or surety or other security for the performance of its duties to the extent required by, and consistent with the respective Liquidating Trust Agreement. The Liquidating Trustees shall be authorized and directed to rely upon the Debtors' books and records and its representatives and professionals in determining those Claims not entitled to Distribution under the Plan in accordance with the terms of the Plan.

## **3. Delivery of Distributions and Undeliverable or Unclaimed Distributions**

### **a. Delivery of Distributions in General**

Distributions to Holders of Allowed Claims shall be made by the respective Liquidating Trustees (a) at the addresses set forth on the Proofs of Claim filed by such Holders, (b) at the addresses set forth in any written notices of address changes delivered to the respective Liquidating Trustee after the date of any related Proof of Claim, (c) at the addresses reflected in the Schedules if no Proof of Claim has been filed and the respective Liquidating Trustee has not received a written notice of a change of address, (d) at the addresses set forth in the other records of the Debtors or the respective Liquidating Trustee at the time of the Distribution or (e) in the case of the Holder of a Claim that is governed by an agreement and is administered by an agent or servicer, at the addresses contained in the official records of such agent or servicer.

Distributions shall be made from the Liquidating Trusts in accordance with the terms of the Plan and the Liquidating Trust Agreements.

In making Distributions under the Plan, the Liquidating Trustees may rely upon the accuracy of the claims register maintained by the Claims Agent (the "Claims Register") in the Chapter 11 Cases, as modified by any Final Order of the Bankruptcy Court disallowing Claims in whole or in part.

### **b. Undeliverable and Unclaimed Distributions**

If the Distribution to any Holder of an Allowed Claim is returned to either Liquidating Trustee as undeliverable or is otherwise unclaimed, no further Distributions shall be made to such Holder unless and until the applicable Liquidating Trustee is notified in writing of such Holder's then-current address, at which time all missed Distributions shall be made to such Holder without interest. Amounts in respect of undeliverable Distributions made by the Liquidating Trustees shall be returned to the applicable Liquidating Trustee until such Distributions are claimed. Each Liquidating Trustee shall, with respect to Cash, maintain in the applicable Liquidating Trust Cash on account of undeliverable and unclaimed Distributions until such time as a Distribution becomes deliverable, is claimed or is forfeited.

Any Holder of an Allowed Claim that does not assert a Claim pursuant to the Plan for an undeliverable or unclaimed Distribution within six (6) months after the last Distribution Date shall be deemed to have forfeited its Claim for such undeliverable or unclaimed Distribution and shall be forever barred and enjoined from asserting any such Claim for an undeliverable or

unclaimed Distribution against the Debtors and their Estates, the Liquidating Trustees, the Liquidating Trusts, and their respective agents, attorneys, representatives, employees or independent contractors, and/or any of its and their property. In such cases, any Cash otherwise reserved for undeliverable or unclaimed Distributions shall become the property of the Liquidating Trusts free of any restrictions thereon and notwithstanding any federal or state escheat laws to the contrary and shall be distributed in accordance with the terms of the Plan and the Liquidating Trust Agreements. Nothing contained in the Plan or the Liquidating Trust Agreements shall require the Debtors, or the Liquidating Trustees to attempt to locate any Holder of an Allowed Claim; *provided, however*, that in their sole discretion, each Liquidating Trustee may periodically publish notice of unclaimed Distributions.

#### **4. Prepayment**

Except as otherwise provided in the Plan or the Confirmation Order, at any time after the Effective Date and after appropriate reserves have been created for unpaid Allowed Administrative Claims and Disputed Administrative Claims that have not been Disallowed, the First Lien Term Lenders Liquidating Trustee shall have the right to prepay, without penalty, all or any portion of an Allowed Administrative Claim, an Allowed Revolver Secured Claim to the extent not paid in full in Cash on the Effective Date, Allowed Miscellaneous Secured Claim, or Allowed Priority Claim.

#### **5. Means of Cash Payment**

Except with respect to the payment of the Revolver Effective Date Cash, Cash payments made pursuant to the Plan shall be in U.S. dollars and shall be made, on and after the Effective Date, at the option and in the sole discretion of the Liquidating Trustees by (i) checks drawn on or (ii) wire transfers from a domestic bank selected by the Liquidating Trustee. The Revolver Effective Date Cash shall be paid by the Debtors to the Pre-petition First Lien Revolver Administrative Agent on the Effective Date in U.S. dollars by wire transfer from a domestic bank selected by the Debtors. In the case of foreign creditors, Cash payments may be made, at the option of the Liquidating Trustees, in such funds and by such means as are necessary or customary in a particular jurisdiction.

#### **6. Interest on Claims**

Unless otherwise specifically provided for in the Plan, the Cash Collateral Order or the Confirmation Order, or required by applicable bankruptcy law, post-petition interest shall not accrue or be paid on any Claims, and no Claimholder shall be entitled to interest accruing on or after the Commencement Date on any Claim, provided, however, that interest shall continue to accrue on the Pre-petition First Lien Revolving Credit Facility, pursuant to the Cash Collateral Order, until the Revolver Effective Date Cash has been paid in full. Interest shall not accrue or be paid upon any Disputed Claim in respect of the period from the Commencement Date to the date a final Distribution is made thereon if and after such Disputed Claim becomes an Allowed Claim.

#### **7. Withholding and Reporting Requirements**

In connection with the Plan and all Distributions under the Plan, each Liquidating Trustee shall, to the extent applicable, comply with all tax withholding, payment, and reporting

requirements (including the filing of grantor trust returns on behalf of their respective Liquidating Trust pursuant to Treasury Income Tax Regulation Section 1.671-4(a)) imposed by any federal, state, provincial, local, or foreign taxing authority, and all Distributions under the Plan shall be subject to any such withholding, payment, and reporting requirements. Each Liquidating Trustee shall be authorized to take any and all actions that may be necessary or appropriate to comply with such withholding, payment and reporting requirements. All amounts properly withheld from Distributions to a Holder as required by applicable law and paid over to the applicable taxing authority for the account of such Holder shall be treated as part of the Distributions to such Holder. All Persons holding Claims shall be required to provide any information necessary to effect information reporting and withholding of such taxes.

Notwithstanding any other provision of the Plan, (a) each Holder of an Allowed Claim that is to receive a Distribution pursuant to the Plan shall have sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed by any governmental unit, including income, withholding, and other tax obligations, on account of such Distribution, and (b) no Distribution shall be made to or on behalf of such Holder pursuant to the Plan unless and until such Holder has made arrangements satisfactory to the Liquidating Trustees for the payment and satisfaction of such withholding tax obligations or such tax obligation that would be imposed upon the Liquidating Trustees in connection with such Distribution. Any property to be distributed pursuant to the Plan shall, pending the implementation of such arrangements, be treated as an undeliverable Distribution pursuant to Article VI.C.2 of the Plan.

## **8. Setoffs**

### **a. By a Debtor**

Except as otherwise provided in the Plan, the Debtors, prior to the Effective Date, may, pursuant to Bankruptcy Code section 553 or applicable nonbankruptcy laws, but shall not be required to, set off against any Claim, and the payments or other Distributions to be made pursuant to the Plan in respect of such Claim, Claims of any nature whatsoever (excluding Released Claims and Avoidance Actions) that the Debtors may have against the Holder of such Claim. As of the Effective Date, each Liquidating Trustee, solely to the extent and in the order of priority provided below, may, pursuant to Bankruptcy Code section 553 or applicable nonbankruptcy laws, but shall not be required to, setoff against any Claim, and the payments or other Distributions to be made pursuant to the Plan in respect of such Claim, Claims of any nature whatsoever (excluding Released Claims and Avoidance Actions) that the Debtors may have against the Holder of such Claim; provided, however, that neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtors, the Liquidating Trusts or the Liquidating Trustees of any such Claim (other than a Released Claim that the Debtors may have against such Holder) that the Debtors may have against such Holder. Notwithstanding the foregoing, set off rights with respect to a particular Holder shall be exercised by the Liquidating Trustees after the Effective Date in the following order of priority: (i) first, by the First Lien Lenders Liquidating Trustee to the extent of any affirmative recovery against a Holder or setoff against any Claim; and (ii) second, if and only if not exhausted by the First Lien Lenders Liquidating Trustee, by the GUC Liquidating Trustee to the extent of any Claims asserted by such Holder against the GUC Liquidating Trust. For the avoidance of doubt, the GUC Liquidating Trust shall not be entitled to any recovery on account of any setoff rights

and such recovery shall constitute Other Assets and shall be the property of the First Lien Lenders Liquidating Trust.

**b. By Non-Debtors**

The Debtors and each Liquidating Trustee reserve all of their rights to assert that any Person seeking to exercise any setoff rights, right of subrogation, or recoupment of any kind against the Debtors and/or the applicable Liquidating Trust has waived such rights on the grounds that such Person has not properly or timely asserted such rights under the Bankruptcy Code or other applicable law or that such rights are not otherwise enforceable under any applicable law. Without limiting the preceding sentence, and except as otherwise expressly provided in the Plan: (i) a Claimholder may seek the liquidation of an unliquidated Claim in connection with an objection to such Claim filed by the applicable Liquidating Trustee; (ii) a Claimholder may assert a setoff or recoupment as a defense or counterclaim in accordance with the Bankruptcy Rules and/or any other applicable rules in connection with any Cause of Action or other proceeding commenced by the First Lien Term Lenders Liquidating Trustee (subject to, prior to the Effective Date, the Debtors' right, and after the Effective Date, the First Lien Term Lenders Liquidating Trustee's right, to object in good faith to such assertion); and (iii) any Person that is named as an additional insured or loss payee or is otherwise expressly entitled to receive payment from the Debtors' insurers directly under the Debtors' insurance policies, but only to the extent of such coverage payable to such Person in such capacities, may seek recovery from any insurer of the Debtors but without duplication of any Distribution such Person would otherwise receive under the Plan in lieu of such insurance policy; *provided however*, that: (a) other than with respect to claims asserted under the Existing D&O Insurance Policies, such Person may not recover under any such insurance policy if it would not be entitled to receive a Distribution on account of its Claim and (b) other than with respect to insurance coverage of any former or current director or officer of the Debtors under the Existing D&O Insurance Policies (and the proceeds thereof paid to, for the benefit of, or on behalf of any such director or officer), (x) prior to the Effective Date, the Debtors do not waive, and expressly reserve their rights to assert that any insurance coverage (and the proceeds thereof) is property of the Estates to which they are entitled; (y) after the Effective Date, the First Lien Term Lenders Liquidating Trustee does not waive, and expressly reserves its right to assert that any insurance coverage (and the proceeds thereof) is property of the First Lien Term Lenders Liquidating Trust to which it is entitled; and (z) both before and after the Effective Date, the Pre-petition Secured Parties pursuant to and in accordance with the Pre-petition First Lien Credit Documents and the Cash Collateral Order, do not waive and expressly reserve the right to assert, that any such insurance policies, and the proceeds thereof, are and remain subject to a first priority Lien in favor of the Pre-petition Secured Parties and all other rights and interests in such insurance policies (and the proceeds thereof) granted to the Pre-petition Secured Parties under the Pre-petition First Lien Credit Documents and the Cash Collateral Order.

For the avoidance of doubt, (i) landlords which have filed Claims on or before the applicable Bar Date may assert claims for year-end adjustments and reconciliations of such Claims that were contained or reserved for in such Claims; and (ii) Creditors may assert any valid right of setoff or recoupment that they may have, subject to the rights of the Debtors and each Liquidating Trustee to assert that any Person seeking to exercise any setoff rights or recoupment of any kind against the Debtors and/or the applicable Liquidating Trust has waived such rights on the grounds that such Person has not properly or timely asserted such rights under

the Bankruptcy Code or other applicable law or that such rights are not otherwise enforceable under any applicable law.

**9. Procedure for Treating and Resolving Disputed, Contingent and/or Unliquidated Claims**

**a. Objection Deadline; Prosecution of Objections**

Except as set forth in the Plan with respect to Administrative Claims, all objections to Claims must be filed and served on the Holders of such Claims by the Claims Objection Deadline, as the same may be extended by the Bankruptcy Court. If an objection has not been filed to a Proof of Claim or the Schedules have not been amended with respect to a Claim that (i) was Scheduled by the Debtors but (ii) was not Scheduled as contingent, unliquidated, and/or disputed, by the Claims Objection Deadline, as the same may be extended by order of the Bankruptcy Court, the Claim to which the Proof of Claim or Scheduled Claim relates will be treated as an Allowed Claim if such Claim has not been allowed earlier. Notice of any motion for an order extending the Claims Objection Deadline shall be required to be given only to those persons or entities that have requested notice in the Chapter 11 Cases, or to such persons as the Bankruptcy Court shall order.

From the Confirmation Date through the Effective Date: (i) the Debtors may file objections, settle, compromise, withdraw, or litigate to judgment objections to Claims; (ii) the Committee may file objections, settle, compromise, withdraw or litigate to judgment objections to General Unsecured Claims; (iii) the Pre-petition Secured Parties may file objections, settle, compromise, withdraw or litigate to judgment objections to Administrative Claims and/or Priority Claims; provided, however, that the Committee, the Debtors, the Liquidating Trustees and the Pre-petition Secured Parties shall not file any objection to any Claim to the extent such objection is inconsistent with the Global Plan Settlement. Subject to the terms of the Liquidating Trust Agreements, from and after the Effective Date, a Liquidating Trustee may settle or compromise any Disputed Claim which, if such Claim were an Allowed Claim would be payable by such Liquidating Trust under the Plan, without approval of the Bankruptcy Court; provided, however, that (1) the First Lien Term Lenders Liquidating Trustee shall have the sole authority to assert, settle, compromise, withdraw, or litigate to judgment objections to (a) all Claims other than Class 5 Claims and (2) the GUC Liquidating Trustee shall have the sole authority to assert, settle, compromise, withdraw, or litigate to judgment objections to Class 5 Claims.

**b. No Distributions on Disputed Claims**

Notwithstanding any other provision of the Plan or the Liquidating Trust Agreements, no payments or Distributions shall be made with respect to all or any portion of a Disputed Claim unless and until all objections to such Disputed Claim have been settled or withdrawn or have been determined by Final Order, and the Disputed Claim, or some portion thereof, has become an Allowed Claim; provided, however, that if the only dispute regarding a Disputed Claim is to the amount of the Disputed Claim, the Holder of a Disputed Claim shall be entitled to a Distribution on account of that portion of the Disputed Claim which the Debtors or the applicable Liquidating Trustee does not dispute at the time and in the manner that the applicable Liquidating Trustee makes Distributions to Holders of Allowed Claims pursuant to the provisions of the Plan.



The First Lien Term Lenders Liquidating Trustee (with respect to Administrative Claims and/or Priority Claims) and the GUC Liquidating Trustee (with respect to General Unsecured Claims) may, in their discretion and consistent with each of their respective Liquidating Trust Agreements, seek an Order of the Bankruptcy Court seeking approval of a maximum reserve with regard to a Disputed Claim for which their respective Liquidating Trust is responsible in order to facilitate Distributions to the Holders of Allowed Claims in such Liquidating Trust.

**c. Distributions on Allowed Claims**

Except as otherwise provided in the Plan, on the earlier of (a) the Distribution Date following the date when a Disputed Claim becomes an Allowed Claim or (b) sixty (60) days after such Disputed Claim becomes an Allowed Claim, the applicable Liquidating Trustee will distribute to the Claimholder any Cash from the applicable Liquidating Trust that would have been distributed on the dates Distributions were previously made to Claimholders had such Allowed Claim been an Allowed Claim on such dates.

All Distributions made under the Plan on account of an Allowed Claim will be made together with any dividends, payments, or other Distributions made on account of, as well as any obligations arising from, the distributed property as if such Allowed Claim had been an Allowed Claim on the dates Distributions were previously made to Holders of other Allowed Claims included in the applicable Class.

**d. De Minimis Distributions**

Except as otherwise provided in the Plan, the Liquidating Trustees shall not have any obligation to make a Distribution on account of an Allowed Claim if the amount to be distributed to the specific Holder of the Allowed Claim on the particular Distribution Date does not constitute a final Distribution to such Holder and such Distribution has a value less than \$25.00. The Liquidating Trustees shall have no obligation to make any Distribution on Claims Allowed in an amount less than \$500.00. Any undistributed Cash will vest in the applicable Liquidating Trust and become Available Cash for Distribution on the final Distribution.

Notwithstanding any other provision of the Plan, if and to the extent that either Liquidating Trustees has Available Cash remaining of no more than \$50,000 after a Distribution has been made, that Liquidating Trustee, may in lieu of making further Distributions donate such Available Cash to a charitable organization designated by the beneficiaries of the applicable Liquidating Trust.

**10. Fractional Dollars**

Any other provision of the Plan notwithstanding, the Liquidating Trustees shall not be required to make Distributions or payments of fractions of dollars. Whenever any payment of a fraction of a dollar under the Plan would otherwise be called for, the actual payment shall reflect a rounding of such fraction to the nearest whole dollar (up or down), with half dollars being rounded down.

## **11. Allocation of Plan Distributions Between Principal and Interest**

To the extent that any Allowed Claim entitled to a Distribution under the Plan is composed of indebtedness and accrued but unpaid interest thereon, such Distribution shall, for all income tax purposes, be allocated to the principal amount of the Claim first and then, to the extent the consideration exceeds the principal amount of the Claim, to the portion of such Claim representing accrued but unpaid interest.

## **12. Distribution Record Date**

The Liquidating Trustees will have no obligation to recognize the transfer of or sale of any participation in any Allowed Claim that occurs after the close of business on the Distribution Record Date, and will be entitled for all purposes in the Plan to recognize, deal with and distribute only to those Holders of Allowed Claims who are record Holders of such Claims, or participants therein, as of the close of business on the Distribution Record Date, as stated on the Claims Register.

## **13. Allowance of Certain Claims**

The Revolver Secured Claims shall be deemed by the Plan to be Allowed Class 3 Claims in the aggregate amount equal to the sum of (i) the Revolver Pre-Effective Date Secured Claims and (ii) the Revolver Post-Effective Date Secured Claims. Without limitation of the foregoing, it is acknowledged that, as of the filing of the Plan, the outstanding principal balance of the loans extended to the Debtors by the Pre-petition First Lien Revolver Lenders under the Pre-petition First Lien Revolving Credit Facility is \$55,000,000.

The Pre-petition First Lien Term Loan Secured Claims shall be deemed by the Plan to be Allowed Class 4 Claims.

The Pre-petition Second Lien Term Loan Claim shall be deemed by the Plan to be an Allowed Class 5 Claim in the aggregate amount of \$151,623,195.20.

## **G. CONDITIONS PRECEDENT TO CONFIRMATION AND CONSUMMATION OF THE PLAN**

### **1. Conditions to Confirmation**

The following are conditions precedent to the occurrence of the Confirmation Date:

- a. A Final Order finding that the Disclosure Statement contains adequate information pursuant to Bankruptcy Code section 1125 shall have been entered by the Bankruptcy Court;
- b. A proposed Confirmation Order in form and substance, reasonably acceptable to the Debtors, the Committee and the Pre-petition Secured Parties shall have been filed with the Bankruptcy Court;
- c. Approval of all provisions, terms and conditions hereof in the Confirmation Order and;

- d. The aggregate amount of unpaid Allowed Priority Claims, Allowed Administrative Claims, and Allowed Miscellaneous Secured Claims (together with all Disputed Claims of the foregoing Classes) shall not reasonably be expected to exceed \$[ ] in the aggregate, as determined by the Debtors and the respective Requisite Lenders of the Pre-petition Secured Parties.

## **2. Conditions to Effective Date**

The following are conditions precedent to the occurrence of the Effective Date, each of which must be satisfied or waived in writing in accordance with Article VIII.C of the Plan:

- a. The Confirmation Order shall have been entered and become a Final Order and shall provide that the Debtors, the Liquidating Trusts, and the Liquidating Trustees are authorized and directed to take all actions necessary or appropriate by each of them to enter into, implement and consummate the contracts, instruments, releases, leases, indentures, and other agreements or documents created in connection with the Plan or effectuate, advance, or further the purposes thereof;
- b. All Plan Exhibits shall be, in form and substance, reasonably acceptable to the Debtors, the Committee and the Pre-petition Secured Parties, and shall have been executed and delivered by all parties signatory thereto;
- c. The Debtors shall be authorized and directed to take all actions necessary or appropriate to enter into, implement and consummate the contracts, instruments, releases, leases, indentures, and the agreements or documents created in connection with, and expressly provided for under, the Plan;
- d. The Revolver Effective Date Cash shall have been paid by the Debtors to the Pre-petition First Lien Revolver Administrative Agent;
- e. Immediately prior to and as of the Effective Date, the Creditor Funds Payment Events (other than the occurrence of the Effective Date) have been satisfied and would each remain satisfied upon the occurrence of and immediately after giving effect to the Effective Date; and
- f. All other actions, documents, and agreements necessary to implement the Plan shall have been effected or executed.

## **3. Waiver of Conditions**

Subject to the joint agreement of the Requisite Lenders under both Pre-petition First Lien Credit Agreements, each of the conditions set forth in Article VIII.A and VIII.B of the Plan may be waived in whole or in part by the Debtors. Notwithstanding the preceding sentence, the Committee's written consent to any waiver of a condition set forth in Article VIII.A and VIII.B shall be obtained if such waiver would be inconsistent with rights of and the benefits conferred upon the Committee, Holders of General Unsecured Claims, Holders of Administrative Claims, the Studios, or Warner Home Video pursuant to the Global Plan Settlement or would adversely

effect the payment of General Unsecured Claims or Administrative Claims. The failure to satisfy or waive any condition to the Effective Date may be asserted by the Debtors regardless of the circumstances giving rise to the failure of such condition to be satisfied or waived. The failure of a party to exercise any of the foregoing rights shall not be deemed a waiver of any other rights, and each such right shall be deemed an ongoing right that may be asserted at any time.

#### **4. Consequences of Non-Occurrence of Effective Date**

Subject to the prior written consent of the Requisite Lenders under both Pre-petition First Lien Credit Agreements, in the event that the Effective Date does not timely occur, the Debtors reserve all rights to seek an order from the Bankruptcy Court directing that the Confirmation Order be vacated, that the Plan be null and void in all respects, and/or that any settlement of Claims provided for in the Plan be null and void. In the event that the Bankruptcy Court shall enter an order vacating the Confirmation Order, the time within which the Debtors may assume and assign or reject all executory contracts and unexpired leases not previously assumed, assumed and assigned, or rejected, shall be extended for a period of thirty (30) days after the date the Confirmation Order is vacated, without prejudice to further extensions.

#### **5. Substantial Consummation**

Substantial consummation of the Plan, as defined in Bankruptcy Code section 1101(2), shall not be deemed to have occurred unless and until all Allowed Administrative Claims, Allowed Priority Claims, Class 2 Claims and Class 3 Claims have been paid in full or funds sufficient to satisfy the Face Amount of all such Claims have been placed in segregated reserves, subject to the other terms and conditions of the Plan governing reserves and the rights of the Pre-petition First Lien Liquidating Trustee to object (to the extent not inconsistent with the Term Sheet) in good faith on any grounds to the validity, amount or priority of any such Claims.

### **H. SETTLEMENT, RELEASE, INJUNCTION AND RELATED PROVISIONS**

#### **1. Binding Effect**

The Plan shall be binding upon and inure to the benefit of the Debtors, all present and former Holders of Claims and Interests, and their respective successors and assigns, including, but not limited to, the Liquidating Trusts and the Liquidating Trustees.

#### **2. Compromise and Settlement**

Notwithstanding anything contained in the Plan to the contrary, the allowance, classification and treatment of all Allowed Claims and their respective distributions and treatments under the Plan takes into account and conforms to the relative priority and rights of the Claims and the Interests in each Class with due regard to any contractual, legal and equitable subordination rights relating thereto whether arising under general principles of equitable subordination, sections 510(b) and (c) of the Bankruptcy Code or otherwise. As of the Effective Date, any and all such rights described in the preceding sentence are settled, compromised and released pursuant to the Plan. The Confirmation Order will constitute the Bankruptcy Court's finding and determination that the settlements reflected in the Plan are (1) in the best interests of the Debtors, their Estates and all Holders of Claims, (2) fair, equitable and reasonable, (3) made

in good faith and (4) approved by the Bankruptcy Court pursuant to Bankruptcy Rule 9019. In addition, the allowance, classification and treatment of Allowed Claims take into account any Causes of Action, whether under the Bankruptcy Code or otherwise under applicable non-bankruptcy law, that may exist: (1) between the Debtors, on the one hand, and the Debtor Releasees, on the other; and (2) as between the Releasing Parties and the Third Party Releasees (to the extent set forth in the Third Party Release); and, as of the Effective Date, any and all such Causes of Action are settled, compromised and released pursuant hereto. The Confirmation Order shall approve and effectuate the releases by all Persons of all such contractual, legal and equitable subordination rights or Causes of Action that are satisfied, compromised and settled pursuant to the Plan.

Provided such compromise and settlement is effected in accordance with the provisions of the Plan, and pursuant to Bankruptcy Rule 9019, without any further notice to or action, order or approval of the Bankruptcy Court (except to the extent necessary to avoid prejudice to the other Liquidating Trust), after the Effective Date: (1) the First Lien Term Lenders Liquidating Trustee may, in its sole and absolute discretion, compromise and settle (a) Administrative Claims Priority Claims or Class 2 Claims and (b) Causes of Action against other Persons; and (2) the GUC Liquidating Trustee may, in its sole and absolute discretion, compromise and settle Class 5 Claims.

### **3. Debtor Release**

NOTWITHSTANDING ANYTHING CONTAINED IN THE PLAN TO THE CONTRARY, ON THE EFFECTIVE DATE AND EFFECTIVE AS OF THE EFFECTIVE DATE, FOR THE GOOD AND VALUABLE CONSIDERATION PROVIDED BY EACH OF THE DEBTOR RELEASEES AND THE THIRD PARTY RELEASEES, INCLUDING, WITHOUT LIMITATION: (1) THE RELEASES OF LIENS AND ALL OTHER GOOD AND VALUABLE CONSIDERATION PAID PURSUANT HERETO; (2) THE AGREEMENT OF THE PRE-PETITION SECURED PARTIES AND LENADO TO PROVIDE THE SUPPORT NECESSARY FOR CONSUMMATION OF THE PLAN; AND (3) THE SERVICES OF THE DEBTORS' PRESENT AND FORMER OFFICERS, DIRECTORS, MEMBERS (INCLUDING *EX OFFICIO* MEMBERS) AND ADVISORS IN FACILITATING THE EXPEDITIOUS IMPLEMENTATION OF THE LIQUIDATION CONTEMPLATED HEREBY, EACH OF THE DEBTOR RELEASORS SHALL FULLY RELEASE (AND, AUTOMATICALLY WITHOUT FURTHER ACTION, EACH SUCH DEBTOR RELEASEE AND THIRD PARTY RELEASEE SO RELEASED SHALL BE DEEMED FULLY RELEASED BY THE DEBTOR RELEASORS) EACH DEBTOR RELEASEE AND EACH THIRD PARTY RELEASEE AND THEIR RESPECTIVE PROPERTIES FROM ANY AND ALL AVOIDANCE ACTIONS AND ALL CAUSES OF ACTION, WHETHER KNOWN OR UNKNOWN, WHETHER ARISING PRIOR TO OR AFTER THE COMMENCEMENT DATE, FORESEEN OR UNFORESEEN, LIQUIDATED OR UNLIQUIDATED, CONTINGENT OR NON-CONTINGENT, EXISTING AS OF THE EFFECTIVE DATE IN LAW, AT EQUITY, WHETHER FOR TORT, FRAUD, CONTRACT, VIOLATIONS OF FEDERAL OR STATE SECURITIES LAWS OR OTHERWISE, ARISING FROM OR RELATED IN ANY WAY TO THE DEBTORS OR THEIR ESTATES, INCLUDING, WITHOUT LIMITATION, THOSE THAT ANY OF THE DEBTORS OR THE LIQUIDATING TRUSTS WOULD HAVE BEEN LEGALLY ENTITLED TO ASSERT IN THEIR OWN RIGHT (WHETHER INDIVIDUALLY OR COLLECTIVELY) OR THAT ANY HOLDER OF A CLAIM OR AN EQUITY INTEREST OR OTHER ENTITY

WOULD HAVE BEEN LEGALLY ENTITLED TO ASSERT ON BEHALF OF ANY OF THE DEBTORS OR ANY OF THEIR ESTATES, AND FURTHER INCLUDING THOSE IN ANY WAY RELATED TO THE CHAPTER 11 CASES, THE PLAN, THE DISCLOSURE STATEMENT, THE SALE OR LIQUIDATION OF ANY PROPERTY OF THE ESTATES, THE CLOSING OF ANY OF THE DEBTORS' STORES, THE DEBTORS' BUSINESSES AND OPERATIONS, THE DEBTORS' EQUITY INTERESTS, THE DEBTORS' DEBT OBLIGATIONS, THE DEBTORS' FINANCING AGREEMENTS, THE DEBTORS' LEASES AND OTHER CONTRACTS, THE DEBTORS' PRIOR BANKRUPTCY CASES, OR THE TRANSACTIONS CONTEMPLATED IN CONNECTION WITH THE DEBTORS' PRIOR BANKRUPTCY CASES; *PROVIDED, HOWEVER*, THAT: (1) THE FOREGOING "DEBTOR RELEASE" SHALL NOT OPERATE TO WAIVE OR RELEASE ANY CAUSES OF ACTION OF ANY DEBTOR AND/OR A LIQUIDATING TRUST AGAINST A THIRD PARTY RELEASEE (OTHER THAN: (I) ALL CURRENT AND FORMER PRE-PETITION SECURED PARTIES AND THEIR RELATED PARTIES (II) LENADO AND ITS RELATED PARTIES, AND (III) THE COMMITTEE, THE STUDIOS, AND WARNER HOME VIDEO) ARISING FROM ANY CONTRACTUAL OBLIGATIONS OWED TO THE DEBTORS AND/OR A LIQUIDATING TRUST; (2) NOTWITHSTANDING THE FOREGOING "DEBTOR RELEASE", THE DEBTORS, THE LIQUIDATING TRUSTS, THE LIQUIDATING TRUSTEES, THE PRE-PETITION SECURED PARTIES, LENADO, THE COMMITTEE, THE STUDIOS AND WARNER HOME VIDEO SHALL HAVE THE RIGHT TO SEEK SPECIFIC ENFORCEMENT OF THE GLOBAL PLAN SETTLEMENT INCLUDING THE TERM SHEET, BY ANY PARTY THERETO DIRECTLY OR THROUGH THE PLAN; AND (3) NOTWITHSTANDING THE FOREGOING "DEBTOR RELEASE", THE DEBTORS AND/OR THE APPLICABLE LIQUIDATING TRUST SHALL HAVE THE RIGHT TO SEEK THE RETURN, RECOUPMENT OR SETOFF OF ANY OVERPAYMENT MADE BY THE DEBTORS OR SUCH APPLICABLE LIQUIDATING TRUST TO A STUDIO OR WARNER HOME VIDEO AND THEIR RELATED PARTIES.

ENTRY OF THE CONFIRMATION ORDER SHALL CONSTITUTE THE BANKRUPTCY COURT'S APPROVAL, PURSUANT TO BANKRUPTCY RULE 9019, OF THE DEBTOR RELEASE, WHICH INCLUDES BY REFERENCE EACH OF THE RELATED PROVISIONS AND DEFINITIONS CONTAINED HEREIN, AND FURTHER, SHALL CONSTITUTE THE BANKRUPTCY COURT'S FINDING THAT THE DEBTOR RELEASE IS: (1) IN EXCHANGE FOR THE GOOD AND VALUABLE CONSIDERATION PROVIDED BY THE DEBTOR RELEASEES AND THE THIRD PARTY RELEASEES; (2) A GOOD FAITH SETTLEMENT AND COMPROMISE OF THE CLAIMS RELEASED BY THE DEBTOR RELEASE; (3) IN THE BEST INTERESTS OF THE DEBTORS AND ALL HOLDERS OF CLAIMS AND INTERESTS; (4) FAIR, EQUITABLE AND REASONABLE; (5) GIVEN AND MADE AFTER DUE NOTICE AND OPPORTUNITY FOR HEARING; AND (6) A BAR TO ANY OF THE DEBTORS OR THE LIQUIDATING TRUSTS ASSERTING ANY CLAIM RELEASED BY THE DEBTOR RELEASE AGAINST ANY OF THE DEBTOR RELEASEES OR ANY OF THE THIRD PARTY RELEASEES.

#### **4. Third Party Release**

NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, ON THE EFFECTIVE DATE AND EFFECTIVE AS OF THE EFFECTIVE DATE, THE RELEASING PARTIES (REGARDLESS OF WHETHER A RELEASING PARTY IS A

THIRD PARTY RELEASEE) SHALL FULLY RELEASE (AND, AUTOMATICALLY WITHOUT FURTHER ACTION, EACH ENTITY SO RELEASED SHALL BE DEEMED RELEASED BY THE RELEASING PARTIES) THE DEBTORS, THE DEBTOR RELEASEES, AND THE THIRD PARTY RELEASEES AND THEIR RESPECTIVE PROPERTY FROM ANY AND ALL AVOIDANCE ACTIONS AND ALL CAUSES OF ACTION, WHETHER KNOWN OR UNKNOWN, WHETHER ARISING PRIOR TO OR AFTER THE COMMENCEMENT DATE, FORESEEN OR UNFORESEEN, LIQUIDATED OR UNLIQUIDATED, CONTINGENT OR NON-CONTINGENT, EXISTING AS OF THE EFFECTIVE DATE IN LAW, AT EQUITY, WHETHER FOR TORT, FRAUD, CONTRACT, VIOLATIONS OF FEDERAL OR STATE SECURITIES LAWS OR OTHERWISE, ARISING FROM OR RELATED IN ANY WAY TO THE DEBTORS OR THEIR ESTATES, INCLUDING, WITHOUT LIMITATION, THOSE IN ANY WAY RELATED TO THE CHAPTER 11 CASES, THE PLAN, THE SALE OR LIQUIDATION OF ANY PROPERTY OF THE ESTATES, THE CLOSING OF ANY OF THE DEBTORS' STORES, THE DEBTORS' BUSINESSES AND OPERATIONS, THE DEBTORS' INTERESTS, THE DEBTORS' DEBT OBLIGATIONS, THE DEBTORS' FINANCING AGREEMENTS, THE DEBTORS' LEASES AND OTHER CONTRACTS, THE DEBTORS' PRIOR BANKRUPTCY CASES, OR THE TRANSACTIONS CONTEMPLATED IN CONNECTION WITH THE DEBTORS' PRIOR BANKRUPTCY CASES; PROVIDED, HOWEVER, THAT (1) THE FOREGOING "THIRD PARTY RELEASE", SHALL NOT OPERATE TO WAIVE OR RELEASE ANY CAUSES OF ACTION OF ANY THIRD PARTY RELEASOR AND/OR A LIQUIDATING TRUST AGAINST A THIRD PARTY RELEASEE (OTHER THAN: (I) ALL CURRENT AND FORMER PRE-PETITION SECURED PARTIES AND THEIR RELATED PARTIES, (II) LENADO AND ITS RELATED PARTIES, AND (III) THE COMMITTEE, THE STUDIOS, AND WARNER HOME VIDEO) ARISING FROM ANY CONTRACTUAL OBLIGATIONS OWED TO THE DEBTORS AND/OR A LIQUIDATING TRUST; (2) NOTWITHSTANDING THE FOREGOING "THIRD PARTY RELEASE" THE DEBTORS, THE LIQUIDATING TRUSTS, THE LIQUIDATING TRUSTEES, THE PRE-PETITION SECURED PARTIES, LENADO, THE COMMITTEE, THE STUDIOS AND WARNER HOME VIDEO SHALL HAVE THE RIGHT TO SEEK SPECIFIC ENFORCEMENT OF THE GLOBAL PLAN SETTLEMENT, INCLUDING THE TERM SHEET, BY ANY PARTY THERETO DIRECTLY OR THROUGH THE PLAN; (3) NOTWITHSTANDING THE FOREGOING "THIRD PARTY RELEASE", THE DEBTORS AND/OR THE APPLICABLE LIQUIDATING TRUST SHALL HAVE THE RIGHT TO SEEK THE RETURN, RECOUPMENT OR SETOFF OF ANY OVERPAYMENT MADE BY THE DEBTORS OR SUCH APPLICABLE LIQUIDATING TRUST TO A STUDIO OR WARNER HOME VIDEO; AND (4) THE FOREGOING "THIRD PARTY RELEASE" SHALL NOT OPERATE TO WAIVE OR RELEASE ANY CLAIMS OR RIGHTS EXPRESSLY SET FORTH IN AND PRESERVED BY THE PLAN OR OTHERWISE PRECLUDE ANY PERSON FROM EXERCISING THEIR RIGHTS PURSUANT TO AND CONSISTENT WITH THE TERMS OF THE PLAN.

ENTRY OF THE CONFIRMATION ORDER SHALL CONSTITUTE THE BANKRUPTCY COURT'S APPROVAL, PURSUANT TO BANKRUPTCY RULE 9019, OF THE THIRD PARTY RELEASE, WHICH INCLUDES BY REFERENCE EACH OF THE RELATED PROVISIONS AND DEFINITIONS CONTAINED HEREIN, AND FURTHER, SHALL CONSTITUTE THE BANKRUPTCY COURT'S FINDING THAT THE THIRD PARTY RELEASE IS: (1) IN EXCHANGE FOR THE GOOD AND VALUABLE CONSIDERATION PROVIDED BY THE THIRD PARTY RELEASEES, (2) A GOOD FAITH

SETTLEMENT AND COMPROMISE OF THE CLAIMS RELEASED BY THE THIRD PARTY RELEASE; (3) IN THE BEST INTERESTS OF THE DEBTORS AND ALL HOLDERS OF CLAIMS; (4) FAIR, EQUITABLE AND REASONABLE; (5) GIVEN AND MADE AFTER DUE NOTICE AND OPPORTUNITY FOR HEARING; AND (6) A BAR TO ANY OF THE RELEASING PARTIES ASSERTING ANY CLAIM RELEASED BY THE THIRD PARTY RELEASE AGAINST ANY OF THE DEBTORS, THE DEBTOR RELEASEES, AND THE THIRD PARTY RELEASEES.

## **5. Exculpation**

Without limiting or restricting any other release or waiver provided in the Plan, the Confirmation Order, the Cash Collateral Order, or other Final Order of the Bankruptcy Court, the Exculpated Parties shall neither have nor incur any liability to any Person for any pre-petition or post-petition act taken or omitted to be taken during the Chapter 11 Cases or in connection with, or related to (i) the preparation, filing, or timing of the commencement of the Chapter 11 Cases, or (ii) formulating, negotiating, preparing, disseminating, implementing, administering, confirming or effecting the Consummation of the Plan, the Disclosure Statement or any contract, instrument, release or other agreement or document created or entered into in connection with the Plan or any other pre-petition or post-petition act taken or omitted to be taken in connection with or in contemplation of the closing of any of the Debtors' stores or other liquidation of the Debtors' assets; provided, however, that the foregoing "Exculpation" shall have no effect on the liability of any Person that results from any such act or omission that is determined in a Final Order to have constituted fraud, gross negligence or willful misconduct; provided, further, that each Exculpated Party shall be entitled to rely upon the advice of counsel concerning his, her or its duties pursuant to, or in connection with, the Plan; provided, still further, that the foregoing Exculpation shall not limit the ability of the Debtors, the Liquidating Trusts, the Liquidating Trustees, the Pre-petition Secured Parties, Lenado, the Committee, the Studios or Warner Home Video to exercise any available right of specific performance remedies with respect to the Global Plan Settlement directly or through the Plan.

## **6. Indemnification**

Except as otherwise provided in the Plan or any contract, instrument, release, or other agreement or document entered into in connection with the Plan, any and all pre-petition indemnification obligations that the Debtors have pursuant to a contract, instrument, agreement, certificate of incorporation, by-law, comparable organizational document or any other document, or applicable law shall be rejected as of the Effective Date, to the extent executory; provided, however, that: (i) the Debtors shall acquire the Tail Coverage, which shall be available to the directors and officers of the Debtors who were directors or officers on or after the Commencement Date, (ii) all rights of such directors and officers under the Tail Coverage and the Debtors' Existing D&O Insurance Policies hereby are expressly reserved, and (iii) the Debtors, or following the Effective Date, the Liquidating Trustees, the First Lien Term Lenders Liquidating Trust Oversight Board and the GUC Liquidating Trust Oversight Committee shall take any action reasonably requested by any such director or officer to preserve the Debtors' Existing D&O Insurance Policies, shall take no action to amend, limit, terminate, cancel, or reduce any Existing D&O Insurance Policy, and shall otherwise cooperate with such directors and officers in connection with the maintenance of the Existing D&O Insurance Policies; provided further, that, (i) to the extent any claims released pursuant to the Debtor Release or the



Third Party Release are pursued against any of the Debtor Releasees or any of the Third Party Releasees, respectively, the First Lien Term Lenders Liquidating Trust shall indemnify any such Debtor Releasees or Third Party Releasees that are Pre-petition Secured Parties, or their respective Related Parties (the “Pre-petition Secured Parties Indemnified Persons”) and (ii) without in any way limiting the generality of, or reducing the scope of, the foregoing indemnities, to the extent any claims released pursuant to the Debtor Release or the Third Party Release are pursued against Lenado (in any capacity other than as a Pre-petition Secured Party) (the “Lenado Indemnified Persons”; the Pre-petition Secured Parties Indemnified Persons together with the Lenado Indemnified Persons, the “Indemnified Persons”) by the First Lien Term Lenders Liquidating Trust, the First Lien Term Lenders Liquidating Trustee, any Person who at any time after the Commencement Date through the Effective Date was a Pre-petition First Lien Term Secured Party or a Related Person thereof or any Person on behalf of the foregoing, the First Lien Term Lenders Liquidating Trust shall indemnify Lenado in such other capacities, except that the First Lien Term Lenders Liquidating Trust shall not indemnify any such Person referred to in the preceding clauses (i) and (ii) with respect to any act or omission that is determined in a Final Order to have constituted fraud, gross negligence or willful misconduct. The First Lien Term Lenders Liquidating Trustee reserves all of its rights and remedies under the Plan, including the right to commence litigation for money damages against any Pre-petition Secured Party (or any Person that was a Pre-petition Secured Party at any time from the Commencement Date through the Effective Date or any of their Related Parties) (a “Secured Party Claimant”) in the event that any Secured Party Claimant pursues any Claims against any Indemnified Person which Claims were, or were deemed to be, released by the Debtor Release or the Third Party Release and which pursuit, directly or indirectly, causes or results in the First Lien Term Lenders Liquidating Trust making any payment or incurring any other liability, cost, or expense including, without limitation, under or as a result of the indemnity granted by the First Lien Term Lenders Liquidating Trust under Article X.F. of the Plan. No Pre-petition Secured Party or Related Party other than a Secured Party Claimant shall be subject to any loss, cost, expenses, or other liability under the immediately preceding sentence.

For the avoidance of doubt: (i) the Liquidating Trustees, the First Lien Term Lenders Liquidating Trust Oversight Board, and the GUC Liquidating Trust Oversight Committee shall have no power or authority to terminate or impair benefits provided under the Tail Coverage or the Debtors’ Existing D&O Insurance Policies; (ii) notwithstanding the Chapter 11 Cases, the Plan, and the Confirmation Order, all rights and benefits of any current or former director or officer of the Debtors under any of (a) the Debtors’ Existing D&O Insurance Policies are expressly reserved and, after the Effective Date, shall survive and shall be fully enforceable and (b) the Debtors’ other insurance policies in force on the Effective Date which name a director or officer as an additional insured or loss payee or otherwise expressly by their terms provide that a director or officer may receive payment on a claim thereunder are reserved, and, after the Effective Date, shall survive and shall be fully enforceable provided, however, that the First Lien Term Lenders Liquidating Trust shall retain and hereby reserves all rights that the Debtors possess under applicable law or the terms of such other insurance policy to amend or terminate any such other insurance policy if the First Lien Liquidating Trustee reasonably determines that the rights or benefits conferred to such director and officer are to the material economic detriment of the First Lien Liquidating Trust or that the rights and benefits conferred on the directors and officers under such other insurance policies, after reasonable written notice to any affected director or officer, shall have any other material adverse financial effect on, or give rise

to any material liability of the First Lien Term Lenders Liquidating Trust; provided, further, that the First Lien Term Lenders Liquidating Trust shall be under no obligation to pay any premium or incur any other expense or liability with respect to any such other insurance policy; (iii) all post-petition indemnification obligations owed by the Debtors or the Estates to (a) the Debtors' directors, managers, or officers serving in such positions on or after the Commencement Date and (b) the Pre-petition Secured Parties, that the Debtors have pursuant to a contract, instrument, agreement, certificate of incorporation, by-law, comparable organizational document or any other document, or applicable law shall survive Consummation of the Plan; and (iv) nothing in the Plan shall impair the rights of the Pre-petition Secured Parties to assert indemnity rights under the Pre-petition First Lien Credit Documents and to include amounts payable to the Pre-petition Secured Parties on account of such indemnity rights in the Pre-petition First Lien Secured Claims.

## **7. Injunction**

PURSUANT TO BANKRUPTCY CODE SECTION 1141(D)(3), CONFIRMATION WILL NOT DISCHARGE CLAIMS AGAINST THE DEBTORS; PROVIDED, HOWEVER, THAT NO CLAIMHOLDER OR INTEREST HOLDER MAY, ON ACCOUNT OF SUCH CLAIM OR INTEREST, SEEK OR RECEIVE ANY PAYMENT OR OTHER DISTRIBUTION FROM, OR SEEK RECOURSE AGAINST, ANY DEBTOR OR THE ESTATE OF ANY DEBTOR, THE LIQUIDATING TRUSTS, THE LIQUIDATING TRUSTEES, FIRST LIEN TERM LENDERS LIQUIDATING TRUST OVERSIGHT BOARD AND ITS MEMBERS, GUC LIQUIDATING TRUST OVERSIGHT COMMITTEE AND ITS MEMBERS AND/OR THEIR RESPECTIVE SUCCESSORS, ASSIGNS, RELATED PARTIES AND/OR PROPERTY, EXCEPT AS EXPRESSLY PROVIDED IN THE PLAN. NOTWITHSTANDING THE PRECEDING SENTENCE, THE INJUNCTIONS SET FORTH BELOW SHALL APPLY TO IMPLEMENT THE PLAN.

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

OR EXCULPATED CLAIMS, INTERESTS, AVOIDANCE ACTIONS, CAUSES OF ACTION OR LIABILITIES; (3) CREATING, PERFECTING OR ENFORCING ANY LIEN, CLAIM OR ENCUMBRANCE OF ANY KIND AGAINST ANY ENTITY SO RELEASED, DISCHARGED OR EXCULPATED (INCLUDING THE DEBTORS AND THE LIQUIDATING TRUSTS) (OR THE PROPERTY OR ESTATE OF ANY ENTITY SO RELEASED, DISCHARGED OR EXCULPATED) ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH RELEASED, DISCHARGED OR EXCULPATED CLAIMS, INTERESTS, AVOIDANCE ACTIONS, CAUSES OF ACTION OR LIABILITIES; (4) ASSERTING ANY RIGHT OF SETOFF, SUBROGATION, OR RECOUPMENT OF ANY KIND AGAINST ANY OBLIGATION DUE FROM ANY ENTITY SO RELEASED, DISCHARGED OR EXCULPATED (INCLUDING THE DEBTORS AND THE LIQUIDATING TRUSTS) (OR THE PROPERTY OR ESTATE OF ANY ENTITY SO RELEASED, DISCHARGED OR EXCULPATED) ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH RELEASED, DISCHARGED OR EXCULPATED CLAIMS, INTERESTS, AVOIDANCE ACTIONS, CAUSES OF ACTION OR LIABILITIES UNLESS SUCH HOLDER HAS FILED A MOTION REQUESTING THE RIGHT TO PERFORM SUCH SETOFF ON OR BEFORE THE CONFIRMATION DATE, AND NOTWITHSTANDING AN INDICATION IN A PROOF OF CLAIM OR INTEREST OR OTHERWISE THAT SUCH HOLDER ASSERTS, HAS OR INTENDS TO PRESERVE ANY RIGHT OF SETOFF PURSUANT TO SECTION 553 OF THE BANKRUPTCY CODE OR OTHERWISE; AND (5) COMMENCING OR CONTINUING IN ANY MANNER ANY ACTION OR OTHER PROCEEDING OF ANY KIND AGAINST ANY ENTITY SO RELEASED, DISCHARGED OR EXCULPATED (INCLUDING THE DEBTORS AND THE LIQUIDATING TRUSTS) (OR THE PROPERTY OR ESTATE OF ANY ENTITY SO RELEASED, DISCHARGED OR EXCULPATED) ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH RELEASED, DISCHARGED OR EXCULPATED CLAIMS, INTERESTS, AVOIDANCE ACTIONS, CAUSES OF ACTION OR LIABILITIES RELEASED OR SETTLED PURSUANT TO THE PLAN. ANY PERSON OR ENTITY INJURED BY ANY WILLFUL VIOLATION OF THIS INJUNCTION MAY SEEK TO RECOVER ACTUAL DAMAGES, INCLUDING COSTS AND ATTORNEYS' FEES, AND, IN APPROPRIATE CIRCUMSTANCES, PUNITIVE DAMAGES FROM THE WILLFUL VIOLATOR.

## **8. Dissolution of the Committee**

Effective on the Effective Date, the Committee shall have no further powers or duties and shall be dissolved for all purposes; *provided, however*, that the Committee and the Professionals employed by the Committee shall be entitled to reasonable compensation and reimbursement of actual, necessary expenses for the preparation, filing, and prosecution of Final Fee Applications, upon the submission of invoices to the Debtors. Any time or expenses incurred in the preparation, filing, and prosecution of Final Fee Applications shall be disclosed by each Professional in its Final Fee Application and shall be subject to approval of the Bankruptcy Court.

## **9. Studio Matters**

The Debtors have timely performed all of their payment obligations to the Studios arising under Section 1(b) of that certain Accommodation Agreement among the Studios and the

Debtors, as approved by the Bankruptcy Court Order entered on March 23, 2010, at Docket No. 791 (the “Accommodation Agreement”). The Studios, Warner Home Video, or the B Studios shall commence any revenue share audits of any “overages” for any rental or sale of any inventory of the Debtors no later than August 31, 2010.

## **10. Waiver of Objection to Professional Fees**

The Committee, each member of the Committee, the GUC Liquidating Trust, and the GUC Liquidating Trustee shall, pursuant to the Term Sheet, be deemed to have waived, subject to the occurrence of and upon the Effective Date, any right any of them may have under the Cash Collateral Order, any other order of the Bankruptcy Court or any other court, or applicable law to challenge or object to the fees and expenses of the financial advisors (including Jefferies & Company, Inc., on behalf of Lenado, and Houlihan Lokey, on behalf of the Pre-petition First Lien Term Administrative Agent and certain of the Pre-petition First Lien Term Lenders, and legal counsel, including O’Melveny & Myers LLP, and Tavenner & Beran LP, on behalf of Lenado, and Brown Rudnick LLP, Christian & Barton LLP, and Osler, Hoskin & Harcourt LLP, on behalf of the Pre-petition First Lien Term Administrative Agent and certain of the Pre-petition First Lien Term Lenders, and any other legal counsel retained by the Joint First Lien Collateral Agent or the Pre-petition First Lien Collateral Agent.

### **I. RETENTION OF JURISDICTION**

Under Bankruptcy Code sections 105(a) and 1142, and notwithstanding entry of the Confirmation Order, substantial consummation of the Plan and occurrence of the Effective Date, the Bankruptcy Court shall retain exclusive jurisdiction over all matters arising out of, and related to, the Chapter 11 Cases and the Plan to the fullest extent permitted by law, including, among other things, jurisdiction to:

- Allow, disallow, determine, liquidate, classify, estimate or establish the priority or secured or unsecured status of any Claim or Interest, including the resolution of any request for payment of any Administrative Claim, the resolution of any objections to the allowance or priority of Claims or Interests and the determination of requests for the payment of claims entitled to priority under Bankruptcy Code section 507(a)(1), including compensation of any reimbursement of expenses of parties entitled thereto;
- Hear and determine all applications for compensation and reimbursement of expenses of Professionals under the Plan or under Bankruptcy Code sections 330, 331, 503(b), 1103, and 1129(a)(4); *provided, however*, that from and after the Effective Date, the payment of the fees and expenses of the Retained Professionals of the Liquidating Trusts and/or the Liquidating Trustees shall be made in the ordinary course of business and shall not be subject to the approval of the Bankruptcy Court;
- Hear and determine all matters with respect to the assumption or rejection of any executory contract or unexpired lease to which a Debtor is a party or with respect to which a Debtor may be liable, and to hear, determine and, if necessary, liquidate any Claims arising therefrom;

- Effectuate performance of and payments under the provisions of the Plan or the Liquidating Trust Agreements;
- Hear and determine any and all adversary proceedings, motions, applications and contested or litigated matters arising out of, under or related to the Chapter 11 Cases, the Plan or the Liquidating Trust Agreements;
- Enter such orders as may be necessary or appropriate to execute, implement or consummate the provisions of the Plan and all contracts, instruments, releases and other agreements or documents created in connection with the Plan, the Disclosure Statement or the Confirmation Order;
- Hear and determine disputes arising in connection with the interpretation, implementation, consummation or enforcement of the Plan, including disputes arising under agreements, documents or instruments executed in connection with the Plan;
- Consider any modifications of the Plan, cure any defect or omission or reconcile any inconsistency in any order of the Bankruptcy Court, including, without limitation, the Confirmation Order;
- Issue injunctions, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any entity with implementation, consummation, or enforcement of the Plan or the Confirmation Order;
- Enter and implement such orders as may be necessary or appropriate if the Confirmation Order is for any reason reversed, stayed, revoked, modified or vacated;
- Hear and determine any matters arising in connection with or relating to the Plan, the Disclosure Statement, the Confirmation Order or any contract, instrument, release or other agreement or document created in connection with the Plan, the Disclosure Statement or the Confirmation Order;
- Enforce all orders, judgments, injunctions, releases, exculpations, indemnifications and rulings entered in connection with the Chapter 11 Cases;
- Except as otherwise limited herein, recover all assets of the Debtors and property of the Estates, wherever located;
- Hear and determine matters concerning state, local and federal taxes in accordance with Bankruptcy Code sections 346, 505 and 1146;
- Hear and determine all matters related to the property of the Estates from and after the Confirmation Date;
- Hear and determine the Causes of Action;

- Hear and determine all disputes involving the existence, nature or scope of the injunctions, indemnification, exculpation and releases granted pursuant to the Plan;
- Hear and determine all matters related to (i) the property of the Estates from and after the Confirmation Date, (ii) the winding up of the Debtors' affairs, and (iii) the activities of the Liquidating Trusts and/or the Liquidating Trustees, including (A) challenges to or approvals of the Liquidating Trustees' activities, (B) resignation, incapacity or removal of the Liquidating Trustees and successor Liquidating Trustees, (C) reporting by, termination of and accounting by the Liquidating Trustees, (D) the settlement of any Claims or Causes of Action, and (E) release of the Liquidating Trustees from their duties;
- Hear and determine disputes with respect to compensation of the Liquidating Trustees and the Liquidating Trustees' Professionals;
- Hear and determine all disputes involving the existence, nature and/or scope of the injunctions and releases provided herein, including any dispute relating to any liability arising out of any termination of employment or the termination of any employee or retiree benefit provision, regardless of whether such termination occurred prior to or after the Effective Date;
- Hear and determine such other matters as may be provided in the Confirmation Order or as may be authorized under, or not inconsistent with, provisions of the Bankruptcy Code;
- Enforce all orders previously entered by the Bankruptcy Court in the Chapter 11 Cases;
- Dismiss any and/or all of the Chapter 11 Cases; and
- Enter a final decree closing the Chapter 11 Cases.

## **J. MISCELLANEOUS PROVISIONS**

### **1. Modifications and Amendments**

Notwithstanding anything to the contrary in the Plan, any waiver or modification of any provision of the Plan requires the prior written consent of the Requisite Lenders under both Pre-petition First Lien Credit Agreements. Subject to the prior written consent of the Requisite Lenders under both Pre-petition First Lien Credit Agreements, the Debtors may alter, amend or modify the Plan or any Exhibits thereto under Bankruptcy Code section 1127(a) at any time prior to the Confirmation Date. Notwithstanding the preceding two sentences, the Committee's written consent to any waiver, modification or amendment of the Plan shall be obtained if such waiver, modification or amendment would be inconsistent with rights of and the benefits conferred upon the Committee, Holders of General Unsecured Claims, Holders of Administrative Claims, the Studios, or Warner Home Video pursuant to the Global Plan Settlement or would adversely effect the payment of General Unsecured Claims or

Administrative Claims. After the Confirmation Date and prior to substantial consummation of the Plan as defined in Bankruptcy Code section 1101(2), the Debtors may, under Bankruptcy Code section 1127(b), institute proceedings in the Bankruptcy Court to remedy any defect or omission or reconcile any inconsistencies in the Plan, the Disclosure Statement or the Confirmation Order, and such matters as may be necessary to carry out the purpose and effect of the Plan so long as such proceedings do not adversely affect the treatment of Holders of Claims under the Plan; provided, however, that prior notice of such proceedings shall be served in accordance with the Bankruptcy Rules or order of the Bankruptcy Court.

## **2. Severability of Plan Provisions**

If, prior to Confirmation, any term or provision of the Plan is held by the Bankruptcy Court to be invalid, void or unenforceable, then the Bankruptcy Court, at the request of the Debtors, shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of the Plan shall remain in full force and effect and shall in no way be affected, impaired or invalidated by such holding, alteration or interpretation. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

## **3. Successors and Assigns**

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

## **4. Payment of Statutory Fees**

All fees then due and payable pursuant to 28 U.S.C. § 1930, as determined by the Bankruptcy Court at the Confirmation Hearing, shall be paid on or before the Effective Date by the Debtors. All such fees that become due and payable thereafter by a Debtor shall be paid by the Liquidating Trustees in an amount corresponding to the amount of distributions made by each Liquidating Trustee, as determined in accordance with 28 U.S.C. § 1930. The Liquidating Trustees shall pay their respective quarterly fees to the U.S. Trustee until the Chapter 11 Cases are closed or converted and/or the entry of final decrees. The Debtors, through the Liquidating Trusts, shall file post-confirmation quarterly reports or any pre-confirmation monthly operating reports not filed as of the Confirmation Hearing in conformance with the U.S. Trustee Guidelines. The U.S. Trustee shall not be required to file a request for payment of its quarterly fees, which shall be paid by the Debtors and/or the Liquidating Trustees.

## **5. Revocation, Withdrawal or Non-Consummation**

Subject to the prior written consent of the Requisite Lenders under both Pre-petition First Lien Credit Agreements, the Debtors reserve the right to revoke or withdraw the Plan as to any or all of the Debtors prior to the Confirmation Date and to file subsequent plans. If the Debtors revoke or withdraw the Plan as to any or all of the Debtors, or if Confirmation or consummation

of the Plan as to any or all of the Debtors does not occur, then, with respect to such Debtors, (a) the Plan shall be null and void in all respects, (b) any settlement or compromise embodied in the Plan (including the fixing or limiting to an amount certain any Claim or Class of Claims), assumption or rejection of executory contracts or leases effected by the Plan and any document or agreement executed pursuant to the Plan, shall be deemed null and void, and (c) nothing contained in the Plan, and no acts taken in preparation for consummation of the Plan, shall (i) constitute or be deemed to constitute a waiver or release of any Claims by or against, or any Interests in, such Debtors or any other Person, (ii) prejudice in any manner the rights of such Debtors or any other Person, or (iii) constitute an admission of any sort by such Debtors or any other Person.

## **6. Service of Documents**

Any notice, request or demand required or permitted to be made or provided to or upon a Debtor, the Committee, and/or the Liquidating Trustees under the Plan shall be: (a) in writing, (b) served by (i) certified mail, return receipt requested, (ii) hand delivery, (iii) overnight delivery service, (iv) first class mail, or (v) facsimile transmission, (c) deemed to have been duly given or made when actually delivered or, in the case of notice by facsimile transmission, when received and telephonically confirmed, and (d) addressed as follows:

### ***The Debtors:***

if by overnight, regular mail or hand delivery:

Wesley D. Sand, President  
Movie Gallery, Inc.  
9275 SW Peyton Lane  
Wilsonville, OR 97070  
Tel: (503) 570-1600  
Fax: (503) 570-5108

with a copy to:

John A. Bicks  
Louis A. Curcio  
Sonnenschein Nath & Rosenthal LLP  
1221 Avenue of the Americas  
New York, NY 10020-1089  
Tel: (212) 768-6700  
Fax: (212) 768-6800

and a copy to:

Michael A. Condyles (VA 27807)  
Peter J. Barrett (VA 46179)  
Jeremy S. Williams (VA 77469)  
KUTAK ROCK LLP  
Bank of America Center  
1111 East Main Street, Suite 800



Richmond, Virginia 23219-3500  
Tel: (804) 644-1700  
Fax: (804) 783-6192

***The Committee:***

Robert J. Feinstein  
Gabrielle A. Rohwer  
Pachulski Stang Ziehl & Jones LLP  
780 Third Street  
36th Floor  
New York, NY 10017  
Tel: (212) 561-7700  
Fax: (212) 561-7777

***The First Lien Term Lenders Liquidating Trust/Trustee:***

[ ]  
[ ]  
[ ]  
[ ]  
[ ]

With a copy to:

Jeffrey Jonas  
Brown Rudnick LLP  
One Financial Center  
Boston, MA 02111  
Tel: (617) 856-8577  
Fax: (617) 289-0551

and also to:

Christopher J. Carolan  
Brown Rudnick LLP  
Seven Times Square  
New York, NY 10036  
Tel: (212) 209-4937  
Fax: (212) 938-2871

***The GUC Liquidating Trust/Trustee:***

[ ]  
[ ]  
[ ]  
[ ]  
[ ]

## **7. Plan Supplement(s)**

Exhibits to the Plan not attached thereto shall be filed in one or more Plan Supplements by the Exhibit Filing Date. Any Plan Supplement (and amendments thereto) filed by the Debtors shall be deemed an integral part of the Plan and shall be incorporated by reference as if fully set forth therein. Substantially contemporaneously with their filing, the Plan Supplements may be viewed at the office of the clerk of the Bankruptcy Court or its designee during normal business hours, by visiting the Bankruptcy Court's website at [www.vaeb.uscourts.gov](http://www.vaeb.uscourts.gov) (PACER account and password required) or by visiting [www.kccllc.net/moviegallery](http://www.kccllc.net/moviegallery) (password required). Holders of Claims and/or Interests may obtain a copy of any Plan Supplements upon reasonable written request to the Claims Agent. The documents contained in any Plan Supplements shall be approved by the Bankruptcy Court pursuant to the Confirmation Order.

## **8. Tax Reporting And Compliance**

The First Lien Term Lenders Liquidating Trustee is hereby authorized, on behalf of each of the Debtors, to request an expedited determination under Bankruptcy Code section 505(b) of the tax liability of the Debtors for all taxable periods ending after the Commencement Date through and including the Effective Date.

## **9. Filing Of Additional Documents**

On or before substantial consummation of the Plan, the Debtors shall file such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan.

# **VI. CONFIRMATION PROCEDURES**

## **A. CONFIRMATION HEARING**

**The Confirmation Hearing will commence on [xx], 2010 at [xx] prevailing Eastern Time.  
The Plan Objection Deadline is [ ] [p.m.] prevailing Eastern Time on [ ], 2010.**

All Plan Objections must be Filed with the Bankruptcy Court and served on the Debtors and certain other parties in accordance with the Disclosure Statement Order on or before the Plan Objection Deadline.

<p><b>THE BANKRUPTCY COURT WILL NOT CONSIDER PLAN OBJECTIONS UNLESS THEY ARE TIMELY-SERVED AND FILED IN COMPLIANCE WITH THE DISCLOSURE STATEMENT ORDER.</b></p>
---

**Plan Objections must be served on all of the following parties:**

John A. Bicks  
Linda Bechutsky  
Louis A. Curcio  
SONNENSCHN NATH & ROSENTHAL LLP  
1221 Avenue of the Americas  
New York, NY 10020-1089  
Telephone: (212) 768-6700

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

***Attorneys for Debtors and Debtors in Possession***

Robert Feinstein  
Gabrielle A. Rohwer  
PACHULSKI STANG ZIEHL & JONES LLP  
780 Third Avenue, 36th Floor  
New York, NY 10017  
Telephone: (212) 561-7700

Tara L. Elgie  
HUNTON & WILLIAMS, LLP  
Riverfront Plaza, East Tower  
951 East Byrd Street  
Richmond, VA 23219  
Telephone (804) 788-8327

***Counsel for the Official Committee of Unsecured Creditors***

Christopher J. Carolan  
BROWN RUDNICK LLP  
Seven Times Square  
New York, NY 10036  
Tel: (212) 209-4800

Augustus C. Epps, Jr.  
CHRISTIAN & BARTON, L.L.P.  
909 East Main Street, Suite 1200  
Richmond, VA 23219  
Tel: (804) 697-4104

***Counsel for the Pre-petition First Lien Term Agent***

Stephen Warren  
Andrew Parlen  
O'MELVENY & MYERS LLP  
400 South Hope Street  
Los Angeles, CA 90071  
Tel: (213) 430-6000

Lynn L. Tavenner  
TAVENNER & BERAN, PLC  
20 North Eighth Street, Second Floor  
Richmond, VA 23219  
Tel: (804) 783-8300

***Counsel for Lenado***

CLERK OF THE BANKRUPTCY COURT  
United States Bankruptcy Court for the Eastern  
District of Virginia, Richmond Division  
701 East Broad Street  
Richmond, Virginia 23219

OFFICE OF THE UNITED STATES  
TRUSTEE FOR THE EASTERN DISTRICT  
OF VIRGINIA  
Robert Van Arsdale  
600 East Main Street  
Suite 301  
Richmond, Virginia 23219

## **B. STATUTORY REQUIREMENTS FOR CONFIRMATION OF THE PLAN**

At the Confirmation Hearing, the Bankruptcy Court will determine whether the Plan satisfies the requirements of section 1129 of the Bankruptcy Code. The Debtors believe that: (1) the Plan satisfies or will satisfy all of the statutory requirements of chapter 11 of the Bankruptcy Code; (2) they have complied or will have complied with all of the requirements of chapter 11 of the Bankruptcy Code; and (3) the Plan has been proposed in good faith. Specifically, the Debtors believe that the Plan satisfies or will satisfy the applicable Confirmation requirements of section 1129 of the Bankruptcy Code set forth below.

- The Plan complies with the applicable provisions of the Bankruptcy Code.
- The Debtors, as the Plan proponents, will have complied with the applicable provisions of the Bankruptcy Code.
- The Plan has been proposed in good faith and not by any means forbidden by law.
- Any payment made or promised under the Plan for services or for costs and expenses in, or in connection with, the Chapter 11 Cases, or in connection with the Plan and incident to the case, has been disclosed to the Bankruptcy Court, and any such payment: (1) made before the Confirmation of the Plan is reasonable; or (2) is subject to the approval of the Bankruptcy Court as reasonable, if it is to be fixed after Confirmation of the Plan.
- Either each Holder of an Impaired Claim has accepted the Plan, or will receive or retain under the Plan on account of such Claim, property of a value, as of the Effective Date of the Plan, that is not less than the amount that such Holder would receive or retain if the Debtors were liquidated on that date under chapter 7 of the Bankruptcy Code, including pursuant to section 1129(b) of the Bankruptcy Code for Interests deemed to reject the Plan.
- Each Class of Claims that is entitled to vote on the Plan has either accepted the Plan or is not Impaired under the Plan, or the Plan can be confirmed without the approval of such voting Class pursuant to section 1129(b) of the Bankruptcy Code.
- Except to the extent that the Holder of a particular Claim will agree to a different treatment of its Claim, the Plan provides that Administrative Claims and Other Priority Claims will be paid in full on the Effective Date, or as soon thereafter as is reasonably practicable.
- At least one Class of Impaired Claims has accepted the Plan, determined without including any acceptance of the Plan by any insider holding a Claim in that Class.
- Confirmation of the Plan is feasible.
- The Debtors have paid the required filing fees pursuant to 28 U.S.C. § 1930 to the clerk of the Bankruptcy Court.

- In addition to the filing fees paid to the clerk of the Bankruptcy Court, the Debtors will pay quarterly fees on the last day of the calendar month, following the calendar quarter for which the fee is owed in each of the Debtors' Chapter 11 Cases for each quarter (including any fraction thereof), to the Office of the U.S. Trustee, until the case is converted or dismissed, whichever occurs first.

### **1. Best Interests of Creditors Test/Liquidation Analysis**

Even if a plan is accepted by the holders of each class of claims and interests, the Bankruptcy Code requires a bankruptcy court to determine that such plan is in the best interests of all holders of claims or interests that are impaired by that plan and that have not accepted that Plan. The "best interests" test, as set forth in Bankruptcy Code section 1129(a)(7), requires a bankruptcy court to find either that all members of an impaired class of claims or interests have accepted the plan or that the plan will provide a member who has not accepted the plan with a recovery of property of a value, as of the effective date of the plan, that is not less than the amount that such holder would recover if the debtor were liquidated under chapter 7 of the Bankruptcy Code.

To calculate the probable distribution to holders of each impaired class of claims and interests if the debtors were liquidated under chapter 7, a bankruptcy court must first determine the aggregate dollar amount that would be generated from a debtor's assets if its chapter 11 cases were converted to chapter 7 cases under the Bankruptcy Code. Because the Plan is a liquidating plan, the "liquidation value" in the hypothetical chapter 7 liquidation analysis for purposes of the "best interests" test is substantially similar to the estimates of the results of the chapter 11 liquidation contemplated by the Plan. However, the Plan proponents believe that in a chapter 7 liquidation, there would be additional costs and expenses that the Estates would incur as a result of the ineffectiveness associated with replacing existing management and professionals in a chapter 7 case.

Costs of liquidation under chapter 7 of the Bankruptcy Code would include the compensation of a trustee, as well as compensation of counsel and other professionals retained by the trustee, asset disposition expenses, all unpaid expenses incurred by the Debtors in their Chapter 11 Cases (such as compensation of attorneys, financial advisors and accountants) that are allowed in the chapter 7 cases, litigation costs, and Claims arising from the operations of the Debtors during the pendency of the Chapter 11 Cases.

In order to determine the amount of hypothetical chapter 7 liquidation value available to Creditors, the Plan proponents have prepared a liquidation analysis, a copy of which is annexed hereto as Exhibit B (the "Liquidation Analysis"). The Debtors believe that such Liquidation Analysis demonstrates that in a chapter 7 liquidation, Holders of certain Claims against the Debtors would receive less in recovery as compared to the recovery projected under the Plan. Moreover, the Liquidation Analysis reflects that General Unsecured Creditors would receive nothing on account of their Claims in a liquidation under chapter 7 versus the recovery projected for those Claims under the Plan.

Notwithstanding the foregoing, the Plan proponents believe that the Liquidation Analysis with respect to the Debtors is inherently speculative. The Liquidation Analysis for the Debtors necessarily contains estimates of the net proceeds that will be available after completion of a

chapter 7 wind-down. Claims estimates are based solely upon the Debtors' review of any Claims filed (a review that is ongoing) and the Debtors' books and records. No order or finding has been entered by the Bankruptcy Court estimating or otherwise fixing the amount of Claims at the projected amounts of Allowed Claims set forth in the Liquidation Analysis.

## **2. Feasibility**

The Debtors believe that the Cash on hand and the proceeds from the Other Assets will be sufficient to make all payments required by the Plan. Accordingly, the Debtors believe that the Plan is feasible. The Debtors have ceased operations and are not seeking to reorganize and are establishing the Liquidating Trusts as of the Effective Date.

## **3. Acceptance by Impaired Classes**

The Bankruptcy Code requires, as a condition to confirmation, that, except as described in the following section, each class of claims or interests that is impaired under a plan, accept the plan. A class that is not "impaired" under a plan is deemed to have accepted the plan and, therefore, solicitation of acceptances with respect to such class is not required. A class is "impaired" unless the plan: (a) leaves unaltered the legal, equitable and contractual rights to which the claim or the interest entitles the holder of such claim or interest; (b) cures any default and reinstates the original terms of such obligation; or (c) provides that, on the consummation date, the holder of such claim or interest receives cash equal to the allowed amount of that claim or, with respect to any interest, any fixed liquidation preference to which the holder of such equity interest is entitled or any fixed price at which the debtor may redeem the security.

Section 1126(c) of the Bankruptcy Code defines acceptance of a plan by a class of impaired claims as acceptance by holders of at least two-thirds in dollar amount and more than one-half in number of claims in that class, but for that purpose counts only those who actually vote to accept or to reject the plan. Thus, a class of claims will have voted to accept the plan only if two-thirds in dollar amount and a majority in number actually voting cast their ballots in favor of acceptance.

The Claims in Classes 1, 2 and 3 are not Impaired under the Plan, and, as a result, the Holders of such Claims are deemed to have accepted the Plan.

The Voting Classes are Impaired under the Plan, and as a result, the Holders of Claims in such Classes are entitled to vote on the Plan. Pursuant to section 1129 of the Bankruptcy Code, the Holders of Claims in the Voting Classes must accept the Plan for the Plan to be confirmed without application of the "fair and equitable test" to such Classes, and without considering whether the Plan "discriminates unfairly" with respect to such Classes, as both standards are described herein. As stated above, Classes of Claims will have accepted the Plan if the Plan is accepted by at least two-thirds in amount and a majority in number of the Claims of each such Class (other than any Claims of creditors designated under section 1126(e) of the Bankruptcy Code) that have voted to accept or reject the Plan.

## **4. Confirmation Without Acceptance by All Impaired Classes**

Section 1129(b) of the Bankruptcy Code allows a bankruptcy court to confirm a plan even if all impaired classes entitled to vote on the plan have not accepted it, provided that the

plan has been accepted by at least one impaired class. Pursuant to section 1129(b) of the Bankruptcy Code, notwithstanding an impaired class's rejection or deemed rejection of the plan, such plan will be confirmed, at the plan proponent's request, in a procedure commonly known as "cram down," so long as the plan does not "discriminate unfairly" and is "fair and equitable" with respect to each class of claims or interests that is impaired under, and has not accepted, the plan.

**a. No Unfair Discrimination**

This test applies to classes of claims or interests that are of equal priority and are receiving different treatment under the Plan. The test does not require that the treatment be the same or equivalent, but that such treatment is "fair." In general, bankruptcy courts consider whether a plan discriminates unfairly in its treatment of classes of claims of equal rank (e.g., classes of the same legal character). Bankruptcy courts will take into account a number of factors in determining whether a plan discriminates unfairly, and, accordingly, a plan could treat two classes of unsecured creditors differently without unfairly discriminating against either class.

**b. Fair and Equitable Test**

This test applies to classes of different priority and status (e.g., secured versus unsecured) and includes the general requirement that no class of claims receive more than 100% of the amount of the allowed claims in such class. As to the dissenting class, the test sets different standards depending on the type of claims or interests in such class.

Secured Claims: The condition that a plan be "fair and equitable" to a non-accepting class of secured claims includes the requirements that: (1) the holders of such secured claims retain the liens securing such claims to the extent of the allowed amount of the claims, whether the property subject to the liens is retained by the debtor or transferred to another entity under the plan; and (2) each holder of a secured claim in the class receives deferred cash payments totaling at least the allowed amount of such claim with a present value, as of the effective date of the plan, at least equivalent to the value of the secured claimant's interest in the debtor's property subject to the liens.

Unsecured Claims: The condition that a plan be "fair and equitable" to a non-accepting class of unsecured claims includes the following requirement that either: (1) the plan provides that each holder of a claim of such class receive or retain on account of such claim property of a value, as of the effective date of the plan, equal to the allowed amount of such claim; or (2) the holder of any claim or any interest that is junior to the claims of such class will not receive or retain under the plan on account of such junior claim or junior interest any property.

Interests: The condition that a plan be "fair and equitable" to a non-accepting class of interests includes the requirements that either: (1) the plan provides that each holder of an interest in that class receives or retains under the plan on account of that interest property of a value, as of the effective date of the plan, equal to the greater of: (a) the allowed amount of any fixed liquidation preference to which such holder is entitled; (b) any fixed redemption price to which such holder is entitled; or (c) the value of such interest; or (2) if the class does not receive the amount as required under (1) hereof, no class of interests junior to the non-accepting class may receive a distribution under the plan.

The Debtors will seek Confirmation of the Plan under section 1129(b) of the Bankruptcy Code, to the extent applicable, in view of the deemed rejection by Classes 6 and 7. To the extent that any of the Voting Classes vote to reject the Plan, the Debtors further reserve the right (1) to seek Confirmation of the Plan under section 1129(b) of the Bankruptcy Code and/or (2) to modify the Plan in accordance with Article XII.A of the Plan.

The votes of Holders of Class 6 Claims and Class 7 Interests are not being solicited because, under the Plan, there will be no distribution to the Holders of Class 6 Claims or Class 7 Interests. All Class 6 Claims and Class 7 Interests will be deemed canceled and will be of no further force and effect, whether surrendered for cancellation or otherwise. Classes 6 and 7 are, therefore, conclusively deemed to have rejected the Plan pursuant to section 1129(b) of the Bankruptcy Code.

Notwithstanding the deemed rejection by Classes 6 and 7 or any Class that votes to reject the Plan, the Debtors do not believe that the Plan discriminates unfairly against any Impaired Class of Claims or Interests. The Debtors believe that the Plan and the treatment of all Classes of Claims and Interests under the Plan satisfy the foregoing requirements for nonconsensual confirmation of the Plan.

## **VII. PLAN-RELATED RISK FACTORS AND ALTERNATIVES TO CONFIRMATION AND CONSUMMATION OF THE PLAN**

**PRIOR TO VOTING TO ACCEPT OR REJECT THE PLAN, ALL HOLDERS OF CLAIMS AND INTERESTS THAT ARE IMPAIRED SHOULD READ AND CONSIDER CAREFULLY THE FACTORS SET FORTH HEREIN, AS WELL AS ALL OTHER INFORMATION SET FORTH OR OTHERWISE REFERENCED IN THIS DISCLOSURE STATEMENT.**

### **A. PARTIES IN INTEREST MAY OBJECT TO THE DEBTORS' CLASSIFICATION OF CLAIMS AND INTERESTS**

Section 1122 of the Bankruptcy Code provides that a plan may place a claim or an interest in a particular class only if such claim or interest is substantially similar to the other claims or interests in such class. The Debtors believe that the classification of Claims and Interests under the Plan complies with the requirements set forth in the Bankruptcy Code because the Debtors created seven Classes of Claims and Interests, each encompassing Claims or Interests, as applicable, that are substantially similar to the other Claims and Interests in each such Class. Nevertheless, there can be no assurance that the Bankruptcy Court will reach the same conclusion.

### **B. FAILURE TO SATISFY VOTE REQUIREMENT**

If votes are received in number and amount sufficient to enable the Bankruptcy Court to confirm the Plan, the Debtors intend to seek, as promptly as practicable thereafter, Confirmation of the Plan. In the event that sufficient votes are not received, the Debtors may seek to accomplish an alternative chapter 11 plan. There can be no assurance that the terms of any such alternative chapter 11 plan would be similar or as favorable to the Holders of Allowed Claims as those proposed in the Plan.



### **C. DEBTORS MAY NOT BE ABLE TO SECURE CONFIRMATION OF THE PLAN**

Section 1129 of the Bankruptcy Code sets forth the requirements for confirmation of a chapter 11 plan, and requires, among other things, a finding by the bankruptcy court that: (a) such plan “does not unfairly discriminate” and is “fair and equitable” with respect to any non-accepting classes; (b) confirmation of such plan feasible; and (c) the value of distributions to non-accepting holders of claims and interests within a particular class under such plan will not be less than the value of distributions such holders would receive if the debtors were liquidated under chapter 7 of the Bankruptcy Code.

There can be no assurance that the requisite acceptances to confirm the Plan will be received. Even if the requisite acceptances are received, there can be no assurance that the Bankruptcy Court will confirm the Plan. A non-accepting Holder of an Allowed Claim might challenge either the adequacy of this Disclosure Statement or whether the balloting procedures and voting results satisfy the requirements of the Bankruptcy Code or Bankruptcy Rules. Even if the Bankruptcy Court determined that the Disclosure Statement, the balloting procedures and voting results were appropriate, the Bankruptcy Court could still decline to confirm the Plan if it found that any of the statutory requirements for Confirmation had not been met, including the requirement that the terms of the Plan do not “unfairly discriminate” and are “fair and equitable” to non-accepting Classes.

Confirmation of the Plan is also subject to certain conditions as described in Article VIII.A of the Plan. If the Plan is not confirmed, it is unclear what distributions, if any, Holders of Allowed Claims would receive with respect to their Allowed Claims.

The Debtors, subject to the terms and conditions of the Plan, reserve the right to modify the terms and conditions of the Plan as necessary for Confirmation. Any such modifications could result in a less favorable treatment of any non-accepting Class, as well as of any Classes junior to such non-accepting Class, than the treatment currently provided in the Plan. Such less favorable treatment could include a distribution of property to the Class affected by the modification of a lesser value than currently provided in the Plan or no distribution of property whatsoever under the Plan.

### **D. NONCONSENSUAL CONFIRMATION**

In the event that any impaired class of claims or interests does not accept a chapter 11 plan, a bankruptcy court may nevertheless confirm such a plan at the proponents’ request if at least one impaired class has accepted the plan (with such acceptance being determined without including the vote of any “insider” in such class), and, as to each impaired class that has not accepted the plan, the bankruptcy court determines that the plan “does not discriminate unfairly” and is “fair and equitable” with respect to the dissenting impaired classes. The Debtors believe that the Plan satisfies these requirements and the Debtors may request such nonconsensual Confirmation in accordance with subsection 1129(b) of the Bankruptcy Code. Nevertheless, there can be no assurance that the Bankruptcy Court will reach this conclusion or confirm the Plan on a nonconsensual basis.

**E. DEBTORS MAY OBJECT TO THE AMOUNT OR CLASSIFICATION OF A CLAIM**

Except as otherwise provided in the Plan, the Debtors reserve the right to object to the amount or classification of any Claim under the Plan. The estimates set forth in this Disclosure Statement cannot be relied on by any Holder of a Claim where such Claim is subject to an objection. Any Holder of a Claim that is subject to an objection thus may not receive its expected share of the estimated distributions described in this Disclosure Statement.

**F. RISK OF NON-OCCURRENCE OF THE EFFECTIVE DATE**

Although the Debtors believe that the Effective Date may occur quickly after the Confirmation Date, there can be no assurance as to such timing, or as to whether the Effective Date will, in fact, occur.

**G. CONTINGENCIES NOT TO AFFECT VOTES OF IMPAIRED CLASSES TO ACCEPT OR REJECT THE PLAN**

The distributions available to Holders of Allowed Claims under the Plan can be affected by a variety of contingencies, including, without limitation, whether or not the Debtors are consolidated and whether the Bankruptcy Court orders certain Allowed Claims to be subordinated to other Allowed Claims. The occurrence of any and all such contingencies, which could affect distributions available to Holders of Allowed Claims under the Plan, will not affect the validity of the vote taken by the Impaired Classes to accept or reject the Plan or require any sort of revote by the Impaired Classes.

**VIII. CERTAIN UNITED STATES FEDERAL INCOME TAX CONSEQUENCES**

The following discussion summarizes certain anticipated U.S. federal income tax consequences of the Plan to the Debtors, the Liquidating Trusts and certain Holders that are entitled to vote to accept or reject the Plan. This discussion is provided for information purposes only and is based on the Internal Revenue Code of 1986, as amended (the "Tax Code"), Treasury regulations promulgated thereunder, judicial authorities, and current administrative rulings and practice, all as in effect as of the date hereof, and all of which are subject to change, possibly with retroactive effect, that could adversely affect the U.S. federal income tax consequences described below.

This discussion does not address all aspects of U.S. federal income taxation that may be relevant to a particular Holder in light of its particular facts and circumstances, or to certain types of Holders subject to special treatment under the Tax Code (for example, governmental entities and entities exercising governmental authority, non-U.S. taxpayers, banks and certain other financial institutions, broker-dealers, insurance companies, tax-exempt organizations, real estate investment trusts, regulated investment companies, persons holding a Claim as part of a hedge, straddle, constructive sale, conversion transaction or other integrated transaction, Holders that are or hold their Claims through a partnership or other pass-through entity, and persons that have a functional currency other than the U.S. dollar). This discussion does not address any aspects of state, local, non-U.S. taxation or U.S. federal taxation other than income taxation. Furthermore, this discussion generally does not address the U.S. federal income tax consequences to Holders that are Unimpaired under the Plan.

The tax treatment of Holders and the character, amount and timing of income, gain or loss recognized as a consequence of the Plan and the distributions provided for by the Plan may vary, depending upon, among other things: (i) whether the Claim (or portion thereof) constitutes a Claim for principal or interest; (ii) the type of consideration received by the Holder in exchange for the Claim and whether the Holder receives distributions under the Plan in more than one taxable year; (iii) whether the Holder is a citizen or resident of the United States for tax purposes, is otherwise subject to U.S. federal income tax on a net basis, or falls into any special class of taxpayers, such as those that are excluded from this discussion as noted above; (iv) the manner in which the Holder acquired the Claim; (v) the length of time that the Claim has been held; (vi) whether the Claim was acquired at a discount; (vii) whether the Holder has taken a bad debt deduction with respect to the Claim (or any portion thereof) in the current or prior years; (viii) whether the Holder has previously included accrued but unpaid interest with respect to the Claim; (ix) the method of tax accounting of the Holder; (x) whether the Claim is an installment obligation for U.S. federal income tax purposes; (xi) whether the Claim, and any instrument received in exchange therefor, is considered a “security” for U.S. federal income tax purposes; and (xii) whether the “market discount” rules are applicable to the Holder. Therefore, each Holder should consult its tax advisor for information that may be relevant to its particular situation and circumstances, and the particular tax consequences to such Holder of the transactions contemplated by the Plan.

A substantial amount of time may elapse between the date of this Disclosure Statement and the receipt of a final distribution under the Plan. Events occurring after the date of this Disclosure Statement, such as additional tax legislation, court decisions or administrative changes, could affect the U.S. federal income tax consequences of the Plan and the transactions contemplated thereunder. There can be no assurance that the IRS will not take a contrary view with respect to one or more of the issues discussed below. No ruling has been or will be sought from the IRS with respect to any of the tax aspects of the Plan, and no opinion of counsel has been or will be obtained by the Debtors with respect thereto. No representations are being made regarding the particular tax consequences of the confirmation or implementation of the Plan as to any Holder. This discussion is not binding upon the IRS or other taxing authorities. No assurance can be given that the IRS or another authority would not assert, or that a court would not sustain, a different position from any discussed herein.

**THE FOLLOWING DISCUSSION IS INTENDED ONLY AS A SUMMARY OF CERTAIN U.S. FEDERAL TAX CONSEQUENCES OF THE PLAN AND IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING WITH A TAX PROFESSIONAL. THE FOLLOWING DISCUSSION IS FOR INFORMATION PURPOSES ONLY AND IS NOT TAX ADVICE. THE TAX CONSEQUENCES ARE IN MANY CASES UNCERTAIN AND MAY VARY DEPENDING ON A HOLDER’S PARTICULAR CIRCUMSTANCES. ACCORDINGLY, EACH HOLDER IS STRONGLY URGED TO CONSULT ITS TAX ADVISOR REGARDING THE U.S. FEDERAL, STATE, LOCAL, AND APPLICABLE NON-U.S. INCOME AND OTHER TAX CONSEQUENCES OF THE PLAN.**

**TO ENSURE COMPLIANCE WITH TREASURY DEPARTMENT CIRCULAR 230, HOLDERS ARE HEREBY NOTIFIED THAT: (A) ANY DISCUSSION OF U.S. FEDERAL TAX ISSUES IN THIS DISCLOSURE STATEMENT IS NOT INTENDED OR WRITTEN TO BE RELIED UPON, AND CANNOT BE RELIED UPON, BY HOLDERS FOR THE PURPOSE OF AVOIDING PENALTIES THAT MAY BE**

**IMPOSED ON HOLDERS UNDER THE TAX CODE; (B) SUCH DISCUSSION IS BEING USED IN CONNECTION WITH THE PROMOTION OR MARKETING (WITHIN THE MEANING OF CIRCULAR 230) BY THE DEBTORS OF THE TRANSACTIONS OR MATTERS ADDRESSED HEREIN; AND (C) EACH HOLDER SHOULD SEEK ADVICE BASED ON ITS PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT TAX ADVISOR.**

**A. CERTAIN TAX CONSEQUENCES OF THE PLAN**

**1. Treatment of Transfers to and Distributions by the Liquidating Trusts**

**a. Treatment of Holders of Interests in the Liquidating Trusts**

For all U.S. federal income tax purposes, all parties must treat the transfer of assets to the Liquidating Trusts as (i) a transfer of the assets by the Debtors to the beneficiaries of the Liquidating Trusts followed by (ii) a transfer of the assets by such beneficiaries to the Liquidating Trusts, with the beneficiaries being treated as the grantors and owners of the Liquidating Trusts. Each Holder that is a beneficiary of the Liquidating Trusts will generally recognize gain (or loss) in its taxable year that includes the Effective Date in an amount equal to the difference between the amount realized in respect of its Claim and its adjusted tax basis in such Claim. The amount realized for this purpose should generally equal the fair market value of the assets (including Cash) deemed received for U.S. federal income tax purposes under the Plan in respect of such Holder's Claim.

A Holder's tax basis in a Claim should generally equal the amount advanced to the applicable Debtor(s) or an amount included in income as a result of provision of goods or services to the applicable Debtor(s), except to the extent that a bad debt loss had been previously taken. A Holder's gain or loss should generally be capital gain or loss except to the extent that the Claim arose in the ordinary course of a trade or business of such Holder in which case the gain or loss will be ordinary. Any capital gain or loss recognized by a Holder should be long-term capital gain or loss only with respect to Claims held for more than one year.

A Holder that is deemed to receive for U.S. federal income tax purposes the assets under the Plan in respect of its Claim should generally have a tax basis in such assets in an amount equal to the fair market value of such assets on the date of such deemed receipt and the holding period for such assets generally will begin on the day following the transfer of such assets to the Liquidating Trusts. A Holder may recognize additional income or loss to the extent that the amount of payments received from the Liquidating Trusts differ from the amount determined to be its pro rata share of the fair market value of the assets transferred to the Liquidating Trusts by the Debtors.

The Liquidating Trustees and the beneficiaries of the Liquidating Trusts shall value the assets consistently and use such valuations for all U.S. federal income tax purposes. The Liquidating Trust Agreements will provide for (i) consistent valuation of the assets by the Liquidating Trustees and the beneficiaries of the Liquidating Trusts, (ii) the Liquidating Trusts to determine the fair market value of their respective assets, and (iii) the Liquidating Trusts to send such determination to each beneficiary of the Liquidating Trusts.

## **b. Tax Treatment of Liquidating Trusts**

### **(1) General**

As described in Article V.D.6(a) of the Plan, and except as otherwise described below, the parties believe and intend to take the position that the Liquidating Trusts qualify as liquidating trusts for U.S. federal income tax purposes.

In general, a liquidating trust is not a separate taxable entity, but rather is treated for U.S. federal income tax purposes as a “grantor trust” (i.e., a pass-through entity) whereby the grantors of the trust are considered to own a proportionate share of the assets of the liquidating trust. Merely establishing a trust as a liquidating trust, however, does not ensure that it will be treated as a grantor trust for U.S. federal income tax purposes. The IRS, in Revenue Procedure 94-45, 1994-2 C.B. 684, sets forth the criteria for obtaining an IRS ruling as to the grantor trust status of a liquidating trust under a Chapter 11 plan. The Liquidating Trusts have been structured with the intention of complying with such criteria. Pursuant to the Plan, and in conformity with Revenue Procedure 94-45, all parties (including, without limitation, the Debtors, the Liquidating Trustees and the Holders) are required to treat, for U.S. federal income tax purposes, the Liquidating Trusts as grantor trusts of which the Holders are the grantors (i.e., owners), and the following discussion assumes that the Liquidating Trusts will be so respected for U.S. federal income tax purposes.

The Debtors, however, do not intend to obtain a ruling from the IRS. Accordingly, there can be no assurance that the IRS would not take a contrary position. A different classification could result in a different income tax treatment of the Liquidating Trusts or a reserve within the Liquidating Trusts. Such treatment could include, but is not limited to, the imposition of an entity-level tax on either the Liquidating Trusts or a reserve within the Liquidating Trusts. Such a tax, if imposed, could result in a material reduction in the amount that would otherwise be available for distribution to Holders.

### **(2) Reserves that may be Established by the Liquidating Trustees**

A portion of the assets transferred to the Liquidating Trusts will be attributable to Disputed Claims. The tax treatment of such transfers of assets generally will be the same as the tax treatment of transfers of assets with respect to Allowed Claims. The Liquidating Trustees, however, may create one or more reserve accounts for the assets held on account of Disputed Claims. Under the Tax Code, amounts earned by an escrow account, settlement fund or similar fund must be subject to current tax. Although the U.S. Treasury Department has issued certain Treasury regulations addressing the tax treatment of such funds, the U.S. Treasury Department has not issued Treasury regulations to address the tax treatment of such funds in a bankruptcy context. Accordingly, the proper tax treatment of such funds, and the extent to which a reserve established by the Liquidating Trustees would be treated as such a fund, is uncertain. Depending on the facts and the relevant law, such funds may be treated as grantor trusts to debtors, grantor trusts to claimholders, or as trusts subject to an entity-level tax. Except as described below, the Debtors intend to treat the assets held in any reserve established by the Liquidating Trustees on account of Disputed Claims as having been transferred to the Liquidating Trusts by the Holders of such Disputed Claims, and the Holders of the Disputed Claims as grantors and owners of the Liquidating Trusts.

Under the Plan, the Liquidating Trusts may be allowed, for federal income tax purposes, to treat an account, trust, fund or reserve that holds assets to satisfy the Disputed Claims as a DOF taxable under IRC Section 468B and Treasury Income Tax Regulation Section 1.468B-9. If the Liquidating Trustees are to file an election to treat a reserve as a DOF, then the DOF would be treated as a separate taxable entity for U.S. federal income tax purposes, and would be required to file tax returns and pay any tax due on income earned or gain recognized that was attributable to the assets held in the reserve with respect to which the DOF election was made. Any tax liability of the DOF will reduce the distributions to certain Holders. For purposes of determining the DOF's federal income tax liability, a DOF would not be required to report as income transfers of assets to the DOF, but would be required to include in income all income received or accrued from assets transferred to the DOF. The DOF would not be allowed a tax deduction for a distribution of assets or of the net after-tax income earned by the DOF to a Holder. The initial tax basis of assets transferred to a DOF would be the fair market value of the assets determined on the date of transfer to the DOF, and the DOF's holding period would begin on the date of the transfer.

No assurance can be given that the IRS would accept a DOF election made by the Liquidating Trustees with respect to a reserve. If the IRS were to successfully reject a DOF election, the reserve with respect to which the DOF election was made would be subject to the rules described above.

**c. Treatment of the Debtors**

**(1) Recognition of Gain or Loss**

The Debtors will recognize gain or loss equal to the difference between the fair market value of the assets and the adjusted tax basis of such assets. The Debtors anticipate that any net gain resulting from the transfer of assets will be offset by the tax attributes available to the Debtors, such as net operating losses, capital loss carry-forwards, bad debt deductions, asset basis, or other deductions from, or offsets to, income. The Debtors may, however, recognize some alternative minimum tax as a result of the transfer of the assets. Any such tax will be paid by the Debtors or the Liquidating Trusts to the IRS.

The foregoing conclusions are based on, among other things, the Debtors' assumptions concerning the fair market value of the assets and the nature and magnitude of their respective tax attributes. Although the Debtors believe such assumptions are correct and appropriate, the IRS may challenge one or more of those assumptions, and if the IRS were to prevail in any such challenge, the Debtors' Estates could be subject to a tax liability that might be allowed as an Administrative Claim. Such an Allowed Administrative Claim would reduce the funds available to administrative and other Creditors.

**(2) Cancellation of Debt Income**

Under the Tax Code, a U.S. taxpayer generally must include in gross income the amount of any cancellation of indebtedness ("COD") income recognized during the taxable year. COD income generally equals the excess of the adjusted issue price of the indebtedness discharged over the sum of (i) the amount of cash, (ii) the issue price of any new debt, and (iii) the fair market value of any other property transferred by the debtor in satisfaction of such discharged

indebtedness (including stock). COD income also includes any interest that has been previously accrued and deducted but remains unpaid at the time the indebtedness is discharged.

The Tax Code permits a debtor in bankruptcy to exclude its COD income from gross income if the discharge occurs in a title 11 case. Thus, although the Debtors will realize COD income as a result of the satisfaction of Claims, the Debtors will not be required to recognize any of that COD income.

#### **d. Treatment of Holders of Interests**

In accordance with the Plan, Holders of Interests will not receive any recovery under the Plan. A Holder of an Interest should recognize a capital loss in an amount equal to its tax basis in such Interest unless the Holder previously claimed a loss with respect to such Interest under its regular method of accounting. Such loss will be treated as a long-term capital loss if the Interest was held by the Holder for more than one year and otherwise will be short-term. In general, corporate Holders may use capital losses only to offset capital gains, but unused capital losses may be carried back three years (subject to certain limitations) and carried forward five years. Individual Holders generally may use capital losses only to the extent of capital gains plus \$3,000 of other income, but unused capital losses may be carried forward indefinitely.

### **2. Allocation of Plan Distributions between Principal and Interest**

A Holder generally recognizes a deductible loss to the extent that any accrued interest claimed or amortized original issue discount was previously included in income and is not paid in full. The Plan provides that, to the extent that any Claim entitled to a distribution under the Plan is composed of indebtedness and accrued but unpaid interest on such indebtedness, such distribution will, to the extent permitted by applicable law, be allocated for U.S. federal income tax purposes first to the principal amount of the Claim and second, to the extent the distribution exceeds the principal amount of the Claim, to the portion of the Claim representing accrued but unpaid interest. Current U.S. federal income tax law is unclear on this point, and no assurance can be given that the IRS will not challenge the Debtors' position. Holders of Claims are urged to consult their own tax advisors regarding the particular U.S. federal income tax consequences to them of the treatment of accrued but unpaid interest, as well as the character of any loss claimed with respect to accrued but unpaid interest previously included in gross income.

If, contrary to the intended position, such a distribution were treated as allocated first to accrued but unpaid interest, a Holder would realize ordinary income with respect to such distribution in an amount equal to the accrued but unpaid interest not already taken into income under the Holder's method of accounting, regardless of whether the Holder would otherwise realize a loss as a result of the Plan. A Holder should also recognize ordinary income on the exchange (but not in excess of the amount of gain recognized, as described above) to the extent a distribution is received in exchange for market discount not previously taken into account under the Holder's method of accounting.

### **3. Withholding, Backup Withholding, and Information Reporting**

In connection with the Plan and all Distributions under the Plan, the Liquidating Trustees shall, to the extent applicable, comply with all tax withholding, payment, and reporting requirements (including the filing of grantor trust returns on behalf of the Liquidating Trusts

pursuant to Treasury Income Tax Regulation Section 1.671-4(a)) imposed by any federal, state, provincial, local, or foreign taxing authority, and all Distributions under the Plan shall be subject to any such withholding, payment, and reporting requirements. The Liquidating Trustees shall be authorized to take any and all actions that may be necessary or appropriate to comply with such withholding, payment, and reporting requirements. All amounts properly withheld from Distributions to a Holder as required by applicable law and paid over to the applicable taxing authority for the account of such Holder shall be treated as part of the Distributions to such Holder. All persons holding Allowed Claims shall be required to provide any information necessary to effect information reporting and withholding of such taxes.

Notwithstanding any other provision of the Plan, (a) each Holder of an Allowed Claim that is to receive a Distribution pursuant to the Plan shall have sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed by any governmental unit, including income, withholding, and other tax obligations, on account of such Distribution, and (b) no Distribution shall be made to or on behalf of such Holder pursuant to the Plan unless and until such Holder has made arrangements satisfactory to the Liquidating Trustees for the payment and satisfaction of such withholding tax obligations or such tax obligation that would be imposed upon the Liquidating Trustees in connection with such Distribution. Any property to be distributed pursuant to the Plan shall, pending the implementation of such arrangements, be treated as an undeliverable Distribution pursuant to Article VI.C.2. of the Plan.

Moreover, under certain circumstances, Holders may be subject to “backup withholding” with respect to payments made pursuant to the Plan, unless such Holder either (i) comes within certain exempt categories (which generally include corporations) and, when required, demonstrates this fact, or (ii) provides a correct U.S. taxpayer identification number and certifies under penalty of perjury that the Holder is a U.S. person, the taxpayer identification number is correct and the taxpayer is not subject to backup withholding because of a failure to report all dividend and interest income.

Backup withholding is not an additional tax. Amounts withheld under the backup withholding rules may be credited against a Holder’s U.S. federal income tax liability, and a Holder may obtain a refund of any excess amounts withheld under the backup withholding rules by filing an appropriate claim for refund with the IRS (generally, a U.S. federal income tax return).

In addition, Treasury regulations generally require disclosure by a taxpayer on its U.S. federal income tax return of certain types of transactions in which the taxpayer participated, including, among other types of transactions, certain transactions that result in the taxpayer claiming a loss in excess of specified thresholds. Each Holder is strongly urged to consult its tax advisor regarding these regulations and whether the transactions contemplated by the Plan would be subject to these regulations and require disclosure on the Holders’ tax returns.

## **B. IMPORTANCE OF OBTAINING PROFESSIONAL TAX ASSISTANCE**

**THE FOREGOING DISCUSSION IS INTENDED ONLY AS A SUMMARY OF CERTAIN TAX CONSEQUENCES OF THE PLAN AND IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING WITH A TAX PROFESSIONAL. THE ABOVE DISCUSSION IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT TAX**



**ADVICE. THE TAX CONSEQUENCES ARE IN MANY CASES UNCERTAIN AND MAY VARY DEPENDING ON A HOLDER'S PARTICULAR CIRCUMSTANCES. ACCORDINGLY, HOLDERS ARE URGED TO CONSULT THEIR TAX ADVISORS ABOUT THE FEDERAL, STATE AND LOCAL, AND APPLICABLE FOREIGN INCOME AND OTHER TAX CONSEQUENCES OF THE PLAN.**

## **IX. GLOSSARY OF DEFINED TERMS**

For purposes herein: (a) in the appropriate context, each term, whether stated in the singular or the plural, will include both the singular and the plural, and pronouns stated in the masculine, feminine or neuter gender will include the masculine, feminine and the neuter gender; (b) any reference herein to a contract, lease, instrument, release, indenture or other agreement or document being in a particular form or on particular terms and conditions means that the referenced document will be substantially in that form or substantially on those terms and conditions; (c) any reference herein to an existing document or exhibit having been Filed or to be Filed will mean that document or exhibit, as it may thereafter be amended, modified or supplemented; (d) unless otherwise specified, all references herein to "Sections" are references to Sections hereof or hereto; (e) unless otherwise stated, the words "herein," "hereof" and "hereto" refer to the Disclosure Statement in its entirety rather than to a particular portion of the Disclosure Statement; (f) captions and headings to Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation hereof; (g) the rules of construction set forth in section 102 of the Bankruptcy Code will apply; and (h) any term used in capitalized form herein that is not otherwise defined but that is used in the Bankruptcy Code or the Bankruptcy Rules will have the meaning assigned to that term in the Bankruptcy Code or the Bankruptcy Rules, as the case may be.

Unless the context otherwise requires, the following terms will have the following meanings when used in capitalized form herein:

"11% Senior Notes" has the meaning ascribed to such term in Article II.C.2. hereof.

"2002 List" means, collectively, all entities that have filed a request for service of documents pursuant to Bankruptcy Rule 2002 pursuant to the Case Management Order.

"2005 Credit Facilities" has the meaning ascribed to such term in Article II.C.2. hereof.

"2007 Bankruptcy Cases" means the voluntary petitions Filed by Movie Gallery, Hollywood, M.G. Digital, LLC, M.G.A. Realty 1, LLC, MG Automation LLC, and Movie Gallery US, LLC with the Bankruptcy Court under chapter 11 of the Bankruptcy Code on October 16, 2007.

"2007 DIP Facility" has the meaning ascribed to such term in Article II.E.1. hereof.

"2008 Confirmation Order" has the meaning ascribed to such term in Article III.A. hereof.

"2008 Plan" has the meaning ascribed to such term in Article II.E.1. hereof.

“9.625% Senior Subordinated Notes” has the meaning ascribed to such term in Article II.C.2. hereof.

“Adequate Provision” has the meaning ascribed to such term in Article V.B.3.(d) hereof.

“Administrative Claim” means a Claim for unpaid administrative expenses as provided in sections 330, 503(b) and 507(a)(2) of the Bankruptcy Code incurred prior to the Effective Date, including without limitation the following: (a) all allowed compensation Claims for legal, financial advisory, accounting and other services and reimbursement of expenses awarded under sections 330(a), 331 or 503 of the Bankruptcy Code (including, for the avoidance of doubt, all allowed section 503(b)(9) claims, if any, and all allowed reclamation claims, if any); (b) all Claims for payments required to be made to the Studios by the Debtors under the Accommodation Agreement (as defined in and to the extent provided by the Term Sheet); (c) Claims for other amounts payable to the Studios or to Warner Home Video as set forth in the Term Sheet in connection with new release titles rented or sold through store closing sales; (d) all other Claims arising from the purchase of goods by the Debtors or the rendition of services to the Debtors post-petition (including, without limitation, payments due to movie suppliers other than the Studios) on account of movies sold or rented by the Debtors after the Commencement Date; (e) all Claims for cure amounts, if any, owed under section 365(b); (f) all Claims for payments to lessors of non-residential real property required under section 365(d)(3) of the Bankruptcy Code, and all Claims for post-petition payment obligations accruing under any nonresidential real property lease related to the period from the Commencement Date through the effective date of the rejection of such lease, including without limitation to the extent they are allowable as administrative expenses under section 503(b) of the Bankruptcy Code, taxes, common area maintenance, utilities and similar charges, each of which (if it constitutes an Allowed Claim) shall be timely paid (i) in the ordinary course of business as required by the terms of the leases; (ii) with respect to February 2010 post-petition rent, on or before July 7, 2010, as required by the Stub Rent Order; and (iii) for any amounts that will not come due in the ordinary course of business or that are not subject to the Stub Rent Order, as required by any previously entered order, docket entry or oral ruling of the Bankruptcy Court or pursuant to the Confirmation Order confirming the Plan; and (g) Claims for all other administrative expense obligations incurred by the Debtors through the Effective Date.

“Administrative Claims Objection Deadline” means the last day for filing an objection to any request for the payment of an Administrative Claim, which shall be the later of (a) one hundred twenty (120) days after the Effective Date or (b) such other date specified in the Plan or ordered by the Bankruptcy Court. The filing of a motion to extend the Administrative Claims Objection Deadline shall automatically extend the Administrative Claims Objection Deadline until a Final Order is entered on such motion; provided that any hearing on said motion is held on or before the date that is no more than thirty (30) days after the Administrative Claims Objection Deadline. In the event that such motion to extend the Administrative Claims Objection Deadline is denied by the Bankruptcy Court, the Administrative Claims Objection Deadline shall be the later of the current Administrative Claims Objection Deadline (as previously extended, if applicable) or thirty (30) days after the Bankruptcy Court’s entry of an order denying the motion to extend the Administrative Claims Objection Deadline. After the Effective Date of the Plan, no Person other than the First Lien Term Lenders Liquidating Trustee shall be authorized to file objections (to the extent not inconsistent with the Term Sheet) to

Administrative Claims in good faith on any grounds to the validity, amount, or administrative priority of any such Administrative Claims.

“Affiliate Debtor(s)” means, individually or collectively Hollywood Entertainment Corporation; Movie Gallery US, LLC; MG Real Estate, LLC; and HEC Real Estate, LLC.

“Allowed Claim” means a Claim or any portion thereof (a) that has been allowed by a Final Order of the Bankruptcy Court (or such court as the applicable Liquidating Trustee against whom enforcement of such Claim is being sought and the Holder of any such Claim agree may adjudicate such Claim and any objections thereto), (b) that either (x) has been Scheduled as a liquidated, non-contingent, and undisputed Claim in an amount greater than zero on the Schedules, or (y) is the subject of a timely filed Proof of Claim as to which either (i) no objection to its allowance has been filed (either by way of objection or amendment to the Schedules) within the periods of limitation fixed by the Plan, the Bankruptcy Code or by any order of the Bankruptcy Court or (ii) any objection to its allowance has been settled, waived through payment, or withdrawn, or has been denied by a Final Order, or (c) that is expressly allowed in a liquidated amount in the Plan; provided, however, that with respect to an Administrative Claim, “Allowed Claim” means an Administrative Claim as to which a timely written request for payment has been made on or prior to the applicable Bar Date (if such written request is required) in each case as to which the First Lien Term Lenders Liquidating Trustee (x) has not interposed a timely objection or (y) has interposed a timely objection and such objection has been settled, waived through payment, or withdrawn, or has been denied by a Final Order; provided, further, however, that for purposes of determining the status (i.e., Allowed or Disputed) of a particular Claim prior to the expiration of the period fixed for filing objections to the allowance or disallowance of Claims, any such Claim which has not been previously allowed or disallowed by a Final Order of the Bankruptcy Court or the Plan shall be deemed a Disputed Claim unless such Claim is specifically identified by the Debtors and/or the applicable Liquidating Trustee as being an Allowed Claim.

“Allowed ... Claim” means an Allowed Claim of the particular type or Class described.

“Amended Cash Collateral Order” has the meaning ascribed to such term in Article IV.G. hereof.

“Available Cash” means all Cash held by a Liquidating Trustee as of the date ten (10) Business Days prior to a Distribution Date; *provided, for the avoidance of doubt*, that: (i) with respect to the First Lien Term Lenders Liquidating Trust, Available Cash does not include the Revolver Effective Date Cash; and (ii) with respect to the GUC Liquidating Trust, Available Cash is limited to the net proceeds of the Creditor Funds and does not include the Other Assets or the products or proceeds thereof.

“Avoidance Actions” means any and all avoidance, recovery, or subordination actions or remedies that may be brought by or on behalf of any Debtor, the Estate and/or Liquidating Trust under the Bankruptcy Code or applicable non-bankruptcy law, including, without limitation, actions or remedies arising under sections 502, 510, or 542-553 of the Bankruptcy Code.

“B Studios” means the movie studios, other than the Studios or Warner Home Video that supplied movies to the Debtors prior to the Effective Date.

“Ballot” means each of the ballot forms distributed to each Holder of a Claim or Interest entitled to vote to accept or reject the Plan.

“Bankruptcy Code” means title 11 of the United States Code, as now in effect or hereafter amended and as applicable to the Chapter 11 Cases.

“Bankruptcy Court” has the meaning ascribed to such term in Article I. hereof.

“Bankruptcy Rules” means, collectively, the Federal Rules of Bankruptcy Procedure and the Official Bankruptcy Forms, as amended, the Federal Rules of Civil Procedure, as amended and as applicable to the Chapter 11 Cases on proceedings therein, as the case may be, and the Local Rules, as now in effect or hereafter amended.

“Bar Date” means, as applicable, the Final Administrative Claims Bar Date, the General Bar Date, the Governmental Bar Date, the Initial Administrative Claims Bar Date, and any other date established by the Bankruptcy Court for filing Proofs of Claim, including, without limitation, the Final Order Approving (I) Rejection of Unexpired Leases and Executory Contracts, (II) Expedited Procedures for Rejecting Executory Contracts and Unexpired Leases and (III) Abandonment of Personal Property.

“Business Day” means any day, other than a Saturday, Sunday or “Legal holiday” (as defined in Bankruptcy Rule 9006(a)).

“Case Interest Rate” means the federal judgment rate provided in 28 U.S.C. § 1961 in effect on the Commencement Date, which is .33%.

“Case Management Order” means that certain Order Establishing Certain Notice, Case Management and Administrative Procedures, entered by this Bankruptcy Court on February 2, 2010 [Docket No. 118].

“Cash” means legal tender of the United States of America and equivalents thereof, which may be conveyed by check or wire transfer.

“Cash Collateral Motion” has the meaning ascribed to such term in Article IV.G. hereof.

“Cash Collateral Order” means the *Final Order (A) Authorizing the Use of Cash Collateral, (B) Granting Adequate Protection to Certain Pre-Petition Secured Parties, and (C) Granting Related Relief, as amended by the Order Amending Final Order (A) Authorizing the Use of Cash Collateral, (B) Granting Adequate Protection to Certain Pre-Petition Secured Parties, and (C) Granting Related Relief* [Docket No. 1151] and as the same may be further amended by order of the Bankruptcy Court.

“Cash-Out Election” has the meaning ascribed to such term in footnote 5 of Article III.A. hereof.

“Causes of Action” means any and all claims, actions, proceedings, causes of action (including Avoidance Actions), demands, suits, obligations, liabilities, cross-claims, counter-claims, offsets, accounts, controversies, agreements, promises, rights of action, rights to legal remedies, rights to equitable remedies, rights to payment and Claims, whether known, unknown,

reduced to judgment, not reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured, existing or hereafter arising, whether asserted or assertable directly or derivatively, in law, equity or otherwise, whether arising under the Bankruptcy Code or federal, state, common or other law, and based in whole or in part upon any act or omission or other event occurring at any time prior to the Effective Date.

“Chapter 11 Case(s)” has the meaning ascribed to such term in Article I. hereof. For the avoidance of doubt, “Chapter 11 Case(s)” does not mean, include, or refer to the 2007 Bankruptcy Cases, as such term is defined herein.

“Claim” has the meaning set forth in Bankruptcy Code section 101(5).

“Claimholder” means the Holder of a Claim.

“Claims Agent” has the meaning ascribed to such term in Article I.E.2. hereof, or any duly appointed successor or assign thereof.

“Claims Bar Date” means, as applicable, (a) June 14, 2010, (b) the Governmental Bar Date or (c) such other period of limitation as may be specifically fixed by an order of the Bankruptcy Court for objecting to such Claims.

“Claims Bar Date Order” means, that certain Order (A) Establishing Bar Dates and (B) Approving the Form and Manner of Notice of Commencement of Cases and Notice of Bar Dates for Creditors to File Proofs of Claims, entered by this Bankruptcy Court on April 27, 2010 [Docket No. 1043]

“Claims Objection Deadline” means the last day for filing objections to Priority Claims and General Unsecured Claims, which day shall be the later of (a) ninety (90) days after the Effective Date or (b) such other date as the Bankruptcy Court may order. The filing of a motion to extend the Claims Objection Deadline shall automatically extend the Claims Objection Deadline until a Final Order is entered on such motion; provided that any hearing on said motion is held on or before the date that is no more than thirty (30) days after the Claims Objection Deadline. In the event that such motion to extend the Claims Objection Deadline is denied, the Claims Objection Deadline shall be the later of the current Claims Objection Deadline (as previously extended, if applicable) or thirty (30) days after the Bankruptcy Court’s entry of an order denying the motion to extend the Claims Objection Deadline. For the avoidance of doubt, after the Effective Date, no Person other than the GUC Liquidating Trustee shall be authorized to file objections to General Unsecured Claims and no Person other than the First Lien Term Lenders Liquidating Trustee shall be authorized to file objections to Priority Claims.

“Claims Register” has the meaning ascribed to such term in Article V.F.3.a. hereof.

“Class” means a category of Holders of Claims or Interests, as described in Article II of the Plan pursuant to sections 1122(a) and 1123(a) of the Bankruptcy Code.

“COD” has the meaning ascribed to such term in Article VIII.A.1.c(2) hereof.

“COKeM” has the meaning ascribed to such term in Article IV.F.2.b. hereof.

“COKeM Sale Agreement” has the meaning ascribed to such term in Article IV.F.2.b. hereof.

“Collateral” means any property or interest in property of a Debtor’s Estate subject to a Lien to secure the payment or performance of a Claim, which Lien has not been avoided by the Bankruptcy Court under the Bankruptcy Code or declared by the Bankruptcy Court to be otherwise invalid under the Bankruptcy Code or applicable state law.

“Commencement Date” the date on which the Debtors filed their petitions for relief commencing the Chapter 11 Cases, which date was February 2, 2010.

“Committee” means the Official Committee of Unsecured Creditors of Movie Gallery, Inc., *et al.*, appointed by the U.S. Trustee in the Chapter 11 Cases pursuant to Bankruptcy Code section 1102.

“Confirmation” means entry by the Bankruptcy Court of the Confirmation Order.

“Confirmation Date” means the date on which the Clerk of the Bankruptcy Court enters the Confirmation Order on the Bankruptcy Court docket in the Chapter 11 Cases.

“Confirmation Hearing” has the meaning ascribed to such term in Article I. hereof.

“Confirmation Hearing Date” has the meaning ascribed to such term in Article I. hereof.

“Confirmation Hearing Notice” means that certain notice of the Confirmation Hearing approved by the Disclosure Statement Order.

“Confirmation Order” means the order entered by the Bankruptcy Court confirming the Plan under Bankruptcy Code section 1129, which order shall be reasonably satisfactory in form and substance to the Debtors, the Committee, and the respective Requisite Lenders under the Pre-petition First Lien Credit Facilities.

“Consummation” or “Consume” means the occurrence of or to achieve the Effective Date.

“Copy Depth Program” has the meaning ascribed to such term in Article II.B.3. hereof.

“Core Group” means as defined in the Case Management Order: (a) the U.S. Trustee; (b) counsel to the Debtors, Sonnenschein Nath & Rosenthal LLP; and (c) bankruptcy counsel for each committee appointed pursuant to section 1102 of the Bankruptcy Code.

“Creditor” means any Person who holds a Claim against one or more of the Debtors.

“Creditor Funds” means funds in the amount of five million dollars (\$5,000,000) transferred to the GUC Liquidating Trust on, and subject to the occurrence of, the Effective Date pursuant to the terms of the Plan.

“Creditor Funds Payment Events” means each of the following: (i) the Effective Date of the Plan has occurred in accordance with and subject to the Term Sheet, (ii) the Pre-petition First Lien Term Lenders and the Pre-petition First Lien Revolver Lenders shall have received

treatment of their secured claims, including principal payments under the Pre-petition First Lien Credit Agreements, substantially in accordance with the treatment of their secured claims as contemplated herein, including without limitation the payment of the Revolver Effective Date Cash on the Effective Date and the making of an initial Distribution to the First Lien Term Loan Secured Parties on the Initial Distribution Date, (iii) each of the Debtor Releases by each of the Debtor Releasers and Third Party Releases by each of the Third Party Releasers in favor of each of the Pre-petition Secured Parties First Lien Term Lenders and the Pre-petition First Lien Revolver Lenders shall be in full force and effect and legally enforceable against the Debtor Releasers and Third Party Releasers as set forth in the Plan, and subject to no objection, challenge, or appeal by any Person which has not been overruled or denied, (iv) neither the Committee (or any Person acting on the Committee's behalf or instruction or on any Committee member's behalf or instruction) has commenced or threatened to commence any adversary proceeding against any Pre-petition Secured Party or the First Lien Term Lenders Liquidating Trust or First Lien Term Lenders Liquidating Trustee in the Bankruptcy Court or any other court or tribunal (other than any adversary proceeding concerning any Claim arising as a result of a material breach of the Term Sheet by any Pre-petition Secured Party or any Related Party thereto to the extent any such proceeding (or the remedies sought therein) are consistent with the Plan), (v) none of the Committee, any member of the Committee (or any Person acting on the Committee's behalf or any constituent member of the Committee), the Studios, or Warner Home Video has taken, since the date of the Term Sheet, any action which would impede or oppose the Debtors', the Estates', or the Term Loan Liquidating Trustee's store closing and inventory liquidation efforts; and (vi) none of the Committee, any member of the Committee (or any Person acting on the Committee's behalf or any constituent member of the Committee) has taken any action materially inconsistent with the Term Sheet.

“Debtor” means any of Movie Gallery or the Affiliate Debtors in their individual capacity.

“Debtors” has the meaning ascribed to such term in Article I. hereof.

“Debtor Release” means the release given by the Debtor Releasers to the Debtor Releasees as set forth in Article V.H.3. of the Plan.

“Debtor Releasees” means, collectively, (a) all current and former members (including ex officio members), officers and directors of the Debtors, their affiliates and subsidiaries and the Committee; (b) all attorneys, financial advisors, accountants, investment bankers, investment advisors, actuaries, professionals and affiliates of the Debtors, their subsidiaries and the Committee and the members of the Committee (provided that any such Person is not an employee of the Debtors); and (c) each of their respective predecessors and successors in interest, and all of their respective current and former members (including ex officio members), officers, directors, employees, partners, attorneys, financial advisors, accountants, managed funds, investment bankers, investment advisors, actuaries, professionals and affiliates, each in their respective capacities as such.

“Debtor Releasers” means the Debtors, the Estates, the Liquidating Trusts, the Liquidating Trustees, any of their respective predecessors or successors in interest, and any Person claiming through any of the foregoing.

“Disallowed” means, with respect to a Claim, or any portion thereof, that such Claim is not an Allowed Claim and (a) has been disallowed by a Final Order, (b) is Scheduled at zero or as contingent, disputed or unliquidated and as to which no Proof of Claim has been filed by the applicable Bar Date or deemed timely filed pursuant to either the Bankruptcy Code or any Final Order (including the Cash Collateral Order) or under applicable law, (c) is not Scheduled, and as to which (i) with respect to Claims arising prior to the Commencement Date, no Proof of Claim has been filed by the applicable Bar Date or deemed timely filed pursuant to either the Bankruptcy Code or any Final Order (including the Cash Collateral Order) or under applicable law, or (ii) with respect to Claims arising on or after the Commencement Date, no request for payment of an Administrative Claim has been filed by the Initial or Final Administrative Claims Bar Date, as appropriate, or deemed timely filed pursuant to either the Bankruptcy Code or any Final Order (including the Cash Collateral Order) or under applicable law, or (d) has been withdrawn, in whole or in part, by the Holder thereof or by agreement between such Holder and the Debtors or the applicable Liquidating Trustee.

“Disclosure Statement” means the disclosure statement (including all exhibits and schedules hereto) dated [            ], 2010, relating to the Plan, distributed contemporaneously herewith in accordance with Bankruptcy Code sections 1125 and 1126(b) and Bankruptcy Rule 3018.

“Disclosure Statement Hearing” means that certain hearing at which the Bankruptcy Court will determine, among other things, whether the Disclosure Statement provides Holders of Impaired Claims entitled to vote to accept or reject the Plan with adequate information within the meaning of section 1125 of the Bankruptcy Code.

“Disclosure Statement Order” means that certain order approving the Disclosure Statement.

“Disputed Claim” means a Claim, or any portion thereof, that is not an Allowed Claim pursuant to the Plan or a Final Order, and:

- a. if a Proof of Claim has been filed, or deemed to have been filed, by the applicable Bar Date (i) a Claim for which a corresponding Claim has been listed on the Schedules as unliquidated, contingent or disputed; (ii) a Claim for which a corresponding Claim has been listed on the Schedules as other than unliquidated, contingent or disputed, but the amount of such Claim as asserted in the corresponding Proof of Claim is greater than the amount of such Claim as listed in the Schedules; or (iii) a Claim as to which the applicable Liquidating Trustee against whom enforcement of such Claim is being sought has timely filed an objection or request for estimation in accordance with the Plan, the Bankruptcy Code, the Bankruptcy Rules and any orders of the Bankruptcy Court, or which is otherwise disputed by the applicable Liquidating Trustee against whom enforcement of such Claim is sought in accordance with applicable law, which objection, request for estimation or dispute has not been withdrawn, or determined by a Final Order;
- b. if a request for payment of an Administrative Claim has been filed or deemed to have been filed by the Initial or Final Administrative Claims Bar Date, as



appropriate, an Administrative Claim as to which the First Lien Term Lenders Liquidating Trustee has timely filed an objection or request for estimation in accordance with the Plan, the Bankruptcy Code, the Bankruptcy Rules, and any orders of the Bankruptcy Court, or which is otherwise disputed by the First Lien Term Lenders Liquidating Trustee in accordance with applicable law, which objection, request for estimation or dispute has not been withdrawn or determined by a Final Order; or

- c. that is disputed in accordance with the provisions of the Plan.

“Disputed ... Claim” means a Disputed Claim of the particular type or Class described.

“Disputed Claim Amount” means (a) if a liquidated amount is set forth in the Proof of Claim relating to a Disputed Claim, (i) the liquidated amount set forth in the Proof of Claim relating to the Disputed Claim; (ii) an amount agreed to by a Debtor (prior to the Effective Date) or the applicable Liquidating Trustee against whom enforcement of such Claim is being sought and the Holder of such Disputed Claim; or (iii) if a request for estimation is filed by any party, the amount at which such Claim is estimated by the Bankruptcy Court; or (b) if no liquidated amount is set forth in the Proof of Claim relating to a Disputed Claim, (i) an amount agreed to by a Debtor or the applicable Liquidating Trustee against whom enforcement of such Claim is being sought and the Holder of such Disputed Claim or (ii) the amount estimated by the Bankruptcy Court with respect to such Disputed Claim.

“Distribution” means any payment of Cash or other property pursuant to the Plan or the applicable Liquidating Trust Agreement to the Holders of Allowed Claims.

“Distribution Center” has the meaning ascribed to such term in Article IV.F.2. hereof.

“Distribution Date” means either the Initial Distribution Date or a Periodic Distribution Date.

“Distribution Record Date” means the record date for purposes of making Distributions under the Plan on account of Allowed Claims, which date shall be the Confirmation Date or such other date designated in the Confirmation Order.

“DOF” has the meaning ascribed to such term in Article V.D.9.b. hereof.

“Effective Date” means the Business Day the Plan becomes effective.

“Entity” means an entity as defined in section 101(15) of the Bankruptcy Code.

“Estate(s)” means, individually, the bankruptcy estate of Movie Gallery, Inc. or any of the Affiliate Debtors and, collectively, the bankruptcy estates of all of the Debtors created under Bankruptcy Code section 541 on the Commencement Date.

“Exculpated Parties” means, collectively: (a) the Debtors; (b) the Liquidating Trusts; (c) the Liquidating Trustees; (d) the Debtor Releasees; (d) the Pre-petition Secured Parties; (e) Lenado; (f) the Committee and its members; (g) the First Lien Term Lenders Liquidating Trust

Oversight Board and its members; (h) the GUC Liquidating Trust Oversight Committee and its members; and (i) all of their respective Related Parties.

“Exculpation” means the exculpation provision set forth in Article V.H.5. of the Plan.

“Exhibit” means an exhibit annexed to either the Plan or as an appendix to the Disclosure Statement.

“Exhibit Filing Date” means the date on which Exhibits to the Plan or the Disclosure Statements shall be filed with the Bankruptcy Court, which date shall be at least five (5) days prior to the Voting Deadline or such later date as may be approved by the Bankruptcy Court without further notice to parties in interest.

“Existing D&O Insurance Policies” means (i) each of the insurance policies in favor of the directors and officers of the Debtors more particularly described on Exhibit A attached hereto and (ii) any other insurance policy in favor of a director or officer of the Debtors which is in full force and effect on the Effective Date and about which any such director or officer notifies the Pre-petition First Lien Liquidating Trustee in writing, together with a copy of such policy; provided, however, that the Pre-petition First Lien Liquidating Trustee shall be under no obligation to pay any premium or incur any expense to amend, modify, extend, or renew any Existing D&O Insurance Policy and with respect to insurance policies specified in clause (ii) of this definition, the Pre-petition First Lien Liquidating Trustee shall be under no obligation to pay any premium or incur any other expense or liability with respect to any such policy.

“Face Amount” means (a) when used in reference to a Disputed Claim, the Disputed Claim Amount and (b) when used in reference to an Allowed Claim, the allowed amount of such Claim.

“File” or “Filed” means file, filed or filing with the Bankruptcy Court or its authorized designee in these Chapter 11 Cases.

“Final Administrative Claims Bar Date” means the last date by which a request for payment of an Administrative Claim that arises after [ ], 2010 up to and through the Effective Date, may be filed, which date is thirty (30) days after the Effective Date.

“Final Decree” means the decree contemplated under Bankruptcy Rule 3022.

“Final Fee Applications” means the final requests for payment of Professional Fee Claims.

“Final Order” means an order or judgment of the Bankruptcy Court, or other court of competent jurisdiction, as entered on the docket in any Chapter 11 Case, the operation or effect of which is not stayed and/or has not been reversed, or amended and as to which order or judgment (or any revision, modification, or amendment thereof) the time to appeal or seek review or rehearing has expired and as to which no appeal or petition for review or rehearing was filed or, if filed, remains pending. Notwithstanding and in lieu of the foregoing, insofar as the Confirmation Order is concerned, Final Order means only such order or judgment of the Bankruptcy Court which has been entered on the docket in any Chapter 11 Case, the operation or effect of which is not stayed.

“Final Trust Distribution Date” means, with respect to a Liquidating Trust, the date of the last Distribution from such Liquidating Trust under the Plan for and on account of an Allowed Claim.

“First Day Motions” means those certain motions and applications Filed by the Debtors on the Commencement Date and/or on February 3, 2010.

“First Day Orders” has the meaning ascribed to such term in Article IV.A. hereof.

“First Lien Term Lenders Liquidating Trust” means the trust established on the Effective Date pursuant to Article V.D of the Plan for the benefit of the Holders of Allowed Class 4 Claims and to make Distributions to the Holders of Allowed Priority Claims, Allowed Administrative Claims, Allowed Class 3 Claims arising after the Effective Date and Allowed Class 4 Claims.

“First Lien Term Lenders Liquidating Trust Oversight Board” means the oversight board of the First Lien Term Lenders Liquidating Trust described in Article V.D.5(1) the rights and duties of which shall be set forth with specificity in the First Lien Term Lenders Liquidating Trust Agreement.

“First Lien Term Lenders Liquidating Trustee” means the Person appointed pursuant to Article V.D.5(a) of the Plan selected by the Requisite Lenders under the Pre-petition First Lien Term Credit Facility to act as the trustee of and administer the First Lien Term Lenders Liquidating Trust, which Person shall be [ ].

“First Lien Term Lenders Liquidating Trust Agreement” means the agreement, in form and substance satisfactory to the Requisite Lenders under the Pre-petition First Lien Term Credit Facility and consistent in all material respects with the terms of the Plan, the Confirmation Order, and the Cash Collateral Order, to be executed as of the Effective Date establishing the First Lien Term Lenders Liquidating Trust pursuant to the Plan in substantially the form attached as Exhibit B-1 thereto.

“Fixed Buy” has the meaning ascribed to such term in Article II.B.3. hereof.

“General Bar Date” means June 14, 2010, as the bar date for filing Proofs of Claim for Claims arising prior to the Commencement Date, including, without limitation, claims arising under Section 503(b)(9) of the Bankruptcy Code, Miscellaneous Secured Claims, and Non-Tax Priority Claims, against any and/or all of the Debtors in the Chapter 11 Cases, other than those Claims expressly excluded from the General Bar Date pursuant to a Final Order of the Bankruptcy Court.

“General Unsecured Claim” means a Claim that is not an Administrative Claim, Priority Tax Claim, Non-Tax Priority Claim, Miscellaneous Secured Claim, Pre-petition First Lien Term Loan Secured Claim, Revolver Secured Claim or Intercompany Claim.

“Global Plan Settlement” has the meaning ascribed to such term in Article V.D.1. hereof.

“GOB Sales” has the meaning ascribed to such term in Article II.E.2. hereof.

“Gordon Brothers” has the meaning ascribed to such term in Article IV.A.4. hereof.

“Governmental Bar Date” means August 1, 2010, as the bar date for Governmental Units to file Proofs of Claim for Claims arising prior to the Commencement Date against any and/or all of the Debtors.

“Great American” has the meaning ascribed to such term in Article IV.A.4 hereof.

“Great American Agreement” has the meaning ascribed to such term in Article IV.F.1. hereof.

“GSCLP” has the meaning ascribed to such term in Article II.E.1. hereof.

“GUC Liquidating Trust” has the meaning ascribed to such term in Article I.A.1. hereof.

“GUC Liquidating Trust Agreement” means the agreement to be executed as of the Effective Date establishing the GUC Liquidating Trust pursuant to the Plan in substantially the form attached as Exhibit B-2 thereto.

“GUC Liquidating Trust Oversight Committee” means the oversight committee of the GUC Liquidating Trust described in Article V.D.5(m) of the Plan, the rights and duties of which shall be set forth with specificity in the GUC Liquidating Trust Agreement.

“GUC Liquidating Trustee” means the Person appointed pursuant to Article V.D.5(a) of the Plan to act as the trustee of and administer the GUC Liquidating Trust, which Person shall be [ ].

“Holder(s)” means an entity holding a Claim against, or Interest in, any Debtor.

“Hollywood” has the meaning ascribed to such term in Article II.A.1. hereof.

“Impaired” means, when used in reference to a Claim, Interest or Class, a Claim, Interest or Class that is impaired within the meaning of Bankruptcy Code section 1124.

“Impaired Class” means an impaired Class within the meaning of section 1124 of the Bankruptcy Code.

“Initial Administrative Claims Bar Date” means [ ], 2010, as the date for filing requests for payment of Administrative Claims, other than those Administrative Claims excluded from the Initial Administrative Claims Bar Date pursuant to a Final Order of the Bankruptcy Court, arising from and after the Commencement Date through and including [ ], 2010.

“Initial Distribution Date” means, with respect to a Liquidating Trust, a Business Day, as determined by the Liquidating Trustee of such Liquidating Trust, as soon as practicable after the Effective Date, that is at least [ ( )] Business Days after the funding of such Liquidating Trust pursuant to Article III.C.1 of the Plan

“Intercompany Claim” means any Claim held by a Debtor against another Debtor, including, without limitation: (a) any account reflecting intercompany book entries by a Debtor with respect to another Debtor, (b) any Claim not reflected in such book entries that is held by a

Debtor against another Debtor, and (c) any derivative Claim asserted by or on behalf of one Debtor against another Debtor.

“Interest(s)” means any “equity security”, within the meaning of section 101(16) of the Bankruptcy Code, issued by a Debtor, and any legal, equitable, contractual, and other rights of any Person with respect to any capital stock or other ownership interest in any Debtor, whether or not transferable, and all options, warrants, call rights, puts, awards, or rights or agreements to purchase, sell, or subscribe for an ownership interest or other equity security in any Debtor.

“IRS” has the meaning ascribed to such term in Article V.D.9.a hereof.

“Lenado” means, collectively, Lenado Capital Advisors, LLC, Aspen Advisors, LLC, and Owl Creek Capital Management LLC, Trendex Capital Management, LLC, and the funds and accounts that each of the foregoing individually or jointly own, manage or control and Neil Subin.

“Lien” has the meaning set forth in section 101(37) of the Bankruptcy Code, and shall include, without limitation, any security interest, pledge, title retention agreement, encumbrance, charge, mortgage, or hypothecation to secure payment of a debt or performance of an obligation, other than, in the case of securities and any other equity ownership interests, any restrictions imposed by applicable United States or foreign securities laws.

“Liquidating Trust(s)” has the meaning ascribed to such term in Article I.A.1. hereof.

“Liquidating Trustee(s)” means the GUC Liquidating Trustee and/or the First Lien Term Lenders Liquidating Trustee, as applicable.

“Liquidating Trust Agreement(s)” means the GUC Liquidating Trust Agreement and/or the First Lien Term Lenders Liquidating Trust Agreement, as applicable.

“Liquidating Trustee Professionals” means, as to a Liquidating Trustee, the agents, financial advisors, attorneys, consultants, independent contractors, representatives, and other professionals of such Liquidation Trustee (in their capacities as such).

“Liquidation Analysis” has the meaning ascribed to such term in Article VI.B.1. hereof.

“Liquidation Proceeds Covenant” has the meaning ascribed to such term in Article IV.G. hereof.

“Local Rules” means the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the Eastern District of Virginia.

“MG Canada” means Movie Gallery Canada, Inc.

“Miscellaneous Secured Claim” means a Claim that is (a) secured by a valid and perfected Lien on property of a Debtor’s Estate, which Lien is senior by operation of law or Final Order of the Bankruptcy Court to the Lien of the Pre-petition Secured Parties or (b) a right of setoff under Bankruptcy Code section 553 which (i) has not been waived by the Holder of such Claim, (ii) is property and timely asserted under applicable law, and (iii) is senior by operation of

law or Final Order to the Lien of the Pre-petition Secured Parties, as such Claim under clause (a) or (b) hereof may be limited to the extent of the value of the Claimholder's interest in the applicable Estate's interest property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to Bankruptcy Code section 506(a) or, in the case of setoff, pursuant to Bankruptcy Code section 553.

“Movies” has the meaning ascribed to such term in Article II.A.1. hereof.

“Movie Gallery” has the meaning ascribed to such term in Article I. hereof.

“Movie Inventory” has the meaning ascribed to such term in Article IV.A.4 hereof.

“Net Proceeds” means the cash proceeds received by the First Lien Term Lenders Liquidating Trustee from the sale or liquidation of Other Assets after payment of all actual duly documented and invoiced or reasonably estimated costs and expenses of such sale or liquidation, including, without limitation, reasonable attorneys' fees and all Taxes.

“Non-Tax Priority Claim” means a Claim, other than and without duplication of an Administrative Claim or Priority Tax Claim, which is entitled to priority in payment pursuant to Bankruptcy Code section 507(a)(3), (4), (5), (6), or (7).

“Old First Lien Credit Agreement” has the meaning ascribed to such term in Article II.E.1. hereof.

“Old Second Lien Credit Agreement” has the meaning ascribed to such term in Article II.E.1. hereof.

“Other Assets” means all tangible and intangible assets of every kind and nature of the Debtors and their Estates, and all of the products and proceeds thereof, existing as of the Effective Date or at any time thereafter, other than the Creditor Funds and the Revolver Effective Date Cash.

“Other Priority Claim” means any Claim accorded priority in right of payment under section 507(a) of the Bankruptcy Code, other than a Priority Tax Claim.

“Periodic Distribution Date” means each of the dates determined by the applicable Liquidating Trustee for the distribution of Available Cash to the Holders of Allowed Claims payable by such Liquidating Trustee as described in the Plan and the applicable Liquidating Trust Agreement.

“Person” has the meaning set forth in Bankruptcy Code section 101(41) and also includes any natural person, corporation, general or limited partnership, limited liability company, firm, trust, association, government, governmental agency or other entity, whether acting in an individual, fiduciary, or other capacity.

“Plan” has the meaning ascribed to such term in Article I. hereof.

“Plan Administrator” has the meaning ascribed to such term in Article III.A. hereof.

“Plan Document” means the Plan, together with any contract, instrument, release, or other agreement or document entered in connection with Plan as any such contract, instrument, release or other agreement or document may be altered, amended, or modified from time to time in accordance with the Bankruptcy Code, the Bankruptcy Rules, and the Plan.

“Plan Objection” means those certain objections to the Confirmation of the Plan Filed with the Bankruptcy Court and served on the Debtors, and certain other parties, on or before Plan Objection Deadline, in accordance with the Disclosure Statement Order.

“Plan Objection Deadline” means [xx], 2010 at [xx] prevailing Eastern Time.

“Plan Supplement” means the compilation(s) of documents and forms of documents, specified in the Plan, that the Debtors will file with the Bankruptcy Court on or before the date that is (a) ten (10) days prior to the Voting Deadline or (b) set by the Bankruptcy Court for the filing of such documents and forms of documents.

“Pre-petition First Lien Credit Agreements” mean collectively the Pre-petition First Lien Revolving Credit Agreement and the Pre-petition First Lien Term Credit Agreement.

“Pre-petition First Lien Credit Documents” mean collectively the Pre-petition First Lien Revolving Credit Documents and the Pre-petition First Lien Term Credit Documents.

“Pre-petition First Lien Credit Facilities” mean collectively the Pre-petition First Lien Revolving Credit Facility and the Pre-petition First Lien Term Credit Facility.

“Pre-petition First Lien Revolver Administrative Agent” means BNYMellon, together with its permitted successors, in its capacity as administrative agent under the First Lien Revolving Credit Facility.

“Pre-petition First Lien Revolver Lenders” means the Lenders as defined in Pre-petition First Lien Revolving Credit Agreement.

“Pre-petition First Lien Revolver Secured Parties” means, collectively, the Pre-petition First Lien Revolver Lenders, the Pre-petition First Lien Revolver Administrative Agent and the Pre-petition Joint Collateral Agent.

“Pre-petition First Lien Revolving Credit Agreement” means the Revolving Credit and Guaranty Agreement, dated as of May 20, 2008, as amended by Amendment No. 1 thereto, dated as of July 21, 2009, by and among the Debtors and the Pre-petition First Lien Revolver Secured Parties.

“Pre-petition First Lien Revolving Credit Documents” means the “Credit Documents” as defined in the Pre-petition First Lien Revolving Credit Agreement.

“Pre-petition First Lien Revolving Credit Facility” means the Pre-petition First Lien Revolving Credit Agreement and the Pre-petition First Lien Revolving Credit Documents.

“Pre-petition First Lien Secured Claims” mean collectively the Revolver Secured Claims and the Pre-petition First Lien Term Loan Secured Claims.

“Pre-petition First Lien Term Administrative Agent” means Wilmington Trust Company and its permitted successors in its capacity as administrative agent under the First Lien Term Credit Facility.

“Pre-petition First Lien Term Credit Agreement” means the Amended and Restated First Lien Credit and Guaranty Agreement, dated as of May 20, 2008, as amended by Amendment No. 1 thereto, dated as of July 21, 2009 by and among the Debtors and the Pre-petition First Lien Term Secured Parties.

“Pre-petition First Lien Term Credit Documents” mean the “Credit Documents” as defined in the Pre-petition First Lien Term Credit Agreement.

“Pre-petition First Lien Term Credit Facility” means the Pre-petition First Lien Revolving Credit Agreement and the Pre-petition First Lien Term Credit Documents.

“Pre-petition First Lien Term Lenders” means the lenders party from time to time to the Pre-petition First Lien Term Credit Agreement.

“Pre-petition First Lien Term Loan Secured Claims” means the secured Claims held by the Pre-petition First Lien Term Secured Parties arising from or under the Pre-petition First Lien Term Credit Facility in an aggregate amount equal to (i) the aggregate amount of \$407,963,869.11 and (ii) any and all fees, expense reimbursements, outstanding and unpaid indemnification obligations arising under, and to the extent provided in, the Pre-petition First Lien Term Credit Documents or the Cash Collateral Order, or other amounts owed by the Debtors under the Pre-petition First Lien Term Credit Facility or the Cash Collateral Order as of the Effective Date, all of which Claims shall be Allowed Class 4 Claims.

“Pre-petition First Lien Term Secured Parties” means collectively the Pre-petition First Lien Term Lenders, the Pre-petition First Lien Term Administrative Agent and the Pre-petition Joint Collateral Agent.

“Pre-petition Joint Collateral Agent” means Deutsche Bank Americas, as collateral agent for the Pre-petition First Lien Revolver Lenders and the Pre-petition First Lien Term Lenders, together with its permitted successors.

“Pre-petition Second Lien Loan Agreement” means the Amended and Restated Second Lien Credit and Guaranty Agreement, dated as of May 20, 2008, as amended by Amendment No 1 thereto, dated as of July 21, 2009, by and among the Debtors, the lenders party thereto from time to time.

“Pre-petition Second Lien Loan Documents” has the meaning ascribed to such term in Article II.E.1. hereof.

“Pre-petition Second Lien Term Credit Agreement” has the meaning ascribed to such term in Article II.E.1. hereof.

“Pre-petition Second Lien Term Loan Claim” means any and all Claims of Wells Fargo Bank, N.A., as administrative agent and collateral agent, arising from or under the Amended and Restated Second Lien Credit and Guaranty Agreement, dated as of May 20, 2008, as amended by



Amendment No 1 thereto, dated as of July 21, 2009, by and among the Debtors, the lenders party thereto from time to time, Wells Fargo Bank, N.A., as administrative agent and collateral agent and the “Credit Documents” as defined therein, which Claim is Allowed under the Plan in Class 5 in the amount of \$151,623,195.20.

“Pre-petition Secured Parties” means the Pre-petition First Lien Revolver Secured Parties and the Pre-petition First Lien Term Secured Parties.

“Priority Claims” means, collectively, all Priority Tax Claims and Non-Tax Priority Claims.

“Priority Tax Claim” means a Claim of a Governmental Unit of the kind specified in Bankruptcy Code sections 502(i) or 507(a)(8).

“Pro Rata” means, at any time, the proportion that the Face Amount of an Allowed Claim in a particular Class bears to the aggregate Face Amount of all Allowed Claims in such Class, unless the Plan provides otherwise

“Professional” means (a) any professional employed in these Chapter 11 Cases pursuant to Bankruptcy Code sections 327, 328, or 1103 or otherwise, and (b) any professional or other entity seeking compensation or reimbursement of expenses in connection with the Chapter 11 Cases pursuant to Bankruptcy Code section 503(b)(4).

“Professional Fee Claim” means a Claim of a Professional for compensation for services rendered or reimbursement of costs, expenses, or other charges incurred after the Commencement Date and prior to and including the Effective Date.

“Proof of Claim” means a proof of claim filed on or before the General Bar Date, the date set forth in any order rejecting an executory contract or unexpired lease or the Governmental Bar Date, as applicable, or such other date as may be ordered by the Bankruptcy Court.

“Record Date” means [ ], 2010 prevailing Eastern Time.

“Rejection Procedures Motion” has the meaning ascribed to such term in Article IV.A.4. hereof.

“Rejection Procedures Order” has the meaning ascribed to such term in Article IV.A.4. hereof.

“Related Parties” means all predecessors and successors in interest, current and former members (including ex officio members), principals, limited liability company managers or similar managerial agents, officers, directors, stockholders, “controlling persons” (within the meaning of the United States federal securities laws), affiliates, subsidiaries, partners, investors, administrators, managed funds and/or accounts, attorneys, financial advisors, accountants, consultants, independent contractors, investment bankers, investment advisors, agents, actuaries, and other professionals, each in their respective capacities as such.

“Released Claims” means the claims or Causes of Actions released or waived under the Plan, including the claims and Causes of Action described in Article X.C of the Plan, and any

claims or Causes of Action specifically released in the Confirmation Order, the Cash Collateral Order, or any other Final Order of the Bankruptcy Court.

“Releasing Parties” means all current and former Pre-petition Secured Parties, Lenado, the Committee, the Committee Members, the Studios, Warner Home Video and all other Holders of Claims and Interests, each of their Related Parties, and any Person claiming through any of the foregoing.

“Requisite Lenders” means, as applicable, the “Requisite Lenders” as such term is defined in the Pre-petition First Lien Revolving Credit Agreement or the “Requisite Lenders” as such term is defined in the Pre-petition First Lien Term Credit Agreement.

“Respective Liquidating Trust Parties” has the meaning ascribed to such term in Article V.D.(9) hereof.

“Retained Professional” means any Entity: (a) employed in these Chapter 11 Cases pursuant to a Final Order in accordance with sections 327 and 1103 of the Bankruptcy Code and to be compensated for services rendered prior to the Effective Date, pursuant to sections 327, 328, 329, 330 or 331 of the Bankruptcy Code; or (b) for which compensation and reimbursement has been allowed by the Bankruptcy Court pursuant to section 503(b)(4) of the Bankruptcy Code.

“Revenue Share Percentage” has the meaning ascribed to such term in Article II.B.3. hereof.

“Revenue Share Term” has the meaning ascribed to such term in Article II.B.3. hereof.

“Revenue Sharing Agreement” has the meaning ascribed to such term in Article II.B.3. hereof.

“Revolver Effective Date Cash” has the meaning ascribed to such term in Article III.B.3 of the Plan.

“Revolver Post-Effective Date Secured Claims” means, without duplication of any Revolver Pre-Effective Date Secured Claims, any Revolver Secured Claims arising, accruing, invoiced, liquidated, calculated, or quantified on or after the Effective Date, including, without limitation and for the avoidance of doubt, outstanding and unpaid indemnification obligations arising under, and to the extent provided in and secured by, the Pre-petition First Lien Credit Documents or the Cash Collateral Order, fees and expenses of the Pre-petition First Lien Revolver Administrative Agent and its professionals arising under the Pre-petition First Lien Revolver Credit Documents or the Cash Collateral Order, and fees and expenses of the Pre-petition First Lien Revolver Lenders’ professionals arising under the Pre-petition First Lien Revolver Credit Documents or the Cash Collateral Order, which Claims, subject to the First Lien Term Lenders Liquidating Trustee’s right to review and object under Article III.B.3 of the Plan, shall be Allowed Class 3 Claims.

“Revolver Pre-Effective Date Secured Claims” means any Revolver Secured Claims arising, accruing, invoiced, liquidated, calculated, or quantified prior to the Effective Date, in an aggregate amount equal to the sum of (i) the aggregate principal amount of \$100,000,000 in

“Revolving Loans” (as defined in the Pre-petition First Lien Revolving Credit Agreement), (ii) interest pursuant to the Pre-petition First Lien Revolving Credit Agreement (which interest shall be calculated at the non-default rate otherwise applicable to “Base Rate Loans”, as such term is defined in the Pre-petition First Lien Revolving Credit Agreement and as provided in the Cash Collateral Order), and (iii) any and all fees, expense reimbursements, outstanding and unpaid indemnification obligations arising under, and to the extent provided in, the Pre-petition First Lien Revolver Credit Documents or the Cash Collateral Order, or other amounts owed by the Debtors under the Pre-petition First Lien Revolving Credit Facility or the Cash Collateral Order as of the Effective Date, all of which Claims shall be Allowed Class 3 Claims.

“Revolver Secured Claims” means all Claims held by the Pre-petition First Lien Revolver Secured Parties arising from or under the Pre-petition First Lien Revolving Credit Facility, including the Revolver Pre-Effective Date Secured Claims and the Revolver Post-Effective Date Secured Claims.

“Scheduled” means, with respect to any Claim, the status, priority and amount, if any, of such Claim as set forth in the Schedules.

“Schedules” means the schedules of assets and liabilities, the list of Holders of Interests, and the statements of financial affairs filed by the Debtors pursuant to Bankruptcy Code section 521 and the Bankruptcy Rules, as such schedules have been or may be further modified, amended or supplemented in accordance with Bankruptcy Rule 1009 or orders of the Bankruptcy Court.

“Solicitation” means the solicitation by the Debtors of acceptances of the Plan.

“Solicitation Notice” means that certain notice that will contain, among other things, the Plan Objection Deadline, the Voting Deadline and the date of the Confirmation Hearing.

“Solicitation Package” means documents sent to Claimholders by the Debtors to solicit acceptances of the Plan.

“Solicitation Procedures” means those certain procedures by which Claimholders may vote to accept or reject the Plan, which procedures are annexed as Exhibit B to the motion of the Debtor’s requesting authorization of the Disclosure Statement.

“Solicitation Procedures Order” means the order entered by the Bankruptcy Court establishing procedures for Solicitation of votes for or against the Plan under Bankruptcy Code sections 105, 1125, 1126 and 1128 and Bankruptcy Rules 2002, 3017, 2018 and 3020.

“Sopris” has the meaning ascribed to such term in Article III.A. hereof.

“Store Closing Motion” has the meaning ascribed to such term in Article II.E.2. hereof.

“Store Closing Procedures Order” has the meaning ascribed to such term in Article II.E.2. hereof.

“Stub Rent Order” means the Bankruptcy Court’s March 8, 2010 Order, docket entry and oral ruling of the Bankruptcy Court requiring the payment of February post-petition rent.

“Studios” means Paramount Home Entertainment Inc., Sony Pictures Home Entertainment Inc., Universal Studios Home Entertainment LLC, V.P.D. IV, Inc. (d/b/a VPD) (“VPD”), and Twentieth Century Fox Home Entertainment LLC.

“Tail Coverage” means liability insurance coverage for the Debtors’ current and former directors and officers obtained by the Debtors extending the Debtors’ existing coverage for a term of not less than six (6) years after the Effective Date.

“Tax Items” has the meaning ascribed to such term in Article V.D.9.a. hereof.

“Taxes” means any and all taxes, levies, imposts, assessments, or other charges of whatever nature imposed at any time by a Governmental Unit or by any political subdivision or taxing authority thereof or therein and all interest, penalties, or similar liabilities with respect thereto.

“Term Sheet” has the meaning ascribed to such term in Article IV.E. hereof.

“Third Party Release” means the release given by the Releasing Parties to the Third Party Releasees as set forth in Article X.D of the Plan.

“Third Party Releasees” means, collectively, the Pre-petition Secured Parties, Lenado, the Studios, Warner Home Video and each of their respective Related Parties.

“Unclassified Claims” means Administrative Claims and Priority Tax Claims.

“Unimpaired” means, when used in reference to a Claim, Interest or Class, a Claim, Interest or Class that is not impaired within the meaning of Bankruptcy Code section 1124.

“U.S. Trustee” means United States Trustee Robert Van Arsdale, Office of the United States Trustee for the Eastern District of Virginia, 600 East Main Street, Suite 301, Richmond, Virginia 23219.

“Up-Front Charge” has the meaning ascribed to such term in Article II.B.3. hereof.

“Video Games” has the meaning ascribed to such term in Article II.A.1. hereof.

“VOD” has the meaning ascribed to such term in Article II.B.2. hereof.

“Voting Classes” has the meaning ascribed to such term in Article I.D. hereof.

“Voting Deadline” means [ ]:00 [ ].m. prevailing Eastern Time on [ ], 2010.

“Voting Instructions” means those certain detailed voting instructions, which are attached to the Ballots and distributed as part of the Solicitation Package.

“VPD” has the meaning ascribed to such term in Article IV.F.2.a hereof.

“VPD Asset Purchase Agreement” has the meaning ascribed to such term in Article IV.F.2.a hereof.

“Warner Home Video” Video means Warner Home Video, a division of Warner Bros. Home Entertainment, Inc.

## **X. CONCLUSION AND RECOMMENDATION**

The Debtors believe the Plan is in the best interests of all Holders of Claims and Interests and urge all Holders of Claims entitled to vote to accept the Plan and to evidence such acceptance by returning their Ballots so they will be received by the Debtors’ Claims Agent no later than \_\_\_\_\_.

Dated: July 21, 2010

MOVIE GALLERY, INC., et al.  
(for itself and on behalf of the Affiliate Debtors)

By: /s/ Steve Moore  
Name: Steve Moore  
Title: Chief Restructuring Officer

Respectfully submitted,

### **KUTAK ROCK LLP**

By: /s/ Michael A. Condyles  
Michael A. Condyles (VA 27807)  
Peter J. Barrett (VA 46179)  
Jeremy S. Williams (VA 77469)  
Bank of America Center  
1111 East Main Street, Suite 800  
Richmond, Virginia 23219-3500  
Telephone: (804) 644-1700  
Fax: (804) 783-6192

and

### **SONNENSCHN NATH & ROSENTHAL LLP**

John A. Bicks (NY 2032498)  
Louis A. Curcio (NY 4016267)  
1221 Avenue of the Americas  
New York, NY 10020-1089  
Telephone: (212) 768-6700  
Fax: (212) 768-6800

*Attorneys for Debtors and Debtors in Possession*

## **EXHIBIT A**

**UNITED STATES BANKRUPTCY COURT**  
**EASTERN DISTRICT OF VIRGINIA**  
**RICHMOND DIVISION**

In re:	)	
	)	
MOVIE GALLERY, INC., et al., <sup>8</sup>	)	Chapter 11
	)	Case No. 10-30696-DOT
Debtors.	)	(Jointly Administered)
	)	

**JOINT PLAN OF LIQUIDATION OF MOVIE GALLERY, INC.  
AND ITS AFFILIATED DEBTORS AND DEBTORS IN POSSESSION**

John A. Bicks (NY 2032498)  
Linda Bechutsky (NY 4642476)  
Louis A. Curcio (NY 4016267)  
SONNENSCHN NATH & ROSENTHAL LLP  
1221 Avenue of the Americas  
New York, NY 10020-1089  
Telephone: (212) 768-6700

*Attorneys for Debtors and Debtors in Possession*

Dated: Richmond, Virginia  
July 13, 2010

Michael A. Condyles (VA 27807)  
Peter J. Barrett (VA 46179)  
Jeremy S. Williams (VA 77469)  
KUTAK ROCK LLP  
Bank of America Center  
1111 East Main Street, Suite 800  
Richmond, Virginia 23219-3500  
Telephone: (804) 644-1700

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<sup>8</sup> The Debtors in these cases are: Movie Gallery, Inc.; Hollywood Entertainment Corporation; Movie Gallery US, LLC; MG Real Estate, LLC; and HEC Real Estate, LLC.

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## EXHIBITS

- A Existing D&O Insurance Policies
- B-1 First Lien Term Lenders Liquidating Trust Agreement
- B-2 GUC Liquidating Trust Agreement
- C List of Leases and Executory Contracts to Be Assumed

**Note: To the extent that the foregoing Exhibits are not annexed to this Plan, such Exhibits will be filed with the Bankruptcy Court in Plan Supplement(s) filed on or before the date(s) set for the filing of such documents and forms of documents.**

## INTRODUCTION

Movie Gallery, Inc., Hollywood Entertainment Corporation; Movie Gallery US, LLC; MG Real Estate, LLC; and HEC Real Estate, LLC (each a “Debtor” and collectively, the “Debtors”) propose the following chapter 11 plan of liquidation. The Debtors are the proponents of the Plan within the meaning of Bankruptcy Code section 1129. Reference is made to the Disclosure Statement, distributed contemporaneously herewith, for a discussion of (i) the Debtors’ history, business and operations, (ii) a summary and analysis of this Plan, and (iii) certain related matters, including risk factors relating to the consummation of this Plan. All Holders of Claims who are eligible to vote on the Plan are encouraged to read the Plan and the accompanying Disclosure Statement (including all exhibits thereto) in their entirety before voting to accept or reject the Plan. Subject to certain restrictions and requirements set forth in Bankruptcy Code section 1127 and Bankruptcy Rule 3019, the Debtors reserve the right to alter, amend, modify, revoke, or withdraw this Plan prior to its substantial consummation.

The Plan is a liquidating plan. Pursuant to prior orders of the Bankruptcy Court, the Debtors have terminated their remaining business operations and have liquidated or are in the process of liquidating their remaining assets. The Plan provides for the continuation and completion of that liquidation process, and also provides some recovery for holders of unsecured claims against the Debtors, even though the claims of many of the Debtors’ prepetition secured creditors will not be paid in full. Subject to the rights of certain parties in interest to object to the allowance and/or priority of such claims as expressly set forth in the Plan, to the extent not inconsistent with the Term Sheet, the Plan also provides for the payment in full to holders of allowed administrative claims and priority claims and to other claimholders and the funding of two liquidating trusts, one for the benefit of secured creditors, and the other for unsecured creditors. The Plan further provides for the termination of all Interests in the Debtors, the substantive consolidation of the Debtors, the dissolution and wind-up of the affairs of the Debtors, the payment of the Revolver Effective Date Cash on the Effective Date, the transfer of \$5 million in cash to a liquidating trust established for the benefit of the Debtors’ general unsecured creditors on the Effective Date, and any remaining assets of the Debtors to a liquidating trust established for the benefit of certain of the Debtors’ secured creditors, and distributions from the respective liquidating trusts as further provided herein.

No solicitation materials, other than the Disclosure Statement and related materials transmitted therewith have been approved for use in soliciting acceptances and rejections of the Plan. Nothing in the Plan should be construed as constituting a solicitation of acceptances of the Plan unless and until the Disclosure Statement has been approved and distributed to all Holders of Claims and Interests to the extent required by Bankruptcy Code section 1125.

**ALL HOLDERS OF CLAIMS ENTITLED TO VOTE ON THE PLAN ARE ENCOURAGED TO READ CAREFULLY THE DISCLOSURE STATEMENT (INCLUDING ALL EXHIBITS THERETO) AND THE PLAN, EACH IN ITS ENTIRETY, BEFORE VOTING TO ACCEPT OR REJECT THE PLAN.**

## XI.

### DEFINED TERMS AND RULES OF INTERPRETATION

#### A. RULES OF CONSTRUCTION

For purposes of this Plan, except as expressly provided herein or unless the context otherwise requires, all capitalized terms not otherwise defined, including those capitalized terms used in the preceding Introduction, shall have the meanings ascribed to them in XI of this Plan or any Exhibit hereto. Any term used in this Plan that is not defined herein, but is defined in the Bankruptcy Code or the Bankruptcy Rules, shall have the meaning ascribed to that term in the Bankruptcy Code or the Bankruptcy Rules, as applicable. To the extent that there is an inconsistency between a definition in this Plan and a definition set forth in the Bankruptcy Code, the definition set forth herein shall control. Whenever the context requires, such terms shall include the plural as well as the singular number, the masculine gender shall include the feminine, and the feminine gender shall include the masculine.

#### B. DEFINITIONS

1. Adequate Provision has the meaning given such term in Article III.C.1 hereof.

2. Administrative Claim means a Claim for unpaid administrative expenses as provided in sections 330, 503(b) and 507(a)(2) of the Bankruptcy Code incurred prior to the Effective Date, including without limitation the following: (a) all allowed compensation Claims for legal, financial advisory, accounting and other services and reimbursement of expenses awarded under sections 330(a), 331 or 503 of the Bankruptcy Code (including, for the avoidance of doubt, all allowed section 503(b)(9) claims, if any, and all allowed reclamation claims, if any); (b) all Claims for payments required to be made to the Studios by the Debtors under the Accommodation Agreement (as defined in and to the extent provided by the Term Sheet); (c) Claims for other amounts payable to the Studios or to Warner Home Video as set forth in the Term Sheet in connection with new release titles rented or sold through store closing sales; (d) all other Claims arising from the purchase of goods by the Debtors or the rendition of services to the Debtors post-petition (including, without limitation, payments due to movie suppliers other than the Studios) on account of movies sold or rented by the Debtors after the Commencement Date; (e) all Claims for cure amounts, if any, owed under section 365(b); (f) all Claims for payments to lessors of non-residential real property required under section 365(d)(3) of the Bankruptcy Code, and all Claims for postpetition payment obligations accruing under any nonresidential real property lease related to the period from the Commencement Date through the effective date of the rejection of such lease, including without limitation to the extent they are allowable as administrative expenses under section 503(b) of the Bankruptcy Code, taxes, common area maintenance, utilities and similar charges, each of which (if it constitutes an Allowed Claim) shall be timely paid (i) in the ordinary course of business as required by the terms of the leases; (ii) with respect to February 2010 post-petition rent, on or before July 7, 2010, as required by the Stub Rent Order; and (iii) for any amounts that will not come due in the ordinary course of business or that are not subject to the Stub Rent Order, as required by any previously entered

order, docket entry or oral ruling of the Bankruptcy Court or pursuant to the Confirmation Order confirming the Plan; and (g) Claims for all other administrative expense obligations incurred by the Debtors through the Effective Date.

3. Administrative Claims Objection Deadline means the last day for filing an objection to any request for the payment of an Administrative Claim, which shall be the later of (a) one hundred twenty (120) days after the Effective Date or (b) such other date specified in this Plan or ordered by the Bankruptcy Court. The filing of a motion to extend the Administrative Claims Objection Deadline shall automatically extend the Administrative Claims Objection Deadline until a Final Order is entered on such motion; *provided that* any hearing on said motion is held on or before the date that is no more than thirty (30) days after the Administrative Claims Objection Deadline. In the event that such motion to extend the Administrative Claims Objection Deadline is denied by the Bankruptcy Court, the Administrative Claims Objection Deadline shall be the later of the current Administrative Claims Objection Deadline (as previously extended, if applicable) or thirty (30) days after the Bankruptcy Court's entry of an order denying the motion to extend the Administrative Claims Objection Deadline. After the Effective Date of the Plan, no Person other than the First Lien Term Lenders Liquidating Trustee shall be authorized to file objections (to the extent not inconsistent with the Term Sheet) to Administrative Claims in good faith on any grounds to the validity, amount, or administrative priority of any such Administrative Claims.

4. Affiliate Debtor(s) means, individually or collectively Hollywood Entertainment Corporation; Movie Gallery US, LLC; MG Real Estate, LLC; and HEC Real Estate, LLC.

5. Allowed Claim means a Claim or any portion thereof (a) that has been allowed by a Final Order of the Bankruptcy Court (or such court as the applicable Liquidating Trustee against whom enforcement of such Claim is being sought and the Holder of any such Claim agree may adjudicate such Claim and any objections thereto), (b) that either (x) has been Scheduled as a liquidated, non-contingent, and undisputed Claim in an amount greater than zero on the Schedules, or (y) is the subject of a timely filed Proof of Claim as to which either (i) no objection to its allowance has been filed (either by way of objection or amendment to the Schedules) within the periods of limitation fixed by the Plan, the Bankruptcy Code or by any order of the Bankruptcy Court or (ii) any objection to its allowance has been settled, waived through payment, or withdrawn, or has been denied by a Final Order, or (c) that is expressly allowed in a liquidated amount in the Plan; provided, however, that with respect to an Administrative Claim, "Allowed Claim" means an Administrative Claim as to which a timely written request for payment has been made on or prior to the applicable Bar Date (if such written request is required) in each case as to which the First Lien Term Lenders Liquidating Trustee (x) has not interposed a timely objection or (y) has interposed a timely objection and such objection has been settled, waived through payment, or withdrawn, or has been denied by a Final Order; provided, further, however, that for purposes of determining the status (i.e., Allowed or Disputed) of a particular Claim prior to the expiration of the period fixed for filing objections to the allowance or disallowance of Claims, any such Claim which has not been previously allowed or disallowed by a Final Order of the Bankruptcy Court or the Plan

shall be deemed a **Disputed Claim** unless such Claim is specifically identified by the Debtors and/or the applicable Liquidating Trustee as being an **Allowed Claim**.

6. **Allowed ... Claim** means an **Allowed Claim** of the particular type or **Class** described.

7. **Available Cash** means all **Cash** held by a **Liquidating Trustee** as of the date ten (10) **Business Days** prior to a **Distribution Date**; *provided, for the avoidance of doubt*, that: (i) with respect to the **First Lien Term Lenders Liquidating Trust**, **Available Cash** does not include the **Revolver Effective Date Cash**; and (ii) with respect to the **GUC Liquidating Trust**, **Available Cash** is limited to the net proceeds of the **Creditor Funds** and does not include the **Other Assets** or the products or proceeds thereof.

8. **Avoidance Actions** means any and all avoidance, recovery, or subordination actions or remedies that may be brought by or on behalf of any Debtor, the Estate and/or Liquidating Trust under the **Bankruptcy Code** or applicable non-bankruptcy law, including, without limitation, actions or remedies arising under sections 502, 510, or 542-553 of the **Bankruptcy Code**.

9. **Ballot** means each of the ballot forms distributed to each Holder of a **Claim** or **Interest** entitled to vote to accept or reject this **Plan**.

10. **Bankruptcy Code** means title 11 of the **United States Code**, as now in effect or hereafter amended and as applicable to the **Chapter 11 Cases**.

11. **Bankruptcy Court** means the **United States Bankruptcy Court** for the **Eastern District of Virginia**, or any other court with jurisdiction over the **Chapter 11 Cases**.

12. **Bankruptcy Rules** means, collectively, the **Federal Rules of Bankruptcy Procedure** and the **Official Bankruptcy Forms**, as amended, the **Federal Rules of Civil Procedure**, as amended and as applicable to the **Chapter 11 Cases** on proceedings therein, as the case may be, and the **Local Rules**, as now in effect or hereafter amended.

13. **Bar Date** means, as applicable, the **Final Administrative Claims Bar Date**, the **General Bar Date**, the **Governmental Bar Date**, the **Initial Administrative Claims Bar Date**, and any other date established by the **Bankruptcy Court** for filing **Proofs of Claim**, including, without limitation, the **Final Order Approving (I) Rejection of Unexpired Leases and Executory Contracts**, **(II) Expedited Procedures for Rejecting Executory Contracts and Unexpired Leases** and **(III) Abandonment of Personal Property**.

14. **B Studios** means the movie studios, other than the **Studios** or **Warner Home Video**, that supplied movies to the Debtors prior to the **Effective Date**.

15. **Business Day** means any day, other than a **Saturday**, **Sunday** or “**Legal holiday**” (as defined in **Bankruptcy Rule 9006(a)**).

16. **Case Interest Rate** means the federal judgment rate provided in **28 U.S.C. § 1961** in effect on the **Commencement Date**, which is **.33%**.

17. Cash means legal tender of the United States of America and equivalents thereof, which may be conveyed by check or wire transfer.

18. Cash Collateral Order means the *Final Order (A) Authorizing the Use of Cash Collateral, (B) Granting Adequate Protection to Certain Pre-Petition Secured Parties, and (C) Granting Related Relief, as amended by the Order Amending Final Order (A) Authorizing the Use of Cash Collateral, (B) Granting Adequate Protection to Certain Pre-Petition Secured Parties, and (C) Granting Related Relief* [Docket No. 1151] and as the same may be further amended by order of the Bankruptcy Court.

19. Causes of Action means any and all claims, actions, proceedings, causes of action (including Avoidance Actions), demands, suits, obligations, liabilities, cross-claims, counter-claims, offsets, accounts, controversies, agreements, promises, rights of action, rights to legal remedies, rights to equitable remedies, rights to payment and Claims, whether known, unknown, reduced to judgment, not reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured, existing or hereafter arising, whether asserted or assertable directly or derivatively, in law, equity or otherwise, whether arising under the Bankruptcy Code or federal, state, common or other law, and based in whole or in part upon any act or omission or other event occurring at any time prior to the Effective Date.

20. Chapter 11 Case(s) means, (a) when used with reference to a particular Debtor, the case under chapter 11 of the Bankruptcy Code commenced by such Debtor on the Commencement Date in the Bankruptcy Court and (b) when used with reference to all Debtors, the jointly administered cases under chapter 11 of the Bankruptcy Code commenced by the Debtors on the Commencement Date in the Bankruptcy Court. For the avoidance of doubt, "Chapter 11 Case(s)" does not mean, include, or refer to the 2007 Bankruptcy Cases, as such term is defined in the Disclosure Statement.

21. Claim has the meaning set forth in Bankruptcy Code section 101(5).

22. Claimholder means the Holder of a Claim.

23. Claims Agent means Kurtzman Carson Consultants, LLC, or any duly appointed successor or assign thereof.

24. Claims Objection Deadline means the last day for filing objections to Priority Claims and General Unsecured Claims, which day shall be the later of (a) ninety (90) days after the Effective Date or (b) such other date as the Bankruptcy Court may order. The filing of a motion to extend the Claims Objection Deadline shall automatically extend the Claims Objection Deadline until a Final Order is entered on such motion; *provided that* any hearing on said motion is held on or before the date that is no more than thirty (30) days after the Claims Objection Deadline. In the event that such motion to extend the Claims Objection Deadline is denied, the Claims Objection Deadline shall be the later of the current Claims Objection Deadline (as previously extended, if applicable) or thirty (30) days after the Bankruptcy Court's entry of an order denying the motion to extend the Claims Objection Deadline. For the avoidance of doubt, after the Effective Date, no Person other than the GUC Liquidating Trustee shall be authorized to file



**objections to General Unsecured Claims and no Person other than the First Lien Term Lenders Liquidating Trustee shall be authorized to file objections to Priority Claims.**

**25. Class means a category of Holders of Claims or Interests, as described in XII hereof pursuant to sections 1122(a) and 1123(a) of the Bankruptcy Code.**

**26. Collateral means any property or interest in property of a Debtor's Estate or a Liquidating Trust subject to a Lien to secure the payment or performance of a Claim, which Lien has not been avoided by the Bankruptcy Court under the Bankruptcy Code or declared by the Bankruptcy Court to be otherwise invalid under the Bankruptcy Code or applicable state law.**

**27. Commencement Date means the date on which the Debtors filed their petitions for relief commencing the Chapter 11 Cases, which date was February 2, 2010.**

**28. Committee means the Official Committee of Unsecured Creditors of Movie Gallery, Inc., et al., appointed by the United States Trustee in the Chapter 11 Cases pursuant to Bankruptcy Code section 1102.**

**29. Confirmation means entry by the Bankruptcy Court of the Confirmation Order.**

**30. Confirmation Date means the date on which the Clerk of the Bankruptcy Court enters the Confirmation Order on the Bankruptcy Court docket in the Chapter 11 Cases.**

**31. Confirmation Hearing means the hearing held by the Bankruptcy Court to consider confirmation of the Plan, as such hearing may be adjourned or continued from time to time.**

**32. Confirmation Order means the order entered by the Bankruptcy Court confirming the Plan under Bankruptcy Code section 1129, which order shall be reasonably satisfactory in form and substance to the Debtors, the Committee, and the respective Requisite Lenders under the Prepetition First Lien Credit Facilities.**

**33. Consummation or Consummate means the occurrence of or to achieve the Effective Date.**

**34. Contingent means, with reference to a Claim, a Claim that has not accrued or is not otherwise payable and the accrual of which, or the obligation to make payment on which, is dependent upon a future event that may or may not occur.**

**35. Creditor means any Person who holds a Claim against one or more of the Debtors.**

**36. Creditor Funds means funds in the amount of five million dollars (\$5,000,000) transferred to the GUC Liquidating Trust on, and subject to the occurrence of, the Effective Date pursuant to the terms of this Plan.**

**37. Creditor Funds Payment Events means each of the following: (i) the Effective Date of the Plan has occurred in accordance with and subject to the Term Sheet, (ii) the Prepetition First Lien Term Lenders and the Prepetition First Lien Revolver Lenders shall have received treatment of their secured claims, including principal payments under the Prepetition First Lien Credit Agreements, substantially in accordance with the treatment of their secured claims as contemplated herein, including without limitation the payment of the Revolver Effective Date Cash on the Effective Date and the making of an initial Distribution to the First Lien Term Loan Secured Parties on the Initial Distribution Date, (iii) each of the Debtor Releases by each of the Debtor Releasers and Third Party Releases by each of the Third Party Releasers in favor of each of the Prepetition Secured Parties First Lien Term Lenders and the Prepetition First Lien Revolver Lenders shall be in full force and effect and legally enforceable against the Debtor Releasers and Third Party Releasers as set forth in the Plan, and subject to no objection, challenge, or appeal by any Person which has not been overruled or denied, (iv) neither the Committee (or any Person acting on the Committee's behalf or instruction or on any Committee member's behalf or instruction) has commenced or threatened to commence any adversary proceeding against any Prepetition Secured Party or the First Lien Term Lenders Liquidating Trust or First Lien Term Lenders Liquidating Trustee in the Bankruptcy Court or any other court or tribunal (other than any adversary proceeding concerning any Claim arising as a result of a material breach of the Term Sheet by any Prepetition Secured Party or any Related Party thereto to the extent any such proceeding (or the remedies sought therein) are consistent with the Plan), (v) none of the Committee, any member of the Committee (or any Person acting on the Committee's behalf or any constituent member of the Committee), the Studios, or Warner Home Video has taken, since the date of the Term Sheet, any action which would impede or oppose the Debtors', the Estates', or the Term Loan Liquidating Trustee's store closing and inventory liquidation efforts; and (vi) none of the Committee, any member of the Committee (or any Person acting on the Committee's behalf or any constituent member of the Committee) has taken any action materially inconsistent with the Term Sheet.**

**38. Debtor means any of Movie Gallery, Inc. or the Affiliate Debtors in their individual capacity.**

**39. Debtor Release means the release given by the Debtor Releasers to the Debtor Releasees as set forth in XX.D of the Plan.**

**40. Debtor Releasees means, collectively, (a) all current and former members (including ex officio members), officers and directors of the Debtors, their affiliates and subsidiaries and the Committee; (b) all attorneys, financial advisors, accountants, investment bankers, investment advisors, actuaries, professionals and affiliates of the Debtors, their subsidiaries and the Committee and the members of the Committee (provided that any such Person is not an employee of the Debtors); and (c) each of their respective predecessors and successors in interest, and all of their respective current and former members (including ex officio members), officers, directors, employees, partners, attorneys, financial advisors, accountants, managed funds, investment bankers, investment advisors, actuaries, professionals and affiliates, each in their respective capacities as such.**

**41. Debtor Releasors means the Debtors, the Estates, the Liquidating Trusts, the Liquidating Trustees, any of their respective predecessors or successors in interest, and any Person claiming through any of the foregoing.**

**42. Debtors means, collectively, Movie Gallery, Inc. and all of the Affiliate Debtors.**

**43. Disallowed means, with respect to a Claim, or any portion thereof, that such Claim is not an Allowed Claim and (a) has been disallowed by a Final Order, (b) is Scheduled at zero or as contingent, disputed or unliquidated and as to which no Proof of Claim has been filed by the applicable Bar Date or deemed timely filed pursuant to either the Bankruptcy Code or any Final Order (including the Cash Collateral Order) or under applicable law, (c) is not Scheduled, and as to which (i) with respect to Claims arising prior to the Commencement Date, no Proof of Claim has been filed by the applicable Bar Date or deemed timely filed pursuant to either the Bankruptcy Code or any Final Order (including the Cash Collateral Order) or under applicable law, or (ii) with respect to Claims arising on or after the Commencement Date, no request for payment of an Administrative Claim has been filed by the Initial or Final Administrative Claims Bar Date, as appropriate, or deemed timely filed pursuant to either the Bankruptcy Code or any Final Order (including the Cash Collateral Order) or under applicable law, or (d) has been withdrawn, in whole or in part, by the Holder thereof or by agreement between such Holder and the Debtors or the applicable Liquidating Trustee.**

**44. Disclosure Statement means the disclosure statement (including all exhibits and schedules thereto) dated [        ], 2010, relating to this Plan, distributed contemporaneously herewith in accordance with Bankruptcy Code sections 1125 and 1126(b) and Bankruptcy Rule 3018.**

**45. Disputed Claim means a Claim, or any portion thereof, that is not an Allowed Claim pursuant to the Plan or a Final Order, and:**

- (1) if a Proof of Claim has been filed, or deemed to have been filed, by the applicable Bar Date (i) a Claim for which a corresponding Claim has been listed on the Schedules as unliquidated, contingent or disputed; (ii) a Claim for which a corresponding Claim has been listed on the Schedules as other than unliquidated, contingent or disputed, but the amount of such Claim as asserted in the corresponding Proof of Claim is greater than the amount of such Claim as listed in the Schedules; or (iii) a Claim as to which the applicable Liquidating Trustee against whom enforcement of such Claim is being sought has timely filed an objection or request for estimation in accordance with the Plan, the Bankruptcy Code, the Bankruptcy Rules and any orders of the Bankruptcy Court, or which is otherwise disputed by the applicable Liquidating Trustee against whom enforcement of such Claim is sought in accordance with applicable law, which objection, request for estimation or dispute has not been withdrawn, or determined by a Final Order;**

- (2) if a request for payment of an Administrative Claim has been filed or deemed to have been filed by the Initial or Final Administrative Claims Bar Date, as appropriate, an Administrative Claim as to which the First Lien Term Lenders Liquidating Trustee has timely filed an objection or request for estimation in accordance with the Plan, the Bankruptcy Code, the Bankruptcy Rules, and any orders of the Bankruptcy Court, or which is otherwise disputed by the First Lien Term Lenders Liquidating Trustee in accordance with applicable law, which objection, request for estimation or dispute has not been withdrawn or determined by a Final Order; or
- (3) that is disputed in accordance with the provisions of this Plan.

46. Disputed ... Claim means a Disputed Claim of the particular type or Class described.

47. Disputed Claim Amount means (a) if a liquidated amount is set forth in the Proof of Claim relating to a Disputed Claim, (i) the liquidated amount set forth in the Proof of Claim relating to the Disputed Claim; (ii) an amount agreed to by a Debtor (prior to the Effective Date) or the applicable Liquidating Trustee against whom enforcement of such Claim is being sought and the Holder of such Disputed Claim; or (iii) if a request for estimation is filed by any party, the amount at which such Claim is estimated by the Bankruptcy Court; or (b) if no liquidated amount is set forth in the Proof of Claim relating to a Disputed Claim, (i) an amount agreed to by a Debtor or the applicable Liquidating Trustee against whom enforcement of such Claim is being sought and the Holder of such Disputed Claim or (ii) the amount estimated by the Bankruptcy Court with respect to such Disputed Claim.

48. Distribution means any payment of Cash or other property pursuant to the Plan or the applicable Liquidating Trust Agreement to the Holders of Allowed Claims.

49. Distribution Date means either the Initial Distribution Date or a Periodic Distribution Date.

50. Distribution Record Date means the record date for purposes of making Distributions under the Plan on account of Allowed Claims, which date shall be the Confirmation Date or such other date designated in the Confirmation Order.

51. Effective Date means the Business Day this Plan becomes effective as provided in XVIII hereof.

52. Estate(s) means, individually, the bankruptcy estate of Movie Gallery, Inc. or any of the Affiliate Debtors and, collectively, the bankruptcy estates of all of the Debtors created under Bankruptcy Code section 541 on the Commencement Date.

53. Exculpated Parties means, collectively: (a) the Debtors; (b) the Liquidating Trusts; (c) the Liquidating Trustees; (d) the Debtor Releasees; (d) the Prepetition Secured Parties; (e) Lenado; (f) the Committee and its members; (g) the First

Lien Term Lenders Liquidating Trust Oversight Board and its members; (h) the GUC Liquidating Trust Oversight Committee and its members; and (i) all of their respective Related Parties.

54. Exculpation means the exculpation provision set forth in XX.E hereof.

55. Exhibit means an exhibit annexed to either this Plan or as an appendix to the Disclosure Statement.

56. Exhibit Filing Date means the date on which Exhibits to the Plan or the Disclosure Statements shall be filed with the Bankruptcy Court, which date shall be at least five (5) days prior to the Voting Deadline or such later date as may be approved by the Bankruptcy Court without further notice to parties in interest.

57. Existing D&O Insurance Policies means (i) each of the insurance policies in favor of the directors and officers of the Debtors more particularly described on Exhibit A attached hereto and (ii) any other insurance policy in favor of a director or officer of the Debtors which is in full force and effect on the Effective Date and about which any such director or officer notifies the Prepetition First Lien Liquidating Trustee in writing, together with a copy of such policy; *provided, however*, that the Prepetition First Lien Liquidating Trustee shall be under no obligation to pay any premium or incur any expense to amend, modify, extend, or renew any Existing D&O Insurance Policy and with respect to insurance policies specified in clause (ii) of this definition, the Prepetition First Lien Liquidating Trustee shall be under no obligation to pay any premium or incur any other expense or liability with respect to any such policy.

58. Face Amount means (a) when used in reference to a Disputed Claim, the Disputed Claim Amount and (b) when used in reference to an Allowed Claim, the allowed amount of such Claim.

59. Final Administrative Claims Bar Date means the last date by which a request for payment of an Administrative Claim that arises after \_\_\_\_\_, 2010 up to and through the Effective Date, may be filed, which date is thirty (30) days after the Effective Date.

60. Final Decree means the decree contemplated under Bankruptcy Rule 3022.

61. Final Fee Applications means the final requests for payment of Professional Fee Claims.

62. Final Order means an order or judgment of the Bankruptcy Court, or other court of competent jurisdiction, as entered on the docket in any Chapter 11 Case, the operation or effect of which is not stayed and/or has not been reversed, or amended and as to which order or judgment (or any revision, modification, or amendment thereof) the time to appeal or seek review or rehearing has expired and as to which no appeal or petition for review or rehearing was filed or, if filed, remains pending. Notwithstanding and in lieu of the foregoing, insofar as the Confirmation Order is concerned, Final Order means only

such order or judgment of the Bankruptcy Court which has been entered on the docket in any Chapter 11 Case, the operation or effect of which is not stayed.

**63. Final Trust Distribution Date means, with respect to a Liquidating Trust, the date of the last Distribution from such Liquidating Trust under the Plan for and on account of an Allowed Claim.**

**64. First Lien Term Lenders Liquidating Trust means the trust established on the Effective Date pursuant to Article V.D of this Plan for the benefit of the Holders of Allowed Class 4 Claims and to make Distributions to the Holders of Allowed Priority Claims, Allowed Administrative Claims, Allowed Class 3 Claims arising after the Effective Date and Allowed Class 4 Claims.**

**65. First Lien Term Lenders Liquidating Trust Agreement means the agreement, in form and substance satisfactory to the Requisite Lenders under the Petition First Lien Term Credit Facility and consistent in all material respects with the terms of this Plan, the Confirmation Order, and the Cash Collateral Order, to be executed as of the Effective Date establishing the First Lien Term Lenders Liquidating Trust pursuant to the Plan in substantially the form attached as Exhibit B-1 hereto.**

**66. First Lien Term Lenders Liquidating Trustee means the Person appointed pursuant to Article V.D.5(a) hereof selected by the Requisite Lenders under the Petition First Lien Term Credit Facility to act as the trustee of and administer the First Lien Term Lenders Liquidating Trust, which Person shall be \_\_\_\_\_.**

**67. First Lien Term Lenders Liquidating Trust Oversight Board means the oversight board of the First Lien Term Lenders Liquidating Trust described in Article V.D.5(l), the rights and duties of which shall be set forth with specificity in the First Lien Term Lenders Liquidating Trust Agreement.**

**68. General Bar Date means June 14, 2010, as the bar date for filing Proofs of Claim for Claims arising prior to the Commencement Date, including, without limitation, claims arising under Section 503(b)(9) of the Bankruptcy Code, Miscellaneous Secured Claims, and Non-Tax Priority Claims, against any and/or all of the Debtors in the Chapter 11 Cases, other than those Claims expressly excluded from the General Bar Date pursuant to a Final Order of the Bankruptcy Court.**

**69. General Unsecured Claim means a Claim that is not an Administrative Claim, Priority Tax Claim, Non-Tax Priority Claim, Miscellaneous Secured Claim, Petition First Lien Term Loan Secured Claim, Revolver Secured Claim or Intercompany Claim.**

**70. Global Plan Settlement has the meaning given such term in Article V.A.1 hereof.**

**71. Governmental Bar Date means August 1, 2010, as the bar date for Governmental Units to file Proofs of Claim for Claims arising prior to the Commencement Date against any and/or all of the Debtors.**

72. Governmental Unit has the meaning set forth in Bankruptcy Code section 101(27).

73. GUC Liquidating Trust means the trust established on the Effective Date pursuant to Article V.D of this Plan for the benefit of the Holders of Allowed General Unsecured Claims.

74. GUC Liquidating Trust Agreement means the agreement to be executed as of the Effective Date establishing the GUC Liquidating Trust pursuant to the Plan in substantially the form attached as Exhibit B-2 hereto.

75. GUC Liquidating Trust Oversight Committee means the oversight committee of the GUC Liquidating Trust described in Article V.D.5(m), the rights and duties of which shall be set forth with specificity in the GUC Liquidating Trust Agreement.

76. GUC Liquidating Trustee means the Person appointed pursuant to Article V.D.5(a) hereof to act as the trustee of and administer the GUC Liquidating Trust, which Person shall be [ ].

77. Holdback Amount means the amount equal to fifteen percent (15%) of fees billed to the Debtors for a given month that were retained by the Debtors as a holdback on payment of Professional Fee Claims.

78. Holder means an entity holding a Claim against, or Interest in, any Debtor.

79. Impaired means, when used in reference to a Claim, Interest or Class, a Claim, Interest or Class that is impaired within the meaning of Bankruptcy Code section 1124.

80. Initial Administrative Claims Bar Date means \_\_\_\_\_, 2010, as the date for filing requests for payment of Administrative Claims, other than those Administrative Claims excluded from the Initial Administrative Claims Bar Date pursuant to a Final Order of the Bankruptcy Court, arising from and after the Commencement Date through and including [ ], 2010.

81. Initial Distribution Date means, with respect to a Liquidating Trust, a Business Day, as determined by the Liquidating Trustee of such Liquidating Trust, as soon as practicable after the Effective Date, that is at least [ ( )] Business Days after the funding of such Liquidating Trust pursuant to XIII.C.a hereof.

82. Intercompany Claim means any Claim held by a Debtor against another Debtor, including, without limitation: (a) any account reflecting intercompany book entries by a Debtor with respect to another Debtor, (b) any Claim not reflected in such book entries that is held by a Debtor against another Debtor, and (c) any derivative Claim asserted by or on behalf of one Debtor against another Debtor.

83. Interests means any “equity security”, within the meaning of section 101(16) of the Bankruptcy Code, issued by a Debtor, and any legal, equitable,

contractual, and other rights of any Person with respect to any capital stock or other ownership interest in any Debtor, whether or not transferable, and all options, warrants, call rights, puts, awards, or rights or agreements to purchase, sell, or subscribe for an ownership interest or other equity security in any Debtor.

**84. IRS means the Internal Revenue Service.**

**85. Lenado means, collectively, Lenado Capital Advisors, LLC, Aspen Advisors, LLC, and Owl Creek Capital Management LLC, Trendex Capital Management, LLC, and the funds and accounts that each of the foregoing individually or jointly own, manage or control and Neil Subin.**

**86. Lien has the meaning set forth in section 101(37) of the Bankruptcy Code, and shall include, without limitation, any security interest, pledge, title retention agreement, encumbrance, charge, mortgage, or hypothecation to secure payment of a debt or performance of an obligation, other than, in the case of securities and any other equity ownership interests, any restrictions imposed by applicable United States or foreign securities laws.**

**87. Liquidating Trust(s) means the First Lien Term Lenders Liquidating Trust and/or the GUC Liquidating Trust, as applicable.**

**88. Liquidating Trust Agreement(s) means the GUC Liquidating Trust Agreement and/or the First Lien Term Lenders Liquidating Trust Agreement, as applicable.**

**89. Liquidating Trustee(s) means the GUC Liquidating Trustee and/or the First Lien Term Lenders Liquidating Trustee, as applicable.**

**90. Liquidating Trustee Professionals means, as to a Liquidating Trustee, the agents, financial advisors, attorneys, consultants, independent contractors, representatives, and other professionals of such Liquidation Trustee (in their capacities as such).**

**91. Local Rules means the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the Eastern District of Virginia.**

**92. MG Canada means Movie Gallery Canada, Inc.**

**93. Miscellaneous Secured Claim means a Claim that is (a) secured by a valid and perfected Lien on property of a Debtor's Estate, which Lien is senior by operation of law or Final Order of the Bankruptcy Court to the Lien of the Prepetition Secured Parties or (b) a right of setoff under Bankruptcy Code section 553 which (i) has not been waived by the Holder of such Claim, (ii) is property and timely asserted under applicable law, and (iii) is senior by operation of law or Final Order to the Lien of the Prepetition Secured Parties, as such Claim under clause (a) or (b) hereof may be limited to the extent of the value of the Claimholder's interest in the applicable Estate's interest property or to the extent of the amount subject to setoff, as applicable, as determined**



pursuant to Bankruptcy Code section 506(a) or, in the case of setoff, pursuant to Bankruptcy Code section 553.

**94. Net Proceeds means the cash proceeds received by the First Lien Term Lenders Liquidating Trustee from the sale or liquidation of Other Assets after payment of all actual duly documented and invoiced or reasonably estimated costs and expenses of such sale or liquidation, including, without limitation, reasonable attorneys' fees and all Taxes.**

**95. Non-Tax Priority Claim means a Claim, other than and without duplication of an Administrative Claim or Priority Tax Claim, which is entitled to priority in payment pursuant to Bankruptcy Code section 507(a)(3), (4), (5), (6), or (7).**

**96. Other Assets means all tangible and intangible assets of every kind and nature of the Debtors and their Estates, and all of the products and proceeds thereof, existing as of the Effective Date or at any time thereafter, other than the Creditor Funds and the Revolver Effective Date Cash.**

**97. Periodic Distribution Date means each of the dates determined by the applicable Liquidating Trustee for the distribution of Available Cash to the Holders of Allowed Claims payable by such Liquidating Trustee as described in the Plan and the applicable Liquidating Trust Agreement.**

**98. Person has the meaning set forth in Bankruptcy Code section 101(41) and also includes any natural person, corporation, general or limited partnership, limited liability company, firm, trust, association, government, governmental agency or other entity, whether acting in an individual, fiduciary, or other capacity.**

**99. Plan means this chapter 11 plan, including the Exhibits, and all supplements, appendices, and schedules hereto, either in its current form or as the same may be altered, amended, or modified from time to time in accordance with the Bankruptcy Code, the Bankruptcy Rules, and this plan.**

**100. Plan Document means the Plan, together with any contract, instrument, release, or other agreement or document entered in connection with Plan as any such contract, instrument, release or other agreement or document may be altered, amended, or modified from time to time in accordance with the Bankruptcy Code, the Bankruptcy Rules, and this Plan.**

**101. Plan Supplement means the compilation(s) of documents and forms of documents, specified in the Plan, that the Debtors will file with the Bankruptcy Court on or before the date that is (a) ten (10) days prior to the Voting Deadline or (b) set by the Bankruptcy Court for the filing of such documents and forms of documents.**

**102. Prepetition First Lien Credit Agreements mean collectively the Prepetition First Lien Revolving Credit Agreement and the Prepetition First Lien Term Credit Agreement.**

**103. Prepetition First Lien Credit Documents mean collectively the Prepetition First Lien Revolving Credit Documents and the Prepetition First Lien Term Credit Documents.**

**104. Prepetition First Lien Credit Facilities mean collectively the Prepetition First Lien Revolving Credit Facility and the Prepetition First Lien Term Credit Facility.**

**105. Prepetition First Lien Revolver Administrative Agent means BNYMellon, together with its permitted successors, in its capacity as administrative agent under the First Lien Revolving Credit Facility.**

**106. Prepetition First Lien Revolver Lenders means the Lenders as defined in Prepetition First Lien Revolving Credit Agreement.**

**107. Prepetition First Lien Revolver Secured Parties means, collectively, the Prepetition First Lien Revolver Lenders, the Prepetition First Lien Revolver Administrative Agent and the Prepetition Joint Collateral Agent.**

**108. Prepetition First Lien Revolving Credit Agreement means the Revolving Credit and Guaranty Agreement, dated as of May 20, 2008, as amended by Amendment No. 1 thereto, dated as of July 21, 2009, by and among the Debtors and the Prepetition First Lien Revolver Secured Parties.**

**109. Prepetition First Lien Revolving Credit Documents means the “Credit Documents” as defined in the Prepetition First Lien Revolving Credit Agreement.**

**110. Prepetition First Lien Revolving Credit Facility means the Prepetition First Lien Revolving Credit Agreement and the Prepetition First Lien Revolving Credit Documents.**

**111. Prepetition First Lien Secured Claims mean collectively the Revolver Secured Claims and the Prepetition First Lien Term Loan Secured Claims.**

**112. Prepetition First Lien Term Administrative Agent means Wilmington Trust Company and its permitted successors in its capacity as administrative agent under the Prepetition First Lien Term Credit Facility.**

**113. Prepetition First Lien Term Credit Documents mean the “Credit Documents” as defined in the Prepetition First Lien Term Credit Agreement.**

**114. Prepetition First Lien Term Credit Facility means the Prepetition First Lien Term Credit Agreement and the Prepetition First Lien Term Credit Documents.**

**115. Prepetition First Lien Term Credit Agreement means the Amended and Restated First Lien Credit and Guaranty Agreement, dated as of May 20, 2008, as amended by Amendment No. 1 thereto, dated as of July 21, 2009 by and among the Debtors and the Prepetition First Lien Term Secured Parties.**

**116. Prepetition First Lien Term Lenders means the lenders party from time to time to the Prepetition First Lien Term Credit Agreement.**

**117. Prepetition First Lien Term Loan Secured Claims means the secured Claims held by the Prepetition First Lien Term Secured Parties arising from or under the Prepetition First Lien Term Credit Facility in an aggregate amount equal to (i) the aggregate amount of \$407,963,869.11 and (ii) any and all fees, expense reimbursements, outstanding and unpaid indemnification obligations arising under, and to the extent provided in, the Prepetition First Lien Term Credit Documents or the Cash Collateral Order, or other amounts owed by the Debtors under the Prepetition First Lien Term Credit Facility or the Cash Collateral Order as of the Effective Date, all of which Claims shall be Allowed Class 4 Claims.**

**118. Prepetition First Lien Term Secured Parties means collectively the Prepetition First Lien Term Lenders, the Prepetition First Lien Term Administrative Agent and the Prepetition Joint Collateral Agent.**

**119. Prepetition Joint Collateral Agent means Deutsche Bank Americas, as collateral agent for the Prepetition First Lien Revolver Lenders and the Prepetition First Lien Term Lenders, together with its permitted successors.**

**120. Prepetition Second Lien Term Loan Claim means any and all Claims of Wells Fargo Bank, N.A., as administrative agent and collateral agent, arising from or under the Amended and Restated Second Lien Credit and Guaranty Agreement, dated as of May 20, 2008, as amended by Amendment No 1 thereto, dated as of July 21, 2009, by and among the Debtors, the lenders party thereto from time to time, Wells Fargo Bank, N.A., as administrative agent and collateral agent and the “Credit Documents” as defined therein, which Claim is Allowed under the Plan in Class 5 in the amount of \$151,623,195.20.**

**121. Prepetition Secured Parties means the Prepetition First Lien Revolver Secured Parties and the Prepetition First Lien Term Secured Parties.**

**122. Priority Claims means, collectively, all Priority Tax Claims and Non-Tax Priority Claims.**

**123. Priority Tax Claim means a Claim of a Governmental Unit of the kind specified in Bankruptcy Code sections 502(i) or 507(a)(8).**

**124. Professional means (a) any professional employed in these Chapter 11 Cases pursuant to Bankruptcy Code sections 327, 328, or 1103 or otherwise, and (b) any professional or other entity seeking compensation or reimbursement of expenses in connection with the Chapter 11 Cases pursuant to Bankruptcy Code section 503(b)(4).**

**125. Professional Fee Claim means a Claim of a Professional for compensation for services rendered or reimbursement of costs, expenses, or other charges incurred after the Commencement Date and prior to and including the Effective Date.**

**126. Proof of Claim means a proof of claim filed on or before the General Bar Date, the date set forth in any order rejecting an executory contract or unexpired lease, or the Governmental Bar Date, as applicable, or such other date as may be ordered by the Bankruptcy Court.**

**127. Pro Rata means, at any time, the proportion that the Face Amount of an Allowed Claim in a particular Class bears to the aggregate Face Amount of all Allowed Claims in such Class, unless the Plan provides otherwise.**

**128. Related Parties means all predecessors and successors in interest, current and former members (including ex officio members), principals, limited liability company managers or similar managerial agents, officers, directors, stockholders, “controlling persons” (within the meaning of the United States federal securities laws), affiliates, subsidiaries, partners, investors, administrators, managed funds and/or accounts, attorneys, financial advisors, accountants, consultants, independent contractors, investment bankers, investment advisors, agents, actuaries, and other professionals, each in their respective capacities as such.**

**129. Released Claims means the claims or Causes of Actions released or waived under this Plan, including the claims and Causes of Action described in Article X.C hereof, and any claims or Causes of Action specifically released in the Confirmation Order, the Cash Collateral Order, or any other Final Order of the Bankruptcy Court.**

**130. Releasing Parties means all current and former Prepetition Secured Parties, Lenado, the Committee, the Committee Members, the Studios, Warner Home Video and all other Holders of Claims and Interests, each of their Related Parties, and any Person claiming through any of the foregoing.**

**131. Requisite Lenders means, as applicable, the “Requisite Lenders” as such term is defined in the Prepetition First Lien Revolving Credit Agreement or the “Requisite Lenders” as such term is defined in the Prepetition First Lien Term Credit Agreement.**

**132. Respective Liquidating Trust Parties has the meaning ascribed to such term in Article V.D.5.n hereof.**

**133. Revolver Effective Date Cash has the meaning ascribed to such term in Article III.B.3 hereof.**

**134. Revolver Pre-Effective Date Secured Claims means any Revolver Secured Claims arising, accruing, invoiced, liquidated, calculated, or quantified prior to the Effective Date, in an aggregate amount equal to the sum of (i) the aggregate principal amount of \$100,000,000 in “Revolving Loans” (as defined in the Prepetition First Lien Revolving Credit Agreement), (ii) interest pursuant to the Prepetition First Lien Revolving Credit Agreement (which interest shall be calculated at the non-default rate otherwise applicable to “Base Rate Loans”, as such term is defined in the Prepetition First Lien Revolving Credit Agreement and as provided in the Cash Collateral Order), and (iii) any and all fees, expense reimbursements, outstanding and unpaid indemnification obligations arising under, and to the extent provided in, the Prepetition First Lien Revolver Credit**

**Documents or the Cash Collateral Order, or other amounts owed by the Debtors under the Prepetition First Lien Revolving Credit Facility or the Cash Collateral Order as of the Effective Date, all of which Claims shall be Allowed Class 3 Claims.**

**135. Revolver Post-Effective Date Secured Claims means, without duplication of any Revolver Pre-Effective Date Secured Claims, any Revolver Secured Claims arising, accruing, invoiced, liquidated, calculated, or quantified on or after the Effective Date, including, without limitation and for the avoidance of doubt, outstanding and unpaid indemnification obligations arising under, and to the extent provided in and secured by, the Prepetition First Lien Credit Documents or the Cash Collateral Order, fees and expenses of the Prepetition First Lien Revolver Administrative Agent and its professionals arising under the Prepetition First Lien Revolver Credit Documents or the Cash Collateral Order, and fees and expenses of the Prepetition First Lien Revolver Lenders' professionals arising under the Prepetition First Lien Revolver Credit Documents or the Cash Collateral Order, which Claims, subject to the First Lien Term Lenders Liquidating Trustee's right to review and object under Article III.B.3 hereof, shall be Allowed Class 3 Claims.**

**136. Revolver Secured Claims means all Claims held by the Prepetition First Lien Revolver Secured Parties arising from or under the Prepetition First Lien Revolving Credit Facility, including the Revolver Pre-Effective Date Secured Claims and the Revolver Post-Effective Date Secured Claims.**

**137. Scheduled means, with respect to any Claim, the status, priority and amount, if any, of such Claim as set forth in the Schedules.**

**138. Schedules means the schedules of assets and liabilities, the list of Holders of Interests, and the statements of financial affairs filed by the Debtors pursuant to Bankruptcy Code section 521 and the Bankruptcy Rules, as such schedules have been or may be further modified, amended or supplemented in accordance with Bankruptcy Rule 1009 or orders of the Bankruptcy Court.**

**139. Securities Act means the Securities Act of 1933, 15 U.S.C. §§ 77a-77aa, as now in effect or hereafter amended.**

**140. Security shall have the meaning ascribed to it in Bankruptcy Code section 101(49).**

**141. Solicitation means the solicitation by the Debtors of acceptances of the Plan.**

**142. Solicitation Procedures Order means the order entered by the Bankruptcy Court establishing procedures for Solicitation of votes for or against the Plan under Bankruptcy Code sections 105, 1125, 1126 and 1128 and Bankruptcy Rules 2002, 3017, 2018 and 3020.**

**143. Stub Rent Order means the Bankruptcy Court's March 8, 2010 Order, docket entry and oral ruling of the Bankruptcy Court requiring the payment of February post-petition rent.**

**144. Studios means Paramount Home Entertainment Inc., Sony Pictures Home Entertainment Inc., Universal Studios Home Entertainment LLC, V.P.D. IV, Inc. (d/b/a VPD) (“VPD”), and Twentieth Century Fox Home Entertainment LLC.**

**145. Substantial Contribution Claim means a Claim under Bankruptcy Code subsections 503(b)(3), (b)(4), or (b)(5) for compensation or reimbursement of expenses incurred in making a substantial contribution in the Chapter 11 Cases.**

**146. Tail Coverage means liability insurance coverage for the Debtors’ current and former directors and officers obtained by the Debtors extending the Debtors’ existing coverage for a term of not less than six (6) years after the Effective Date.**

**147. Tax Items has the meaning ascribed to such term in Article V.D.6(a) hereof.**

**148. Taxes means any and all taxes, levies, imposts, assessments, or other charges of whatever nature imposed at any time by a Governmental Unit or by any political subdivision or taxing authority thereof or therein and all interest, penalties, or similar liabilities with respect thereto.**

**149. Term Sheet means that certain Term Sheet for Joint Plan of Liquidation of Movie Gallery, Inc. and Its Affiliated Debtors dated May 6, 2010 and annexed to the Stipulation by and Between the Debtors, Lenado Capital Advisors and Affiliates (on Behalf of Certain Prepetition First Lien Revolving Lenders), the Prepetition First Lien Term Agent (on Behalf of the Prepetition First Lien Term Lenders), the Official Committee of Unsecured Creditors and Certain Movie Studios and Suppliers Regarding Final Cash Collateral Order and Plan Term Sheet filed with the Bankruptcy Court on May 7, 2010 [Docket No. 1093].**

**150. Third Party Release means the release given by the Releasing Parties to the Third Party Releasees as set forth in Article X.D of the Plan.**

**151. Third Party Releasees means, collectively, the Prepetition Secured Parties, Lenado, the Studios, Warner Home Video and each of their respective Related Parties.**

**152. Unclassified Claims means Administrative Claims and Priority Tax Claims.**

**153. Unimpaired means, when used in reference to a Claim, Interest or Class, a Claim, Interest or Class that is not impaired within the meaning of Bankruptcy Code section 1124.**

**154. U.S. Trustee means the Office of the United States Trustee for the Eastern District of Virginia.**

**155. Voting Classes means those Impaired Classes of Claims that are entitled to Vote under the Plan.**

**156. Voting Deadline means the date and time, as fixed by an order of the Bankruptcy Court and set forth in the Disclosure Statement, by which all Ballots to accept or reject the Plan must be received in order to be counted.**

**157. Warner Home Video means Warner Home Video, a division of Warner Bros. Home Entertainment, Inc.**

### **C. RULES OF INTERPRETATION**

For purposes of the Plan (a) any reference in the Plan to a contract, instrument, release, indenture, or other agreement or document being in a particular form or on particular terms and conditions means that such document shall be substantially in such form or substantially on such terms and conditions, (b) any reference in the Plan to an existing document or exhibit filed or to be filed means such document or exhibit as it may have been or may be amended, modified, or supplemented, (c) unless otherwise specified, all references in the Plan to sections, articles, Schedules and Exhibits are references to sections, articles, Schedules and Exhibits of or to the Plan, (d) the words “herein” and “hereto” refer to the Plan in its entirety rather than to a particular portion of the Plan, (e) captions and headings to Articles and Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of the Plan, and (f) to the extent not modified herein, the rules of construction set forth in Bankruptcy Code section 102 and in the Bankruptcy Rules shall apply.

### **D. COMPUTATION OF TIME**

In computing any period of time prescribed or allowed by the Plan, the provisions of Bankruptcy Rule 9006(a) shall apply.

### **E. GOVERNING LAW**

Unless a rule of law or procedure is supplied by federal law (including the Bankruptcy Code and Bankruptcy Rules) and except as otherwise provided herein or therein, the laws of (i) the State of New York shall govern the construction and implementation of the Plan and any agreements, documents, and instruments executed in connection with the Plan and (ii) the laws of the state of incorporation of each Debtor shall govern corporate governance matters with respect to such Debtor, in either case without giving effect to the principles of conflicts of law thereof.

### **F. EXHIBITS**

All Exhibits are incorporated into and are a part of this Plan as if set forth in full herein, and, to the extent not annexed hereto, such Exhibits shall be filed with the Bankruptcy Court on or before the Exhibit Filing Date. After the Exhibit Filing Date, copies of Exhibits can be obtained upon written request to the Claims Agent to the Debtors, at Movie Gallery Claims Processing, c/o Kurtzman Carson Consultants LLC, 2335 Alaska Avenue, El Segundo, CA 90245, or by downloading such Exhibits from the Bankruptcy Court’s website at <http://www.vaeb.uscourts.gov> (registration and password required) or the Claims Agent’s website at [www.kccllc.net/moviegallery](http://www.kccllc.net/moviegallery). To the extent any Exhibit is inconsistent with the terms of the Plan, unless otherwise ordered by the Bankruptcy Court, the non-Exhibit portion of the Plan shall control.

## **XII.**

### **CLASSIFICATION OF CLAIMS AND INTERESTS**

#### **A. INTRODUCTION**

All Claims and Interests, except Unclassified Claims are placed in the Classes set forth below. In accordance with Bankruptcy Code section 1123(a)(1), Unclassified Claims have not been classified.

A Claim or Interest is placed in a particular Class only to the extent that the Claim or Interest falls within the description of that Class, and is classified in other Classes to the extent that any portion of the Claim or Interest falls within the description of such other Classes. A Claim is also placed in a particular Class for the purpose of receiving Distributions pursuant to the Plan only to the extent that such Claim is an Allowed Claim in that Class and such Claim has not been paid, released or otherwise settled prior to the Effective Date.

The Plan provides for substantive consolidation of the Debtors' assets and liabilities for voting and distribution purposes, pursuant to the Global Plan Settlement, as described in XV.A.3 of this Plan.

The Debtors have set forth the Classes below.

#### **B. UNSOLICITED AND UNCLASSIFIED CLAIMS (UNCLASSIFIED CLAIMS ARE NOT ENTITLED TO VOTE ON THE PLAN.)**

- a. Administrative Claims**
- b. Priority Tax Claims**

#### **C. UNIMPAIRED CLASSES OF CLAIMS (CLASSES 1, 2 AND 3 ARE DEEMED TO HAVE ACCEPTED THE PLAN AND, THEREFORE, ARE NOT ENTITLED TO VOTE ON THE PLAN.)**

##### **a. Class 1: Non-Tax Priority Claims**

Class 1 consists of Non-Tax Priority Claims.

##### **b. Class 2: Miscellaneous Secured Claims**

Class 2 consists of all Miscellaneous Secured Claims.

##### **c. Class 3: Revolver Secured Claims**

Class 3 consists of all Revolver Secured Claims.



**D. IMPAIRED CLASSES OF CLAIMS (CLASSES 4 AND 5 ARE ENTITLED TO VOTE ON THE PLAN. CLASS 6 IS DEEMED TO HAVE REJECTED THE PLAN AND, THEREFORE, IS NOT ENTITLED TO VOTE ON THE PLAN.)**

**a. Class 4: Prepetition First Lien Term Loan Secured Claims**

Class 4 consists of all Prepetition First Lien Term Loan Secured Claims.

**b. Class 5: General Unsecured Claims**

Class 5 consists of all General Unsecured Claims.

**c. Class 6: Intercompany Claims**

Class 6 consists of all Intercompany Claims.

**E. IMPAIRED CLASSES OF INTERESTS (CLASS 7 IS DEEMED TO HAVE REJECTED THE PLAN AND, THEREFORE, IS NOT ENTITLED TO VOTE ON THE PLAN.)**

**a. Class 7: Interests**

Class 7 consists of all Interests.

**F. ELIMINATION OF CLASSES**

Any Class of Claims that does not consist, as of the date of the Confirmation Hearing, of at least one Allowed Claim, Disputed Claim or Claim temporarily Allowed under Rule 3018 of the Bankruptcy Rules, shall be deemed deleted from this Plan for all purposes.

**XIII.**

**TREATMENT OF CLAIMS AND INTERESTS**

**A. UNCLASSIFIED CLAIMS**

In accordance with Bankruptcy Code section 1123(a)(1) of the Bankruptcy Code, certain Claims have not been classified, and the respective treatment of such Unclassified Claims is set forth immediately below.

**a. Administrative Claims**

Except as otherwise provided herein, and subject to the requirements of this Plan, on, or as soon as reasonably practicable after, the date that is fifteen (15) days after the date on which such Administrative Claim becomes an Allowed Administrative Claim, a Holder of an Allowed Administrative Claim shall receive, to be paid out of the First Lien Term Lenders Liquidating Trust, in full and final satisfaction, settlement and release of and in exchange for such Allowed Administrative Claim, (i) Cash equal to the unpaid portion of such Allowed Administrative Claim or (ii) such other treatment as to which such Holder and the Debtors and/or the First Lien Term Lenders Liquidating Trustee shall have agreed upon in writing; provided,

however, that Allowed Administrative Claims with respect to liabilities incurred by a Debtor in the ordinary course of business during the Chapter 11 Cases may be paid in the ordinary course of business in accordance with the terms and conditions of any agreements relating thereto (a) prior to the Effective Date, by the Debtors and (b) subsequent to the Effective Date, by the First Lien Term Lenders Liquidating Trustee. Notwithstanding the foregoing, the payment of Administrative Claims shall be subject, if prior to the Effective Date, to Lenado's and/or the Prepetition First Lien Term Administrative Agent's rights to object (to the extent not inconsistent with the Term Sheet), and if after the Effective Date, the First Lien Term Lenders Liquidating Trustee's right to object (to the extent not inconsistent with the Term Sheet), in good faith on any grounds to the validity, amount or administrative priority of any such Claims.

**b. Priority Tax Claims**

Except to the extent that an Allowed Priority Tax Claim has been paid prior to the Distribution Date, a Holder of an Allowed Priority Tax Claim shall be entitled to receive, to be paid out of the First Lien Term Lenders Liquidating Trust, in full and final satisfaction, settlement and release of and in exchange for such Allowed Priority Tax Claim, (i) regular installment Cash payments, occurring not less frequently than quarterly over a period not exceeding five (5) years after the Commencement Date, in an aggregate principal amount equal to the unpaid portion of such Allowed Priority Tax Claim, plus interest on the unpaid portion thereof at the Case Interest Rate from the Effective Date through the date of payment thereof or (ii) such other treatment as to which such Holder and the First Lien Term Lenders Liquidating Trustee shall have agreed upon in writing; provided, however, that the First Lien Term Lenders Liquidating Trustee shall have the right to pay any Allowed Priority Tax Claim, or any remaining balance of any Allowed Priority Tax Claim, in full at any time on or after the Effective Date without premium or penalty. Priority Tax Claimholders will be paid in full on account of their Allowed Priority Tax Claims and are not entitled to vote on the Plan. Notwithstanding the foregoing, the payment of Priority Tax Claims shall be subject, if prior to the Effective Date, to Lenado's and/or the Prepetition First Lien Term Lender Administrative Agent's rights to object, and if after the Effective Date, the First Lien Term Lenders Liquidating Trustee's rights to object, in good faith on any grounds to the validity, amount or priority of any such Claims.

**B. UNIMPAIRED CLAIMS**

**a. Class 1: Non-Tax Priority Claims**

On, or as soon as reasonably practicable after, the date that is ninety (90) days after the date on which a Non-Tax Priority Claim becomes an Allowed Non-Tax Priority Claim, a Holder of an Allowed Non-Tax Priority Claim shall receive, to be paid out of the First Lien Term Lenders Liquidating Trust, in full and final satisfaction, settlement and release of and in exchange for such Allowed Non-Tax Priority Claim, (i) Cash equal to the unpaid portion of such Allowed Non-Tax Priority Claim or (ii) such other treatment as to which such Holder and the Debtor and/or the First Lien Term Lenders Liquidating Trustee shall have agreed upon in writing. Notwithstanding the foregoing, the payment of Non-Tax Priority Claims shall be subject, if prior to the Effective Date, to Lenado's and/or the Prepetition First Lien Term Lender Administrative Agent's rights to object, and if after the Effective Date, the First Lien Term Lenders Liquidating Trustee's right to object, in good faith on any grounds to the validity,

amount or priority of any such Claims. Class 1 is presumed to have accepted the Plan and, therefore, Holders of Class 1 Claims are not entitled to vote to accept or reject the Plan.

The Debtors reserve their right, whether of their own accord or upon the request of the Requisite Lenders under both Prepetition First Lien Credit Agreements, to delete this Class in accordance with XII.F.

**b. Class 2: Miscellaneous Secured Claims**

On, or as soon as reasonably practicable after, the date that is sixty (60) days after the date on which a Miscellaneous Secured Claim becomes an Allowed Miscellaneous Secured Claim, a Holder of an Allowed Miscellaneous Secured Claim shall receive, at the Debtors' option (if prior to the Effective Date) and at the First Lien Term Lenders Liquidating Trustee's option (if after the Effective Date) in full and final satisfaction, settlement and release of and in exchange for, such Allowed Miscellaneous Secured Claim, (i) Cash equal to the unpaid portion of such Allowed Miscellaneous Secured Claim, to be paid out of the First Lien Term Lenders Liquidating Trust, (ii) a return of the Holder's Collateral securing the Miscellaneous Secured Claim, or (iii) such other treatment as to which such Holder and the First Lien Term Lenders Liquidating Trustee shall have agreed upon in writing. Any Holder of a Miscellaneous Secured Claim shall retain its Lien in the Collateral or the proceeds of the Collateral (to the extent that such Collateral is sold by the Debtors or the First Lien Term Lenders Liquidating Trustee free and clear of such Lien) to the same extent and with the same priority as such Lien held as of the Commencement Date (after giving effect to the Cash Collateral Order) until such time as (a) such Miscellaneous Secured Claim has been satisfied pursuant to the preceding sentence; or (b) such purported Lien has been determined by an order of the Bankruptcy Court to be invalid or otherwise avoidable. Notwithstanding the foregoing, or anything to the contrary in the Plan, no Distributions shall be made to the Holder of any Allowed Miscellaneous Secured Claim unless either (a) the First Lien Term Lenders Liquidating Trust has sufficient Available Cash to pay, or reserve for, as the case may be, the Face Amount of all Miscellaneous Secured Claims or (b) the First Lien Term Lenders Liquidating Trustee consents to all or any portion of such Distribution. Notwithstanding the foregoing, the payment of Miscellaneous Secured Claims shall be subject to the First Lien Term Lenders Liquidating Trustee's right to object, in good faith on any grounds to the validity, amount or priority of any such Claims or the validity, perfection, enforceability or priority of the Lien purported to secure any such Claim or portion thereof. Class 2 is presumed to have accepted the Plan and, therefore, Holders of Class 2 Claims are not entitled to vote to accept or reject the Plan.

To the extent any Holder of a Claim that is secured by a valid and perfected Lien on property of a Debtor's estate which Lien is, whether by operation of law, contract, court order, or otherwise, junior and subordinate to the Lien of the Prepetition Secured Parties and/or the Claims of the Revolver Secured Claims or the First Lien Term Loan Claims, then such Claim shall be treated as a Class 5 Claim under this Plan.

The Debtors reserve their right, whether of their own accord or upon the request of the Requisite Lenders under both Prepetition First Lien Credit Agreements, to delete this Class in accordance with XII.F.

**c. Class 3: Revolver Secured Claims**

On the Effective Date, the Debtors shall pay Cash equal to the full amount of the then unpaid and outstanding Revolver Secured Claims to the Prepetition First Lien Revolver Administrative Agent (such Cash, the “**Revolver Effective Date Cash**”) without prejudice to the Holder of any Revolver Post-Effective Date Secured Claim. As soon as practicable upon receipt of the Revolver Effective Date Cash, the Prepetition First Lien Revolver Administrative Agent shall distribute the Revolver Effective Date Cash on a Pro Rata basis to the Prepetition First Lien Revolver Lenders net of fees and expenses payable to the Prepetition First Lien Revolver Agent, its professionals and professionals of the Prepetition First Lien Revolver Lenders, which fees and expenses the Prepetition First Lien Revolver Administrative Agent shall apply or remit based on invoices presented to the Prepetition First Lien Revolver Administrative Agent. The payment of the Revolver Effective Date Cash by the Debtors to the Prepetition First Lien Revolver Administrative Agent on the Effective Date shall be in full and final satisfaction, settlement and release of and in exchange for all Revolver Pre-Effective Date Secured Claims paid on the Effective Date and the portion of any other Revolver Secured Claims paid on the Effective Date; *provided, however*, that if and to the extent any Revolver Pre-Effective Date Secured Claim is not paid in full in Cash on the Effective Date, such Revolver Pre-Effective Date Secured Claim, or any portion thereof, shall retain the applicable priority under the Prepetition First Lien Credit Documents and shall be paid in full in Cash by the First Lien Term Lenders Liquidating Trustee from the Available Cash held by the First Lien Term Lenders Liquidating Trust promptly upon presentation of such Revolver Pre-Effective Date Secured Claim by any Prepetition First Lien Revolving Secured Party. Revolver Post-Effective Date Secured Claims, if any, shall be paid by the First Lien Term Lenders Liquidating Trustee from the Available Cash held by the First Lien Term Lenders Liquidating Trust promptly upon presentation of such Revolver Pre-Effective Date Secured Claim and shall retain the applicable priority under the Prepetition First Lien Credit Documents and the payment of any Revolver Post-Effective Date Secured Claim by the First Lien Term Lenders Trustee to the Prepetition First Lien Revolver Administrative Agent thereafter shall be in full and final satisfaction, settlement and release of and in exchange for that portion of the Revolver Post-Effective Date Secured Claims so paid on such date; *provided, however*, that the First Lien Term Lenders Liquidating Trustee may review such Revolver Post-Effective Date Secured Claims and reserves the right to object in good faith in whole or part to the payment thereof.

Except as provided in the Plan with respect to the Creditor Funds, the Prepetition Joint Collateral Agent, on its own behalf and on behalf of any Holder of a Revolver Secured Claim shall retain its Lien in the Collateral or the proceeds of the Collateral (to the extent that such Collateral is sold by the Debtors or the Liquidating Trustee free and clear of such Lien) to the same extent and with the same priority as such Lien held as of the Commencement Date until the termination of the First Lien Term Lenders Liquidating Trust. Nothing in this Plan or the Confirmation Order shall, or shall be deemed to reduce any payment due to or adversely affect any right of the Prepetition First Lien Revolver Secured Parties under the Cash Collateral Order including, without limitation under Section 7(d) of the Cash Collateral Order.

All Distributions paid by the Debtors, on or prior to the Effective Date, or the First Lien Term Lenders Liquidating Trustee after the Effective Date to the Prepetition First Lien Revolver Administrative Agent shall be final, absent manifest error, shall immediately vest in and become the property of the Holders of Revolver Secured Claims.

Class 3 is presumed to have accepted the Plan and, therefore, Holders of Class 3 Claims are not entitled to vote to accept or reject the Plan.

### **C. IMPAIRED CLAIMS**

#### **a. Class 4: Prepetition First Lien Term Loan Claims**

Subject to the occurrence of the Effective Date and the transfer of the Creditor Funds to the GUC Liquidating Trust as provided in this Plan, each Holder of a Prepetition First Lien Term Loan Claim shall receive its Pro Rata share of the beneficial interests in the First Lien Term Lenders Liquidating Trust, which shall make distributions to the Holders of such beneficial interests all Available Cash and other property held by the First Lien Term Lenders Liquidating Trust in installments on the Initial Distribution Date and on each Periodic Distribution Date thereafter, after making adequate provision for: (i) the expenses of administering the First Lien Term Lenders Liquidating Trust; (ii) after two (2) Business Days receipt of written notice from Lenado or the Prepetition First Lien Revolver Administrative Agent of the existence of any Revolver Post-Effective Date Secured Claim, the amount of any such Revolver Post-Effective Date Secured Claim to the extent not paid in full in Cash to the Prepetition First Lien Revolver Administrative Agent on the Effective Date or any Distribution Date; (iii) the payment in full of all Allowed Administrative Claims that have not been paid and any Disputed Administrative Claims that have not been Disallowed; and (iv) the payment in full of all Allowed Priority Claims and any Disputed Claims that have not been Disallowed (collectively, the “**Adequate Provision**”). Any payment of an Allowed Claim by the First Lien Term Lenders Liquidating Trustee will reduce the amount of Adequate Provision on a dollar for dollar basis equal to the amount of such payment. The First Lien Lenders Liquidating Trustee may, but shall not be required to, request that the Bankruptcy Court review and approve the First Lien Term Lenders Liquidating Trustee’s Adequate Provision. Nothing in this Plan or the Confirmation Order shall, or shall be deemed to, reduce any payment due to or adversely affect any right of the Prepetition First Lien Term Secured Parties under the Cash Collateral Order, including, without limitation under Section 7(d) of the Cash Collateral Order, except as set forth in the Term Sheet.

Except as provided in the Plan with respect to the Creditor Funds, the Prepetition Joint Collateral Agent, on its own behalf and on behalf of any Holder of a Prepetition First Lien Term Secured Claim shall retain its Lien in the Collateral or the proceeds of the Collateral (to the extent that such Collateral is sold by the Debtors or the First Lien Term Lenders Liquidating Trustee free and clear of such Lien) to the same extent and with the same priority as such Lien held as of the Commencement Date until the termination of the First Lien Term Lenders Liquidating Trust.

All Distributions paid by the First Lien Term Lenders Liquidating Trustee to the Holders of a Prepetition First Lien Term Loan Secured Claim shall be final, absent manifest error, shall immediately vest in and become the property of such Holders.

Class 4 is Impaired and is entitled to vote on the Plan.

#### **b. Class 5: General Unsecured Claims**

Each Holder of an Allowed General Unsecured Claim shall receive from the GUC Liquidating Trust, in full and final satisfaction, settlement and release of and in exchange for

such Allowed General Unsecured Claim, its Pro Rata share of the beneficial interests in the GUC Liquidating Trust, which shall make distributions to the Holders of such beneficial interests all of the Creditor Funds held by the GUC Liquidating Trust, after making adequate provision for: (i) the expenses of administering the GUC Liquidating Trust; and (ii) Disputed General Unsecured Claims, if any.

Upon the occurrence of the Effective Date, the Prepetition Joint Collateral Agent, on its own behalf and on behalf of the Holders of Revolver Secured Claims and Prepetition First Lien Term Loan Claims shall be deemed to release its Lien on the Creditor Funds.

Upon the occurrence of Effective Date, the Holders of Prepetition First Lien Term Loan Claims shall be deemed to have waived their rights to receive any distribution on account of their unsecured deficiency claims under the Prepetition First Lien Term Credit Facility or any other General Unsecured Claims arising from the Prepetition First Lien Term Credit Facility that they may assert against the Debtors (without prejudice to any other General Unsecured Claims or other Claims that any such Holder may have).

All Distributions paid by the GUC Liquidating Trustee to the Holders of Allowed General Unsecured Claims shall be final, absent manifest error, shall immediately vest in and become the property of such Holders.

Class 5 is Impaired and is entitled to vote on the Plan.

**c. Class 6: Intercompany Claims**

In connection with, to the extent of and as a result of, the substantive consolidation of the Debtors' Estates and the Chapter 11 Cases, on the Confirmation Date or such other date as may be set by an order of the Bankruptcy Court, but subject to the occurrence of the Effective Date, all Intercompany Claims shall be deemed eliminated, cancelled and/or extinguished and the Holders of Class 6 Claims shall not be entitled to, and shall not receive or retain any property or interest in property on account of such Claims. Class 6 is deemed to have rejected the Plan and, therefore, Holders of Class 6 Claims are not entitled to vote to accept or reject the Plan.

**D. IMPAIRED INTERESTS**

**a. Class 7: Interests**

On the Effective Date, all Interests shall be cancelled and each Holder thereof shall not be entitled to, and shall not receive or retain any property or interest in property on account of, such Interests. Class 7 is deemed to have rejected the Plan and, therefore, Holders of Interests are not entitled to vote to accept or reject the Plan.

**E. ALLOWED CLAIMS**

Except as set forth in XIII.C above and in this XIII.E, (i) the First Lien Term Lenders Liquidating Trustee shall only make Distributions to Holders of Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Class 1 Claims, Allowed Class 2 Claims, Allowed Class 3 Claims, and Allowed Class 4 Claims and (ii) the GUC Liquidating Trustee shall

only make Distributions to Holders of Allowed Class 5 Claims. No Holder of a Disputed Claim will receive any Distribution on account thereof until (and then only to the extent that) its Disputed Claim becomes an Allowed Claim; *provided, however*, that if the only dispute regarding a Disputed Claim is to the amount of the Disputed Claim, the Holder of a Disputed Claim shall be entitled to receive a Distribution on account of that portion of the Disputed Claim which the applicable Liquidating Trustee does not dispute, which Distribution shall be made by the applicable Liquidating Trustee at the same time and in the same manner that such Liquidating Trustee makes Distributions to Holders of Allowed Claims pursuant to the provisions of the Plan. Each Liquidating Trustee may, in its respective discretion, withhold Distributions otherwise due and payable by such Liquidating Trustee hereunder to any applicable Claimholder until the Claims Objection Deadline, to enable a timely objection thereto to be filed. Any Holder of a Claim that becomes an Allowed Claim after the Effective Date will receive its Distribution in accordance with the terms and provisions of this Plan and the applicable Liquidating Trust Agreement.

#### **XIV.**

#### **ACCEPTANCE OR REJECTION OF THE PLAN**

##### **A. IMPAIRED CLASSES OF CLAIMS ENTITLED TO VOTE**

Classes 4 and 5 are Impaired by the Plan. Subject to XIII of the Plan, the votes of Holders of Claims in Class 4 and Class 5 and who are entitled to vote under the Solicitation Procedures Order will be solicited for acceptance or rejection of the Plan.

##### **B. ACCEPTANCE BY AN IMPAIRED CLASS**

In accordance with Bankruptcy Code section 1126(c) and except as provided in Bankruptcy Code section 1126(e), each of Class 4 and Class 5, as Impaired Classes, shall have accepted the Plan if the Plan is accepted by the Holders of at least two-thirds (2/3) in dollar amount and more than one-half (1/2) in number of the Claims of such Class that are entitled to vote and have timely and properly voted to accept or reject the Plan.

##### **C. PRESUMED ACCEPTANCES BY UNIMPAIRED CLASSES**

Classes 1, 2 and 3 are Unimpaired by the Plan. Under Bankruptcy Code section 1126(f), Holders of Claims in Classes 1, 2 and 3 are conclusively presumed to accept the Plan, and the votes of such Claimholders will not be solicited.

##### **D. CLASSES DEEMED TO REJECT PLAN**

Claimholders in Class 6 and Interest Holders in Class 7 are not entitled to receive or retain any property under the Plan. Under Bankruptcy Code section 1126(g), Holders of Claims in Class 6 and Holders of Interests in Class 7 are deemed to reject the Plan, and the votes of such Claimholders or Interest Holders will not be solicited.

## **E. SUMMARY OF CLASSES VOTING ON THE PLAN**

As a result of the provisions of XIV of this Plan, the votes of Holders of Claims in Class 4 and Class 5 that are not subject to an objection or who have filed a motion under Bankruptcy Rule 3018(a) and obtained temporary allowance of their Claims for voting purposes, all as further set out in the Solicitation Procedures Order, will be solicited with respect to the Plan.

## **F. CONFIRMATION PURSUANT TO BANKRUPTCY CODE SECTION 1129(B)**

The Debtors will seek confirmation of the Plan from the Court by employing the “cramdown” procedures set forth in section 1129(b) of the Bankruptcy Code.

## **G. AMENDMENT OF THE PLAN**

Subject to the prior written consent of the Requisite Lenders under both Prepetition First Lien Credit Agreements, the Debtors reserve the right to alter, amend, modify, revoke, or withdraw the Plan or any Plan Exhibit or schedule, including to amend or modify the Plan or such Exhibits or schedules to satisfy the requirements of Bankruptcy Code section 1129(b), if necessary. To the extent any such alteration, amendment, modification, revocation, or withdrawal of the Plan or any Plan Exhibit or schedule would be inconsistent with rights of and the benefits conferred upon the Committee, Holders of General Unsecured Claims, Holders of Administrative Claims, the Studios, or Warner Home Video pursuant to the Global Plan Settlement or would adversely effect the payment of General Unsecured Claims or Administrative Claims, then the Committee (if prior to the Effective Date) or the GUC Liquidating Trustee (if after the Effective Date) shall be entitled to consent in writing.

## **XV.**

### **MEANS FOR IMPLEMENTATION OF THE PLAN**

#### **A. GLOBAL PLAN SETTLEMENT AND SUBSTANTIVE CONSOLIDATION**

##### **a. Global Plan Settlement**

The Plan is predicated upon the agreements entered into among the Debtors, the Committee, certain of the Prepetition Secured Parties, the Studios and Warner Home Video as set forth in the Term Sheet (the “Global Plan Settlement”). In accordance with the Global Plan Settlement: (i) the Prepetition Secured Parties shall (a) release their Liens upon the Creditor Funds upon the occurrence of the Effective Date, and (b) without prejudice to the rights of certain parties in interest to object to Administrative Claims to the extent provided in the Plan, to consent to the payment of Allowed Administrative Claims incurred prior to the Effective Date, all as set forth in the Term Sheet, (ii) the Studios and Warner Home Video shall waive or amend certain obligations owed to them by the Debtors pursuant the terms of various revenue sharing agreements, and to forbear from taking certain other actions, all as set forth in the Term Sheet, and (iii) the Committee shall suspend and, subject to the Confirmation Order becoming a Final Order, terminate the Committee Investigation, as defined in, and subject to, the terms of the Term Sheet and the Cash Collateral Order. In addition, on and subject to the occurrence of the Effective Date: (a) the Revolver Pre-Effective Date Secured Claims will be paid in full in Cash;



(b) the GUC Liquidating Trustee shall take possession of the Creditor Funds; and (c) all of the Debtors' Other Assets will be deemed transferred to the First Lien Term Lenders Liquidating Trust. Thereafter, the GUC Liquidating Trustee shall be responsible for administering the GUC Liquidating Trust including distributing the Creditor Funds in accordance with this Plan. The First Lien Term Lenders Liquidating Trustee shall be responsible for administering the First Lien Term Lenders Liquidating Trust and liquidating the Debtors' Other Assets and distributing Cash in accordance with this Plan and resolving all Claims other than General Unsecured Claims.

The Plan also contemplates, and is predicated upon, the entry of an order substantively consolidating the Debtors' Estates and the Chapter 11 Cases. Accordingly, on the Effective Date: (i) all Intercompany Claims by, between and among the Debtors shall be deemed eliminated, (ii) all assets and liabilities of the Affiliate Debtors shall be merged or treated as if they were merged with the assets and liabilities of Movie Gallery, Inc., (iii) any obligation of a Debtor and all guarantees thereof by one or more of the other Debtors shall be deemed to be one obligation of Movie Gallery, Inc., (iv) the Interests shall be cancelled, and (v) each Claim filed or to be filed against any Debtor shall be deemed filed only against the consolidated Movie Gallery, Inc. and shall be deemed a single Claim against and a single obligation of the consolidated Movie Gallery, Inc. On the Effective Date, in accordance with the terms of the Plan, all Claims based upon guarantees of collection, payment, or performance made by the Debtors as to the obligations of another Debtor shall be released and of no further force and effect. The Debtors' subsidiary, MG Canada, shall not be subject to substantive consolidation with the other Debtors and, after the Effective Date, all of the Debtors' right, title and interest in and to MG Canada shall be deemed and considered to be and constitute Other Assets; provided, however, that the First Lien Term Lenders Liquidating Trust shall not be liable in any way for any liabilities, obligations, or guarantees of the Debtors, whether contingent or actual, express or implied, in and to or arising from the Debtors' relationship with MG Canada.

**b. Approval of the Global Plan Settlement**

The Plan and Disclosure Statement, jointly, shall serve as, and shall be deemed to be, a motion for entry of an order under Bankruptcy Rule 9019 approving the Global Plan Settlement and the substantive consolidation of the Debtors' Chapter 11 Cases. If no objection to the Global Plan Settlement or to substantive consolidation is timely filed and served by any Holder of an Impaired Claim affected by the Plan as provided herein on or before the Voting Deadline or such other date as may be established by the Bankruptcy Court, the Global Plan Settlement and substantive consolidation may be approved by the Bankruptcy Court; *provided, however,* that, pursuant to the terms of the Term Sheet, no party thereto may object to the Global Plan Settlement. If any objections are timely filed and served, a hearing with respect to the Global Plan Settlement and/or substantive consolidation and the objections thereto shall be scheduled by the Bankruptcy Court, which hearing may, but is not required to, coincide with the Confirmation Hearing.

**c. Substantive Consolidation**

Substantive consolidation of the estates of multiple debtors in bankruptcy effectuates a combination of the assets and liabilities of the involved debtors for certain purposes. The common effects of consolidation are (i) the pooling of the assets of, and claims against, the consolidated debtors; (ii) satisfying liabilities from a common fund; and (iii)

combining the creditors of the debtors for purposes of voting on plans of reorganization or liquidation. The Plan contemplates and is predicated upon entry of an order substantively consolidating the Debtors' Estates and the Chapter 11 Cases consistent with the Global Plan Settlement.

Substantive consolidation of multiple debtors under a plan is expressly permitted by section 1123(a)(5)(C) of the Bankruptcy Code. *See, e.g., In re Stone & Webster, Inc.*, 286 B.R. 532, 546 (Bankr. D. Del. 2002) (“§ 1123(a)(5)(C) clearly authorizes a bankruptcy court to confirm a Chapter 11 plan containing a provision that substantively consolidates the estates of two or more debtors.”); *see also Schnellig v. Crawford (In re James River Coal Co., Inc.)*, 360 B.R. 139, 148, n.1 (Bankr. E.D. Va. 2007) (Huennekens, J.) (noting that “it is not unusual for bankruptcy courts to confirm plans of reorganization to call for the ‘substantive consolidation’ of the different corporate entities comprising the corporate group”).

Accordingly, the Debtors seek Bankruptcy Court approval of the Global Plan Settlement. Through the Global Plan Settlement, the Plan will effect a consensual substantive consolidation of the Chapter 11 Cases. Specifically, the Global Plan Settlement provides that the Debtors' Estates and Chapter 11 Cases will be substantively consolidated and all Claims based upon guarantees of collection, payment, or performance made by the Debtors as to the obligations of another Debtor shall be released and of no further force and effect.

## **B. CORPORATE ACTION**

### **a. Transfer of Estate Assets**

Upon the Effective Date; (a) the members of the board of directors or managers, as the case may be, of each of the Debtors shall be deemed to have resigned; (b) each of the Debtors shall cause all of its Other Assets and the Other Assets of its Estate to be transferred to the First Lien Term Lenders Liquidating Trust in accordance with this Plan; and (c) each of the Debtors shall cause the Creditor Funds to be transferred to the GUC Liquidating Trust in accordance with the Plan.

Upon the payment of the Revolver Effective Date Cash to the Prepetition First Lien Revolver Administrative Agent, the transfer of the Other Assets to the First Lien Term Lenders Liquidating Trust in accordance with the Plan and the transfer of the Creditor Funds to the GUC Liquidating Trust in accordance with the Plan, the Debtors shall have no further duties or responsibilities in connection with the implementation of the Plan.

### **b. Dissolution of the Debtors**

On the Effective Date, each of the Debtors shall be deemed dissolved for all purposes without the necessity for any other or further actions to be taken by or on behalf of the Debtors or payments to be made in connection therewith.

As soon as practicable after the payment of the Revolver Effective Date Cash to the Prepetition First Lien Revolver Administrative Agent and the transfer of the Other Assets to the First Lien Term Lenders Liquidating Trust and the Creditor Funds to the GUC Liquidating Trust, the First Lien Term Lenders Liquidating Trustee shall provide for the retention and storage of the books, records and files that shall have been delivered to the First Lien Term

Lenders Liquidating Trust until such time as all such books, records and files are no longer required to be retained under applicable law, or otherwise as determined by the First Lien Term Lenders Liquidating Trustee. The First Lien Term Lenders Liquidating Trustee shall provide the GUC Liquidating Trustee with reasonable access during normal business hours to the Debtors' books, records and files to the extent necessary to carry out the GUC Liquidating Trustees' obligations under the Plan and the GUC Liquidating Trust Agreement.

The Professionals employed by the Debtors and the Committee shall be entitled to reasonable and necessary compensation and reimbursement by the First Lien Term Lenders Liquidating Trust of actual, documented, necessary expenses for post-Effective Date activities, related to the preparation, filing, and prosecution of Final Fee Applications, upon the submission of invoices to the First Lien Term Lenders Liquidating Trustee. Any time or expenses incurred in the preparation, filing, and prosecution of Final Fee Applications shall be disclosed by each Professional in its Final Fee Application and shall be subject to approval of the Bankruptcy Court. Notwithstanding the foregoing, the First Lien Term Lenders Liquidating Trustee reserves the right to object, in good faith, to any Final Fee Application.

**c. Legal Representation of the Debtors and the Committee after the Effective Date**

Upon the Effective Date, the attorney-client relationship between the Debtors and their current counsel, Sonnenschein Nath & Rosenthal LLP and Kutak Rock, LLP, and between the Committee and its current counsel, Pachulski Stang Ziehl & Jones LLP, Kelley Drye & Warren LLP, and Hunton & Williams LLP, shall be deemed terminated on a going forward basis. Upon the Effective Date, none of the Debtors' or the Committee's current counsel shall have any further obligation or responsibility with respect to the Bankruptcy Cases.

**d. Cancellation of Existing Securities and Agreements**

Except as otherwise provided in the Plan, and in any contract, instrument or other agreement or document created in connection with the Plan, on the Effective Date, the Interests in the Debtors and any other promissory notes, share certificates, whether for preferred or common stock (including treasury stock), other instruments evidencing any Claims against or payable by the Debtors or Interests in the Debtors shall be deemed cancelled and of no further force and effect, without any further act or action under any applicable agreement, law, regulation, order, or rule, and the obligations and liabilities of the Debtors under the notes, share certificates, and other agreements and instruments governing such Claims and Interests shall be released and forever discharged; *provided, however*, that certain instruments, documents, and credit agreements related to Claims shall continue in effect solely for the purposes of allowing the applicable Liquidating Agent to make Distributions to the Holders of such Claims. The holders of or parties to such canceled notes, share certificates and other agreements and instruments shall have no rights arising from or relating to such notes, share certificates and other agreements and instruments or the cancellation thereof, except the rights provided pursuant to the Plan, the Confirmation Order, the Cash Collateral Order, and the Global Plan Settlement. Notwithstanding anything in the foregoing to the contrary, the Global Plan Settlement, the Prepetition First Lien Revolving Credit Documents, and the Prepetition First Lien Term Credit Documents shall remain in full force and effect and shall not be cancelled until the entry of the Final Decree. In the event of any conflict between the terms of the Global Plan Settlement and

the Plan, the Plan shall govern.

**e. No Further Action**

Each of the matters provided for under the Plan involving the corporate or limited liability company structure of the Debtors or corporate or limited liability company action to be taken by or required of the Debtors shall, as of the Effective Date, be deemed to have occurred and be effective as provided herein, and shall be authorized and approved in all respects without any requirement of further action by any Person, including but not limited to, the Liquidating Trusts, the Liquidating Trustees, Holders of Claims or Interests against or in the Debtors, or directors or officers of the Debtors.

**C. SOURCES FOR PLAN DISTRIBUTIONS**

Subject to and only to the extent provided in the Global Plan Settlement, all Cash necessary for the Debtors and/or the Liquidating Trustees to make payments of Cash pursuant to the Plan shall be obtained from the following sources: (a) Cash on hand as of the Effective Date, with respect to the payment by the Debtors of the Revolver Effective Date Cash and Distributions to be made by the Debtors to the Holders of Administrative Claims or Priority Claims that are Allowed Claims as of the Effective Date; (b) the Creditor Funds, with respect to the Distributions to be made by the GUC Liquidating Trustee to the Holders of Allowed Class 5 Claims or to pay the costs and expenses of the GUC Liquidating Trustee and the GUC Liquidating Trust; or (c) the Other Assets (to the extent reduced to Cash) with respect to the Distributions to be made by the First Lien Term Lenders Liquidating Trustee to the Holders of Allowed Priority Claims, Allowed Class 2 Claims, Allowed Class 3 Claims to the extent not paid in full in Cash on the Effective Date, Allowed Class 4 Claims, Administrative Claims that become Allowed Claims on or after the Effective Date or to pay the costs and expenses (including the costs and fees of professionals) of the First Lien Term Lenders Liquidating Trustee and the First Lien Term Lenders Liquidating Trust.

**D. LIQUIDATING TRUSTS**

**a. Establishment of the Liquidating Trusts**

On the Effective Date, the First Lien Term Lenders Liquidating Trustee shall execute and deliver the First Lien Term Lenders Liquidating Trust Agreement and accept the Other Assets on behalf of and for the benefit of the Prepetition First Lien Term Secured Parties and any other beneficiaries thereof pursuant to the Prepetition First Lien Liquidating Trust Agreement and for the other uses provided in this Plan, and shall be authorized to obtain, liquidate, and collect all of the Other Assets of the Estates not in its possession and pursue all of the Causes of Action (except to the extent waived or released by this Plan). The First Lien Term Lenders Liquidating Trust will upon such execution and delivery be deemed created and effective without any further action by the Bankruptcy Court or any other Person. All Distributions to the Holders of Allowed Priority Claims, Allowed Class 2 Claims, Allowed Class 3 Claims to the extent not paid in full in Cash on the Effective Date, Allowed Class 4 Claims and Administrative Claims that become Allowed Claims on or after the Effective Date shall be from Available Cash on hand at the First Lien Term Lenders Liquidating Trust on the date any such Distribution is made. The beneficiaries and transferees of the First Lien Term Lenders

Liquidating Trust, including without limitation, the Prepetition Secured Parties and Lenado and their respective Related Parties, shall not be personally liable, or otherwise deemed to be liable, in any manner whatsoever, for any obligation, liability, action, or omission of the First Lien Term Lenders Liquidating Trust or First Lien Term Lenders Liquidating Trustee, and the sole recourse for any liabilities of the First Lien Term Lenders Liquidating Trust shall be limited to the assets of the First Lien Term Lenders Liquidating Trust.

On the Effective Date, the GUC Liquidating Trustee shall execute and deliver the GUC Liquidating Trust Agreement and accept the Creditor Funds on behalf of the and for the benefit of the Holders of General Unsecured Claims as beneficiaries thereof. The GUC Liquidating Trust will upon such execution and delivery be deemed created and effective without any further action by the Bankruptcy Court or any party. All Distributions to the Holders of Allowed Class 5 Claims shall be from the GUC Liquidating Trust. The beneficiaries and transferees of the GUC Liquidating Trust shall not be personally liable, or otherwise deemed to be liable, in any manner whatsoever, for any obligation, liability, action, or omission of the GUC Liquidating Trust or GUC Liquidating Trustee, and the sole recourse for any liabilities of the GUC Liquidating Trust shall be limited to the assets of the GUC Liquidating Trust.

The Liquidating Trusts shall hold and administer the following assets:

- A. The First Lien Term Lenders Liquidating Trust shall hold and administer the Debtors' Other Assets and the product and proceeds thereof.
- B. The GUC Liquidating Trust shall hold and administer the Creditor Funds.

The Prepetition First Lien Term Lenders Liquidating Trust is created for the primary purpose of liquidating the Other Assets, with no objective to conduct a trade or business except to the extent reasonably necessary to, and consistent with, the liquidating purposes of the Prepetition First Lien Term Lenders Liquidating Trust.

## 2. Trust Distributions

Each Liquidating Trustee shall distribute any Cash in their respective Liquidating Trust, and shall liquidate their respective assets (to the extent that such assets are other than Cash) and shall distribute such Cash and the Net Proceeds of such liquidation from the applicable Liquidating Trust in accordance with this Plan and the applicable Liquidating Trust Agreement.

## 3. Duration of Trust

Each Liquidating Trust shall have an initial term of five (5) years; *provided, however,* that, if warranted by the facts and circumstances, and subject to the approval of the Bankruptcy Court with jurisdiction over the Chapter 11 Cases, upon a finding that an extension of the term of a Liquidating Trust is necessary to accomplish the liquidating purpose of such Liquidating Trust, the Liquidating Trust's term may be extended for a finite term based on facts and circumstances. Each extension of the term of a Liquidating Trust must be approved by the Bankruptcy Court within six (6) months of the beginning of the extended term. A Liquidating Trust may be terminated earlier than its scheduled termination if (a) the Bankruptcy Court has entered a Final Order closing the Chapter 11 Cases pursuant to Bankruptcy Code section 350(a)

and (b) the applicable Liquidating Trustee has administered all assets of the applicable Liquidating Trust and performed all other duties required by the Plan and the applicable Liquidating Trust Agreement. As soon as practicable after the Final Trust Distribution Date, the applicable Liquidating Trustee shall seek entry of a Final Order closing the Chapter 11 Cases pursuant to Bankruptcy Code section 350.

#### 4. Liquidation of Causes of Action

The Debtors shall have, prior to the Effective Date and in consultation with the Prepetition Secured Parties, and the First Lien Term Lenders Liquidating Trustee shall have, on and after the Effective Date, sole authority and responsibility for investigating, analyzing, commencing, prosecuting, litigating, compromising, collecting, and otherwise administering the Causes of Action that are not released or waived under the Plan, the Confirmation Order, the Cash Collateral Order, or any other Final Order of the Bankruptcy Court; *provided, however*, that all Avoidance Actions and Released Claims are released and waived, and neither the Debtors nor any Liquidating Trustee shall pursue any such Avoidance Actions or Released Claims.

#### 5. Liquidating Trustees

##### **(1) Appointment**

The appointment of each Liquidating Trustee shall be effective as of the Effective Date. Successor Liquidating Trustee(s) shall be appointed as set forth in the applicable Liquidating Trust Agreement.

##### **(2) Term**

Unless a Liquidating Trustee resigns or dies earlier, each Liquidating Trustee's term shall expire upon termination of the applicable Liquidating Trust pursuant to the Plan and/or the applicable Liquidating Trust Agreement.

##### **(3) Powers and Duties**

Each Liquidating Trustee shall have the rights and powers set forth in the applicable Liquidating Trust Agreement including, but not limited to, the powers of a debtor-in-possession under Bankruptcy Code sections 1107 and 1108. Each Liquidating Trustee shall be governed in all things by the terms of the applicable Liquidating Trust Agreement and the Plan. Each Liquidating Trustee shall administer their respective Liquidating Trust, and its assets, and make Distributions from the proceeds of their respective Liquidating Trust in accordance with the Plan and the applicable Liquidating Trust Agreement. In the event a provision of this Plan or the Confirmation Order conflicts with a provision of the applicable Liquidating Trust Agreement, the provision of this Plan or the Confirmation Order, as applicable, shall control. In addition, the First Lien Term Lenders Liquidating Trustee shall, in accordance with the terms of the Plan, take all actions (other than the Distributions of the Creditor Funds) necessary to wind down the affairs of the Debtors consistent with the Plan and applicable non-bankruptcy law. Without limitation, each Liquidating Trustee shall file final federal, state, foreign and, to the extent applicable, local, tax returns. Subject to the limitations set forth in the following clauses (i) through (xvii) and any other limitations, releases, or waivers set forth in this Plan, each Liquidating Trustee shall be authorized, empowered and directed to take all actions necessary

with respect to their Liquidating Trust to comply with the Plan and exercise and fulfill the duties and obligations arising thereunder, including, without limitation, to:

- (a) **employ, retain, and replace one or more attorneys, accountants, auctioneers, brokers, managers, consultants, other professionals, agents, investigators, expert witnesses, consultants, and advisors as necessary to discharge the duties of the Liquidating Trustee under the Plan and the applicable Liquidating Trust Agreement;**
- (b) **solely with respect to the First Lien Term Lenders Liquidating Trustee, object to the allowance of Administrative Claims, Priority Claims, and Miscellaneous Secured Claims in accordance with the terms of the Term Sheet and this Plan;**
- (c) **solely with respect to the GUC Liquidating Trustee, object to the allowance of General Unsecured Claims in accordance with the terms of the Term Sheet and this Plan;**
- (d) **open, maintain and administer bank accounts as necessary to discharge the duties of the Liquidating Trustee under the Plan and the applicable Liquidating Trust Agreement;**
- (e) **pay reasonable and necessary professional fees, costs, and expenses of the Liquidating Trust as set forth in the Plan; *provided* that no Liquidating Trust is liable for the professional fees, costs, and expenses of the other Liquidating Trust's professionals;**
- (f) **solely with respect to the First Lien Term Lenders Liquidating Trustee, investigate, analyze, commence, prosecute, litigate, compromise, and otherwise administer the Causes of Action, other than the Avoidance Actions and the Released Claims, and all related Liens for the benefit of the First Lien Term Lenders Liquidating Trust and the Prepetition First Lien Term Secured Parties, as set forth in the Plan, and take all other necessary and appropriate steps to collect, recover, settle, liquidate, or otherwise reduce to Cash such Causes of Action, including all receivables, and to negotiate and effect settlements and lien releases with respect to all related Claims and all related Liens; *provided, that for the avoidance of doubt,* the First Lien Term Lenders Liquidating Trustee shall not be empowered and shall have not right to investigate, analyze, commence, prosecute, litigate, compromise, or otherwise administer any Cause of Action or Lien covered by a release or waiver in favor of any Debtor Releasee or Third Party Releasee under this Plan, the Confirmation Order, the Cash Collateral Order, or any other Final Order of the Bankruptcy Court;**
- (g) **solely with respect to the First Lien Term Lenders Liquidating Trustee and the Other Assets transferred to the First Lien Term**

**Lenders Liquidating Trust, administer, sell, liquidate, or otherwise dispose of the Other Assets (including, without limitation, all Collateral) of the Estates in accordance with the terms of the Term Sheet and this Plan;**

- (h) solely with respect to the First Lien Term Lenders Liquidating Trustee: (a) exercise all of the Debtors' rights as the owner of the equity interests of Movie Gallery Canada Inc., including, without limitation, the right to direct counsel to Movie Gallery Canada Inc. with regard to the voluntary bankruptcy proceedings filed in the District of Ontario, Toronto Division (Estate No. 31-1357202), (b) act as the successor to the Debtors with regard to any of the Debtors' rights as a secured creditor of Movie Gallery Canada Inc.; and (c) act as the successor to the Debtors with regard to any other rights or interests that the Debtors may possess with respect to Movie Gallery Canada Inc.;**
- (i) solely with respect to the First Lien Term Lenders Liquidating Trust, represent the Estate before the Bankruptcy Court and other courts of competent jurisdiction with respect to matters concerning the Estate, other than with regard to General Unsecured Claims, including any Disputed General Unsecured Claims, and the payment and Distributions of the Creditors Funds, with respect to which the GUC Liquidating Trust may represent the Estate before the Bankruptcy Court and other courts of competent jurisdiction;**
- (j) seek, at the sole cost and expense of such Liquidating Trust so seeking, the examination of any entity under and subject to the provisions of Bankruptcy Rule 2004 except in connection with or concerning a Cause of Action released or waived under this Plan, the Confirmation Order, the Cash Collateral Order, or any other Final Order of the Bankruptcy Court;**
- (k) comply with applicable orders of the Bankruptcy Court and any other court of competent jurisdiction over the matters set forth herein;**
- (l) solely with respect to the First Lien Term Lenders Liquidating Trustee, follow the written instructions of the Requisite Lenders under the Prepetition First Lien Term Credit Agreement; provided that such written instructions are not inconsistent with the terms of the Plan or the Confirmation Order;**
- (m) comply with all applicable laws and regulations concerning the matters set forth herein;**
- (n) exercise such other powers as may be vested in a Liquidating Trustee pursuant to the applicable Liquidating Trust Agreement, the Plan, or other Final Orders of the Bankruptcy Court;**



- (o) **execute any documents, instruments, contracts, and agreements necessary and appropriate to carry out the powers and duties of the applicable Liquidating Trust;**
  - (p) **solely with respect to the First Lien Term Lenders Liquidating Trustee, stand in the shoes of the Debtors for all purposes consistent with the administration of the First Lien Term Lenders Liquidating Trustees and the Plan; and**
  - (q) **solely with respect to the GUC Liquidating Trustee, stand in the shoes of the Debtors for all purposes consistent with the administration of the GUC Liquidating Trust and the Plan.**
- (4) Fees and Expenses**

Except as otherwise provided in the Plan, compensation of each Liquidating Trustee and the costs and expenses of each Liquidating Trustee and their respective Liquidating Trust (including, without limitation, Professional fees and expenses including attorneys' fees and expenses) shall be paid solely from the particular Liquidating Trust's assets. For the avoidance of doubt: (i) compensation of the First Lien Term Lenders Liquidating Trustee and the costs and expenses of the First Lien Term Lenders Liquidating Trust (including, without limitation, professional fees and expenses including attorneys' fees and expenses) shall be paid solely from the Other Assets; and (ii) compensation of the GUC Liquidating Trustee and the costs and expenses of the GUC Liquidating Trust (including, without limitation, professional fees and expenses including attorneys' fees and expenses) shall be paid solely from the Creditor Funds. Each Liquidating Trustee shall pay, without further order, notice, or application to the Bankruptcy Court, the reasonable fees and expenses of the Liquidating Trustee professionals, as necessary to discharge the Liquidating Trustee's duties under the Plan and the applicable Liquidating Trust Agreement to the extent provided in the applicable Liquidating Trust Agreement. Payments to the applicable Liquidating Trustee, or to the Liquidating Trustee professionals, shall not require notice to any party, or an order of the Bankruptcy Court approving such payments except as required in the Global Plan Settlement and/or the applicable Liquidating Trust Agreement.

**(5) Retention of Professionals and Compensation Procedure**

On and after the Effective Date, subject to the terms of the applicable Liquidating Trust Agreement, each Liquidating Trustee may engage such professionals and experts as may be deemed necessary and appropriate by the Liquidating Trustee to assist the Liquidating Trustee in carrying out the provisions of the Plan and the applicable Liquidating Trust Agreement, including, but not limited to, Professionals retained prior to the Effective Date by the Debtors, the Prepetition Secured Parties or the Committee. Subject to the terms of the applicable Liquidating Trust Agreement, for services performed from and after the Effective Date, the Liquidating Trustee Professionals shall receive compensation and reimbursement of expenses in a manner to be determined by agreement between the applicable Liquidating Trustee and such Liquidating Trustee Professional consistent with the applicable Liquidating Trust Agreement. For the avoidance of doubt: (i) compensation of the First Lien Term Lenders Liquidating Trustee and the costs and expenses of the First Lien Term Lenders Liquidating Trustee and the First Lien

Term Lenders Liquidating Trust (including, without limitation, professional fees and expenses including attorneys' fees and expenses) shall be paid solely from the Other Assets; and (ii) compensation of the GUC Liquidating Trustee and the costs and expenses of the GUC Liquidating Trust and the GUC Liquidating Trust (including, without limitation, professional fees and expenses including attorneys' fees and expenses) shall be paid solely from the Creditor Funds.

**(6) First Lien Term Lenders Liquidating Trustee as Successor**

Pursuant to Bankruptcy Code section 1123(b), the First Lien Term Lenders Liquidating Trustee shall be the successor to the Debtors for all purposes consistent with the Plan, the Global Plan Settlement and the First Lien Term Lenders Liquidating Trust Agreement; *provided, however*, that solely for purposes of objecting to the allowance of, or making Distributions with respect to, General Unsecured Claims, the GUC Liquidating Trustee shall be deemed to be the successor to the Debtors. For the avoidance of doubt, upon the Effective Date, the First Lien Term Lenders Liquidating Trustee shall have all rights and remedies of the Debtors under the Global Plan Settlement.

**(7) Compromising Claims**

Pursuant to Bankruptcy Rule 9019(b), the Plan and the Liquidating Trust Agreements, as of the Effective Date, each of the Liquidating Trustees are authorized to approve compromises of Claims, Disputed Claims, and Liens relating to their respective Liquidating Trust and to execute necessary documents, including Lien releases and stipulations of settlement or release, without notice to any party (except, to the other Liquidating Trustee or to the extent required by the Plan) and without further order of the Bankruptcy Court, except as otherwise provided in the Liquidating Trust Agreement; *provided, however*, that (1) the First Lien Term Lenders Liquidating Trustee shall have the sole authority to compromise and settle all Claims other than Class 5 Claims; and (2) the GUC Liquidating Trustee shall have the sole authority to compromise and settle Class 5 Claims.

**(8) Investment Powers**

The powers of a Liquidating Trustee to invest any Cash that is held by the applicable Liquidating Trust, other than those powers reasonably necessary to maintain the value of the assets and to further such Liquidating Trust's liquidating purposes, shall be limited to powers to invest in demand and time deposits, such as short-term certificates of deposit, in banks or other savings institutions, or other temporary liquid investments, such as treasury bills. Each Liquidating Trustee is prohibited from continuing or engaging in the conduct of a trade or business, except to the extent reasonably necessary to and consistent with the liquidating purpose of the applicable Liquidating Trust.

**(9) Distributions**

Except as otherwise provided in the Plan, each Liquidating Trustee is required to distribute at least annually to beneficiary Claimholders qualifying for Distributions from the applicable Liquidating Trust under the Plan the applicable Liquidating Trust's Available Cash, net income and all net proceeds from the sale of any non-Cash assets held by the applicable Liquidating Trust, except that the Liquidating Trust shall retain an amount of Cash, Net Proceeds

or net income reasonably necessary to maintain the value of its assets or to meet Claims and contingent liabilities (including Disputed Claims). The First Lien Term Lenders Trust shall be in compliance with the requirements of the foregoing sentence so long as it has made Adequate Provision pursuant to Article III.C.1 of the Plan. The First Lien Term Lenders Liquidating Trustee shall make continuing efforts to liquidate any non-Cash assets held by the First Lien Term Lenders Liquidating Trust. Each Liquidating Trustee shall make timely Distributions and not unduly prolong the duration of the applicable Liquidating Trust. All Distributions to the Holders of Allowed Class 2 Claims, Allowed Class 3 Claims to the extent not paid in full in Cash on the Effective Date, Allowed Class 4 Claims, Administrative Claims and Priority Claims that become Allowed Claims on or after the Effective Date shall be from the First Lien Term Lenders Liquidating Trust. All Distributions to the Holders of Allowed Class 5 Claims shall be from the GUC Liquidating Trust and solely from Creditor Funds.

#### **(10) Transfer and Vesting of Assets**

On the Effective Date, the Other Assets, including any minutes, and general corporate records of Debtors, and any books and records relating to the foregoing not otherwise treated by the Plan, shall be transferred to and vest in the First Lien Term Lenders Liquidating Trust subject only to the Liens created by the Prepetition First Lien Credit Facilities and free and clear of all other Liens, Claims (other than Allowed Claims payable by the First Lien Term Lenders Liquidating Trust pursuant to the Plan), encumbrances, and other interests and shall thereafter be administered, liquidated by sale, collection, recovery, or other disposition and distributed by the First Lien Term Lenders Liquidating Trustee in accordance with the terms of the First Lien Term Lenders Liquidating Trust Agreement and the Plan; *provided, however*, that the First Lien Term Lenders Liquidating Trustee shall make the Debtors' books and records reasonably available during business hours on a Business Day to the GUC Liquidating Trustee as provided in Article V.D.5.k of the Plan. In addition, on the Effective Date, the Creditor Funds shall vest in the GUC Liquidating Trust free and clear of all Liens, Claims (other than Allowed Class 5 Claims), encumbrances, and other interests and shall thereafter be administered and distributed by the GUC Liquidating Trustee in accordance with the terms of the GUC Liquidating Trust Agreement and the Plan. The property of the Debtors' Estates shall not be vested in the Debtors following the Effective Date. On the Effective Date, and following payment of the Revolver Effective Date Cash to the Prepetition First Lien Revolver Administrative Agent pursuant to Article \_\_ hereof, the Other Assets shall be distributed to and vested in the First Lien Term Lenders Liquidating Trust as set forth in the Plan and shall continue to be subject to the jurisdiction of the Bankruptcy Court until such property is distributed to Holders of Allowed Claims payable by the First Lien Term Lenders Liquidating Trust in accordance with the provisions of the Plan, the First Lien Term Lenders Liquidating Trust Agreement, and the Confirmation Order. On the Effective Date, the Creditor Funds shall be distributed to and vested in the GUC Liquidating Trust as set forth in the Plan and shall continue to be subject to the jurisdiction of the Bankruptcy Court until such property is distributed to Holders of Allowed Claims in accordance with the provisions of the Plan, the GUC Liquidating Trust Agreement, and the Confirmation Order.

#### **(11) Cooperation Among Liquidating Trustees**

Each of the Liquidating Trustees shall reasonably cooperate with the other in connection with the administration of such Liquidating Trustee's Liquidating Trust including,

without limitation, sharing information regarding Claims. The First Lien Term Lenders' Liquidating Trustee shall make the Debtors' books and records reasonably available to the GUC Liquidating Trustee during business hours on a Business Day to the extent necessary to administer the GUC Liquidating Trust.

**(12) First Lien Term Lenders Liquidating Trust Oversight Board.**

The First Lien Term Lenders Liquidating Trust Oversight Board shall be comprised of [5] members consisting of representatives of the Prepetition First Lien Term Lenders chosen pursuant to the terms of the First Lien Term Lenders Liquidating Trust Agreement. The rights and duties of the First Lien Term Lenders Trust Oversight Board shall be set forth with specificity in the First Lien Term Lenders Liquidating Trust Agreement. The First Lien Term Lenders Liquidating Trustee shall consult regularly with the First Lien Term Lenders Liquidating Trust Oversight Board when carrying out the implementation of this Plan. The members of the First Lien Term Lenders Liquidating Trust Oversight Board shall not receive compensation, but shall be reimbursed for their reasonable and necessary expenses by the First Lien Term Lenders Liquidating Trustee.

**(13) GUC Liquidating Trust Oversight Committee**

The GUC Liquidating Trust Oversight Committee shall be comprised of [ ] members consisting of representatives of the Committee chosen pursuant to the terms of the GUC Liquidating Trust Agreement. The rights and duties of the GUC Liquidating Trust Oversight Committee shall be set forth with specificity in the GUC Liquidating Trust Agreement.

**(14) Liability, Indemnification**

Neither of the Liquidating Trustees, the First Lien Term Lenders Liquidating Trust Oversight Board, the GUC Liquidating Trust Oversight Committee, their respective members, designees or professionals, or any duly designated agent or representative of the Liquidating Trustees, the First Lien Term Lenders Liquidating Trust Oversight Board, or the GUC Liquidating Trust Oversight Committee or any of the respective employees of any of the foregoing (all of the foregoing, individually and collectively, the "Respective Liquidating Trust Parties") shall be liable for the acts or omissions of any other Respective Liquidating Trust Party, nor shall Respective Liquidating Trust Party be liable for any act or omission taken or omitted to be taken in its capacity as Respective Liquidating Trust Party, respectively, other than for specific acts or omissions resulting from such Respective Liquidating Trust Party's willful misconduct, gross negligence or fraud. Each Liquidating Trustee, the First Lien Term Lenders Liquidating Trust Oversight Board, or the GUC Liquidating Trust Oversight Committee may, in connection with the performance of its functions, and in its sole and absolute discretion, consult with its attorneys, accountants, financial advisors and agents, and shall not be liable for any act taken, omitted to be taken, or suffered to be done in accordance with advice or opinions rendered by such Persons, regardless of whether such advice or opinions are provided in writing. Notwithstanding such authority, neither of the Liquidating Trustees, the First Lien Term Lenders Liquidating Trust Oversight Board and its individual members, or the GUC Liquidating Trust Oversight Committee and its individual members shall be under any obligation to consult with its attorneys, accountants, financial advisors or agents, and their determination not to do so shall not

result in the imposition of liability on such Liquidating Trustee, First Lien Term Lenders Liquidating Trust Oversight Board, or GUC Liquidating Trust Oversight Committee or their respective members and/or designees, unless such determination is based on willful misconduct, gross negligence, or fraud. Each Liquidating Trust shall indemnify and hold harmless its Liquidating Trustee and its designees and professionals, and all duly designated agents and representatives thereof (in their capacity as such), the First Lien Term Lenders Liquidating Trust shall indemnify and hold harmless the First Lien Term Lenders Liquidating Trust Oversight Board and its members, designees and professionals, and all duly designated agents and representatives thereof (in their capacity as such), and the GUC Liquidating Trust shall indemnify and hold harmless the GUC Liquidating Trust Oversight Committee and its members, designees and professionals, and all duly designated agents and representatives thereof (in their capacity as such), in each case, from and against and in respect of all liabilities, losses, damages, claims, costs and expenses (including, without limitation, reasonable attorneys' fees, disbursements, and related expenses) which such parties may incur or to which such parties may become subject in connection with any action, suit, proceeding or investigation brought by or threatened against such parties arising out of or due to their acts or omissions, or consequences of such acts or omissions, with respect to the implementation or administration of the applicable Liquidating Trust or the Plan or the discharge of their duties hereunder; provided, however, that no such indemnification will be made to such persons for actions or omissions as a result of willful misconduct, gross negligence, or fraud.

#### 6. Federal Income Taxation of Liquidating Trusts

##### **Treatment of Liquidating Trusts and Asset Transfers**

For federal income tax purposes, the Debtors, the Liquidating Trusts, the Liquidating Trustees and the beneficiary Claimholders shall treat the Liquidating Trusts as liquidating trusts within the meaning of Treasury Income Tax Regulation Section 301.7701-4(d) and IRS Revenue Procedure 94-45, 1994-2 C.B. 684. For federal income tax purposes, the applicable transfer of assets to a Liquidating Trust under the Plan is treated as a deemed transfer to the beneficiary Claimholders of such Liquidating Trust in satisfaction of their Claims followed by a deemed transfer of the assets by the beneficiary Claimholders to such Liquidating Trust. For federal income tax purposes, the beneficiary Claimholders of an applicable Liquidating Trust will be deemed to be the grantors and owners of such Liquidating Trust and its assets. For federal income tax purposes, each Liquidating Trust, with respect to the assets of the Debtors and the Estates transferred to it under the Plan, will be taxed as a grantor trust within the meaning of IRC Sections 671-677 (a non-taxable pass-through tax entity) owned by the beneficiary Claimholders of such Liquidating Trust. Each Liquidating Trust will file federal income tax returns as a grantor trust under IRC Section 671 and Treasury Income Tax Regulation Section 1.671-4 and report, but not pay tax on, such Liquidating Trust's tax items of income, gain, loss deductions and credits ("Tax Items"). The beneficiary Claimholders of a Liquidating Trust will report such Tax Items on their federal income tax returns and pay any resulting federal income tax liability. The Debtors, each Liquidating Trustee and the beneficiary Claimholders of each Liquidating Trust will use consistent valuations of the assets transferred to the applicable Liquidating Trust for all federal income tax purposes, such valuations to be determined by the applicable Liquidating Trustee owning such assets.

##### **Reserves that may be Established by the Liquidating Trustees**

The Plan permits each Liquidating Trustee to create separate reserves for Disputed Claims for which the applicable Liquidating Trust may be liable. Each Liquidating Trustee may, at its sole discretion, file a tax election to treat any such reserve as a Disputed Ownership Fund (“DOF”) within the meaning of Treasury Income Tax Regulation Section 1.468B-9 for federal income tax purposes rather than to tax such reserve as a part of its applicable Liquidating Trust. If such an election is made, the applicable Liquidating Trust shall comply with all federal and state tax reporting and tax compliance requirements of the DOF, including but not limited to the filing of a separate federal income tax return for the DOF and the payment of federal and/or state income tax due.

#### **E. ACCOUNTS**

Each Liquidating Trustee shall, with respect to the assets of its Liquidating Trust, (a) establish one or more general accounts into which shall be deposited all funds not required to be deposited into any other account or reserve and (b) create, fund, and withdraw funds from, as appropriate, any reserves or other accounts maintained or established by the Liquidating Trustees.

#### **F. RELEASE OF LIENS**

Except as otherwise provided in the Plan, the Confirmation Order, or in any document, instrument, or other agreement created in connection with the Plan, on the Effective Date, all mortgages, deeds of trust, liens, or other security interests against the property of the Estates shall be released; *provided, however*, that, except with respect to the Creditor Funds, the Liens established pursuant to the Prepetition First Lien Credit Facilities shall not be released unless and until the Prepetition First Lien Secured Claims are satisfied in full; *provided, further*, that with respect to the Creditor Funds, the Liens established pursuant to the Prepetition First Lien Credit Facilities shall not be released unless and until the Effective Date has occurred.

#### **G. EXEMPTION FROM CERTAIN TRANSFER TAXES**

Pursuant to Bankruptcy Code section 1146(c), any transfers from any of the Debtors or the Liquidating Trustees to the Liquidating Trusts or to any other Person pursuant to the Plan and/or the Liquidating Trust Agreements in the United States shall not be subject to any stamp tax or similar tax, and the Confirmation Order shall direct the appropriate state or local governmental officials or agents to forgo the collection of any such tax or governmental assessment and to accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment.

#### **H. PRESERVATION OF CAUSES OF ACTION; SETTLEMENT OF CAUSES OF ACTION**

##### **a. Preservation of Causes of Action**

In accordance with section 1123(b)(3) of the Bankruptcy Code or any corresponding provision of similar federal or state laws, and except as otherwise provided in the Plan, the Confirmation Order, the Cash Collateral Order, or other Final Order of the Bankruptcy Court on and after the Effective Date, (a) the First Lien Term Lenders Liquidating Trustee shall be deemed to be a representative of the Debtors as the party in interest in the Chapter 11 Cases

and any adversary proceeding in the Chapter 11 Cases, under the Plan or in any judicial proceeding or appeal as to which any of the Debtors is a party and (b) the First Lien Term Lenders Liquidating Trustee shall retain all of the Causes of Action of the Debtors and their Estates that are not waived or released hereunder. For the avoidance of doubt and subject to the provisions of and priorities established by XVI.H of the Plan, the First Lien Term Lenders Liquidating Trustee and the GUC Liquidating Trustee shall have standing to assert all of the Debtors' setoff rights as provided in the Plan. The First Lien Term Lenders Liquidating Trustee and/or the First Lien Term Lenders Liquidating Trust may, in accordance with the First Lien Term Lenders Liquidating Trust Agreement, enforce, sue on, settle or compromise (or decline to do any of the foregoing) any or all of the Causes of Action that are not waived or released under this Plan, the Confirmation Order, the Cash Collateral Order, or other Final Order of the Bankruptcy Court.

In connection with the Global Plan Settlement, the Debtors, the Prepetition Secured Parties, the Committee, the Studios and Warner Home Video have agreed that all Avoidance Actions and Released Claims shall be waived as of the Effective Date. With respect to any Causes of Action that are not waived or released hereunder, the substantive consolidation of the Debtors and their Estates as set forth in XV.A.3 of this Plan shall not, and shall not be deemed to, prejudice any of such Causes of Action, which shall survive entry of the Confirmation Order for the benefit of the Debtors and their Estates, and, upon the Effective Date, for the benefit of the First Lien Term Lenders Liquidating Trust.

**b. Settlement of Causes of Action**

Subject to the terms of the First Lien Term Lenders Liquidating Trust Agreement, at any time after the Confirmation Date but before the Effective Date, notwithstanding anything in this Plan to the contrary, the Debtors may settle Causes of Action with the approval of the Court pursuant to Bankruptcy Rule 9019. After the Effective Date, the First Lien Term Lenders Liquidating Trustee, in accordance with the terms of this Plan and the First Lien Term Lenders Liquidating Trust Agreement, will determine whether to bring, settle, release, compromise, enforce or abandon such rights (or decline to do any of the foregoing) in accordance with XV.D.a(7) hereof, and may do so without any further required action by, or Order of, the Court.

**I. EFFECTUATING DOCUMENTS; FURTHER TRANSACTIONS**

Subject to the terms and conditions of the Plan, the Prepetition First Lien Credit Facilities, and the Cash Collateral Order and other Final Orders of the Bankruptcy Court, prior to the Effective Date, any appropriate officer of the applicable Debtor shall, in consultation with the Prepetition Secured Parties, be authorized to execute, deliver, file or record such contracts, instruments, releases, indentures and other agreements or documents, and take such actions as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan. Subject to the terms and conditions of the Plan and the Liquidating Trust Agreements, after the Effective Date, the Liquidating Trusts shall be authorized to execute, deliver, file or record such contracts, instruments, releases, indentures and other agreements or documents, and take such actions as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan.

## **XVI.**

### **PROVISIONS GOVERNING DISTRIBUTIONS**

#### **A. DISTRIBUTIONS FOR CLAIMS ALLOWED AS OF THE EFFECTIVE DATE**

Except as otherwise provided herein or as ordered by the Bankruptcy Court, all Distributions to be made on account of Claims that are Allowed Claims as of the Effective Date shall be made on the applicable Distribution Date by the applicable Liquidating Trustee. Distributions on account of Claims that first become Allowed Claims after the Effective Date shall be made pursuant to the terms and conditions of this Plan. Notwithstanding any other provision of the Plan to the contrary, no Distribution shall be made on account of any Claim or portion thereof that (i) has been (and remains) satisfied after the Commencement Date pursuant to an order of the Bankruptcy Court; (ii) is listed in the Schedules as contingent, unliquidated, disputed or in a zero amount, and for which a Proof of Claim has not been timely filed or deemed filed; or (iii) is evidenced by a Proof of Claim that has been amended by a subsequently filed Proof of Claim that purports to amend the prior Proof of Claim (provided that the foregoing shall have no effect on such amended Proof of Claim).

#### **B. LIQUIDATING TRUSTEE AS DISBURSING AGENT**

Each Liquidating Trustee shall make all Distributions required under this Plan to their respective beneficiaries and Holders of Allowed Claims, subject to the terms and provisions of this Plan and the Liquidating Trust Agreements. Each Liquidating Trustee shall be required to post a bond or surety or other security for the performance of its duties to the extent required by, and consistent with the respective Liquidating Trust Agreement. The Liquidating Trustees shall be authorized and directed to rely upon the Debtors' books and records and its representatives and professionals in determining those Claims not entitled to Distribution under the Plan in accordance with the terms of the Plan.

#### **C. DELIVERY OF DISTRIBUTIONS AND UNDELIVERABLE OR UNCLAIMED DISTRIBUTIONS**

##### **a. Delivery of Distributions in General**

Distributions to Holders of Allowed Claims shall be made by the respective Liquidating Trustees (a) at the addresses set forth on the Proofs of Claim filed by such Holders, (b) at the addresses set forth in any written notices of address changes delivered to the respective Liquidating Trustee after the date of any related Proof of Claim, (c) at the addresses reflected in the Schedules if no Proof of Claim has been filed and the respective Liquidating Trustee has not received a written notice of a change of address, (d) at the addresses set forth in the other records of the Debtors or the respective Liquidating Trustee at the time of the Distribution or (e) in the case of the Holder of a Claim that is governed by an agreement and is administered by an agent or servicer, at the addresses contained in the official records of such agent or servicer.

Distributions shall be made from the Liquidating Trusts in accordance with the terms of this Plan and the Liquidating Trust Agreements.



In making Distributions under the Plan, the Liquidating Trustees may rely upon the accuracy of the claims register maintained by the Claims Agent in the Chapter 11 Cases, as modified by any Final Order of the Bankruptcy Court disallowing Claims in whole or in part.

**b. Undeliverable and Unclaimed Distributions**

If the Distribution to any Holder of an Allowed Claim is returned to either Liquidating Trustee as undeliverable or is otherwise unclaimed, no further Distributions shall be made to such Holder unless and until the applicable Liquidating Trustee is notified in writing of such Holder's then-current address, at which time all missed Distributions shall be made to such Holder without interest. Amounts in respect of undeliverable Distributions made by the Liquidating Trustees shall be returned to the applicable Liquidating Trustee until such Distributions are claimed. Each Liquidating Trustee shall, with respect to Cash, maintain in the applicable Liquidating Trust Cash on account of undeliverable and unclaimed Distributions until such time as a Distribution becomes deliverable, is claimed or is forfeited.

Any Holder of an Allowed Claim that does not assert a Claim pursuant to this Plan for an undeliverable or unclaimed Distribution within six (6) months after the last Distribution Date shall be deemed to have forfeited its Claim for such undeliverable or unclaimed Distribution and shall be forever barred and enjoined from asserting any such Claim for an undeliverable or unclaimed Distribution against the Debtors and their Estates, the Liquidating Trustees, the Liquidating Trusts, and their respective agents, attorneys, representatives, employees or independent contractors, and/or any of its and their property. In such cases, any Cash otherwise reserved for undeliverable or unclaimed Distributions shall become the property of the Liquidating Trusts free of any restrictions thereon and notwithstanding any federal or state escheat laws to the contrary and shall be distributed in accordance with the terms of this Plan and the Liquidating Trust Agreements. Nothing contained in this Plan or the Liquidating Trust Agreements shall require the Debtors, or the Liquidating Trustees to attempt to locate any Holder of an Allowed Claim; *provided, however*, that in their sole discretion, each Liquidating Trustee may periodically publish notice of unclaimed Distributions.

**D. PREPAYMENT**

Except as otherwise provided in this Plan or the Confirmation Order, at any time after the Effective Date and after appropriate reserves have been created for unpaid Allowed Administrative Claims and Disputed Administrative Claims that have not been Disallowed, the First Lien Term Lenders Liquidating Trustee shall have the right to prepay, without penalty, all or any portion of an Allowed Administrative Claim, an Allowed Revolver Secured Claim to the extent not paid in full in Cash on the Effective Date, Allowed Miscellaneous Secured Claim, or Allowed Priority Claim.

**E. MEANS OF CASH PAYMENT**

Except with respect to the payment of the Revolver Effective Date Cash, Cash payments made pursuant to this Plan shall be in U.S. dollars and shall be made, on and after the Effective Date, at the option and in the sole discretion of the Liquidating Trustees by (i) checks drawn on or (ii) wire transfers from a domestic bank selected by the Liquidating Trustee. The

Revolver Effective Date Cash shall be paid by the Debtors to the Prepetition First Lien Revolver Administrative Agent on the Effective Date in U.S. dollars by wire transfer from a domestic bank selected by the Debtors. In the case of foreign creditors, Cash payments may be made, at the option of the Liquidating Trustees, in such funds and by such means as are necessary or customary in a particular jurisdiction.

#### **F. INTEREST ON CLAIMS**

Unless otherwise specifically provided for in this Plan, the Cash Collateral Order or the Confirmation Order, or required by applicable bankruptcy law, postpetition interest shall not accrue or be paid on any Claims, and no Claimholder shall be entitled to interest accruing on or after the Commencement Date on any Claim, *provided, however*, that interest shall continue to accrue on the Prepetition First Lien Revolving Credit Facility, pursuant to the Cash Collateral Order, until the Revolver Effective Date Cash has been paid in full. Interest shall not accrue or be paid upon any Disputed Claim in respect of the period from the Commencement Date to the date a final Distribution is made thereon if and after such Disputed Claim becomes an Allowed Claim.

#### **G. WITHHOLDING AND REPORTING REQUIREMENTS**

In connection with this Plan and all Distributions under this Plan, each Liquidating Trustee shall, to the extent applicable, comply with all tax withholding, payment, and reporting requirements (including the filing of grantor trust returns on behalf of their respective Liquidating Trust pursuant to Treasury Income Tax Regulation Section 1.671-4(a)) imposed by any federal, state, provincial, local, or foreign taxing authority, and all Distributions under this Plan shall be subject to any such withholding, payment, and reporting requirements. Each Liquidating Trustee shall be authorized to take any and all actions that may be necessary or appropriate to comply with such withholding, payment, and reporting requirements. All amounts properly withheld from Distributions to a Holder as required by applicable law and paid over to the applicable taxing authority for the account of such Holder shall be treated as part of the Distributions to such Holder. All Persons holding Claims shall be required to provide any information necessary to effect information reporting and withholding of such taxes.

Notwithstanding any other provision of this Plan, (a) each Holder of an Allowed Claim that is to receive a Distribution pursuant to this Plan shall have sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed by any governmental unit, including income, withholding, and other tax obligations, on account of such Distribution, and (b) no Distribution shall be made to or on behalf of such Holder pursuant to this Plan unless and until such Holder has made arrangements satisfactory to the Liquidating Trustees for the payment and satisfaction of such withholding tax obligations or such tax obligation that would be imposed upon the Liquidating Trustees in connection with such Distribution. Any property to be distributed pursuant to this Plan shall, pending the implementation of such arrangements, be treated as an undeliverable Distribution pursuant to XVI.C.b of this Plan.

## **H. SETOFFS**

### **a. By a Debtor**

Except as otherwise provided in the Plan, the Debtors, prior to the Effective Date, may, pursuant to Bankruptcy Code section 553 or applicable nonbankruptcy laws, but shall not be required to, set off against any Claim, and the payments or other Distributions to be made pursuant to the Plan in respect of such Claim, Claims of any nature whatsoever (excluding Released Claims and Avoidance Actions) that the Debtors may have against the Holder of such Claim. As of the Effective Date, each Liquidating Trustee, solely to the extent and in the order of priority provided below, may, pursuant to Bankruptcy Code section 553 or applicable nonbankruptcy laws, but shall not be required to, setoff against any Claim, and the payments or other Distributions to be made pursuant to the Plan in respect of such Claim, Claims of any nature whatsoever (excluding Released Claims and Avoidance Actions) that the Debtors may have against the Holder of such Claim; *provided, however*, that neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtors, the Liquidating Trusts or the Liquidating Trustees of any such Claim (other than a Released Claim that the Debtors may have against such Holder) that the Debtors may have against such Holder. Notwithstanding the foregoing, set off rights with respect to a particular Holder shall be exercised by the Liquidating Trustees after the Effective Date in the following order of priority: (i) first, by the First Lien Lenders Liquidating Trustee to the extent of any affirmative recovery against a Holder or setoff against any Claim; and (ii) second, if and only if not exhausted by the First Lien Lenders Liquidating Trustee, by the GUC Liquidating Trustee to the extent of any Claims asserted by such Holder against the GUC Liquidating Trust. For the avoidance of doubt, the GUC Liquidating Trust shall not be entitled to any recovery on account of any setoff rights and such recovery shall constitute Other Assets and shall be the property of the First Lien Lenders Liquidating Trust.

### **b. By Non-Debtors**

The Debtors and each Liquidating Trustee reserves all of their rights to assert that any Person seeking to exercise any setoff rights, right of subrogation, or recoupment of any kind against the Debtors and/or the applicable Liquidating Trust has waived such rights on the grounds that such Person has not properly or timely asserted such rights under the Bankruptcy Code or other applicable law or that such rights are not otherwise enforceable under any applicable law. Without limiting the preceding sentence, and except as otherwise expressly provided in this Plan: (i) a Claimholder may seek the liquidation of an unliquidated Claim in connection with an objection to such Claim filed by the applicable Liquidating Trustee; (ii) a Claimholder may assert a setoff or recoupment as a defense or counterclaim in accordance with the Bankruptcy Rules and/or any other applicable rules in connection with any Cause of Action or other proceeding commenced by the First Lien Term Lenders Liquidating Trustee (subject to, prior to the Effective Date, the Debtors' right, and after the Effective Date, the First Lien Term Lenders Liquidating Trustee's right, to object in good faith to such assertion); and (iii) any Person that is named as an additional insured or loss payee or is otherwise expressly entitled to receive payment from the Debtors' insurers directly under the Debtors' insurance policies, but only to the extent of such coverage payable to such Person in such capacities, may seek recovery from any insurer of the Debtors but without duplication of any Distribution such Person would otherwise receive under the Plan in lieu of such insurance policy; *provided however*, that: (a)

other than with respect to claims asserted under the Existing D&O Insurance Policies, such Person may not recover under any such insurance policy if it would not be entitled to receive a Distribution on account of its Claim and (b) other than with respect to insurance coverage of any former or current director or officer of the Debtors under the Existing D&O Insurance Policies (and the proceeds thereof paid to, for the benefit of, or on behalf of any such director or officer), (x) prior to the Effective Date, the Debtors do not waive, and expressly reserve their rights to assert that any insurance coverage (and the proceeds thereof) is property of the Estates to which they are entitled; (y) after the Effective Date, the First Lien Term Lenders Liquidating Trustee does not waive, and expressly reserves its right to assert that any insurance coverage (and the proceeds thereof) is property of the First Lien Term Lenders Liquidating Trust to which it is entitled; and (z) both before and after the Effective Date, the Prepetition Secured Parties pursuant to and in accordance with the Prepetition First Lien Credit Documents and the Cash Collateral Order, do not waive and expressly reserve the right to assert, that any such insurance policies, and the proceeds thereof, are and remain subject to a first priority Lien in favor of the Prepetition Secured Parties and all other rights and interests in such insurance policies (and the proceeds thereof) granted to the Prepetition Secured Parties under the Prepetition First Lien Credit Documents and the Cash Collateral Order.

For the avoidance of doubt, (i) landlords which have filed Claims on or before the applicable Bar Date may assert claims for year-end adjustments and reconciliations of such Claims that were contained or reserved for in such Claims; and (ii) Creditors may assert any valid right of setoff or recoupment that it may have, subject to the rights of the Debtors and each Liquidating Trustee to assert that any Person seeking to exercise any setoff rights or recoupment of any kind against the Debtors and/or the applicable Liquidating Trust has waived such rights on the grounds that such Person has not properly or timely asserted such rights under the Bankruptcy Code or other applicable law or that such rights are not otherwise enforceable under any applicable law.

## **I. PROCEDURE FOR TREATING AND RESOLVING DISPUTED, CONTINGENT AND/OR UNLIQUIDATED CLAIMS**

### **a. Objection Deadline; Prosecution of Objections**

Except as set forth in the Plan with respect to Administrative Claims, all objections to Claims must be filed and served on the Holders of such Claims by the Claims Objection Deadline, as the same may be extended by the Bankruptcy Court. If an objection has not been filed to a Proof of Claim or the Schedules have not been amended with respect to a Claim that (i) was Scheduled by the Debtors but (ii) was not Scheduled as contingent, unliquidated, and/or disputed, by the Claims Objection Deadline, as the same may be extended by order of the Bankruptcy Court, the Claim to which the Proof of Claim or Scheduled Claim relates will be treated as an Allowed Claim if such Claim has not been allowed earlier. Notice of any motion for an order extending the Claims Objection Deadline shall be required to be given only to those persons or entities that have requested notice in the Chapter 11 Cases, or to such persons as the Bankruptcy Court shall order.

From the Confirmation Date through the Effective Date: (i) the Debtors may file objections, settle, compromise, withdraw, or litigate to judgment objections to Claims; (ii) the Committee may file objections, settle, compromise, withdraw or litigate to judgment objections

to General Unsecured Claims; (iii) the Prepetition Secured Parties may file objections, settle, compromise, withdraw or litigate to judgment objections to Administrative Claims and/or Priority Claims; *provided, however*, that the Committee, the Debtors, the Liquidating Trustees and the Prepetition Secured Parties shall not file any objection to any Claim to the extent such objection is inconsistent with the Global Plan Settlement. Subject to the terms of the Liquidating Trust Agreements, from and after the Effective Date, a Liquidating Trustee may settle or compromise any Disputed Claim which, if such Claim were an Allowed Claim would be payable by such Liquidating Trust under the Plan, without approval of the Bankruptcy Court; *provided, however*, that (1) the First Lien Term Lenders Liquidating Trustee shall have the sole authority to assert, settle, compromise, withdraw, or litigate to judgment objections to (a) all Claims other than Class 5 Claims and (2) the GUC Liquidating Trustee shall have the sole authority to assert, settle, compromise, withdraw, or litigate to judgment objections to Class 5 Claims.

**b. No Distributions on Disputed Claims**

Notwithstanding any other provision of the Plan or the Liquidating Trust Agreements, no payments or Distributions shall be made with respect to all or any portion of a Disputed Claim unless and until all objections to such Disputed Claim have been settled or withdrawn or have been determined by Final Order, and the Disputed Claim, or some portion thereof, has become an Allowed Claim; *provided, however*, that if the only dispute regarding a Disputed Claim is to the amount of the Disputed Claim, the Holder of a Disputed Claim shall be entitled to a Distribution on account of that portion of the Disputed Claim which the Debtors or the applicable Liquidating Trustee does not dispute at the time and in the manner that the applicable Liquidating Trustee makes Distributions to Holders of Allowed Claims pursuant to the provisions of the Plan.

The First Lien Term Lenders Liquidating Trustee (with respect to Administrative Claims and/or Priority Claims) and the GUC Liquidating Trustee (with respect to General Unsecured Claims) may, in their discretion and consistent with each of their respective Liquidating Trust Agreements, seek an Order of the Bankruptcy Court seeking approval of a maximum reserve with regard to a Disputed Claim for which their respective Liquidating Trust is responsible in order to facilitate Distributions to the Holders of Allowed Claims in such Liquidating Trust.

**c. Distributions on Allowed Claims**

Except as otherwise provided in the Plan, on the earlier of (a) the Distribution Date following the date when a Disputed Claim becomes an Allowed Claim or (b) sixty (60) days after such Disputed Claim becomes an Allowed Claim, the applicable Liquidating Trustee will distribute to the Claimholder any Cash from the applicable Liquidating Trust that would have been distributed on the dates Distributions were previously made to Claimholders had such Allowed Claim been an Allowed Claim on such dates.

All Distributions made under this Article of the Plan on account of an Allowed Claim will be made together with any dividends, payments, or other Distributions made on account of, as well as any obligations arising from, the distributed property as if such Allowed Claim had been an Allowed Claim on the dates Distributions were previously made to Holders of other Allowed Claims included in the applicable Class.

**d. De Minimis Distributions**

Except as otherwise provided in the Plan, the Liquidating Trustees shall not have any obligation to make a Distribution on account of an Allowed Claim if the amount to be distributed to the specific Holder of the Allowed Claim on the particular Distribution Date does not constitute a final Distribution to such Holder and such Distribution has a value less than \$25.00. The Liquidating Trustees shall have no obligation to make any Distribution on Claims Allowed in an amount less than \$500.00. Any undistributed Cash will vest in the applicable Liquidating Trust and become Available Cash for Distribution on the final Distribution.

Notwithstanding any other provision of this Plan, if and to the extent that either Liquidating Trustees has Available Cash remaining of no more than \$50,000 after a Distribution has been made, that Liquidating Trustee, may in lieu of making further Distributions donate such Available Cash to a charitable organization designated by the beneficiaries of the applicable Liquidating Trust.

**J. FRACTIONAL DOLLARS**

Any other provision of this Plan notwithstanding, the Liquidating Trustees shall not be required to make Distributions or payments of fractions of dollars. Whenever any payment of a fraction of a dollar under this Plan would otherwise be called for, the actual payment shall reflect a rounding of such fraction to the nearest whole dollar (up or down), with half dollars being rounded down.

**K. ALLOCATION OF PLAN DISTRIBUTIONS BETWEEN PRINCIPAL AND INTEREST**

To the extent that any Allowed Claim entitled to a Distribution under this Plan is composed of indebtedness and accrued but unpaid interest thereon, such Distribution shall, for all income tax purposes, be allocated to the principal amount of the Claim first and then, to the extent the consideration exceeds the principal amount of the Claim, to the portion of such Claim representing accrued but unpaid interest.

**L. DISTRIBUTION RECORD DATE**

The Liquidating Trustees will have no obligation to recognize the transfer of or sale of any participation in any Allowed Claim that occurs after the close of business on the Distribution Record Date, and will be entitled for all purposes herein to recognize, deal with and distribute only to those Holders of Allowed Claims who are record Holders of such Claims, or participants therein, as of the close of business on the Distribution Record Date, as stated on the official claims register.

**M. ALLOWANCE OF CERTAIN CLAIMS**

The Revolver Secured Claims shall be deemed by the Plan to be Allowed Class 3 Claims in the aggregate amount equal to the sum of (i) the Revolver Pre-Effective Date Secured Claims and (ii) the Revolver Post-Effective Date Secured Claims. Without limitation of the foregoing, it is acknowledged that, as of the filing of the Plan, the outstanding principal balance

of the loans extended to the Debtors by the Prepetition First Lien Revolver Lenders under the Prepetition First Lien Revolving Credit Facility is \$55,000,000.

The Prepetition First Lien Term Loan Secured Claims shall be deemed by the Plan to be Allowed Class 4 Claims.

The Prepetition Second Lien Term Loan Claim shall be deemed by the Plan to be an Allowed Class 5 Claim in the aggregate amount of \$151,623,195.20.

## **XVII.**

### **TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

#### **A. REJECTED CONTRACTS AND LEASES**

Except as otherwise provided in the Confirmation Order, the Plan, or any other Plan Document, the Confirmation Order shall constitute an order under Bankruptcy Code section 365 rejecting all prepetition executory contracts and unexpired leases to which any Debtor is a party, to the extent such contracts or leases are executory contracts or unexpired leases, on and subject to the occurrence of the Effective Date, unless such contract or lease (a) previously shall have been assumed, assumed and assigned, or rejected by the Debtors, (b) previously shall have expired or terminated pursuant to its own terms before the Effective Date, (c) is the subject of a pending motion to assume or reject on the Confirmation Date, or (d) is identified in Exhibit C to this Plan; *provided, however*, that the Debtors may amend such Exhibit C at any time prior to the Confirmation Date; *provided further however*, that listing an insurance agreement on such Exhibit shall not constitute an admission by a Debtor that such agreement is an executory contract or that any Debtor has any liability thereunder. Nothing herein or in the Confirmation Order shall be deemed to provide for or permit the rejection of the Tail Coverage or any other Existing D&O Insurance Policy and the Tail Coverage and the Existing D&O Insurance Policies shall remain in full force in effect on and after the Effective Date.

#### **B. BAR DATE FOR TO REJECTION DAMAGES**

If the rejection of an executory contract or unexpired lease pursuant to XVII.A above gives rise to a Claim by the other party or parties to such contract or lease, such Claim shall be forever barred and shall not be enforceable against the applicable Debtor or its Estate, the Liquidating Trusts, or their respective successors or properties unless a Proof of Claim is filed and served on the GUC Liquidating Trust and counsel for the GUC Liquidating Trustee within thirty (30) days after service of a notice of the Effective Date or such other date as is prescribed by the Bankruptcy Court.

#### **C. ASSUMED AND ASSIGNED CONTRACTS AND LEASES**

Except as otherwise provided in the Confirmation Order, the Plan, or any other Plan Document entered into after the Commencement Date or in connection with the Plan, the Confirmation Order shall constitute an order under Bankruptcy Code section 365 assuming, as of the Effective Date, those contracts listed on Exhibit C to this Plan; *provided, however*, that the Debtors may amend such Exhibit at any time prior to the Confirmation Date; *provided further*,

*however*, that listing an insurance agreement on such Exhibit shall not constitute an admission by a Debtor that such agreement is an executory contract or that any Debtor has any liability thereunder.

## **XVIII.**

### **CONFIRMATION AND CONSUMMATION OF THE PLAN**

#### **A. CONDITIONS TO CONFIRMATION**

The following are conditions precedent to the occurrence of the Confirmation Date:

- a. A Final Order finding that the Disclosure Statement contains adequate information pursuant to Bankruptcy Code section 1125 shall have been entered by the Bankruptcy Court;**
- b. A proposed Confirmation Order in form and substance, reasonably acceptable to the Debtors, the Committee and the Prepetition Secured Parties shall have been filed with the Bankruptcy Court;**
- c. Approval of all provisions, terms and conditions hereof in the Confirmation Order and;**
- d. The aggregate amount of Allowed Priority Claims, Allowed Administrative Claims, and Allowed Miscellaneous Secured Claims (together with all Disputed Claims of the foregoing Classes) shall not reasonably be expected to exceed \$[ ] in the aggregate, as determined by the Debtors and the respective Requisite Lenders of the Prepetition Secured Parties.**

#### **B. CONDITIONS TO EFFECTIVE DATE**

The following are conditions precedent to the occurrence of the Effective Date, each of which must be satisfied or waived in writing in accordance with XVIII.C:

- a. The Confirmation Order shall have been entered and become a Final Order and shall provide that the Debtors, the Liquidating Trusts, and the Liquidating Trustees are authorized and directed to take all actions necessary or appropriate by each of them to enter into, implement and consummate the contracts, instruments, releases, leases, indentures, and other agreements or documents created in connection with the Plan or effectuate, advance, or further the purposes thereof;**
- b. All Plan Exhibits shall be, in form and substance, reasonably acceptable to the Debtors, the Committee and the Prepetition Secured Parties, and shall have been executed and delivered by all parties' signatory thereto;**



- c. **The Debtors shall be authorized and directed to take all actions necessary or appropriate to enter into, implement and consummate the contracts, instruments, releases, leases, indentures, and the agreements or documents created in connection with, and expressly provided for under, the Plan;**
- d. **The Revolver Effective Date Cash shall have been paid by the Debtors to the Prepetition First Lien Revolver Administrative Agent;**

Immediately prior to and as of the Effective Date, the Creditor Funds Payment Events (other than the occurrence of the Effective Date) have been satisfied and would each remain satisfied upon the occurrence of and immediately after giving effect to the Effective Date; and

- e. **All other actions, documents, and agreements necessary to implement the Plan shall have been effected or executed.**

### **C. WAIVER OF CONDITIONS**

Subject to the joint agreement of the Requisite Lenders under both Prepetition First Lien Credit Agreements, each of the conditions set forth in XVIII.A and VIII.B of the Plan may be waived in whole or in part by the Debtors. Notwithstanding the preceding sentence, the Committee's written consent to any waiver of a condition set forth in XVIII.A and VIII.B shall be obtained if such waiver would be inconsistent with rights of and the benefits conferred upon the Committee, Holders of General Unsecured Claims, Holders of Administrative Claims, the Studios, or Warner Home Video pursuant to the Global Plan Settlement or would adversely effect the payment of General Unsecured Claims or Administrative Claims. The failure to satisfy or waive any condition to the Effective Date may be asserted by the Debtors regardless of the circumstances giving rise to the failure of such condition to be satisfied. The failure of a party to exercise any of the foregoing rights shall not be deemed a waiver of any other rights, and each such right shall be deemed an ongoing right that may be asserted at any time.

### **D. CONSEQUENCES OF NON-OCCURRENCE OF EFFECTIVE DATE**

Subject to the prior written consent of the Requisite Lenders under both Prepetition First Lien Credit Agreements, in the event that the Effective Date does not timely occur, the Debtors reserve all rights to seek an order from the Bankruptcy Court directing that the Confirmation Order be vacated, that the Plan be null and void in all respects, and/or that any settlement of Claims provided for in the Plan be null and void. In the event that the Bankruptcy Court shall enter an order vacating the Confirmation Order, the time within which the Debtors may assume and assign or reject all executory contracts and unexpired leases not previously assumed, assumed and assigned, or rejected, shall be extended for a period of thirty (30) days after the date the Confirmation Order is vacated, without prejudice to further extensions.

### **E. SUBSTANTIAL CONSUMMATION**

Substantial consummation of the Plan, as defined in Bankruptcy Code section 1101(2), shall not be deemed to have occurred unless and until all Allowed Administrative Claims, Allowed Priority Claims, Class 2 Claims and Class 3 Claims have been paid in full or funds sufficient to satisfy the Face Amount of all such Claims have been placed in

segregated reserves, subject to the other terms and conditions of this Plan governing reserves and the rights of the Prepetition First Lien Liquidating Trustee to object (to the extent not inconsistent with the Term Sheet) in good faith on any grounds to the validity, amount or priority of any such Claims.

## **XIX.**

### **ALLOWANCE AND PAYMENT OF CERTAIN ADMINISTRATIVE CLAIMS**

#### **A. PROFESSIONAL FEE CLAIMS**

##### **a. Final Fee Applications**

The Final Fee Applications must be filed no later than forty-five (45) days after the Effective Date. Objections, if any, to Final Fee Applications of such Professionals must be filed and served on the First Lien Term Lenders Liquidating Trustee and its counsel, the requesting Professional and the Office of the U.S. Trustee no later than ten (10) days from the date on which each such Final Fee Application is served and filed. After notice and a hearing in accordance with the procedures established by the Bankruptcy Code and prior orders of the Bankruptcy Court, the allowed amounts of such Professional Fee Claims shall be determined by the Court. No objections to Final Fee Applications may be asserted after ten (10) days from the date on which such Final Fee Application was served and filed.

##### **b. Employment of Professionals after the Effective Date**

Except as otherwise provided for in the Liquidating Trust Agreements, from and after the Effective Date, any requirement that Professionals comply with Bankruptcy Code sections 327 through 331 or any order previously entered by the Bankruptcy Court in seeking retention or compensation for services rendered or expenses incurred after such date shall terminate.

#### **B. OTHER ADMINISTRATIVE CLAIMS**

All other requests for allowance and payment of an Administrative Claim arising after the Initial Administrative Claims Bar Date, up to and through the Effective Date, other than Professional Fee Claims, must be filed with the Court and served on counsel for the Debtors and the Prepetition Secured Parties no later than the Final Administrative Claims Bar Date. Unless the First Lien Term Lenders Liquidating Trustee or the Debtors objects to an Administrative Claim by the Administrative Claims Objection Deadline, such Administrative Claim shall be deemed allowed in the amount requested. In the event that the First Lien Term Lenders Liquidating Trustee or the Debtors objects to an Administrative Claim, the Bankruptcy Court shall determine the allowed amount of such Administrative Claim.

## **XX.**

### **EFFECT OF PLAN CONFIRMATION**

#### **A. BINDING EFFECT**

This Plan shall be binding upon and inure to the benefit of the Debtors, all present and former Holders of Claims and Interests, and their respective successors and assigns, including, but not limited to, the Liquidating Trusts and the Liquidating Trustees.

#### **B. COMPROMISE AND SETTLEMENT**

Notwithstanding anything contained herein to the contrary, the allowance, classification and treatment of all Allowed Claims and their respective distributions and treatments hereunder takes into account and conforms to the relative priority and rights of the Claims and the Interests in each Class with due regard to any contractual, legal and equitable subordination rights relating thereto whether arising under general principles of equitable subordination, sections 510(b) and (c) of the Bankruptcy Code or otherwise. As of the Effective Date, any and all such rights described in the preceding sentence are settled, compromised and released pursuant hereto. The Confirmation Order will constitute the Bankruptcy Court's finding and determination that the settlements reflected in the Plan are (1) in the best interests of the Debtors, their Estates and all Holders of Claims, (2) fair, equitable and reasonable, (3) made in good faith and (4) approved by the Bankruptcy Court pursuant to Bankruptcy Rule 9019. In addition, the allowance, classification and treatment of Allowed Claims take into account any Causes of Action, whether under the Bankruptcy Code or otherwise under applicable non-bankruptcy law, that may exist: (1) between the Debtors, on the one hand, and the Debtor Releasees, on the other; and (2) as between the Releasing Parties and the Third Party Releasees (to the extent set forth in the Third Party Release); and, as of the Effective Date, any and all such Causes of Action are settled, compromised and released pursuant hereto. The Confirmation Order shall approve and effectuate the releases by all Persons of all such contractual, legal and equitable subordination rights or Causes of Action that are satisfied, compromised and settled pursuant hereto.

Provided such compromise and settlement is effected in accordance with the provisions of this Plan, and pursuant to Bankruptcy Rule 9019, without any further notice to or action, order or approval of the Bankruptcy Court (except to the extent necessary to avoid prejudice to the other Liquidating Trust), after the Effective Date: (1) the First Lien Term Lenders Liquidating Trustee may, in its sole and absolute discretion, compromise and settle (a) Administrative Claims after the Effective Date, Priority Claims or Class 2 Claims and (b) Causes of Action against other Persons; and (2) the GUC Liquidating Trustee may, in its sole and absolute discretion, compromise and settle Class 5 Claims.

#### **C. DEBTOR RELEASE**

NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, ON THE EFFECTIVE DATE AND EFFECTIVE AS OF THE EFFECTIVE DATE, FOR THE GOOD AND VALUABLE CONSIDERATION PROVIDED BY EACH OF THE DEBTOR RELEASEES AND THE THIRD PARTY RELEASEES, INCLUDING,

WITHOUT LIMITATION: (1) THE RELEASES OF LIENS AND ALL OTHER GOOD AND VALUABLE CONSIDERATION PAID PURSUANT HERETO; (2) THE AGREEMENT OF THE PREPETITION SECURED PARTIES AND LENADO TO PROVIDE THE SUPPORT NECESSARY FOR CONSUMMATION OF THE PLAN; AND (3) THE SERVICES OF THE DEBTORS' PRESENT AND FORMER OFFICERS, DIRECTORS, MEMBERS (INCLUDING *EX OFFICIO* MEMBERS) AND ADVISORS IN FACILITATING THE EXPEDITIOUS IMPLEMENTATION OF THE LIQUIDATION CONTEMPLATED HEREBY, EACH OF THE DEBTOR RELEASORS SHALL FULLY RELEASE (AND, AUTOMATICALLY WITHOUT FURTHER ACTION, EACH SUCH DEBTOR RELEASEE AND THIRD PARTY RELEASEE SO RELEASED SHALL BE DEEMED FULLY RELEASED BY THE DEBTOR RELEASORS) EACH DEBTOR RELEASEE AND EACH THIRD PARTY RELEASEE AND THEIR RESPECTIVE PROPERTIES FROM ANY AND ALL AVOIDANCE ACTIONS AND ALL CAUSES OF ACTION, WHETHER KNOWN OR UNKNOWN, WHETHER ARISING PRIOR TO OR AFTER THE COMMENCEMENT DATE, FORESEEN OR UNFORESEEN, LIQUIDATED OR UNLIQUIDATED, CONTINGENT OR NON-CONTINGENT, EXISTING AS OF THE EFFECTIVE DATE IN LAW, AT EQUITY, WHETHER FOR TORT, FRAUD, CONTRACT, VIOLATIONS OF FEDERAL OR STATE SECURITIES LAWS OR OTHERWISE, ARISING FROM OR RELATED IN ANY WAY TO THE DEBTORS OR THEIR ESTATES, INCLUDING, WITHOUT LIMITATION, THOSE THAT ANY OF THE DEBTORS OR THE LIQUIDATING TRUSTS WOULD HAVE BEEN LEGALLY ENTITLED TO ASSERT IN THEIR OWN RIGHT (WHETHER INDIVIDUALLY OR COLLECTIVELY) OR THAT ANY HOLDER OF A CLAIM OR AN INTEREST OR OTHER ENTITY WOULD HAVE BEEN LEGALLY ENTITLED TO ASSERT ON BEHALF OF ANY OF THE DEBTORS OR ANY OF THEIR ESTATES, AND FURTHER INCLUDING THOSE IN ANY WAY RELATED TO THE CHAPTER 11 CASES, THE PLAN, THE DISCLOSURE STATEMENT, THE SALE OR LIQUIDATION OF ANY PROPERTY OF THE ESTATES, THE CLOSING OF ANY OF THE DEBTORS' STORES, THE DEBTORS' BUSINESSES AND OPERATIONS, THE DEBTORS' INTERESTS, THE DEBTORS' DEBT OBLIGATIONS, THE DEBTORS' FINANCING AGREEMENTS, THE DEBTORS' LEASES AND OTHER CONTRACTS, THE DEBTORS' PRIOR BANKRUPTCY CASES, OR THE TRANSACTIONS CONTEMPLATED IN CONNECTION WITH THE DEBTORS' PRIOR BANKRUPTCY CASES; *PROVIDED, HOWEVER*, THAT (1) THE FOREGOING "DEBTOR RELEASE" SHALL NOT OPERATE TO WAIVE OR RELEASE ANY CAUSES OF ACTION OF ANY DEBTOR AND/OR A LIQUIDATING TRUST AGAINST A THIRD PARTY RELEASEE (OTHER THAN: (I) ALL CURRENT AND FORMER PREPETITION SECURED PARTIES AND THEIR RELATED PARTIES, (II) LENADO AND ITS RELATED PARTIES, AND (III) THE COMMITTEE, THE STUDIOS, AND WARNER HOME VIDEO) ARISING FROM ANY CONTRACTUAL OBLIGATIONS OWED TO THE DEBTORS AND/OR A LIQUIDATING TRUST; (2) NOTWITHSTANDING THE FOREGOING "DEBTOR RELEASE", THE DEBTORS, THE LIQUIDATING TRUSTS, THE LIQUIDATING TRUSTEES, THE PREPETITION SECURED PARTIES, LENADO, THE COMMITTEE, THE STUDIOS AND WARNER HOME VIDEO SHALL HAVE THE RIGHT TO SEEK SPECIFIC ENFORCEMENT OF THE GLOBAL PLAN SETTLEMENT INCLUDING THE TERM SHEET, BY ANY PARTY THERETO DIRECTLY OR THROUGH THE PLAN; AND (3) NOTWITHSTANDING THE FOREGOING "DEBTOR RELEASE", THE DEBTORS AND/OR THE APPLICABLE LIQUIDATING TRUST SHALL HAVE THE RIGHT TO SEEK THE RETURN, RECOUPMENT OR SETOFF OF ANY OVERPAYMENT MADE BY THE

DEBTORS OR SUCH APPLICABLE LIQUIDATING TRUST TO A STUDIO OR WARNER HOME VIDEO AND THEIR RELATED PARTIES.

ENTRY OF THE CONFIRMATION ORDER SHALL CONSTITUTE THE BANKRUPTCY COURT'S APPROVAL, PURSUANT TO BANKRUPTCY RULE 9019, OF THE DEBTOR RELEASE, WHICH INCLUDES BY REFERENCE EACH OF THE RELATED PROVISIONS AND DEFINITIONS CONTAINED HEREIN, AND FURTHER, SHALL CONSTITUTE THE BANKRUPTCY COURT'S FINDING THAT THE DEBTOR RELEASE IS: (1) IN EXCHANGE FOR THE GOOD AND VALUABLE CONSIDERATION PROVIDED BY THE DEBTOR RELEASEES AND THE THIRD PARTY RELEASEES; (2) A GOOD FAITH SETTLEMENT AND COMPROMISE OF THE CLAIMS RELEASED BY THE DEBTOR RELEASE; (3) IN THE BEST INTERESTS OF THE DEBTORS AND ALL HOLDERS OF CLAIMS AND INTERESTS; (4) FAIR, EQUITABLE AND REASONABLE; (5) GIVEN AND MADE AFTER DUE NOTICE AND OPPORTUNITY FOR HEARING; AND (6) A BAR TO ANY OF THE DEBTORS OR THE LIQUIDATING TRUSTS ASSERTING ANY CLAIM RELEASED BY THE DEBTOR RELEASE AGAINST ANY OF THE DEBTOR RELEASEES OR ANY OF THE THIRD PARTY RELEASEES.

#### **D. THIRD PARTY RELEASE**

NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, ON THE EFFECTIVE DATE AND EFFECTIVE AS OF THE EFFECTIVE DATE, THE RELEASING PARTIES (REGARDLESS OF WHETHER A RELEASING PARTY IS A THIRD PARTY RELEASEE) SHALL FULLY RELEASE (AND, AUTOMATICALLY WITHOUT FURTHER ACTION, EACH ENTITY SO RELEASED SHALL BE DEEMED RELEASED BY THE RELEASING PARTIES) THE DEBTORS, THE DEBTOR RELEASEES, AND THE THIRD PARTY RELEASEES AND THEIR RESPECTIVE PROPERTY FROM ANY AND ALL AVOIDANCE ACTIONS AND ALL CAUSES OF ACTION, WHETHER KNOWN OR UNKNOWN, WHETHER ARISING PRIOR TO OR AFTER THE COMMENCEMENT DATE, FORESEEN OR UNFORESEEN, LIQUIDATED OR UNLIQUIDATED, CONTINGENT OR NON-CONTINGENT, EXISTING AS OF THE EFFECTIVE DATE IN LAW, AT EQUITY, WHETHER FOR TORT, FRAUD, CONTRACT, VIOLATIONS OF FEDERAL OR STATE SECURITIES LAWS OR OTHERWISE, ARISING FROM OR RELATED IN ANY WAY TO THE DEBTORS OR THEIR ESTATES, INCLUDING, WITHOUT LIMITATION, THOSE IN ANY WAY RELATED TO THE CHAPTER 11 CASES, THE PLAN, THE SALE OR LIQUIDATION OF ANY PROPERTY OF THE ESTATES, THE CLOSING OF ANY OF THE DEBTORS' STORES, THE DEBTORS' BUSINESSES AND OPERATIONS, THE DEBTORS' INTERESTS, THE DEBTORS' DEBT OBLIGATIONS, THE DEBTORS' FINANCING AGREEMENTS, THE DEBTORS' LEASES AND OTHER CONTRACTS, THE DEBTORS' PRIOR BANKRUPTCY CASES, OR THE TRANSACTIONS CONTEMPLATED IN CONNECTION WITH THE DEBTORS' PRIOR BANKRUPTCY CASES; *PROVIDED, HOWEVER*, THAT (1) THE FOREGOING "THIRD PARTY RELEASE", SHALL NOT OPERATE TO WAIVE OR RELEASE ANY CAUSES OF ACTION OF ANY THIRD PARTY RELEASOR AND/OR A LIQUIDATING TRUST AGAINST A THIRD PARTY RELEASEE (OTHER THAN: (I) ALL CURRENT AND FORMER PREPETITION SECURED PARTIES AND THEIR RELATED PARTIES, (II) LENADO AND ITS RELATED PARTIES, AND (III) THE COMMITTEE, THE STUDIOS, AND WARNER HOME VIDEO) ARISING FROM ANY

CONTRACTUAL OBLIGATIONS OWED TO THE DEBTORS AND/OR A LIQUIDATING TRUST; (2) NOTWITHSTANDING THE FOREGOING "THIRD PARTY RELEASE" THE DEBTORS, THE LIQUIDATING TRUSTS, THE LIQUIDATING TRUSTEES, THE PREPETITION SECURED PARTIES, LENADO, THE COMMITTEE, THE STUDIOS AND WARNER HOME VIDEO SHALL HAVE THE RIGHT TO SEEK SPECIFIC ENFORCEMENT OF THE GLOBAL PLAN SETTLEMENT, INCLUDING THE TERM SHEET, BY ANY PARTY THERETO DIRECTLY OR THROUGH THE PLAN; (3) NOTWITHSTANDING THE FOREGOING "THIRD PARTY RELEASE", THE DEBTORS AND/OR THE APPLICABLE LIQUIDATING TRUST SHALL HAVE THE RIGHT TO SEEK THE RETURN, RECOUPMENT OR SETOFF OF ANY OVERPAYMENT MADE BY THE DEBTORS OR SUCH APPLICABLE LIQUIDATING TRUST TO A STUDIO OR WARNER HOME VIDEO; AND (4) THE FOREGOING "THIRD PARTY RELEASE" SHALL NOT OPERATE TO WAIVE OR RELEASE ANY CLAIMS OR RIGHTS EXPRESSLY SET FORTH IN AND PRESERVED BY THE PLAN OR OTHERWISE PRECLUDE ANY PERSON FROM EXERCISING THEIR RIGHTS PURSUANT TO AND CONSISTENT WITH THE TERMS OF THIS PLAN.

ENTRY OF THE CONFIRMATION ORDER SHALL CONSTITUTE THE BANKRUPTCY COURT'S APPROVAL, PURSUANT TO BANKRUPTCY RULE 9019, OF THE THIRD PARTY RELEASE, WHICH INCLUDES BY REFERENCE EACH OF THE RELATED PROVISIONS AND DEFINITIONS CONTAINED HEREIN, AND FURTHER, SHALL CONSTITUTE THE BANKRUPTCY COURT'S FINDING THAT THE THIRD PARTY RELEASE IS: (1) IN EXCHANGE FOR THE GOOD AND VALUABLE CONSIDERATION PROVIDED BY THE THIRD PARTY RELEASEES, (2) A GOOD FAITH SETTLEMENT AND COMPROMISE OF THE CLAIMS RELEASED BY THE THIRD PARTY RELEASE; (3) IN THE BEST INTERESTS OF THE DEBTORS AND ALL HOLDERS OF CLAIMS; (4) FAIR, EQUITABLE AND REASONABLE; (5) GIVEN AND MADE AFTER DUE NOTICE AND OPPORTUNITY FOR HEARING; AND (6) A BAR TO ANY OF THE RELEASING PARTIES ASSERTING ANY CLAIM RELEASED BY THE THIRD PARTY RELEASE AGAINST ANY OF THE THIRD PARTY RELEASEES.

#### **E. EXCULPATION**

Without limiting or restricting any other release or waiver provided in the Plan, the Confirmation Order, the Cash Collateral Order, or other Final Order of the Bankruptcy Court, the Exculpated Parties shall neither have nor incur any liability to any Person for any prepetition or postpetition act taken or omitted to be taken during the Chapter 11 Cases or in connection with, or related to (i) the preparation, filing, or timing of the commencement of the Chapter 11 Cases, or (ii) formulating, negotiating, preparing, disseminating, implementing, administering, confirming or effecting the Consummation of the Plan, the Disclosure Statement or any contract, instrument, release or other agreement or document created or entered into in connection with the Plan or any other prepetition or postpetition act taken or omitted to be taken in connection with or in contemplation of the closing of any of the Debtors' stores or other liquidation of the Debtors' assets; *provided, however*, that the foregoing "Exculpation" shall have no effect on the liability of any Person that results from any such act or omission that is determined in a Final Order to have constituted fraud, gross negligence or willful misconduct; *provided, further*, that each Exculpated Party shall be entitled to rely upon the advice of counsel concerning his, her or its duties pursuant to, or in connection with, the Plan; *provided, still further*, that the foregoing

Exculpation shall not limit the ability of the Debtors, the Liquidating Trusts, the Liquidating Trustees, the Prepetition Secured Parties, Lenado, the Committee, the Studios or Warner Home Video to exercise any available right of specific performance remedies with respect to the Global Plan Settlement directly or through the Plan.

## F. INDEMNIFICATION

Except as otherwise provided in this Plan or any contract, instrument, release, or other agreement or document entered into in connection with this Plan, any and all prepetition indemnification obligations that the Debtors have pursuant to a contract, instrument, agreement, certificate of incorporation, by-law, comparable organizational document or any other document, or applicable law shall be rejected as of the Effective Date, to the extent executory; *provided, however*, that: (i) the Debtors shall acquire the Tail Coverage, which shall be available to the directors and officers of the Debtors who were directors or officers on or after the Commencement Date, (ii) all rights of such directors and officers under the Tail Coverage and the Debtors' Existing D&O Insurance Policies hereby are expressly reserved, and (iii) the Debtors, or following the Effective Date, the Liquidating Trustees, the First Lien Term Lenders Liquidating Trust Oversight Board and the GUC Liquidating Trust Oversight Committee shall take any action reasonably requested by any such director or officer to preserve the Debtors' Existing D&O Insurance Policies, shall take no action to amend, limit, terminate, cancel, or reduce any Existing D&O Insurance Policy, and shall otherwise cooperate with such directors and officers in connection with the maintenance of the Existing D&O Insurance Policies; *provided further*, that, (i) to the extent any claims released pursuant to the Debtor Release or the Third Party Release are pursued against any of the Debtor Releasees or any of the Third Party Releasees, respectively, the First Lien Term Lenders Liquidating Trust shall indemnify any such Debtor Releasees or Third Party Releasees that are Prepetition Secured Parties, or their respective Related Parties (the "Prepetition Secured Parties Indemnified Persons") and (ii) without in any way limiting the generality of, or reducing the scope of, the foregoing indemnities, to the extent any claims released pursuant to the Debtor Release or the Third Party Release are pursued against Lenado (in any capacity other than as a Prepetition Secured Party) (the "**Lenado Indemnified Persons**"; the Prepetition Secured Parties Indemnified Persons together with the Lenado Indemnified Persons, the "**Indemnified Persons**") by the First Lien Term Lenders Liquidating Trust, the First Lien Term Lenders Liquidating Trustee, any Person who at any time after the Commencement Date through the Effective Date was a Prepetition First Lien Term Secured Party or a Related Person thereof or any Person on behalf of the foregoing, the First Lien Term Lenders Liquidating Trust shall indemnify Lenado in such other capacities, except that the First Lien Term Lenders Liquidating Trust shall not indemnify any such Person referred to in the preceding clauses "i" and "ii" with respect to any act or omission that is determined in a Final Order to have constituted fraud, gross negligence or willful misconduct. **THE PREPETITION FIRST LIEN LIQUIDATING TRUSTEE HEREBY RESERVES ALL OF ITS RIGHTS AND REMEDIES, INCLUDING THE RIGHT TO COMMENCE LITIGATION FOR MONEY DAMAGES AGAINST ANY PREPETITION SECURED PARTY (OR ANY PERSON THAT WAS A PREPETITION SECURED PARTY AT ANY TIME FROM THE COMMENCEMENT DATE THROUGH THE EFFECTIVE DATE OR ANY OF THEIR RELATED PERSONS) (A "SECURED PARTY CLAIMANT") IN THE EVENT THAT ANY SECURED PARTY CLAIMANT PURSUES ANY CLAIMS AGAINST ANY INDEMNIFIED PERSON WHICH CLAIMS WERE, OR WERE DEEMED TO BE, RELEASED BY THE DEBTOR RELEASE OR THE THIRD**

**PARTY RELEASE AND WHICH PURSUIT, DIRECTLY OR INDIRECTLY, CAUSES OR RESULTS IN THE FIRST LIEN LIQUIDATING TRUST MAKING ANY PAYMENT OR INCURRING ANY OTHER LIABILITY, COST, OR EXPENSE INCLUDING, WITHOUT LIMITATION, UNDER OR AS A RESULT OF THE INDEMNITY GRANTED BY THE PREPETITION FIRST LIEN LIQUIDATING TRUST UNDER THIS ARTICLE X(F).** No Prepetition Secured Party or Related Party other than a Secured Party Claimant shall be subject to any loss, cost, expenses, or other liability under the immediately preceding sentence.

For the avoidance of doubt: (i) the Liquidating Trustees, the First Lien Term Lenders Liquidating Trust Oversight Board, and the GUC Liquidating Trust Oversight Committee shall have no power or authority to terminate or impair benefits provided under the Tail Coverage or the Debtors' Existing D&O Insurance Policies; (ii) notwithstanding the Chapter 11 Cases, this Plan, and the Confirmation Order, all rights and benefits of any current or former director or officer of the Debtors under any of (a) the Debtors' Existing D&O Insurance Policies are expressly reserved and, after the Effective Date, shall survive and shall be fully enforceable and (b) the Debtors' other insurance policies in force on the Effective Date which name a director or officer as an additional insured or loss payee or otherwise expressly by their terms provide that a director or officer may receive payment on a claim thereunder are reserved, and, after the Effective Date, shall survive and shall be fully enforceable *provided, however*, that the First Lien Term Lenders Liquidating Trust shall retain and hereby reserves all rights that the Debtors possess under applicable law or the terms of such other insurance policy to amend or terminate any such other insurance policy if the First Lien Liquidating Trustee reasonably determines that the rights or benefits conferred to such director and officer are to the material economic detriment of the First Lien Liquidating Trust or that the rights and benefits conferred on the directors and officers under such other insurance policies, after reasonable written notice to any affected director or officer, shall have any other material adverse financial effect on, or give rise to any material liability of the First Lien Term Lenders Liquidating Trust; *provided*, further, that the First Lien Term Lenders Liquidating Trust shall be under no obligation to pay any premium or incur any other expense or liability with respect to any such other insurance policy; (iii) all postpetition indemnification obligations owed by the Debtors or the Estates to (a) the Debtors' directors, managers, or officers serving in such positions on or after the Commencement Date and (b) the Prepetition Secured Parties, that the Debtors have pursuant to a contract, instrument, agreement, certificate of incorporation, by-law, comparable organizational document or any other document, or applicable law shall survive Consummation of this Plan; and (iv) nothing herein shall impair the rights of the Prepetition Secured Parties to assert indemnity rights under the Prepetition First Lien Credit Documents and to include amounts payable to the Prepetition Secured Parties on account of such indemnity rights in the Prepetition First Lien Secured Claims.

## **G. INJUNCTION**

PURSUANT TO BANKRUPTCY CODE SECTION 1141(D)(3), CONFIRMATION WILL NOT DISCHARGE CLAIMS AGAINST THE DEBTORS; *PROVIDED, HOWEVER*, THAT NO CLAIMHOLDER OR INTEREST HOLDER MAY, ON ACCOUNT OF SUCH CLAIM OR INTEREST, SEEK OR RECEIVE ANY PAYMENT OR OTHER DISTRIBUTION FROM, OR SEEK RECOURSE AGAINST, ANY DEBTOR OR THE ESTATE OF ANY DEBTOR, THE LIQUIDATING TRUSTS, THE LIQUIDATING



TRUSTEES, FIRST LIEN TERM LENDERS LIQUIDATING TRUST OVERSIGHT BOARD AND ITS MEMBERS, GUC LIQUIDATING TRUST OVERSIGHT COMMITTEE AND/OR THEIR RESPECTIVE SUCCESSORS, ASSIGNS AND/OR PROPERTY, EXCEPT AS EXPRESSLY PROVIDED IN THIS PLAN. NOTWITHSTANDING THE PRECEDING SENTENCE, THE INJUNCTIONS SET FORTH BELOW SHALL APPLY TO IMPLEMENT THE PLAN.

EXCEPT AS OTHERWISE PROVIDED IN THE PLAN, ALL PERSONS WHO HAVE HELD, HOLD OR MAY HOLD CLAIMS, INTERESTS, AVOIDANCE ACTIONS, CAUSES OF ACTION OR LIABILITIES THAT: (A) HAVE BEEN RELEASED PURSUANT TO ARTICLE X.C OR ARTICLE X.D HEREOF; OR (B) ARE SUBJECT TO EXCULPATION PURSUANT TO ARTICLE (BUT ONLY TO THE EXTENT OF THE EXCULPATION PROVIDED IN XX.E) ARE PERMANENTLY ENJOINED AND PRECLUDED, FROM AND AFTER THE EFFECTIVE DATE, FROM: (1) COMMENCING OR CONTINUING IN ANY MANNER ANY ACTION OR OTHER PROCEEDING OF ANY KIND AGAINST ANY ENTITY SO RELEASED, DISCHARGED OR EXCULPATED (INCLUDING THE DEBTORS AND THE LIQUIDATING TRUSTS) (OR THE PROPERTY OR ESTATE OF ANY ENTITY SO RELEASED, DISCHARGED OR EXCULPATED) ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH RELEASED, DISCHARGED OR EXCULPATED CLAIMS, INTERESTS, AVOIDANCE ACTIONS, CAUSES OF ACTION OR LIABILITIES; (2) ENFORCING, ATTACHING, COLLECTING OR RECOVERING BY ANY MANNER OR MEANS ANY JUDGMENT, AWARD, DECREE OR ORDER AGAINST ANY ENTITY SO RELEASED, DISCHARGED OR EXCULPATED (INCLUDING THE DEBTORS AND THE LIQUIDATING TRUSTS) (OR THE PROPERTY OR ESTATE OF ANY ENTITY SO RELEASED, DISCHARGED OR EXCULPATED) ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH RELEASED, DISCHARGED OR EXCULPATED CLAIMS, INTERESTS, AVOIDANCE ACTIONS, CAUSES OF ACTION OR LIABILITIES; (3) CREATING, PERFECTING OR ENFORCING ANY LIEN, CLAIM OR ENCUMBRANCE OF ANY KIND AGAINST ANY ENTITY SO RELEASED, DISCHARGED OR EXCULPATED (INCLUDING THE DEBTORS AND THE LIQUIDATING TRUSTS) (OR THE PROPERTY OR ESTATE OF ANY ENTITY SO RELEASED, DISCHARGED OR EXCULPATED) ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH RELEASED, DISCHARGED OR EXCULPATED CLAIMS, INTERESTS, AVOIDANCE ACTIONS, CAUSES OF ACTION OR LIABILITIES; (4) ASSERTING ANY RIGHT OF SETOFF, SUBROGATION, OR RECOUPMENT OF ANY KIND AGAINST ANY OBLIGATION DUE FROM ANY ENTITY SO RELEASED, DISCHARGED OR EXCULPATED (INCLUDING THE DEBTORS AND THE LIQUIDATING TRUSTS) (OR THE PROPERTY OR ESTATE OF ANY ENTITY SO RELEASED, DISCHARGED OR EXCULPATED) ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH RELEASED, DISCHARGED OR EXCULPATED CLAIMS, INTERESTS, AVOIDANCE ACTIONS, CAUSES OF ACTION OR LIABILITIES UNLESS SUCH HOLDER HAS FILED A MOTION REQUESTING THE RIGHT TO PERFORM SUCH SETOFF ON OR BEFORE THE CONFIRMATION DATE, AND NOTWITHSTANDING AN INDICATION IN A PROOF OF CLAIM OR INTEREST OR OTHERWISE THAT SUCH HOLDER ASSERTS, HAS OR INTENDS TO PRESERVE ANY RIGHT OF SETOFF PURSUANT TO SECTION 553 OF THE BANKRUPTCY CODE OR OTHERWISE; AND (5) COMMENCING OR CONTINUING IN ANY MANNER ANY ACTION OR OTHER PROCEEDING OF ANY KIND AGAINST ANY ENTITY SO

RELEASED, DISCHARGED OR EXCULPATED (INCLUDING THE DEBTORS AND THE LIQUIDATING TRUSTS) (OR THE PROPERTY OR ESTATE OF ANY ENTITY SO RELEASED, DISCHARGED OR EXCULPATED) ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH RELEASED, DISCHARGED OR EXCULPATED CLAIMS, INTERESTS, AVOIDANCE ACTIONS, CAUSES OF ACTION OR LIABILITIES RELEASED OR SETTLED PURSUANT TO THE PLAN. ANY PERSON OR ENTITY INJURED BY ANY WILLFUL VIOLATION OF THIS INJUNCTION MAY SEEK TO RECOVER ACTUAL DAMAGES, INCLUDING COSTS AND ATTORNEYS' FEES, AND, IN APPROPRIATE CIRCUMSTANCES, PUNITIVE DAMAGES FROM THE WILLFUL VIOLATOR.

#### **H. DISSOLUTION OF THE COMMITTEE**

Effective on the Effective Date, the Committee shall have no further powers or duties and shall be dissolved for all purposes; *provided, however*, that the Committee and the Professionals employed by the Committee shall be entitled to reasonable compensation and reimbursement of actual, necessary expenses for the preparation, filing, and prosecution of Final Fee Applications, upon the submission of invoices to the Debtors. Any time or expenses incurred in the preparation, filing, and prosecution of Final Fee Applications shall be disclosed by each Professional in its Final Fee Application and shall be subject to approval of the Bankruptcy Court.

#### **I. STUDIO MATTERS**

The Debtors have timely performed all of their payment obligations to the Studios arising under Section 1(b) of that certain Accommodation Agreement among the Studios and the Debtors, as approved by the Bankruptcy Court Order entered on March 23, 2010, at Docket No. 791 (the "**Accommodation Agreement**"). The Studios, Warner Home Video, or the B Studios shall commence any revenue share audits of any "overages" for any rental or sale of any inventory of the Debtors no later than \_\_\_\_\_, 2010.

#### **J. WAIVER OF OBJECTION TO PROFESSIONAL FEES**

The Committee, each member of the Committee, the GUC Liquidating Trust, and the GUC Liquidating Trustee shall each, pursuant to the Term Sheet, be deemed to have waived, subject to the occurrence of and upon the Effective Date, any right any of them may have under the Cash Collateral Order, any other order of the Bankruptcy Court or any other court, or applicable law to challenge or object to the fees and expenses of the financial advisors (including Jefferies & Company, Inc., on behalf of Lenado, and Houlihan Lokey, on behalf of the Prepetition First Lien Term Administrative Agent and certain of the Prepetition First Lien Term Lenders, and legal counsel, including O'Melveny & Myers LLP, and Tavenner & Beran LP, on behalf of Lenado, and Brown Rudnick LLP, Christian & Barton LLP, and Osler, Hoskin & Harcourt LLP, on behalf of the Prepetition First Lien Term Administrative Agent and certain of the Prepetition First Lien Term Lenders, and any other legal counsel retained by the Joint First Lien Collateral Agent or the Prepetition First Lien Collateral Agent.

## XXI.

### RETENTION OF JURISDICTION

Under Bankruptcy Code sections 105(a) and 1142, and notwithstanding entry of the Confirmation Order, substantial consummation of the Plan and occurrence of the Effective Date, the Bankruptcy Court shall retain exclusive jurisdiction over all matters arising out of, and related to, the Chapter 11 Cases and the Plan to the fullest extent permitted by law, including, among other things, jurisdiction to:

- (1) Allow, disallow, determine, liquidate, classify, estimate or establish the priority or secured or unsecured status of any Claim or Interest, including the resolution of any request for payment of any Administrative Claim, the resolution of any objections to the allowance or priority of Claims or Interests and the determination of requests for the payment of claims entitled to priority under Bankruptcy Code section 507(a)(1), including compensation of any reimbursement of expenses of parties entitled thereto;**
- (2) Hear and determine all applications for compensation and reimbursement of expenses of Professionals under the Plan or under Bankruptcy Code sections 330, 331, 503(b), 1103, and 1129(a)(4); *provided, however*, that from and after the Effective Date, the payment of the fees and expenses of the retained Professionals of the Liquidating Trusts and/or the Liquidating Trustees shall be made in the ordinary course of business and shall not be subject to the approval of the Bankruptcy Court;**
- (3) Hear and determine all matters with respect to the assumption or rejection of any executory contract or unexpired lease to which a Debtor is a party or with respect to which a Debtor may be liable, and to hear, determine and, if necessary, liquidate any Claims arising therefrom;**
- (4) Effectuate performance of and payments under the provisions of the Plan or the Liquidating Trust Agreements;**
- (5) Hear and determine any and all adversary proceedings, motions, applications and contested or litigated matters arising out of, under or related to the Chapter 11 Cases, the Plan or the Liquidating Trust Agreements;**
- (6) Enter such orders as may be necessary or appropriate to execute, implement or consummate the provisions of the Plan and all contracts, instruments, releases and other agreements or documents created in connection with the Plan, the Disclosure Statement or the Confirmation Order;**

- (7) Hear and determine disputes arising in connection with the interpretation, implementation, consummation or enforcement of the Plan, including disputes arising under agreements, documents or instruments executed in connection with the Plan;**
- (8) Consider any modifications of the Plan, cure any defect or omission or reconcile any inconsistency in any order of the Bankruptcy Court, including, without limitation, the Confirmation Order;**
- (9) Issue injunctions, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any entity with implementation, consummation, or enforcement of the Plan or the Confirmation Order;**
- (10) Enter and implement such orders as may be necessary or appropriate if the Confirmation Order is for any reason reversed, stayed, revoked, modified or vacated;**
- (11) Hear and determine any matters arising in connection with or relating to the Plan, the Disclosure Statement, the Confirmation Order or any contract, instrument, release or other agreement or document created in connection with the Plan, the Disclosure Statement or the Confirmation Order;**
- (12) Enforce all orders, judgments, injunctions, releases, exculpations, indemnifications and rulings entered in connection with the Chapter 11 Cases;**
- (13) Except as otherwise limited herein, recover all assets of the Debtors and property of the Estates, wherever located;**
- (14) Hear and determine matters concerning state, local and federal taxes in accordance with Bankruptcy Code sections 346, 505 and 1146;**
- (15) Hear and determine all matters related to the property of the Estates from and after the Confirmation Date;**
- (16) Hear and determine the Causes of Action;**
- (17) Hear and determine all disputes involving the existence, nature or scope of the injunctions, indemnification, exculpation and releases granted pursuant to this Plan;**
- (18) Hear and determine all matters related to (i) the property of the Estates from and after the Confirmation Date, (ii) the winding up of the Debtors' affairs, and (iii) the activities of the Liquidating Trusts and/or the Liquidating Trustees, including (A) challenges to or approvals of the Liquidating Trustees' activities, (B) resignation, incapacity or removal of the Liquidating Trustees and successor**

**Liquidating Trustees, (C) reporting by, termination of and accounting by the Liquidating Trustees, (D) the settlement of any Claims or Causes of Action, and (E) release of the Liquidating Trustees from their duties;**

- (19) Hear and determine disputes with respect to compensation of the Liquidating Trustees and the Liquidating Trustees' Professionals;**
- (20) Hear and determine all disputes involving the existence, nature and/or scope of the injunctions and releases provided herein, including any dispute relating to any liability arising out of any termination of employment or the termination of any employee or retiree benefit provision, regardless of whether such termination occurred prior to or after the Effective Date;**
- (21) Hear and determine such other matters as may be provided in the Confirmation Order or as may be authorized under, or not inconsistent with, provisions of the Bankruptcy Code;**
- (22) Enforce all orders previously entered by the Bankruptcy Court in the Chapter 11 Cases;**
- (23) Dismiss any and/or all of the Chapter 11 Cases; and**
- (24) Enter a final decree closing the Chapter 11 Cases.**

## **XXII.**

### **MISCELLANEOUS PROVISIONS**

#### **A. MODIFICATIONS AND AMENDMENTS**

Notwithstanding anything to the contrary herein, any waiver or modification of any provision of this Plan requires the prior written consent of the Requisite Lenders under both Prepetition First Lien Credit Agreements. Subject to the prior written consent of the Requisite Lenders under both Prepetition First Lien Credit Agreements, the Debtors may alter, amend or modify the Plan or any Exhibits thereto under Bankruptcy Code section 1127(a) at any time prior to the Confirmation Date. Notwithstanding the preceding two sentences, the Committee's written consent to any waiver, modification or amendment of the Plan shall be obtained if such waiver, modification or amendment would be inconsistent with rights of and the benefits conferred upon the Committee, Holders of General Unsecured Claims, Holders of Administrative Claims, the Studios, or Warner Home Video pursuant to the Global Plan Settlement or would adversely effect the payment of General Unsecured Claims or Administrative Claims. After the Confirmation Date and prior to substantial consummation of the Plan as defined in Bankruptcy Code section 1101(2), the Debtors may, under Bankruptcy Code section 1127(b), institute proceedings in the Bankruptcy Court to remedy any defect or omission or reconcile any inconsistencies in the Plan, the Disclosure Statement or the Confirmation Order, and such matters as may be necessary to carry out the purpose and effect of the Plan so long as such proceedings do not adversely affect the treatment of Holders of Claims

under the Plan; *provided, however*, that prior notice of such proceedings shall be served in accordance with the Bankruptcy Rules or order of the Bankruptcy Court.

#### **B. SEVERABILITY OF PLAN PROVISIONS**

If, prior to Confirmation, any term or provision of the Plan is held by the Bankruptcy Court to be invalid, void or unenforceable, then the Bankruptcy Court, at the request of the Debtors, shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of the Plan shall remain in full force and effect and shall in no way be affected, impaired or invalidated by such holding, alteration or interpretation. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

#### **C. SUCCESSORS AND ASSIGNS**

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

#### **D. PAYMENT OF STATUTORY FEES**

All fees then due and payable pursuant to 28 U.S.C. § 1930, as determined by the Court at the Confirmation Hearing, shall be paid on or before the Effective Date by the Debtors. All such fees that become due and payable thereafter by a Debtor shall be paid by the Liquidating Trustees in an amount corresponding to the amount of distributions made by each Liquidating Trustee, as determined in accordance with 28 U.S.C. § 1930. The Liquidating Trustees shall pay their respective quarterly fees to the U.S. Trustee until the Chapter 11 Cases are closed or converted and/or the entry of final decrees. The Debtors, through the Liquidating Trusts, shall file post-confirmation quarterly reports or any pre-confirmation monthly operating reports not filed as of the Confirmation Hearing in conformance with the U.S. Trustee Guidelines. The U.S. Trustee shall not be required to file a request for payment of its quarterly fees, which shall be paid by the Debtors and/or the Liquidating Trustees.

#### **E. REVOCATION, WITHDRAWAL OR NON-CONSUMMATION**

Subject to the prior written consent of the Requisite Lenders under both Prepetition First Lien Credit Agreements, the Debtors reserve the right to revoke or withdraw the Plan as to any or all of the Debtors prior to the Confirmation Date and to file subsequent plans. If the Debtors revoke or withdraw the Plan as to any or all of the Debtors, or if Confirmation or consummation of the Plan as to any or all of the Debtors does not occur, then, with respect to such Debtors, (a) the Plan shall be null and void in all respects, (b) any settlement or compromise embodied in the Plan (including the fixing or limiting to an amount certain any Claim or Class of Claims), assumption or rejection of executory contracts or leases effected by the Plan and any document or agreement executed pursuant to the Plan, shall be deemed null and void, and (c) nothing contained in the Plan, and no acts taken in preparation for consummation of the Plan,

shall (i) constitute or be deemed to constitute a waiver or release of any Claims by or against, or any Interests in, such Debtors or any other Person, (ii) prejudice in any manner the rights of such Debtors or any other Person, or (iii) constitute an admission of any sort by such Debtors or any other Person.

**F. SERVICE OF DOCUMENTS**

Any notice, request or demand required or permitted to be made or provided to or upon a Debtor, the Committee, and/or the Liquidating Trustees under the Plan shall be (a) in writing, (b) served by (i) certified mail, return receipt requested, (ii) hand delivery, (iii) overnight delivery service, (iv) first class mail, or (v) facsimile transmission, (c) deemed to have been duly given or made when actually delivered or, in the case of notice by facsimile transmission, when received and telephonically confirmed, and (d) addressed as follows:

***The Debtors:***

if by overnight or hand delivery:

Wesley D. Sand, President  
Movie Gallery, Inc.  
9275 SW Peyton Lane  
Wilsonville, OR 97070  
Tel: (503) 570-1600  
Fax: (503) 570-5108

with a copy to:

John A. Bicks  
Louis A. Curcio  
Sonnenschein Nath & Rosenthal LLP  
1221 Avenue of the Americas  
New York, NY 10020-1089  
Tel: (212) 768-6700  
Fax: (212) 768-6800

if by regular mail:

Wesley D. Sand, President  
Movie Gallery, Inc.  
9275 SW Peyton Lane  
Wilsonville, OR 97070

with a copy to:

John A. Bicks  
Louis A. Curcio  
Sonnenschein Nath & Rosenthal LLP  
1221 Avenue of the Americas  
New York, NY 10020-1089

***The Committee:***

Robert J. Feinstein  
Pachulski Stang Ziehl & Jones LLP  
780 Third Street  
36th Floor  
New York, NY 10017  
Tel: (212) 561-7700  
Fax: (212) 561-7777

***The First Lien Term Lenders Liquidating Trust/Trustee:***

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[ ]  
[ ]  
[ ]

With a copy to:

Jeffrey Jonas  
Brown Rudnick LLP  
One Financial Center  
Boston, MA 02111  
Tel: (617) 856-8577  
Fax: (617) 289-0551

and also to:

Christopher J. Carolan  
Brown Rudnick LLP  
Seven Times Square  
New York, NY 10036  
Tel: (212) 209-4937  
Fax: (212) 938-2871

***The GUC Liquidating Trust/Trustee:***

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**G. PLAN SUPPLEMENT(S)**

Exhibits to the Plan not attached hereto shall be filed in one or more Plan Supplements by the Exhibit Filing Date. Any Plan Supplement (and amendments thereto) filed by the Debtors shall be deemed an integral part of the Plan and shall be incorporated by



reference as if fully set forth herein. Substantially contemporaneously with their filing, the Plan Supplements may be viewed at the office of the clerk of the Bankruptcy Court or its designee during normal business hours, by visiting the Court's website at [www.vaeb.uscourts.gov](http://www.vaeb.uscourts.gov) (PACER account and password required) or by visiting [www.kccllc.net/moviegallery](http://www.kccllc.net/moviegallery). Holders of Claims and/or Interests may obtain a copy of any Plan Supplements upon reasonable written request to the Claims Agent. The documents contained in any Plan Supplements shall be approved by the Bankruptcy Court pursuant to the Confirmation Order.

#### **H. TAX REPORTING AND COMPLIANCE**

The First Lien Term Lenders Liquidating Trustee is hereby authorized, on behalf of each of the Debtors, to request an expedited determination under Bankruptcy Code section 505(b) of the tax liability of the Debtors for all taxable periods ending after the Commencement Date through and including the Effective Date.

#### **I. FILING OF ADDITIONAL DOCUMENTS**

On or before substantial consummation of this Plan, the Debtors shall file such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of this Plan.

Dated: July 13, 2010

MOVIE GALLERY, INC., et al.  
(for itself and on behalf of the Affiliate Debtors)

By: /s/ Wesley D. Sand \_\_\_\_\_

Name: Wesley D. Sand

Title: President and COO

Respectfully submitted,

**KUTAK ROCK LLP**

By: /s/ Michael A. Condyles \_\_\_\_\_

Michael A. Condyles (VA 27807)

Peter J. Barrett (VA 46179)

Jeremy S. Williams (VA 77469)

Bank of America Center

1111 East Main Street, Suite 800

Richmond, Virginia 23219-3500

Telephone: (804) 644-1700

Fax: (804) 783-6192

and

**SONNENSCHN NATH & ROSENTHAL LLP**

John A. Bicks (NY 2032498)

Louis A. Curcio (NY 4016267)

1221 Avenue of the Americas

New York, NY 10020-1089

Telephone: (212) 768-6700

Fax: (212) 768-6800

*Attorneys for Debtors and Debtors in Possession*

**Exhibit A**

**Existing D&O Insurance Policies**

**(To Be Filed on or Before the Exhibit Filing Date)**

**Exhibit B-1**

**First Lien Term Lenders Liquidating Trust Agreement**

**(To Be Filed On Or Before The Exhibit Filing Date)**

**Exhibit B-2**

**GUC Liquidating Trust Agreement**

**(To Be Filed On Or Before The Exhibit Filing Date)**

**Exhibit C**

**List of Leases and Executory Contracts to Be Assumed**

**(To Be Filed On Or Before The Exhibit Filing Date)**

**EXHIBIT B**

**[To Be Supplied]**