



UNITED STATES SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

Form 10-K

(Mark One)

- ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934  
For the fiscal year ended December 31, 2009
- TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

Commission file Number 0-24216

**IMAX Corporation**

(Exact name of registrant as specified in its charter)

Canada  
(State or other jurisdiction of  
incorporation or organization)

2525 Speakman Drive,  
Mississauga, Ontario, Canada  
(Address of principal executive offices)

98-0140269  
(I.R.S. Employer  
Identification Number)

L5K 1B1  
(Postal Code)

Registrant's telephone number, including area code:  
(905) 403-6500

Securities registered pursuant to Section 12(b) of the Act:

Title of Each Class	Name of Exchange on Which Registered
Common Shares, no par value	The NASDAQ Stock Market LLC

Securities registered pursuant to Section 12(g) of the Act:

None  
(Title of class)

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act Yes o No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes o No

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes  No o

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes o No o

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of the registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer o Accelerated filer  Non-accelerated filer o Smaller reporting Company o  
(Do not check if a smaller reporting company)

Indicate by check mark whether the registrant is a shell Company (as defined in Rule 12b-2 of the Act). Yes o No

The aggregate market value of the common shares of the registrant held by non-affiliates of the registrant, computed by reference to the last sale price of such shares as of the close of trading on June 30, 2009 was \$347.8 million (42,829,037 common shares times \$8.12).

As of February 28, 2010, there were 63,028,035, common shares of the registrant outstanding.

Document Incorporated by Reference

Portions of the registrant's definitive Proxy Statement to be filed within 120 days of the close of IMAX Corporation's fiscal year ended December 31, 2009, with the Securities and Exchange Commission pursuant to Regulation 14A involving the election of directors and the annual meeting of the stockholders of the registrant (the "Proxy Statement") are incorporated by reference in Part III of this Form 10-K to the extent described therein.

IMAX CORPORATION

December 31, 2009

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## IMAX CORPORATION

## EXCHANGE RATE DATA

Unless otherwise indicated, all dollar amounts in this document are expressed in United States (“U.S.”) dollars. The following table sets forth, for the periods indicated, certain exchange rates based on the noon buying rate in the City of New York for cable transfers in foreign currencies as certified for customs purposes by the Bank of Canada (the “Noon Buying Rate”). Such rates quoted are the number of U.S. dollars per one Canadian dollar and are the inverse of rates quoted by the Bank of Canada for Canadian dollars per U.S. \$1.00. The average exchange rate is based on the average of the exchange rates on the last day of each month during such periods. The Noon Buying Rate on December 31, 2009 was U.S. \$0.9555.

	Years Ended December 31,				
	2009	2008	2007	2006	2005
Exchange rate at end of period	0.9555	0.8170	1.0120	0.8582	0.8579
Average exchange rate during period	0.8757	0.9381	0.9425	0.8818	0.8254
High exchange rate during period	0.9716	1.0291	1.0908	0.9100	0.8690
Low exchange rate during period	0.7692	0.7710	0.8437	0.8528	0.7872

## SPECIAL NOTE REGARDING FORWARD-LOOKING INFORMATION

Certain statements included in this annual report may constitute “forward-looking statements” within the meaning of the United States Private Securities Litigation Reform Act of 1995. These forward-looking statements include, but are not limited to, references to future capital expenditures (including the amount and nature thereof), business and technology strategies and measures to implement strategies, competitive strengths, goals, expansion and growth of business, operations and technology, plans and references to the future success of IMAX Corporation together with its wholly-owned subsidiaries (the “Company”) and expectations regarding the Company’s future operating, financial and technological results. These forward-looking statements are based on certain assumptions and analyses made by the Company in light of its experience and its perception of historical trends, current conditions and expected future developments, as well as other factors it believes are appropriate in the circumstances. However, whether actual results and developments will conform with the expectations and predictions of the Company is subject to a number of risks and uncertainties, including, but not limited to, general economic, market or business conditions; including the length and severity of the current economic downturn, the opportunities (or lack thereof) that may be presented to and pursued by the Company; competitive actions by other companies; the performance of IMAX DMR films; conditions in the in-home and out-of-home entertainment industries; the signing of theater system agreements; changes in laws or regulations; conditions, changes and developments in the commercial exhibition industry; the failure to convert theater system backlog into revenue; risks associated with the Company’s transition to a digitally-based projector; risks related to new business initiatives; risks associated with investments and operations in foreign jurisdictions and any future international expansion, including those related to economic, political and regulatory policies of local governments and laws and policies of the United States and Canada; the potential impact of increased competition in the markets the Company operates within; risks related to foreign currency transactions; risks related to the Company’s prior restatements and the related litigation and ongoing inquiry by the Securities and Exchange Commission (the “SEC”) and the Ontario Securities Commission (the “OSC”); and other factors, many of which are beyond the control of the Company. Consequently, all of the forward-looking statements made in this annual report are qualified by these cautionary statements, and actual results or anticipated developments by the Company may not be realized, and even if substantially realized, may not have the expected consequences to, or effects on, the Company. The Company undertakes no obligation to update publicly or otherwise revise any forward-looking information, whether as a result of new information, future events or otherwise.

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IMAX®, IMAX® Dome, IMAX® 3D, IMAX® 3D Dome, Experience It In IMAX®, *The IMAX Experience®*, *An IMAX Experience®*, IMAX DMR®, DMR®, IMAX MPX®, IMAX think big® and think big® are trademarks and trade names of the Company or its subsidiaries that are registered or otherwise protected under laws of various jurisdictions.

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## PART I

### Item 1. *Business*

#### GENERAL

IMAX Corporation, together with its wholly-owned subsidiaries (the “Company”), is one of the world’s leading entertainment technology companies, specializing in motion picture technologies and large-format motion picture presentations. The Company’s principal business is: the design and manufacture of large-format digital and film-based theater systems (“IMAX theater systems”) and the sale or lease of such IMAX theater systems or the contribution of IMAX theater systems under revenue-sharing arrangements with its customers. The IMAX theater systems are based on proprietary and patented technology for both large-format digital projectors and large-format 15-perforation film frame, 70mm format (“15/70-format”) projectors. The Company’s customers who purchase, lease or otherwise acquire the IMAX theater systems are theater exhibitors that operate commercial theaters (particularly multiplexes), museums, science centers, or destination entertainment sites. The Company generally does not own IMAX theaters, but licenses the use of its trademarks along with the sale, lease or contribution of its equipment. The Company refers to all theaters using the IMAX theater system as “IMAX theaters.”

The Company is also engaged in the production and distribution of original large-format films, the provision of post-production services for large-format films, the conversion of two-dimensional (“2D”) and three-dimensional (“3D”) Hollywood feature films for exhibition on IMAX theater systems around the world, the operation of four IMAX theaters and the provision of services in support of IMAX theaters and the IMAX theater network throughout the globe.

The Company believes the IMAX theater network is the most extensive large-format theater network in the world with 430 theater systems (309 commercial, 121 institutional) operating in 48 countries as at December 31, 2009. This compares to 351 theater systems (231 commercial, 120 institutional) operating in 42 countries as at December 31, 2008. While the Company’s roots are in the institutional market, the Company’s expanded commercial theater network and its initiatives to facilitate the production and reduce the cost of displaying IMAX content have made IMAX a key distribution platform for Hollywood blockbuster films. To that end, in 2002, the Company introduced a technology that allows conventional 35mm movies to be digitally converted for its large-format theaters. In 2003, the Company introduced lower cost theater systems designed for multiplex owners (the “MPX” systems). In 2008, the Company introduced a proprietary new digital projector which has resulted in a greater number of both theater system signings and Hollywood features being released to the IMAX network. The Company continues to maintain strong relationships with Hollywood studios and commercial exhibition companies.

IMAX theater systems combine advanced, high-resolution projectors with film handling equipment and automated theater control systems, sound system components and screen components that extend to the edge of a viewer’s peripheral vision to create immersive audio-visual experiences. As a result, audiences feel as if they are a part of the on-screen action, creating a more intense, immersive and exciting experience than in a traditional theater. In addition, the Company’s IMAX 3D theater systems combine the same theater systems with 3D images that further enhance the audience’s feeling of being immersed in the film.

The Company believes that one of the key steps to becoming an important distribution platform for Hollywood’s biggest event films was the Company’s introduction, in 2002, of a technology that can digitally convert live-action 35mm films to its large-format at a modest incremental cost (incurred by the Company), while meeting the Company’s high standards of image and sound quality. This proprietary system is known as IMAX DMR (Digital Re-Mastering). Since the introduction of IMAX DMR, 44 IMAX DMR films have been released. As the Company’s theater network has expanded, the number of films converted through the DMR process that have been released annually has increased as well. Accordingly, 12 films converted through the IMAX DMR process were released in 2009 as compared to 8 in 2008.

A further important step in becoming a distribution platform for Hollywood’s biggest event films was the Company’s development of an IMAX digital projection system. The IMAX digital projection system, which operates without the need for analog film prints, was designed specifically for use by commercial multiplex operators and allows operators to reduce the capital and operating costs required to run an IMAX theater without sacrificing the image and sound quality of the “*The IMAX Experience*.” By making *The IMAX Experience* more accessible for commercial multiplex operators, the introduction of the IMAX digital projection system paved the way for several important joint revenue sharing arrangements which have allowed the Company to rapidly expand its theater network. Since announcing that the Company was developing digital projection technology, the Company has signed agreements for 293 digital systems (including the upgrade of film-based systems), 28 of which were signed in 2009, and 27 of which were signed in 2010 year-to-date. As of December 31, 2009, 151 IMAX digital projection systems were in operation, a 228% increase compared to the 46 digital projection systems in operation as of December 31, 2008.

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As a result of the immersiveness and superior image and sound quality of *The IMAX Experience*, the Company's exhibitor customers typically charge a premium for IMAX DMR films over films exhibited in their conventional auditoriums. The premium pricing, combined with higher attendance levels associated with IMAX films, generates incremental box office for the Company's exhibitor customers and for the movie studios releasing their films to the IMAX network. The incremental box office generated by IMAX DMR films has helped establish IMAX as a premium distribution platform for Hollywood blockbuster films.

The Company intends to explore new areas of brand extension in 3D in-home entertainment technology; the digital re-mastering and 2D-to-3D conversion of movie and television content; increased post-production opportunities; alternative theater content and partnerships with technology, studio, programming, content and consumer electronics companies.

IMAX Corporation, a Canadian corporation, was formed in March 1994 as a result of an amalgamation between WGIM Acquisition Corp. and the former IMAX Corporation ("Predecessor IMAX"). Predecessor IMAX was incorporated in 1967.

## **PRODUCT LINES**

The Company is the pioneer and leader in the large-format film industry. The Company believes it is the world's largest designer and manufacturer of specialty projection and sound system components for large-format theaters around the world, as well as a significant producer and distributor of large-format films. The Company's theater systems include a specialized IMAX projector, advanced sound systems and specialty screens. The Company derives its revenues from: IMAX theater systems (the sale and lease of, and provision of services related to, its theater systems); films (production and digital re-mastering of films, the distribution of film products to the IMAX theater network, post-production services for films); joint revenue sharing arrangements (the provision of its theater system in exchange for a certain percentage of theater revenue); theater system maintenance (the provision of maintenance services related to its theater systems); theater operations (owning equipment, operating, managing or participating in the revenues of IMAX theaters); and other activities, which include the sale of after market parts and camera rentals. Segmented information is provided in note 20 to the accompanying audited consolidated financial statements in Item 8.

### **IMAX Systems, Theater System Maintenance and Joint Revenue Sharing Arrangements**

The Company's primary products are its theater systems. Traditional IMAX film-based theater systems include a unique rolling loop 15/70-format projector that offers superior image quality and stability and a digital theater control system; a 6-channel, digital audio system delivering up to 12,000 watts of sound; a screen with a proprietary coating technology; and, if applicable, 3D glasses cleaning equipment. The Company's digital projection system includes all of the above components (absent the rolling-loop projector) and operates without the need for analog film prints. Since its introduction, the majority of the Company's theater sales have been digital systems and the Company expects a majority of its future theater systems sales to continue to be IMAX digital systems. As part of the arrangement to sell or lease its theater systems, the Company provides extensive advice on theater planning and design and supervision of installation services. Theater systems are also leased or sold with a license for the use of the world famous IMAX brand. IMAX theater systems come in five configurations: the GT projection system for the largest IMAX theaters; the SR system for smaller theaters; the IMAX MPX and IMAX digital systems, which are targeted for multiplex complexes; and a fifth category of theater systems featuring heavily curved and tilted screens that are used in dome shaped theaters. The GT, SR, IMAX MPX and IMAX digital systems are "flat" screens that have a minimum of curvature and tilt and can exhibit both 2D and 3D films, while the screen components in dome shaped theaters are generally 2D only and are popular with the Company's institutional clients.

Unlike standard cinema screens, IMAX screens typically go from floor to ceiling and extend to the edge of a viewer's peripheral vision to create an immersive experience which, when combined with the Company's superior sound system components, make audiences feel as if they are a part of the on-screen action, creating a more intense and exciting experience than in a traditional theater. The immersive experience is a critical part of *The IMAX Experience*. The Company's IMAX 3D theaters further increase the audience's feeling of immersion in the film by bringing images off the screen. All IMAX theaters, with the exception of dome configurations, feature a steeply inclined floor to provide each audience member with a clear view of the screen. The Company holds patents on the geometrical design of IMAX theaters.

The Company's analog projectors utilize the largest commercially available film format (15-perforation film frame, 70mm), which is nearly 10 times larger than conventional film (4-perforation film frame, 35mm) and therefore are able to project significantly more detail on a larger screen. The Company believes these projectors, which utilize the Company's rolling loop technology, are unsurpassed in their ability to project film with maximum steadiness and clarity with minimal film wear while substantially enhancing the quality of the projected image. As a result, the Company's projectors deliver a higher level of clarity, detail and brightness as compared to conventional movies and competing projectors.

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In order to compete and evolve with the market, the Company has created a digital projection system that provides a premium and differentiated experience to moviegoers that is consistent with what they have come to expect from the IMAX brand. The introduction of the digital projection system for a large portion of the Company's customer base has been compelling for a number of reasons. The savings to the studios as a result of eliminating film prints are considerable, as the typical cost of an IMAX film print ranges from \$20 thousand per 2D print to \$45 thousand per 3D print. Removing those costs significantly increases the profit of an IMAX release for a studio which, the Company believes, provides more incentive for studios to release their films to IMAX theaters. The Company similarly believes that economics change favorably for its exhibition clients as a result of a digital theater system, since lower print costs (which total approximately \$200 per movie per system), and the increased programming flexibility that digital delivery provides allow theaters to program at least 12-14 IMAX DMR films per year, thereby increasing both customer choice and total box-office revenue. In 2009, 12 films converted through the IMAX DMR process were released to the IMAX theater network as compared to 8 films in 2008. Furthermore, to date, the Company has announced the release of 10 DMR films to its theater network in 2010, plus 1 IMAX original production and anticipates announcing additional DMR titles in 2010 which are expected to be released to IMAX theaters in 2010 and beyond. Digital projectors also typically require lower installation costs for exhibitors and potentially allow for the opportunity to show attractive alternate programming, such as live sporting events and concerts, in the immersive environment of an IMAX theater. Digital systems represent 85% of the Company's current backlog and the Company continues to expect a majority of its future theater system arrangements to be for digital systems.

To complement its viewing experience, the Company provides unique digital sound system components. The sound system components are among the most advanced in the industry and help to heighten the sense of realism of an IMAX presentation. IMAX sound system components are specifically designed for IMAX theaters and are an important competitive advantage. The Company believes it is a world leader in the design and manufacture of digital sound system components for applications including traditional movie theaters, auditoriums and IMAX theaters.

The Company's arrangements for theater system equipment involve either a lease or sale. As part of the arrangement for an IMAX theater system, the Company also advises the customer on theater design, supervises the installation of the theater systems and provides projectionists with training in using the equipment. Theater owners or operators are responsible for providing the theater location, the design and construction of the theater building, the installation of the system components and any other necessary improvements, as well as the marketing and programming at the theater. The supervision of installation requires that the equipment also be put through a complete functional start-up and test procedure to ensure proper operation. The Company's typical arrangement also includes the trademark license rights which commence on execution of the agreement and generally have terms of 7 to 20 years that may be renewed. The theater system equipment components (including the projector, sound system, and screen system, and, if applicable, 3D glasses cleaning machine), theater design support, supervision of installation, projectionist training and trademark rights are all elements of what the Company considers the system deliverable (the "System Deliverable"). For a separate fee, the Company provides ongoing maintenance and extended warranty services for the theater system. The Company's contracts are generally denominated in U.S. dollars, except in Canada, Japan and parts of Europe, where contracts are sometimes denominated in local currency.

Leases, other than joint revenue sharing arrangements, generally have 10 to 20-year initial terms and are typically renewable by the customer for one or more additional 5 to 10-year terms. Under the terms of the typical lease agreement, the title to the theater system equipment (including the projector, the sound system and the projection screen) remains with the Company. The Company has the right to remove the equipment for non-payment or other defaults by the customer. The contracts are generally not cancelable by the customer unless the Company fails to perform its obligations.

The Company also enters into sale agreements with its customers. Under a sales arrangement, the title to the theater system remains with the customer. In certain instances, however, the Company retains title or a security interest in the equipment until the customer has made all payments required under the agreement.

The typical lease or sales arrangement provides for three major sources of cash flows for the Company: (i) initial fees; (ii) ongoing minimum fixed and contingent fees; and (iii) ongoing maintenance and extended warranty fees. Initial fees generally are received over the period of time from the date the arrangement is executed to the date the equipment is installed and customer acceptance has been received. However, in certain cases, the payments of the initial fee may be scheduled over a period after the equipment is installed and customer acceptance has been received. Ongoing minimum fixed and contingent fees and ongoing maintenance and extended warranty fees are generally received over the life of the arrangement and are usually adjusted annually based on changes in the local consumer price index. The ongoing minimum fixed and contingent fees generally provide for a fee which is the greater of a fixed amount or a certain percentage of the theater box-office. The terms of each arrangement vary according to the configuration of the theater system provided and the geographic location of the customer.

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Over the last several years, the Company has entered into joint revenue sharing arrangements with customers pursuant to which the Company provides the System Deliverable in return for a percentage of the theater box-office and concession revenue. Under these arrangements, the Company receives no up-front fee, no minimum rent, and the Company retains title to the theater system (including the projector, the sound system and the projection screen). The Company has the right to remove the equipment for non-payment or other defaults by the customer. The contracts are generally not cancelable by the customer unless the Company fails to perform its obligations. In certain cases, the contract provides certain performance thresholds that, if not met by either party, allows the other party to terminate the agreement. Joint revenue sharing arrangements generally have a 7 to 10-year initial term and may be renewed by the customer for an additional term. By offering arrangements whereby exhibitors do not need to invest the initial capital required in a lease or a sale arrangement, the Company's theater network has expanded significantly more quickly than in the past. In addition, joint revenue sharing arrangements provide the Company with a significant portion of the box-office from IMAX theaters, as well as a continuing portion from the studios releasing IMAX DMR films, for which the Company typically receives a percentage of the studio's box-office receipts. Theater systems under joint revenue sharing arrangements differ from the sale or lease of theater systems as payments to the Company are contingent, instead of fixed or determinable. To date, the Company has entered into joint revenue sharing arrangements for 169 systems, 117 of which were in operation as of December 31, 2009.

**Sales Backlog.** Signed contracts for theater systems are listed as sales backlog prior to the time of revenue recognition. The value of sales backlog represents the total value of all signed theater system sales and sales-type lease agreements that are expected to be recognized as revenue in the future. Sales backlog includes initial fees along with the present value of contractual fixed minimum fees due over the term, but excludes contingent fees in excess of contractual minimums and maintenance and extended warranty fees that might be received in the future.

The Company's sales backlog is as follows:

	December 31, 2009		December 31, 2008	
	Number of Systems	Dollar Value (in thousands)	Number of Systems	Dollar Value (in thousands)
Sales and sale-type lease arrangements	94	\$ 117,157	107	\$ 144,837
Joint revenue sharing arrangements	42	n/a	106	n/a
	<u>136</u>	<u>\$ 117,157</u>	<u>213</u>	<u>\$ 144,837</u>

The value of the sales backlog does not include anticipated revenues from theaters in which the Company has an equity-interest, joint revenue sharing arrangements, agreements covered by letters of intent or conditional sale or lease commitments, though the number of systems contracted for under these arrangements is included.

The following chart shows the number of the Company's theater systems by configuration, opened theater network base and backlog as of December 31:

	2009		2008	
	Theater Network Base	Backlog	Theater Network Base	Backlog
Flat Screen (2D)	36	—	40	1
Dome Screen (2D)	65	1	67	2
IMAX 3D Dome (3D)	2	—	2	—
IMAX 3D GT (3D)	88	5	90	7
IMAX 3D SR (3D)	51	2	49	5
IMAX MPX (3D)	37 (1)	13	57	31
IMAX digital (3D)	151 (1)	115 (2)	46	167 (2)
Total	<u>430</u>	<u>136</u>	<u>351</u>	<u>213</u>



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- (1) In 2009, the Company upgraded 25 film-based IMAX theater systems to IMAX digital theater systems (14 sales arrangements, 2 operating lease arrangements and 9 under joint revenue sharing arrangements).
- (2) Includes 42 and 106 theater systems as of December 31, 2009 and 2008, respectively, under joint revenue sharing arrangements.

*IMAX Flat Screen and IMAX Dome Systems.* IMAX flat screen and IMAX Dome systems comprise approximately 103 of the Company's opened theater base and primarily reside in institutional settings such as museums and science centers. Flat screen IMAX theaters were introduced in 1970, while IMAX Dome theaters, which are designed for tilted dome screens, were introduced in 1973. There have been several significant proprietary and patented enhancements to these systems since their introduction.

*IMAX 3D GT and IMAX 3D SR Systems.* IMAX 3D theaters utilize a flat screen 3D system, which produces realistic 3D images on an IMAX screen. The Company believes that the IMAX 3D theater systems offer consumers one of the most realistic 3D experiences available today. To create the 3D effect, the audience uses either polarized or electronic glasses that separate the left-eye and right-eye images. The IMAX 3D projectors can project both 2D and 3D films, allowing theater owners the flexibility to exhibit either type of film.

In 1997, the Company launched a smaller IMAX 3D system called IMAX 3D SR, a patented theater system configuration that combines a proprietary theater design, a more automated projector and specialized sound system components to replicate the experience of a larger IMAX 3D theater in a smaller space.

As of December 31, 2009, there was a total of 139 IMAX 3D GT and IMAX 3D SR theaters in operation, which is consistent with the 139 IMAX 3D GT and IMAX 3D SR theaters in operation as of December 31, 2008.

*IMAX MPX.* In 2003, the Company launched a large-format theater system designed specifically for use in multiplex theaters. Known as IMAX MPX, this system projects 15/70-format film onto flat screens which are curved and tilted forward to further immerse the audience. An IMAX MPX theater system utilizes the Company's proprietary digital sound system components, which are capable of multi-channel uncompressed studio quality digital audio. The projector is capable of playing both 2D and 3D films and is installed into a standard 35mm projection booth. The IMAX MPX system can be installed as part of a newly-constructed multiplex, as an add-on to an existing multiplex or as a retrofit of one or two existing stadium seat auditoriums within a multiplex. With lower capital and operating costs, the IMAX MPX was designed to improve a multiplex owner's financial returns and allow for the installation of IMAX theater systems in markets that might previously not have been able to support one. As of December 31, 2009, there were 37 MPX systems in operation compared to 57 MPX systems as of December 31, 2008. The decrease in the number of MPX systems is largely attributable to the conversion of existing MPX systems to IMAX digital systems.

*IMAX Digital.* In July 2008, the Company introduced a proprietary IMAX digital projection system operating on a digital platform that it believes delivers higher quality imagery compared with other digital systems and that is consistent with the Company's brand. As of December 31, 2009, the Company had installed 151 digital theater systems, including 27 digital upgrades, and has an additional 115 digital systems in its backlog. Digital theater systems represent 85% of the total backlog. Moreover, the Company believes that some of the film-based systems currently in its backlog, particularly MPX systems, will ultimately become digital installations as well. The Company believes that the dramatic print cost savings associated with the elimination of analog film prints with the IMAX digital system has led to greater profitability for the Company by increasing the number of films released to the IMAX network, which in turn can result in more theaters in the Company's network, more profits per theater, more profits for studios releasing their films to the network and higher returns for the theaters in which the Company shares revenues under joint revenue sharing arrangements. The Company's digital system also has a lower cost of goods sold than its film-based ones. While there are a number of risks inherent in the Company's digital strategy, including technology risks, the aggregate reliability percentage, defined as the percentage of successful shows exhibited across the theater network, of the Company's digital projectors installed to date is 99.8%. The Company's introduction of a digital platform for a large portion of its customer base has been compelling for a number of reasons. The savings to the studios as a result of eliminating film prints are considerable, as the typical cost of an IMAX film print ranges from \$20 thousand per 2D print to \$45 thousand per 3D print. Removing those costs significantly increases the profit of an IMAX release for a studio which, the Company believes, provides more incentive for studios to release their films to IMAX theaters. In 2009, the Company released 12 films converted through the IMAX DMR process as compared to 8 films in 2008. Furthermore, the Company has announced the release of 10 DMR films and 1 IMAX original production to its theater network in 2010 and anticipates announcing additional DMR titles in 2010 which are expected to be released to the IMAX theater network in 2010 and beyond. The Company similarly believes that economics change favorably for its exhibition clients as a result of a digital theater system, since lower print costs (which total approximately \$200 per movie per system), and the increased programming flexibility that digital delivery provides allow theaters to program at least 12-14 IMAX DMR films per year, thereby increasing both customer choice and total box-office revenue.

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Moreover, the installation of an IMAX digital system costs exhibitors less than the installation of a film-based system, requires smaller space in the projection booth and results in more large-format films being available in the exhibitors' libraries, further improving exhibitor returns. Finally, digital transmission eventually allows for the opportunity to show attractive alternative programming, such as live sporting events and concerts, in the immersive environment of an IMAX theater. Accordingly, digital systems represent 85% of the Company's current backlog and the Company continues to expect a majority of its future theater system arrangements to be for digital systems.

### Films

#### *Film Production and Digital Re-mastering (IMAX DMR)*

Films produced by the Company are typically financed through third parties, whereby the Company will generally receive a film production fee in exchange for producing the film and a distribution fee for distributing the film. The ownership rights to such films may be held by the film sponsors, the film investors and/or the Company.

In 2002, the Company developed technology that makes it possible for live-action film footage to be digitally transformed into IMAX's large-format at a cost of roughly \$1.0 — \$1.5 million per film. This proprietary system, known as IMAX DMR, has opened up the IMAX theater network to film releases from Hollywood's broad library of films. In a typical IMAX DMR film arrangement, the Company will absorb its costs for the IMAX DMR re-mastering and then recoup this cost from a percentage of the gross box-office receipts of the film, which generally range from 10-15%. In 2009, gross box office from IMAX DMR films was \$270.8 million, compared to \$130.3 million in 2008, an increase of 108%. The Company may also have certain distribution rights to the films produced using its IMAX DMR technology.

The IMAX DMR process involves the following:

- in certain instances, scanning, at the highest possible resolution, each individual frame of the movie and converting it into a digital image;
- optimizing the image using proprietary image enhancement tools;
- enhancing the digital image using techniques such as sharpening, color correction, grain and noise removal and the elimination of unsteadiness and removal of unwanted artifacts;
- recording the enhanced digital image onto IMAX 15/70-format film or IMAX digital cinema package ("DCP") format;
- specially re-mastering the sound track to take full advantage of the IMAX theater's unique sound system; and
- in certain instances, performing the Company's proprietary live-action 2D to 3D conversion.

The first IMAX DMR film, *Apollo 13: The IMAX Experience*, produced in conjunction with Universal Pictures and Imagine Entertainment, was released in September 2002. Since the release of that film, an additional 43 IMAX DMR films have been released to the IMAX theater network as of December 31, 2009.

The highly automated IMAX DMR process typically allows the re-mastering process to meet aggressive film production schedules. The Company is continuing to decrease the length of time it takes to reformat a film with its IMAX DMR technology. *Apollo 13: The IMAX Experience*, released in 2002, was re-mastered in 16 weeks, while *Star Trek: The IMAX Experience*, released in May 2009, was re-mastered in approximately 7 days. The IMAX DMR conversion of simultaneous, or "day-and-date" releases are done in parallel with the movie's filming and editing, which is necessary for the simultaneous release of an IMAX DMR film with the domestic release to conventional theaters.

The Company demonstrated its ability to convert computer-generated animation to IMAX 3D with the 1999 release of *Cyberworld*, the 2004 release of the full length computer generated imagery ("CGI") feature, *The Polar Express: The IMAX 3D Experience* and the release of four CGI 3D features in 2005-2007, including *Beowulf: An IMAX 3D Experience* released in November 2007. In addition, the Company has developed proprietary technology to convert live action 2D films to IMAX 3D films, which the Company believes can offer significant potential benefits to the Company, studios and the IMAX theater network. This technology was used to convert scenes from 2D to 3D in the film *Superman Returns: An IMAX 3D Experience* in 2006. In July 2007, *Harry Potter and the Order of the Phoenix: An IMAX 3D Experience*, was released with approximately 20 minutes of the film converted from 2D to 3D

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using such technology. In addition, the 2009 release of *Harry Potter and the Half-Blood Prince: An IMAX 3D Experience* included certain scenes of the film converted to IMAX 3D.

For IMAX DMR releases, the original soundtrack of the movie is re-mastered for the IMAX five or six-channel digital sound systems. Unlike the soundtracks played in conventional theaters, IMAX re-mastered soundtracks are uncompressed and full fidelity. IMAX sound systems use proprietary loudspeaker systems and proprietary surround sound configurations that ensure every theater seat is in a good listening position.

In 2009, 12 films were converted through the IMAX DMR process and released to IMAX theaters as compared to 8 films in 2008. These 12 films were:

- *Jonas Bros: The 3D Concert Experience* (Walt Disney Pictures, February 2009);
- *Watchmen: The IMAX Experience* (Warner Bros. Pictures (“WB”), March 2009);
- *Monsters vs. Aliens: An IMAX 3D Experience* (DreamWorks Animation SKG, Inc., March 2009);
- *Star Trek: The IMAX Experience* (Paramount Pictures, May 2009);
- *Night at the Museum: Battle of the Smithsonian: The IMAX Experience* (Twentieth Century Fox, May 2009);
- *Transformers: Revenge of the Fallen: The IMAX Experience* (DreamWorks Pictures, June 2009);
- *Harry Potter and the Half Blood Prince: An IMAX 3D Experience* (WB, July 2009);
- *Cloudy with a Chance of Meatballs: An IMAX 3D Experience* (Sony Pictures Animation, September 2009);
- *Where the Wild Things Are: The IMAX Experience* (WB, October 2009);
- *Michael Jackson’s This Is It: The IMAX Experience* (Sony Pictures, October 2009);
- *Disney’s A Christmas Carol: An IMAX 3D Experience* (Walt Disney Pictures and ImageMovers Digital, November 2009); and
- *Avatar: An IMAX 3D Experience* (Twentieth Century Fox, December 2009).

The Company believes that the box-office performance of its DMR releases has positioned IMAX theaters as a premium distribution platform for Hollywood films, which is separate and distinct from their wider theatrical release. IMAX theaters therefore serve as an additional distribution platform for Hollywood films, just as home video and pay-per-view are ancillary distribution platforms.

To date, the Company has announced the release of 10 DMR films to its theater network in 2010:

- *Alice In Wonderland: An IMAX 3D Experience* (Walt Disney Studios, March 2010);
- *How To Train Your Dragon: An IMAX 3D Experience* (Paramount Pictures, March 2010);
- *Iron Man 2: The IMAX Experience* (Marvel Entertainment and Paramount Pictures, May 2010);
- *Shrek Forever After: An IMAX 3D Experience* (Dreamworks Animation, May 2010);
- *Prince of Persia: The Sands of Time: The IMAX Experience* (Walt Disney Pictures, May 2010);
- *Toy Story 3: An IMAX 3D Experience* (Walt Disney Pictures Studios Motion Pictures, June 2010);
- *The Twilight Saga: Eclipse: The IMAX Experience* (Summit Entertainment, June 2010);
- *Inception: The IMAX Experience* (WB, July 2010);
- *Aftershock: The IMAX Experience* (Huayi Brothers Group, July 2010, primarily to be distributed in China and other parts of Asia); and
- *Tron Legacy: An IMAX 3D Experience* (Walt Disney Pictures, December 2010).

The Company remains in active negotiations with virtually all of Hollywood’s studios for additional films to fill out its short and long-term film slate and anticipates announcing additional Hollywood films to be released in IMAX theaters in 2010.

In addition, the Company, in conjunction with WB and the National Aeronautics and Space Administration (NASA), will release *Hubble 3D: The IMAX Experience* to its network in March 2010. *Hubble 3D: The IMAX Experience*, narrated by three-time Academy-Award® nominee Leonardo DiCaprio, chronicles a team of astronauts’ journey to the Hubble Space Telescope.

### **Film Distribution**

The Company is a significant distributor of large-format films. The Company generally distributes films which it has produced or for which it has acquired distribution rights from independent producers. As a distributor, the Company receives a fixed fee and/or a percentage of the theater box-office receipts.

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Among the library of large-format films are 44 films, as of December 31, 2009, converted into large-format through IMAX DMR technology, including Hollywood event films such as the 2009 blockbuster *Avatar: The IMAX Experience*, along with general entertainment and educational films on subjects such as space, wildlife, music, history and natural wonders. The library consisted of 306 films at the end of 2009, aggregate, of which the Company had distribution rights to 45 such films. Large-format films that have been successfully released by the Company include *Under the Sea 3D*, which was released by the Company and WB in March 2009, has grossed over \$26.1 million as of the end of 2009, *Deep Sea 3D*, which was released by the Company and WB in March 2006 and has grossed more than \$86.2 million as of the end of 2009, *SPACE STATION*, which was released in April 2002 and has grossed over \$114.3 million as of the end of 2009 and *T-REX: Back to the Cretaceous*, which was released by the Company in 1998 and has grossed over \$103.1 million as of the end of 2009. Large-format films have significantly longer exhibition periods than conventional 35mm films and many of the films in the large-format library have remained popular for many decades including the films *To Fly!* (1976), *Grand Canyon — The Hidden Secrets* (1984) and *The Dream Is Alive* (1985).

### **Film Post-Production**

David Keighley Productions 70MM Inc., a wholly-owned subsidiary of the Company, provides film post-production and quality control services for large-format films (whether produced internally or externally), and digital post-production services.

### **Theater Operations**

As at December 31, 2009, the Company had four owned and operated theaters on leased premises as compared to 6 owned and operated theaters as at December 31, 2008. In addition, the Company has entered into a commercial arrangement with one theater resulting in the sharing of profits and losses. The Company also provides management services to two theaters.

### **Other**

#### **Cameras**

The Company rents its proprietary 2D and 3D large-format analog cameras and provides technical and post-production services to third-party producers for a fee. The Company's 3D camera, which is a patented, state-of-the-art dual and single filmstrip 3D camera, is among the most advanced motion picture cameras in the world and is the only 3D camera of its kind. The IMAX 3D camera simultaneously shoots left-eye and right-eye images and enables filmmakers to access a variety of locations, such as underwater or aboard aircraft. The Company maintains cameras and other film equipment to support third-party producers and also offers production advice and technical assistance to filmmakers. For *Transformers: Revenge of the Fallen: The IMAX Experience*, released in June 2009, director Michael Bay used IMAX 2D large-format cameras to film a number of key scenes in the film, adding a special feature for consumers who saw the film in IMAX theaters.

**MARKETING AND CUSTOMERS**

The Company markets its theater systems through a direct sales force and marketing staff located in offices in Canada, the United States, Europe, and Asia. In addition, the Company has agreements with consultants, business brokers and real estate professionals to locate potential customers and theater sites for the Company on a commission basis.

The commercial multiplex theater segment of the Company's theater network is now its largest segment, comprising 288 theaters, or 67.0%, of the total 430 theaters opened as of December 31, 2009. The Company's institutional customers include science and natural history museums, zoos, aquaria and other educational and cultural centers. The Company also sells or leases its theater systems to theme parks, tourist destination sites, fairs and expositions. At December 31, 2009, approximately 37.0% of all opened IMAX theaters were in locations outside of North America (defined as the United States and Canada). The following table outlines the breakdown of the theater network by type and geographic location as of December 31:

	2009 Theater Network Base				2008 Theater Network Base			
	Commercial Multiplex	Commercial Destination	Institutional	Total	Commercial Multiplex	Commercial Destination	Institutional	Total
United States	175	8	66	249	116	9	67	192
Canada	13	2	7	22	14	2	7	23
Mexico	8	—	11	19	7	—	10	17
Europe	40	7	10	57	32	7	10	49
Japan	5	2	7	14	1	2	7	10
China	10	—	12	22	8	—	10	18
Rest of World	37	2	8	47	31	2	9	42
Total	<u>288</u>	<u>21</u>	<u>121</u>	<u>430</u>	<u>209</u>	<u>22</u>	<u>120</u>	<u>351</u>

For information on revenue breakdown by geographic area, see note 20 to the accompanying audited consolidated financial statements in Item 8. The Company's foreign operations are subject to certain risks. See "Risk Factors – The company conducts business internationally which exposes it to uncertainties and risks that could negatively affect its operations and sales" in Item 1A. The Company's two largest customers as of December 31, 2009, collectively represent 22.1% of the Company's network base of theaters and 11.6% of revenues.

**INDUSTRY AND COMPETITION**

The Company traditionally has competed with manufacturers of large-format film projectors. Most of these competitors utilize smaller film formats, including 8-perforation film frame 70mm and 10-perforation film frame 70mm formats, which the Company believes deliver an image that is inferior to *The IMAX Experience*. The IMAX theater network and the number of large-format films to which the Company has distribution rights are substantially larger than those of its large-format competitors and IMAX DMR reformatted films are available exclusively to the IMAX theater network. More recently, as the motion picture industry transitions from film projection to digital projection, a number of companies have introduced digital 3D projection technology and, since 2008, a number of Hollywood features have been exhibited using these technologies. According to the National Association of Theater Owners, as of December 31, 2009, there were approximately 3,500 conventional-sized screens in U.S. multiplexes equipped with such digital 3D systems. In 2008, the Company introduced its own proprietary digitally-based projector which is capable of 2D and 3D presentations and which comprises the majority of its current (and, the Company expects, future) theater system sales. For the films released to both IMAX 3D theaters and conventional 3D theaters, the IMAX theaters have significantly outperformed the conventional theaters on a per-screen revenue basis. Finally, some commercial exhibitors have recently introduced or announced an intention to introduce their own large-screen auditoriums. IMAX theaters have continually outperformed the small number of these theaters currently operating.

The Company may also face competition in the future from companies in the entertainment industry with new technologies and/or substantially greater capital resources to develop and support them. The Company also faces in-home competition from a number of alternative motion picture distribution channels such as home video, pay-per-view, video-on-demand, DVD, Internet and syndicated and broadcast television. The Company further competes for the public's leisure time and disposable income with other forms of entertainment, including sporting events, concerts, live theater and restaurants.

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The Company believes that its competitive strengths include the value of the IMAX brand name, the design, quality and historic reliability rate of IMAX theater systems, the return on investment of an IMAX theater, the number and quality of large-format films that it distributes, the quality of the sound system components included with the IMAX theater, the availability of Hollywood event films to IMAX theaters through IMAX DMR technology and the level of the Company's service and maintenance and extended warranty efforts. Virtually all of the best performing large-format theaters in the world are IMAX theaters.

### **THE IMAX BRAND**

The world-famous IMAX brand stands for the highest-quality, most immersive motion picture entertainment. Consumer research conducted for the Company in the U.S. by a third-party research firm shows that the IMAX brand is known for cutting-edge technology and an experience that immerses audiences in the movie. The research also shows that the brand inspires a strong sense of loyalty and that consumers place a premium on it, often willing to travel significantly farther and pay more for *The IMAX Experience* than for a conventional movie. The Company believes that its significant brand loyalty among consumers provides it with a strong, sustainable position in the exhibition industry. The IMAX brand name cuts across geographic and demographic boundaries. To date, IMAX DMR films have significantly outperformed other formats on a per screen basis.

As the IMAX theater network and film slate grow, so does the visibility of the IMAX brand. In recent years, IMAX has built on its heritage of immersive, high-quality educational movies presented in prestigious institutions and destination centers by increasingly expanding its network into multiplexes. With a growing number of IMAX theaters based in multiplexes and with a recent history of commercially successful large-format films such as: *Avatar: An IMAX 3D Experience*, *The Dark Knight: The IMAX Experience*, *Transformers: Revenge of the Fallen: The IMAX Experience*, *Beowulf: An IMAX 3D Experience*, *300: The IMAX Experience*, *Spider-Man 3: The IMAX Experience*, *Superman Returns: An IMAX 3D Experience* and the *Harry Potter* series, the Company continues to increase its presence in commercial settings. The Company believes the strength of the IMAX brand will be an asset as it continues to establish the IMAX theater network as a unique and desirable release window for Hollywood movies, and as it continues to roll out digital projection systems.

### **RESEARCH AND DEVELOPMENT**

The Company believes that it is one of the world's leading entertainment technology companies with significant in-house proprietary expertise in digital and film-based projection and sound system component design, engineering and imaging technology, particularly in 3D. The motion picture industry has been and will continue to be affected by the development of digital technologies, particularly in the areas of content creation (image capture), post-production, digital re-mastering (such as IMAX DMR), distribution and display (projection). As such, the Company has made significant investments in digital technologies, including the development of a proprietary, patent-pending technology to digitally enhance image resolution and quality of motion picture films, the conversion of monoscopic (2D) to stereoscopic (3D) images and the creation of an IMAX digital projector. Accordingly, the Company holds a number of patents, patents pending and other intellectual property rights in these areas. In addition, the Company holds numerous digital patents and relationships with key manufacturers and suppliers in digital technology. In July 2008, the Company introduced its proprietary, digitally-based projector which operates without the need for analog film prints.

The IMAX DMR technology enhances the image quality of a conventional motion picture for large screen exhibition. For movies shot on 35mm film, the process begins by converting the 35mm frame into its digital form at the highest possible resolution. Once an image has been converted into a digital form, or for films already in digital form, the DMR process optimizes the image using proprietary image enhancement tools, such as sharpening, color correction, grain and noise removal and the elimination of unsteadiness and unwanted artifacts. The proprietary system therefore recreates a pristine form of the original photography. The completed re-mastered film is transferred onto the Company's 15/70-film format or into an IMAX digital DCP format. Each film's original soundtrack is also recreated and upgraded to Company standards. Through its research and development program, the Company continues to refine and enhance the capabilities of this technology.

Several of the underlying technologies and resulting products and system components of the Company are covered by patents or patent applications. Other underlying technologies are available to competitors, in part because of the expiration of certain patents owned by the Company. The Company, however, has successfully obtained patent protection covering several of its significant improvements made to such technologies and to the nature of its immersive experience. The Company plans to continue to fund research and development activity in areas considered important to the Company's continued commercial success, including further improving the reliability of its projectors, enhancing the Company's 2D and 3D image quality, expanding IMAX theater systems' capabilities in live entertainment and enhancing the IMAX theater and sound system design. The Company has also recently announced that it is developing its first digital 3D camera.

For 2009, 2008, and 2007, the Company recorded research and development expenses of \$3.8 million, \$7.5 million and \$5.8 million, respectively. Over the past three years, the Company has invested significantly in research and development relating to the development and introduction of its IMAX digital projector system. As at December 31, 2009, 28 of the Company's employees were connected with research and development projects.

## **MANUFACTURING AND SERVICE**

### ***Projector Component Manufacturing***

The Company assembles the projector of its large-format theater systems at its Corporate Headquarters and Technology Center in Mississauga, Ontario, Canada (near Toronto). A majority of the parts and sub-assemblies for this component are purchased from outside vendors. The Company develops and designs all the key elements for the proprietary technology involved in this component. Fabrication of parts and sub-assemblies is subcontracted to a group of carefully pre-qualified suppliers. Manufacture and supply contracts are signed for the delivery of the component on an order-by-order basis. The Company has developed long-term relationships with a number of significant suppliers, and the Company believes its existing suppliers will continue to supply quality products in quantities sufficient to satisfy its needs. The Company inspects all parts and sub-assemblies, completes the final assembly and then subjects the projector to comprehensive testing individually and as a system prior to shipment. In 2009, these projectors, including the Company's recently introduced digital projection system, had reliability rates, based on scheduled shows, of approximately 99.8%.

### ***Sound System Component Manufacturing***

The Company develops, designs and assembles the key elements of its theater sound system component. The standard IMAX theater sound system component comprises parts from a variety of sources with approximately 50.0% of the materials of each sound system attributable to proprietary parts provided under original equipment manufacturers agreements with outside vendors. These proprietary parts include custom loudspeaker enclosures and horns and specialized amplifiers, signal processing and control equipment. The Company inspects all parts and sub-assemblies, completes the final assembly and then subjects the sound system component to comprehensive testing individually and as a system prior to shipment.

### ***Screen and Other Components***

The Company purchases its screen component and glasses cleaning equipment from third parties. The standard screen system component is comprised of a projection screen manufactured to IMAX specifications and a frame to hang the projection screen. The proprietary glasses cleaning machine is a stand-alone unit that is connected to the theater's water and electrical supply to automate the cleaning of 3D glasses.

### ***Maintenance and Extended Warranty Services***

The Company also provides ongoing maintenance and extended warranty services to IMAX theater systems. These arrangements are usually for a separate fee, although the Company often includes free service in the initial year of an arrangement. The maintenance and extended warranty arrangements include service, maintenance and replacement parts for theater systems.

To support the IMAX theater network, the Company has personnel stationed in major markets throughout the world, who provide periodic and emergency maintenance and extended warranty services on existing theater systems. The Company provides various levels of maintenance and warranty services, which are priced accordingly. Under full service programs, Company personnel typically visit each theater every three months to provide preventative maintenance, cleaning and inspection services and emergency visits to resolve problems and issues with the theater system. Under some arrangements, customers can elect to participate in a service partnership program whereby the Company trains a customer's technician to carry out certain aspects of maintenance. Under such shared maintenance arrangements, the Company participates in certain of the customer's maintenance checks each year, provides a specified number of emergency visits and provides spare parts, as necessary.



## **PATENTS AND TRADEMARKS**

The Company's inventions cover various aspects of its proprietary technology and many of these inventions are protected by Letters of Patent or applications filed throughout the world, most significantly in the United States, Canada, Belgium, Japan, France, Germany and the United Kingdom. The subject matter covered by these patents, applications and other licenses encompasses theater design and geometry, electronic circuitry and mechanisms employed in projectors and projection equipment (including 3D projection equipment), a method for synchronizing digital data, a method of generating stereoscopic (3D) imaging data from a monoscopic (2D) source, a process for digitally re-mastering 35mm films into large-format, a method for increasing the dynamic range and contrast of projectors, a method for visibly seaming or superimposing images from multiple projectors and other inventions relating to digital projectors. The Company has been and will continue to be diligent in the protection of its proprietary interests.

The Company currently holds or licenses 42 patents, has 11 patents pending in the United States and has corresponding patents or filed applications in many countries throughout the world. While the Company considers its patents to be important to the overall conduct of its business, it does not consider any particular patent essential to its operations. Certain of the Company's patents in the United States, Canada and Japan for improvements to the IMAX projection system components expire between 2010 and 2024.

The Company owns or otherwise has rights to trademarks and trade names used in conjunction with the sale of its products, systems and services. The following trademarks are considered significant in terms of the current and contemplated operations of the Company: IMAX®, Experience It In IMAX®, *The IMAX Experience*®, *An IMAX Experience*®, IMAX DMR®, IMAX® 3D, IMAX® Dome, IMAX MPX®, IMAX think big® and think big®. These trademarks are widely protected by registration or common law throughout the world. The Company also owns the service mark IMAX THEATRE™.

## **EMPLOYEES**

As of December 31, 2009, the Company had 325 employees compared to 326 employees as of December 31, 2008. Both employee counts exclude hourly employees at the Company's owned and operated theaters.

## **AVAILABLE INFORMATION**

The Company makes available, free of charge, its Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q and Current Reports on Form 8-K as soon as reasonably practicable after such filings have been made with the United States Securities and Exchange Commission (the "SEC"). Reports may be obtained through the Company's website at [www.imax.com](http://www.imax.com) or by calling the Company's Investor Relations Department at 212-821-0100.

### **Item 1A. Risk Factors**

If any of the risks described below occurs, the Company's business, operating results and financial condition could be materially adversely affected.

The risks described below are not the only ones the Company faces. Additional risks not presently known to the Company or that it deems immaterial, may also impair its business or operations.

## **RISKS RELATED TO THE COMPANY'S FINANCIAL PERFORMANCE OR CONDITION**

*The Company depends principally on commercial movie exhibitors to purchase or lease its IMAX theater systems, to supply revenue under joint revenue sharing arrangements as well as to provide additional revenues under its sales and sales-type lease agreements and to supply venues in which to exhibit its IMAX DMR films and the Company can make no assurances that exhibitors will continue to do so.*

The Company's primary customers are commercial multiplex exhibitors. The Company is unable to predict if, or when, they or other exhibitors will purchase or lease IMAX theater systems or enter into joint revenue sharing arrangements with the Company, or whether any of the Company's existing customers will continue to do any of the foregoing. If exhibitors choose to reduce their levels of expansion or decide not to purchase or lease IMAX theater systems or enter into joint revenue sharing arrangements with the Company, the Company's revenues would not increase at an anticipated rate and motion picture studios may be less willing to reformat their films into the Company's format for exhibition in commercial IMAX theaters. As a result, the Company's future revenues and cash flows could be adversely affected.



***The success of the IMAX theater network is directly related to the availability and success of IMAX DMR films for which there can be no guarantee.***

An important factor affecting the growth and success of the IMAX theater network is the availability of films for IMAX theaters. The Company produces only a small number of such films and, as a result, the Company relies principally on films produced by third party filmmakers and studios, particularly Hollywood features converted into the Company's large format using the Company's IMAX DMR technology. There is no guarantee that these filmmakers and studios will continue to release IMAX films, or that the films they produce will be commercially successful. Furthermore, the steady flow and successful box office performance of IMAX DMR releases becomes more important to the Company's financial performance as the number of joint revenue sharing arrangements included in the overall IMAX network grows. The Company's revenues from joint revenue sharing arrangements are driven directly by exhibitors' box-office results, which are dependent on commercial acceptance of IMAX DMR films. Moreover, films can be subject to delays in production or changes in release schedule, which can negatively impact the number, timing and quality of IMAX DMR and IMAX original films released to the IMAX theater network.

***The introduction of new products and technologies and changes in the way the Company's competitors operate could harm the Company's business.***

The out-of-home entertainment industry is very competitive, and the Company faces a number of competitive challenges. The Company's new proprietary digitally-based projector faces competition from a number of companies that have introduced digital 3D projection technology as a result of the motion picture industry transitioning from film projection to digital projection. According to the National Association of Theater Owners, as of December 31, 2009, there were approximately 3,500 conventional-sized screens in U.S. multiplexes equipped with such digital 3D systems. In addition, some commercial exhibitors have recently introduced or announced an intention to introduce their own large-scale auditoriums. The Company may also face competition in the future from companies in the entertainment industry with new technologies and/or substantially greater capital resources to develop and support them. The Company also faces in-home competition from a number of alternative motion picture distribution channels such as home video, pay-per-view, video-on-demand, DVD, Internet and syndicated and broadcast television. The Company further competes for the public's leisure time and disposable income with other forms of entertainment, including sporting events, concerts, live theater and restaurants.

***The Company is undertaking new lines of business and these new business initiatives may not be successful.***

The Company is actively exploring new areas of brand extension as well as opportunities in alternative theater content. These initiatives represent new areas of growth for the Company and that these new business initiatives may not prove to be successful. Some of these initiatives could include the offering of new products and services that may not be accepted by the market. Some areas of potential growth are in the field of in-home entertainment technology, which is an intensively competitive business and the success of which is dependent on consumer demand. If any new business in which the Company invests or attempts to develop does not progress as planned, the Company may be adversely affected by investment expenses that have not led to the anticipated results, by the distraction of management from its core business or by damage to its brand or reputation.

In addition, these initiatives may involve the formation of joint ventures and business alliances. While the Company seeks to employ the optimal structure for each such business alliance, there is a possibility that the Company may have disagreements with its relevant partner in a joint venture or business with respect to financing, technological management, product development, management strategies or otherwise. Any such disagreement may cause the joint venture or business alliance to be terminated.

***The Company's ability to adequately protect its intellectual property is limited, and competitors may misappropriate its technology, which could weaken its competitive position.***

The Company depends on its proprietary knowledge regarding IMAX theater systems and digital and film technology. The Company relies principally upon a combination of copyright, trademark, patent and trade secret laws, restrictions on disclosures and contractual provisions to protect its proprietary and intellectual property rights. These laws and procedures may not be adequate to prevent unauthorized parties from attempting to copy or otherwise obtain the Company's processes and technology or deter others from developing similar processes or technology, which could weaken the Company's competitive position. The protection provided to the Company's proprietary technology by the laws of foreign jurisdictions may not protect it as fully as the laws of Canada or the United States. Finally, some of the underlying technologies of the Company's products and system components are not covered by patents or patent applications.

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The Company has patents issued and patent applications pending, including those covering its digital projector and digital conversion technology. The Company's patents are filed in the United States, often with corresponding patents or filed applications in other jurisdictions, such as Canada, Belgium, Japan, France, Germany and the United Kingdom. The patent applications pending may not be issued or the patents may not provide the Company with any competitive advantages. The patent applications may also be challenged by third parties. On November 4, 2009, Cinemark, Inc. filed suit against the Company in the U.S. District Court for the Eastern District of Texas challenging the validity of certain of the Company's theater geometry patents. Though the company intends to vigorously defend itself against Cinemark's suit, and has counter-sued Cinemark on multiple grants in Texas and New York, the Company may not ultimately prevail (see Item 3. Legal Proceedings) or the ultimate validity of any of the Company's patents if challenged. Several of the Company's issued patents in the United States, Canada and Japan for improvements to IMAX projectors, IMAX 3D Dome and sound system components expire between 2010 and 2024. Any claims or litigation initiated by the Company to protect its proprietary technology could be time consuming, costly and divert the attention of its technical and management resources.

***Current economic conditions beyond the Company's control could materially affect the Company's business by reducing both revenue generated from existing IMAX theater systems and the demand for new IMAX theater systems.***

The macro-economic outlook for 2010 remains negative in many markets and the U.S. and global economies could remain significantly challenged for an indeterminate period of time. While historically the movie industry has proved to be somewhat resistant to economic downturns and 2009 was a strong year for box office returns, and while the Company has taken steps to mitigate the effect of the economic downturn on its operations, present economic conditions, which are beyond the Company's control, could lead to a decrease in discretionary consumer spending. It is difficult to predict the severity and the duration of any decrease in discretionary consumer spending resulting from the economic downturn and what affect it may have on the movie industry, in general, and box office results of the Company's films in particular.

The Company's revenues are increasingly dependent on box-office revenues. The Company's sale and sales-type lease agreements typically provide for additional revenues based on a percentage of theater box-office receipts when attendance at an IMAX theater exceeds a minimum threshold. In addition, the Company receives a percentage of the gross box-office receipts of its IMAX DMR films. The Company's joint revenue sharing arrangements typically provide it with a portion of exhibitor's IMAX box-office and concession revenue in lieu of receiving significant payments at the beginning of a contract term. As the Company continues to install theater systems under joint revenue sharing arrangements, the Company's revenues will be more directly dependent on the box-office performance of IMAX films. Accordingly, any decline in attendance at commercial IMAX theaters could materially and adversely affect the Company's future revenues and cash flows.

The Company also depends on the sale and lease of IMAX theater systems to commercial movie exhibitors to generate revenue. Commercial movie exhibitors generate revenues from consumer attendance at their theaters, which depends on the willingness of consumers to spend discretionary income at movie theaters. While in the past, the movie industry has proven to be somewhat resistant to economic downturns and 2009 was a strong year for box office returns, in the event of declining box office and concession revenues, commercial exhibitors may be less willing to invest capital in new IMAX theaters. In addition, as a result of continuing tight credit conditions that may limit exhibitors' access to capital, exhibitors may be unable to invest capital in new IMAX theaters. A decline in demand for new IMAX theater systems could materially and adversely affect the Company's results of operations.

***The issuance of the Company's common shares and the accumulation of shares by certain shareholders could result in the loss of the Company's ability to use certain of the Company's net operating losses.***

As at December 31, 2009, the Company had approximately \$30.9 million of consolidated or separate U.S. federal tax and state tax net operating loss carryforwards as well as approximately \$55.7 million of U.S. federal branch return loss carryforwards. Realization of some or all of the benefit from these U.S. tax net operating losses is dependent on: i) the Company's ability to generate future taxable income and ii) the absence of certain future "ownership changes" of the Company's common shares. An "ownership change" as defined in the applicable federal income tax rules would place significant limitations, on an annual basis, on the use of such net operating losses to offset any future taxable income that the Company may generate. Under the tax code, an ownership change usually occurs if immediately after the close of the "testing date" the percentage of stock owned by one or more 5-percent shareholders (as defined) is increased by more than 50 percentage points. The testing period is generally a 3-year period. Such limitations, in conjunction with the net operating loss expiration provisions, could significantly reduce or effectively eliminate the Company's ability to use its U.S. net operating losses to offset any future taxable income.

***There is collection risk associated with payments to be received over the terms of the Company's theater system agreements.***

The Company is dependent in part on the viability of its exhibitors for collections under long-term leases, sales financing agreements and joint revenue sharing arrangements. Exhibitors or other operators may experience financial difficulties that could cause them to be unable to fulfill their contractual payment obligations to the Company. As a result, the Company's future revenues and cash flows could be adversely affected.

***The Company may not convert all of its backlog into revenue and cash flows.***

At December 31, 2009, the Company's sales backlog included 136 theater systems, consisting of arrangements for 94 sales and lease systems and 42 theater systems under joint revenue sharing arrangements. The Company lists signed contracts for theater systems for which revenue has not been recognized as sales backlog prior to the time of revenue recognition. The total value of the sales backlog represents all signed theater system sale or lease agreements that are expected to be recognized as revenue in the future (other than those under joint revenue sharing arrangements) and includes initial fees along with the present value of fixed minimum ongoing fees due over the term, but excludes contingent fees in excess of fixed minimum ongoing fees that might be received in the future and maintenance and extended warranty fees. Notwithstanding the legal obligation to do so, not all of the Company's customers with which it has signed contracts may accept delivery of theater systems that are included in the Company's backlog. This could adversely affect the Company's future revenues and cash flows. In addition, customers with theater system obligations in backlog sometimes request that the Company agree to modify or reduce such obligations, which the Company has agreed to in the past under certain circumstances. Customer requested delays in the installation of theater systems in backlog remain a recurring and unpredictable part of the Company's business.

***The Company's theater system revenue can vary significantly from its cash flows under theater system sales or lease agreements.***

The Company's theater systems revenue can vary significantly from the associated cash flows. The Company generally provides financing to customers for theater systems on a long-term basis through long-term leases or notes receivables. The terms of leases or notes receivable are typically 10 to 20 years. The Company's sale and lease-type agreements typically provide for three major sources of cash flow related to theater systems:

- initial fees, which are paid in installments generally commencing upon the signing of the agreement until installation of the theater systems;
- ongoing fees, which are paid monthly after all theater systems have been installed and are generally equal to the greater of a fixed minimum amount per annum and a percentage of box-office receipts; and
- ongoing annual maintenance and extended warranty fees, which are generally payable commencing in the second year of theater operations.

Initial fees generally make up a majority of cash received for a theater arrangement.

For sales and sales-type leases, the revenue recorded is generally equal to the sum of initial fees and the present value of minimum ongoing fees due under the agreement. Cash received from initial fees in advance of meeting the revenue recognition criteria for the theater systems is recorded as deferred revenue. Contingent fees are recognized as they are reported by the theaters after annual minimum fixed fees are exceeded.

Leases that do not transfer substantially all of the benefits and risks of ownership to the customer are classified as operating leases. For these leases, initial fees and minimum fixed ongoing fees are recognized as revenue on a straight-line basis over the lease term. Contingent fees are recognized as they are reported by the theaters after annual minimum fixed fees are exceeded.

As a result of the above, the revenue set forth in the Company's financial statements does not necessarily correlate with the Company's cash flow or cash position. Revenues include the present value of future contracted cash payments and there is no guarantee that the Company will receive such payments under its lease and sale agreements if its customers default on their payment obligations.

***The Company's operating results and cash flow can vary substantially from quarter to quarter and could increase the volatility of its share price.***

The Company's operating results and cash flow can fluctuate substantially from quarter to quarter. In particular, fluctuations in theater system installations can materially affect operating results. Factors that have affected the Company's operating results and cash flow in the past, and are likely to affect its operating results and cash flow in the future, include, among other things:

- the timing of signing and installation of new theater systems;
- the demand for, and acceptance of, its products and services;
- the recognition of revenue of sales and sales-type leases;
- the classification of leases as sales-type versus operating leases;
- the volume of orders received and that can be filled in the quarter;
- the level of its sales backlog;
- the timing and commercial success of films produced and distributed by the Company and others;
- the signing of film distribution agreements;
- the financial performance of IMAX theaters operated by the Company's customers and by the Company;
- financial difficulties faced by customers, particularly customers in the commercial exhibition industry;
- the magnitude and timing of spending in relation to the Company's research and development efforts; and
- the number and timing of joint revenue sharing arrangement installations, related capital expenditures and timing of related cash receipts.

Most of the Company's operating expenses are fixed in the short term. The Company may be unable to rapidly adjust its spending to compensate for any unexpected sales shortfall, which would harm quarterly operating results, although the results of any quarterly period are not necessarily indicative of its results for any other quarter or for a full fiscal year.

***The Company's revenues from existing customers are derived in part from financial reporting provided by its customers, which may be inaccurate or incomplete, resulting in lost or delayed revenues.***

The Company's revenue under its joint revenue sharing arrangements, a portion of the Company's payments under lease or sales arrangements and its film license fees are based upon financial reporting provided by its customers. If such reporting is inaccurate, incomplete or withheld, the Company's ability to receive the appropriate payments in a timely fashion that are due to it may be impaired. The Company's contractual audits of IMAX theaters may not rectify payments lost or delayed as a result of customers not fulfilling their contractual obligations with respect to financial reporting.

***The Company's stock price has historically been volatile and declines in market price, including as a result a market downturn, may negatively affect its ability to raise capital, issue debt, secure customer business and retain employees.***

The Company's publicly traded shares have in the past experienced, and may continue to experience, significant price and volume fluctuations. This market volatility could reduce the market price of its common stock, regardless of the Company's operating performance. A decline in the capital markets generally, or an adjustment in the market price or trading volumes of the Company's publicly traded securities, may negatively affect its ability to raise capital, issue debt, secure customer business or retain employees. These factors, as well as general economic and geopolitical conditions, may have a material adverse effect on the market price of the Company's publicly traded securities.

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*There are several risks associated with the Company's transition to a digitally-based projector, including technical risks and business risks, such as the risk that movie studios may be unwilling to pay the higher costs of IMAX film prints, particularly for certain under-performing movie theaters outside the United States and Canada.*

In 2008, the Company introduced to the market its proprietary digitally-based projector, which the Company expects to continue to supplant and replace its film-based projector for a large portion of its commercial theater customer base. Since its introduction, the Company's digitally-based projector has constituted the majority of the Company's theater system sales. As of December 31, 2009, the Company has installed 151 digitally-based projectors, including 27 digital upgrades, all of which are currently in operation, and has signed contracts for the installation of an additional 115 digitally-based projectors in future periods. As the number of digitally-based projectors in the commercial IMAX theater network grows, movie studios may be unwilling to continue to pay the high costs of IMAX film prints, particularly those intended for under-performing theaters located outside the United States and Canada. While the Company is actively seeking solutions to ensure that IMAX film prints will be delivered to such theaters, these measures may not be adequate to ensure that all IMAX theaters will continue to receive film prints.

In addition, while to date the digitally-based projectors have been highly reliable, technical flaws or bugs may become apparent in the future which would require repairs or modifications to the projector. Competitors may design digitally-based projectors which are more attractive to the consumer or exhibitors and/or are more cost effective than the Company's, and may make the Company's projectors less competitive. As a result of this competition, the Company could lose market share if demand for its products declines, which could seriously harm its business and operating results. In addition, the need for additional research and development and/or for capital to finance the replacement of certain theater systems and associated conversion costs could require the Company to raise additional capital, which capital may not be available to the Company on attractive terms, or at all.

***The credit agreement governing the Company's senior secured credit facility contains significant restrictions that limit its operating and financial flexibility.***

The credit agreement governing the Company's senior secured credit facility contains certain restrictive covenants that, among other things, limit its ability to:

- incur additional indebtedness;
- pay dividends and make distributions;
- repurchase stock;
- make certain investments;
- transfer or sell assets;
- create liens;
- enter into transactions with affiliates;
- issue or sell stock of subsidiaries;
- create dividend or other payment restrictions affecting restricted subsidiaries; and
- merge, consolidate, amalgamate or sell all or substantially all of its assets to another person.

These restrictive covenants impose operating and financial restrictions on the Company that limit the Company's ability to engage in acts that may be in the Company's long-term best interests.

***The Company conducts business internationally, which exposes it to uncertainties and risks that could negatively affect its operations and sales.***

A significant portion of the Company's sales are made to customers located outside the United States and Canada. Approximately 35%, 32% and 36% of its revenues were derived outside of the United States and Canada in 2009, 2008 and 2007, respectively. The Company expects its international operations to continue to account for a significant portion of its revenues in the future and plans to

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expand into new markets in the future. The Company does not have significant experience in operating in certain foreign countries and is subject to the risks associated with doing business in those countries. The Company currently has theater systems installations projected in countries where economies have been unstable in recent years. The economies of other foreign countries important to the Company's operations could also suffer slower economic growth or instability in the future. The following are among the risks that could negatively affect the Company's operations and sales in foreign markets:

- new restrictions on access to markets, both for theater systems and films;
- unusual or burdensome foreign laws or regulatory requirements or unexpected changes to those laws or requirements;
- fluctuations in the value of foreign currency versus the U.S. dollar and potential currency devaluations;
- new tariffs, trade protection measures, import or export licensing requirements, trade embargoes and other trade barriers;
- imposition of foreign exchange controls in such foreign jurisdictions;
- dependence on foreign distributors and their sales channels;
- difficulties in staffing and managing foreign operations;
- adverse changes in monetary and/or tax policies;
- poor recognition of intellectual property rights;
- inflation;
- requirements to provide performance bonds and letters of credit to international customers to secure system component deliveries; and
- political, economic and social instability.

### ***The Company may experience adverse effects due to exchange rate fluctuations.***

A substantial portion of the Company's revenues are denominated in U.S. dollars, while a substantial portion of its expenses are denominated in Canadian dollars. The Company also generates revenues in Euros and Japanese Yen. While the Company periodically enters into forward contracts to hedge its exposure to exchange rate fluctuations between the U.S. and the Canadian dollar, the Company may not be successful in reducing its exposure to these fluctuations. The use of derivative contracts is intended to mitigate or reduce transactional level volatility in the results of foreign operations, but does not completely eliminate volatility.

### ***The Company is subject to impairment losses on its film assets.***

The Company amortizes its film assets, including IMAX DMR costs capitalized using the individual film forecast method, whereby the costs of film assets are amortized and participation costs are accrued for each film in the ratio of revenues earned in the current period to management's estimate of total revenues ultimately expected to be received for that title. Management regularly reviews, and revises when necessary, its estimates of ultimate revenues on a title-by-title basis, which may result in a change in the rate of amortization of the film assets and write-downs or impairments of film assets. Results of operations in future years depend upon the amortization of the Company's film assets and may be significantly affected by periodic adjustments in amortization rates.

### ***The Company is subject to impairment losses on its inventories.***

The Company records provisions for excess and obsolete inventory based upon current estimates of future events and conditions, including the anticipated installation dates for the current backlog of theater system contracts, technological developments, signings in negotiation and anticipated market acceptance of the Company's current and pending theater systems. The Company recently introduced a proprietary digitally-based IMAX projection system. Increased customer acceptance and preference for the Company's digital projection system may subject existing film-based inventories to further write-downs (resulting in lower margins) as these theater systems become less desirable in the future.

***If the Company's goodwill or long lived assets become impaired the Company may be required to record a significant charge to earnings.***

Under United States Generally Accepted Accounting Principles ("U.S. GAAP"), the Company reviews its long lived assets for impairment when events or changes in circumstances indicate the carrying value may not be recoverable. Goodwill is required to be tested for impairment annually or when events or changes in circumstances indicate an impairment test is required. Factors that may be considered a change in circumstances include (but are not limited to) a decline in stock price and market capitalization, declines in future cash flows, and slower growth rates in the Company's industry. The Company may be required to record a significant charge to earnings in its financial statements during the period in which any impairment of its goodwill or long lived assets is determined.

***Changes in accounting and changes in management's estimates may affect the Company's reported earnings and operating income.***

U.S. GAAP and accompanying accounting pronouncements, implementation guidelines and interpretations for many aspects of the Company's business, such as revenue recognition, film accounting, accounting for pensions, accounting for income taxes, and treatment of goodwill or long lived assets, are highly complex and involve many subjective judgments. Changes in these rules, their interpretation, management's estimates, or changes in the Company's products or business could significantly change its reported future earnings and operating income and could add significant volatility to those measures, without a comparable underlying change in cash flow from operations. See "Critical Accounting Policies" in Item 7.

***The Company may not be able to generate profits in the future.***

The Company had significant losses in each of 2008 and 2007. Though the Company was profitable in 2009, the Company may not be able to generate profits in any future period. If the Company does not generate profits in future periods, it may be unable to finance the operations of its business or meet any future debt obligations.

***The Company relies on its key personnel, and the loss of one or more of those personnel could harm its ability to carry out its business strategy.***

The Company's operations and prospects depend in large part on the performance and continued service of its senior management team. The Company may not find qualified replacements for any of these individuals if their services are no longer available. The loss of the services of one or more members of the Company's senior management team could adversely affect its ability to effectively pursue its business strategy.

***The Company faces risks in connection with the continued expansion of its business in China and other parts of Asia.***

The first IMAX theater system in a theater in China was installed in December 2001. There were 22 IMAX theaters operating in China as of December 31, 2009, and 22 additional IMAX theater systems that are scheduled to be installed in China by 2012. However, the geopolitical instability of the region comprising China, Taiwan, North Korea and South Korea could result in economic embargoes, disruptions in shipping or even military hostilities, which could interfere with both the fulfillment of the Company's existing contracts and its pursuit of additional contracts in China.

***Because the Company is incorporated in Canada, it may be difficult for plaintiffs to enforce against the Company liabilities based solely upon U.S. federal securities laws.***

The Company is incorporated under the federal laws of Canada, some of its directors and officers are residents of Canada and a substantial portion of its assets and the assets of such directors and officers are located outside the United States. As a result, it may be difficult for U.S. plaintiffs to effect service within the United States upon those directors or officers who are not residents of the United States, or to realize against them or the Company in the United States upon judgments of courts of the United States predicated upon the civil liability under the U.S. federal securities laws. In addition, it may be difficult for plaintiffs to bring an original action outside of the United States against the Company to enforce liabilities based solely on U.S. federal securities laws.

## RISKS RELATED TO THE COMPANY'S PRIOR RESTATEMENTS AND RELATED MATTERS

***The Company is subject to ongoing informal inquiries by regulatory authorities in the U.S. and Canada, and it cannot predict the timing of developments and outcomes in these matters.***

The Company is the subject of informal inquiries by the SEC and the Ontario Securities Commission (the "OSC"); these inquiries focus on the Company's accounting policies and related matters. The Company cannot predict when these inquiries will be completed or the further timing of any other developments in connection with the inquiries. The Company also cannot predict the results or outcomes of these inquiries.

Expenses incurred in connection with these informal inquiries (which include substantial fees of lawyers and other professional advisors) continue to adversely affect the Company's cash position and profitability. The Company may also have potential obligations to indemnify officers and directors who could, at a future date, be parties to such inquiries.

The informal inquiries may adversely affect the course of the pending litigation against the Company. The Company is currently defending a consolidated class-action lawsuit in the U.S. and a class-action lawsuit in Ontario (see Item 3. Legal Proceedings). Negative developments or outcomes in the informal inquiries could have an adverse effect on the Company's defense of lawsuits. Also, the SEC and/or OSC could impose sanctions and/or fines on the Company in connection with the aforementioned inquiries. Finally, these informal investigations could divert the attention of the Company's management and other personnel for significant periods of time.

***The Company is subject to lawsuits that could divert its resources and result in the payment of significant damages and other remedies.***

The Company's industry is characterized by frequent claims and related litigation regarding breach of contract and related issues. The Company is subject to a number of legal proceedings and claims that arise in the ordinary course of its business. In addition, the Company is engaged as a defendant in several class action lawsuits filed by certain shareholders of the Company. The Company cannot assure that it will succeed in defending any claims, that judgments will not be entered against it with respect to any litigation or that reserves the Company may set aside will be adequate to cover any such judgments. If any of these actions or proceedings against the Company is successful, it may be subject to significant damages awards. In addition, the Company is the plaintiff in a number of lawsuits in which it seeks the recovery of substantial payments. The Company is incurring legal fees in prosecuting and defending its lawsuits, and it may not ultimately prevail in such lawsuits or be able to collect on such judgments if it does.

Although the Company's directors and officers liability insurance is deemed to provide coverage for the class-action, the defense of these claims (as with the defense or prosecution of all of the Company's litigation) could divert the attention of the Company's management and other personnel for significant periods of time.

The Company has been the subject of anti-trust complaints and investigations in the past and may be sued or investigated on similar grounds in the future.

***Continued negative publicity has affected and may continue to adversely affect the Company's business and the market price of its publicly traded common shares.***

The Company has been the subject of continuing negative publicity in part as a result of the ongoing informal SEC and OSC inquiries and its prior delay in filing financial statements and restatements of prior results. Continuing negative publicity could have an adverse effect on the Company's business and the market price of the Company's publicly traded securities.

### **Item 1B. Unresolved Staff Comments**

None.



**Item 2. Properties**

The Company's principal executive offices are located in Mississauga, Ontario, Canada, New York, New York and Santa Monica, California. The Company's principal facilities are as follows:

	<u>Operation</u>	<u>Own/Lease</u>	<u>Expiration</u>
Mississauga, Ontario <sup>(1)</sup>	Headquarters, Administrative, Assembly and Research and Development	Own	N/A
New York, New York	Executive	Lease	2014
Santa Monica, California	Sales, Marketing, Film Production and Post-Production	Lease	2013
Shanghai, China	Sales and Marketing	Lease	2012
Tokyo, Japan	Sales, Marketing and Maintenance	Lease	2010

- (1) This facility is subject to a charge in favor of Wachovia Capital Finance Corporation (Canada) in connection with a secured term and revolving credit facility (see note 12 to the accompanying audited consolidated financial statements in Item 8).

**Item 3. Legal Proceedings**

In March 2005, the Company, together with Three-Dimensional Media Group, Ltd. ("3DMG"), filed a complaint in the U.S. District Court for the Central District of California, Western Division, against In-Three, Inc. ("In-Three") alleging patent infringement. On March 10, 2006, the Company and In-Three entered into a settlement agreement settling the dispute between the Company and In-Three. On June 12, 2006, the U.S. District Court for the Central District of California, Western Division, entered a stay in the proceedings against In-Three pending the arbitration of disputes between the Company and 3DMG. On May 15, 2006, the Company initiated arbitration against 3DMG before the International Centre for Dispute Resolution in New York ("ICDR"), alleging breaches of the license and consulting agreements between the Company and 3DMG. On June 15, 2006, 3DMG filed an answer denying any breaches and asserting counterclaims that the Company breached the parties' license agreement. On June 21, 2007, the Arbitration Panel unanimously denied 3DMG's Motion for Summary Judgment filed on April 11, 2007 concerning the Company's claims and 3DMG's counterclaims. The proceeding was suspended on May 4, 2009 due to failure of 3DMG to pay fees associated with the proceeding. On November 23, 2009, the ICDR extended suspension of the proceeding until May 2010, at which time the ICDR is scheduled to report back to the parties regarding the status of the proceeding. The Company will continue to pursue its claims vigorously and believes that all allegations made by 3DMG are without merit. The Company further believes that the amount of loss, if any, suffered in connection with the counterclaims would not have a material impact on the financial position or results of operations of the Company, although no assurance can be given with respect to the ultimate outcome of the arbitration.

In January 2004, the Company and IMAX Theatre Services Ltd., a subsidiary of the Company, commenced an arbitration seeking damages before the International Court of Arbitration of the International Chambers of Commerce (the "ICC") with respect to the breach by Electronic Media Limited ("EML") of its December 2000 agreement with the Company. In June 2004, the Company commenced a related arbitration before the ICC against EML's affiliate, E-CITI Entertainment (I) PVT Limited ("E-Citi"), seeking damages as a result of E-Citi's breach of a September 2000 lease agreement. An arbitration hearing took place in November 2005 against E-Citi which considered all claims by the Company. On February 1, 2006, the ICC issued an award on liability finding unanimously in the Company's favor on all claims. Further hearings took place in July 2006 and December 2006. On August 24, 2007, the ICC issued an award unanimously in favor of the Company in the amount of \$9.4 million, consisting of past and future rents owed to the Company under its lease agreements, plus interest and costs. In the award, the ICC upheld the validity and enforceability of the Company's theater system contract. The Company thereafter submitted its application to the arbitration panel for interest and costs. On March 27, 2008, the Panel issued a final award in favor of the Company in the amount of \$11,309,496, plus an additional \$2,512 each day in interest from October 1, 2007 until the date the award is paid, which the Company is seeking to enforce and collect in full.

In June 2004, Robots of Mars, Inc. ("Robots") initiated an arbitration proceeding against the Company in California with the American Arbitration Association pursuant to arbitration provisions in two film production agreements between Robots' predecessor-in-interest and a subsidiary of the Company (Ridefilm), asserting claims for breach of contract, fraud, breach of fiduciary duty and intentional interference with the contract. Robots is seeking an award of contingent compensation that it claims is owed under two production agreements, damages for tort claims, and punitive damages. The arbitration hearing of this matter occurred in June and October 2009. The parties are currently awaiting a final award from the arbitrator. The Company believes the amount of loss, if any, that may be suffered in connection with this proceeding will not have a material impact on the financial position or results of operations of the Company, although no assurance can be given with respect to the ultimate outcome of such arbitration.

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The Company and certain of its officers and directors were named as defendants in eight purported class action lawsuits filed between August 11, 2006 and September 18, 2006, alleging violations of U.S. federal securities laws. These eight actions were filed in the U.S. District Court for the Southern District of New York. On January 18, 2007, the Court consolidated all eight class action lawsuits and appointed Westchester Capital Management, Inc. as the lead plaintiff and Abbey Spanier Rodd & Abrams, LLP as lead plaintiff's counsel. On October 2, 2007, plaintiffs filed a consolidated amended class action complaint. The amended complaint, brought on behalf of shareholders who purchased the Company's common stock between February 27, 2003 and July 20, 2007, alleges primarily that the defendants engaged in securities fraud by disseminating materially false and misleading statements during the class period regarding the Company's revenue recognition of theater system installations, and failing to disclose material information concerning the Company's revenue recognition practices. The amended complaint also added PricewaterhouseCoopers LLP, the Company's auditors, as a defendant. The lawsuit seeks unspecified compensatory damages, costs, and expenses. The defendants filed a motion to dismiss the amended complaint on December 10, 2007. On September 16, 2008, the Court issued a memorandum opinion and order, denying the motion. On October 6, 2008, the defendants filed an answer to the amended complaint. On October 31, 2008, the plaintiffs filed a motion for class certification. Fact discovery on the merits commenced on November 14, 2008 and is ongoing. On March 13, 2009, the Court granted a second prospective lead plaintiff's request to file a motion for reconsideration of the Court's order naming Westchester Capital Management, Inc. as the lead plaintiff and issued an order denying without prejudice plaintiff's class certification motion pending resolution of the motion for reconsideration. On June 29, 2009, the Court granted the motion for reconsideration and appointed Snow Capital Investment Partners, L.P. as the lead plaintiff and Coughlin Stoa Geller Rudman & Robbins LLP as lead plaintiff's counsel. Westchester Capital Management, Inc. appealed this decision, but the U.S. Court of Appeals for the Second Circuit denied its petition on October 1, 2009. The lawsuit is at an early stage and as a result the Company is not able to estimate a potential loss exposure at this time. The Company will vigorously defend the matter, although no assurances can be given with respect to the outcome of such proceedings. The Company's directors and officers insurance policy provides for reimbursement of costs and expenses incurred in connection with this lawsuit as well as potential damages awarded, if any, subject to certain policy limits and deductibles.

A class action lawsuit was filed on September 20, 2006 in the Ontario Superior Court of Justice against the Company and certain of its officers and directors, alleging violations of Canadian securities laws. This lawsuit was brought on behalf of shareholders who acquired the Company's securities between February 17, 2006 and August 9, 2006. The lawsuit is in an early stage and seeks unspecified compensatory and punitive damages, as well as costs and expenses. As a result, the Company is unable to estimate a potential loss exposure at this time. For reasons released December 14, 2009, the Court granted leave to the plaintiffs to amend their statement of claim to plead certain claims pursuant to the Securities Act (Ontario) against the Company and granted certification of the action as a class proceeding. These are procedural decisions, and do not contain any binding conclusions on the factual or legal merits of the claim. The Company has commenced certain appeal proceedings with respect to each of the court's decisions and it is not known when the Ontario court will render decisions on those appeal proceedings. The Company believes the allegations made against it in the statement of claim are meritless and will vigorously defend the matter, although no assurance can be given with respect to the ultimate outcome of such proceedings. The Company's directors and officers insurance policy provides for reimbursement of costs and expenses incurred in connection with this lawsuit as well as potential damages awarded, if any, subject to certain policy limits and deductibles.

On September 7, 2007, Catalyst Fund Limited Partnership II ("Catalyst"), a holder of the Company's Senior Notes, commenced an application against the Company in the Ontario Superior Court of Justice for a declaration of oppression pursuant to sections 229 and 241 of the Canada Business Corporations Act ("CBCA") and for a declaration that the Company is in default of the Indenture governing its Senior Notes (the "Indenture"). In its application against the Company, Catalyst challenged the validity of the consent solicitation through which the Company requested and obtained a waiver of any and all defaults arising from a failure to comply with the reporting covenant under the Indenture and alleged common law fraud. On September 26, 2008, on the Company's motion, the Ontario Superior Court stayed Catalyst's application in Canada on the basis of Catalyst having brought similar claims against the Company in the State of New York, and ordered Catalyst to pay the Company's costs associated with the motion. On April 27, 2009, the Supreme Court of the State of New York disposed of Catalyst's claims against the Company in the State of New York. The time for Catalyst to appeal the dismissal of its claim by the New York court expired on February 8, 2010, without Catalyst perfecting an appeal.

In a related matter, on December 21, 2007, U.S. Bank National Association, trustee under the Indenture, filed a complaint in the Supreme Court of the State of New York against the Company and Catalyst, requesting a declaration that the theory of default asserted by Catalyst before the Ontario Superior Court of Justice is without merit and further that Catalyst has failed to satisfy certain prerequisites to bondholder action, which are contained in the Indenture (the "U.S. Bank Action"). On February 22, 2008, Catalyst served a Verified Answer to the U.S. Bank Action and filed several cross-claims (the "Cross-Claims") against the Company in the same proceeding. On January 16, 2009, the Company moved for summary judgment, seeking a ruling that the Company satisfies the terms of the declaratory relief requested by the Trustee and the dismissal of the Cross-Claims. On April 27, 2009, the Court granted

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the Company's motion for summary judgment, disposing of the Cross-Claims. On May 7, 2009, Catalyst filed a notice preserving for a period of nine months its right to appeal the Court's ruling on summary judgment. The time for Catalyst to perfect its appeal has now expired.

On November 4, 2009, Cinemark USA, Inc. ("Cinemark") filed a complaint in the United States District Court for the Eastern District of Texas against the Company seeking a declaratory judgment that Cinemark is not infringing certain of the Company's patents related to theater geometry and that such patents are invalid. The complaint does not set forth a claim by Cinemark for monetary damages against the Company. The Company filed an answer to Cinemark's complaint on January 8, 2010. The lawsuit is at an early stage and as a result the Company is unable to predict its outcome at this time. The Company will vigorously defend any and all challenges to its patents and other intellectual property rights.

On December 12, 2009, the Company filed a complaint in the Supreme Court of New York against Cinemark alleging breach of contract, fraud, tortious interference with existing and prospective economic relations, breach of the implied warranty of good faith and fair dealing, misappropriation of trade secrets, unjust enrichment and deliberate acts of bad faith in connection with the introduction and operation of a new Cinemark theater prototype. The Company is seeking equitable relief as well as unspecified damages from Cinemark. The lawsuit is at a very early stage and no assurances can be given with respect to the ultimate outcome of the suit.

Since June 2006, the Company has been subject to ongoing informal inquiries by the SEC and the OSC. The Company has been cooperating with these inquiries and believes that they principally relate to the timing of recognition of the Company's theater system installation revenue in 2005 and related matters. Although the Company cannot predict the timing of developments and outcomes in these inquiries, they could result at any time in developments (including charges or settlement of charges) that could have material adverse effects on the Company. These effects could include payments of fines or disgorgement or other relief with respect to the Company or its officers or employees that could be material to the Company. Such developments could also have an adverse effect on the Company's defense of the class action lawsuits referred to above. See "Risk Factors" in Item 1A for further discussion of these inquiries and their potential impact on the Company, including the ongoing expenses incurred in connection with cooperating with the authorities.

In addition to the matters described above, the Company is currently involved in other legal proceedings which, in the opinion of the Company's management, will not materially affect the Company's financial position or future operating results, although no assurance can be given with respect to the ultimate outcome of any such proceedings.

#### **Item 4. *Submission of Matters to a Vote of Security Holders***

There were no matters submitted to a vote of the security holders during the quarter ended December 31, 2009.

**PART II****Item 5. Market for Registrant's Common Equity, Related Stockholder Matters, and Issuer Purchases of Equity Securities**

The Company's common shares are listed for trading under the trading symbol "IMAX" on the NASDAQ Global Market ("NASDAQ"). The common shares are also listed on the Toronto Stock Exchange ("TSX") under the trading symbol "IMX." The following table sets forth the range of high and low sales prices per share for the common shares on NASDAQ and the TSX.

	U.S. Dollars	
	High	Low
<b>NASDAQ</b>		
Year Ended December 31, 2009		
Fourth quarter	\$13.87	\$9.00
Third quarter	\$10.14	\$7.14
Second quarter	\$ 8.49	\$4.28
First quarter	\$ 5.49	\$3.74
Year Ended December 31, 2008		
Fourth quarter	\$ 5.94	\$2.41
Third quarter	\$ 8.28	\$5.58
Second quarter	\$ 7.74	\$6.45
First quarter	\$ 7.39	\$5.27
<b>TSX</b>		
Year Ended December 31, 2009		
Fourth quarter	\$14.56	\$9.68
Third quarter	\$10.82	\$8.39
Second quarter	\$ 9.77	\$5.45
First quarter	\$ 6.66	\$4.89
Year Ended December 31, 2008		
Fourth quarter	\$ 6.33	\$3.10
Third quarter	\$ 8.32	\$5.87
Second quarter	\$ 7.82	\$6.51
First quarter	\$ 7.54	\$5.37

As of February 28, 2010, the Company had approximately 277 registered holders of record of the Company's common shares.

Within the last three years, the Company has not paid and has no current plans to pay, cash dividends on its common shares. The payment of dividends by the Company is subject to certain restrictions under the terms of the Company's indebtedness (see notes 11 and 12 to the accompanying audited consolidated financial statements in Item 8 and "Liquidity and Capital Resources" in Item 7). The payment of any future dividends will be determined by the Board of Directors in light of conditions then existing, including the Company's financial condition and requirements, future prospects, restrictions in financing agreements, business conditions and other factors deemed relevant by the Board of Directors.

**Equity Compensation Plans**

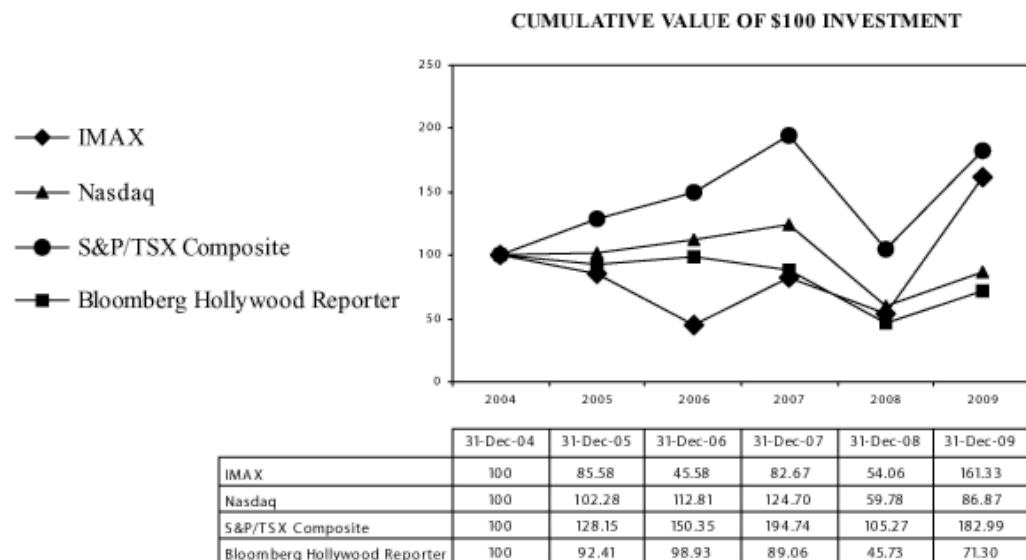
The following table sets forth information regarding the Company's Equity Compensation Plan as of December 31, 2009:

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Plan Category	Number of Securities to be Issued Upon Exercise of Outstanding Options, Warrants and Rights (a)	Weighted Average Exercise Price of Outstanding Options (b)	Number of Securities Remaining Available for Future Issuance Under Equity Compensation Plans (Excluding Securities Reflected in Column (a)) (c)
Equity compensation plans approved by security holders	6,173,795	\$ 6.52	6,392,600
Equity compensation plans not approved by security holders	nil	nil	nil
<b>Total</b>	<b>6,173,795</b>	<b>\$ 6.52</b>	<b>6,392,600</b>

**Performance Graph**

The following graph compares the total cumulative shareholder return for \$100 invested (assumes that all dividends were reinvested) in common shares of the Company against the cumulative total return of the NASDAQ Composite Index, the S&P/TSX Composite Index and the Bloomberg Hollywood Reporter Index on December 31, 2004 to the end of the most recently completed fiscal year.



**CERTAIN INCOME TAX CONSIDERATIONS**

**United States Federal Income Tax Considerations**

The following discussion is a general summary of the material U.S. federal income tax consequences of the ownership and disposition of the common shares by a holder of common shares that is an individual resident of the United States or a United States corporation (a “U.S. Holder”). This discussion does not discuss all aspects of U.S. federal income taxation that may be relevant to investors subject to special treatment under U.S. federal income tax law (including, for example, owners of 10.0% or more of the voting shares of the Company).

***Distributions on Common Shares***

In general, distributions (without reduction for Canadian withholding taxes) paid by the Company with respect to the common shares will be taxed to a U.S. Holder as dividend income to the extent that such distributions do not exceed the current and accumulated earnings and profits of the Company (as determined for U.S. federal income tax purposes). Subject to certain limitations, under current law dividends paid to non-corporate U.S. Holders in taxable years beginning before January 1, 2011 may be eligible for a reduced rate of taxation as long as the Company is considered to be a “qualified foreign corporation”. A qualified foreign

corporation includes a foreign corporation that is eligible for the benefits of an income tax treaty with the United States. The amount of a distribution that exceeds the earnings and profits of the Company will be treated first as a non-taxable return of capital to the extent of the U.S. Holder's tax basis in the common shares and thereafter as taxable capital gain. Corporate holders generally will not be allowed a deduction for dividends received in respect of distributions on common shares. Subject to the limitations set forth in the U.S. Internal Revenue Code, as modified by the U.S.-Canada Income Tax Treaty, U.S. Holders may elect to claim a foreign tax credit against their U.S. federal income tax liability for Canadian income tax withheld from dividends. Alternatively, U.S. Holders may claim a deduction for such amounts of Canadian tax withheld.

#### ***Disposition of Common Shares***

Upon the sale or other disposition of common shares, a U.S. Holder generally will recognize capital gain or loss equal to the difference between the amount realized on the sale and such holder's tax basis in the common shares. Gain or loss upon the disposition of the common shares will be long-term if, at the time of the disposition, the common shares have been held for more than one year. Long-term capital gains of non-corporate U.S. Holders may be eligible for a reduced rate of taxation. The deduction of capital losses is subject to limitations for U.S. federal income tax purposes.

#### **Canadian Federal Income Tax Considerations**

This summary is applicable to a holder or prospective purchaser of common shares who, for the purposes of the *Income Tax Act* (Canada) and any applicable treaty and at all relevant times, is not (and is not deemed to be) resident in Canada, does not (and is not deemed to) use or hold the common shares in, or in the course of, carrying on a business in Canada, and is not an insurer that carries on an insurance business in Canada and elsewhere.

This summary is based on the current provisions of the *Income Tax Act* (Canada), the regulations thereunder, all specific proposals to amend such Act and regulations publicly announced by or on behalf of the Minister of Finance (Canada) prior to the date hereof and the Company's understanding of the administrative and assessing practices published in writing by the Canada Revenue Agency. This summary does not otherwise take into account any change in law or administrative practice, whether by judicial, governmental, legislative or administrative action, nor does it take into account provincial, territorial or foreign income tax consequences, which may vary from the Canadian federal income tax considerations described herein.

This summary is of a general nature only and it is not intended to be, nor should it be construed to be, legal or tax advice to any holder of the common shares and no representation with respect to Canadian federal income tax consequences to any holder of common shares is made herein. Accordingly, prospective purchasers and holders of the common shares should consult their own tax advisers with respect to their individual circumstances.

#### ***Dividends on Common Shares***

Canadian withholding tax at a rate of 25.0% (subject to reduction under the provisions of any relevant tax treaty) will be payable on dividends paid or credited to a holder of common shares outside of Canada. Under the Canada-U.S. Income Tax Convention (1980), as amended (the "Canada — U.S. Income Tax Treaty") the withholding tax rate is generally reduced to 15.0% for a holder entitled to the benefits of the Canada — U.S. Income Tax Treaty who is the beneficial owner of the dividends (or 5.0% if the holder is a corporation that owns at least 10.0% of the common shares).

#### ***Capital Gains and Losses***

Subject to the provisions of any relevant tax treaty, capital gains realized by a holder on the disposition or deemed disposition of common shares held as capital property will not be subject to Canadian tax unless the common shares are taxable Canadian property (as defined in the *Income Tax Act* (Canada)), in which case the capital gains will be subject to Canadian tax at rates which will approximate those payable by a Canadian resident. Common shares generally will not be taxable Canadian property to a holder provided that, at the time of the disposition or deemed disposition, the common shares are listed on a designated stock exchange (which currently includes the TSX) unless such holder, persons with whom such holder did not deal at arm's length or such holder together with all such persons, owned 25.0% or more of the issued shares of any class or series of shares of the Company at any time within the 60 month period immediately preceding such time. In certain circumstances set out in the *Income Tax Act* (Canada), the common shares may be deemed to be taxable Canadian property. Under the Canada-U.S. Income Tax Treaty, a holder entitled to the benefits of the Canada — U.S. Income Tax Treaty and to whom the common shares are taxable Canadian property will not be subject to Canadian tax on the disposition or deemed disposition of the common shares unless at the time of disposition or deemed disposition, the value of the common shares is derived principally from real property situated in Canada.

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**Item 6. Selected Financial Data**

The selected financial data set forth below is derived from the consolidated financial information of the Company. The financial information has been prepared in accordance with U.S. GAAP. All financial information referred to herein is expressed in U.S. dollars unless otherwise noted.

(In thousands of U.S. dollars, except per share amounts)	Years Ended December 31,				
	2009	2008 (1)	2007 (1)	2006 (1)	2005 (1)
<b>Statements of Operations Data:</b>					
<b>Revenue</b>					
Equipment and product sales	\$ 57,304	\$ 27,853	\$ 32,500	\$ 49,322	\$ 50,547
Services	82,052	61,477	64,972	62,927	52,350
Rentals	25,758	8,207	7,107	5,622	7,631
Finance income	4,235	4,300	4,649	5,242	4,605
Other revenues(2)	1,862	881	2,427	300	14,318
	<u>171,211</u>	<u>102,718</u>	<u>111,655</u>	<u>123,413</u>	<u>129,451</u>
<b>Costs and expenses applicable to revenues</b>					
Equipment and product sales(3)(4)	29,040	17,182	21,546	26,008	25,216
Services(3)(4)	49,891	40,771	46,254	43,679	38,376
Rentals(4)	10,093	7,043	2,987	1,859	2,507
Other	635	169	50	—	142
	<u>89,659</u>	<u>65,165</u>	<u>70,837</u>	<u>71,546</u>	<u>66,241</u>
<b>Gross margin</b>	<b>81,552</b>	<b>37,553</b>	<b>40,818</b>	<b>51,867</b>	<b>63,210</b>
Selling, general and administrative expenses	56,207	43,681	44,716	42,543	37,492
Research and development	3,755	7,461	5,789	3,615	3,224
Amortization of intangibles	546	526	547	602	911
Receivable provisions, net of (recoveries)	1,067	1,977	1,795	1,066	(1,009)
Restructuring costs and asset impairments(5)	180	—	485	1,029	13
<b>Earnings (loss) from operations</b>	<b>19,797</b>	<b>(16,092)</b>	<b>(12,514)</b>	<b>3,012</b>	<b>22,579</b>
Interest income	98	381	862	1,036	1,004
Interest expense	(13,845)	(17,707)	(17,093)	(16,759)	(16,875)
Loss on repurchase of Senior Notes due December 2010(6)	(579)	—	—	—	—
<b>Earnings (loss) from continuing operations before income taxes</b>	<b>5,471</b>	<b>(33,418)</b>	<b>(28,745)</b>	<b>(12,711)</b>	<b>6,708</b>
Provision for income taxes(7)	(274)	(92)	(472)	(6,218)	(1,130)
<b>Net earnings (loss) from continuing operations</b>	<b>5,197</b>	<b>(33,510)</b>	<b>(29,217)</b>	<b>(18,929)</b>	<b>5,578</b>
Net (loss) earnings from discontinued operations	(176)	(92)	2,277	2,080	2,176
<b>Net earnings (loss)</b>	<b>\$ 5,021</b>	<b>\$ (33,602)</b>	<b>\$ (26,940)</b>	<b>\$ (16,849)</b>	<b>\$ 7,754</b>
<b>Earnings (loss) per share:</b>					
Earnings (loss) per share — basic:					
Net earnings (loss) from continuing operations	\$ 0.10	\$ (0.79)	\$ (0.72)	\$ (0.47)	\$ 0.15
Net (loss) earnings from discontinued operations	\$ —	\$ —	\$ 0.05	\$ 0.05	\$ 0.05
	<u>\$ 0.10</u>	<u>\$ (0.79)</u>	<u>\$ (0.67)</u>	<u>\$ (0.42)</u>	<u>\$ 0.20</u>
Earnings (loss) per share — diluted:					
Net earnings (loss) from continuing operations	\$ 0.09	\$ (0.79)	\$ (0.72)	\$ (0.47)	\$ 0.14
Net (loss) earnings from discontinued operations	\$ —	\$ —	\$ 0.05	\$ 0.05	\$ 0.05
	<u>\$ 0.09</u>	<u>\$ (0.79)</u>	<u>\$ (0.67)</u>	<u>\$ (0.42)</u>	<u>\$ 0.19</u>



- (1) In 2009, the Company closed its owned and operated Vancouver and Tempe IMAX theaters. The net (loss) earnings from the operation of the theaters are reflected as discontinued operations and disclosed in note 23(d) to the accompanying audited consolidated financial statements in Item 8, as there are no continuing cash flows from either a migration or a continuation of activities. The remaining assets and liabilities of the owned and operated Vancouver and Tempe IMAX theaters are included in the Company's consolidated balance sheet as of December 31, 2009 and are disclosed in note 23(d) to the accompanying audited consolidated financial statements in Item 8. As a result, the respective prior years' figures have been reclassified to conform to the current year's presentation.
- (2) The Company enters into theater system arrangements with customers that typically contain customer payment obligations prior to the scheduled installation of the theater systems. The Company's joint revenue sharing arrangements are not included in these arrangements as the Company receives a portion of a theater's box-office and concession revenue in exchange for contributing a theater system at theater operators' venues with no upfront payment obligations required. During the period of time between signing and theater system installation, certain customers each year are unable to, or elect not to, proceed with the theater system installation for a number of reasons, including business considerations, or the inability to obtain certain consents, approvals or financing. Once the determination is made that the customer will not proceed with installation, the customer and/or the Company may terminate the arrangement by default or by entering into a consensual buyout. In these situations the parties are released from their future obligations under the arrangement, and the initial payments that the customer previously made to the Company and recognized as revenue are typically not refunded. In addition, the Company enters into agreements with customers to terminate their obligations for a theater system configuration and enter into a new arrangement for a different configuration. Included in Other Revenues for the periods 2005 through 2009 are the following types of settlement arrangements:

	<u>2009</u>	<u>2008</u>	<u>2007</u>	<u>2006</u>	<u>2005</u>
Theater system configuration conversions	\$ 136	\$ —	\$ —	\$ 300	\$ 635
Consensual buyouts	1,726	881	2,427	—	11,696
Terminations by default	—	—	—	—	1,987
	<u>\$ 1,862</u>	<u>\$ 881</u>	<u>\$ 2,427</u>	<u>\$ 300</u>	<u>\$ 14,318</u>

- (3) In recent years, the Company recorded a charge to costs and expenses applicable to revenues, primarily for its film-based projector inventories due to a reduction in the net realizable value resulting from the Company development of a digital projection system. Specifically, equipment and product sales includes inventory write-downs of less than \$0.1 million in 2009, \$2.4 million in 2008, \$3.3 million in 2007, \$1.3 million in 2006 and \$nil in 2005. Services includes inventory write-downs of \$0.8 million in 2009, \$0.1 million in 2008, \$0.6 million in 2007 and \$nil in each of 2006 and 2005, respectively. In 2007, the Company's post-production unit recorded a charge of \$0.1 million.
- (4) The Company recorded advertising, marketing and commission costs of \$7.8 million, \$4.4 million, \$2.7 million, \$3.8 million and \$4.6 million in 2009, 2008, 2007, 2006 and 2005, respectively, to costs and expenses applicable to revenues. Specifically, advertising, marketing and commission costs included in equipment and product sales was \$2.0 million, \$1.0 million, \$0.8 million, \$1.6 million and \$1.2 million in 2009, 2008, 2007, 2006 and 2005, respectively. Services includes \$2.4 million, \$1.6 million, \$1.7 million, \$2.2 million, and \$3.3 million in 2009, 2008, 2007, 2006 and 2005, respectively. Rentals includes \$3.4 million, \$1.8 million, \$0.2 million, \$nil and less than \$0.1 million in 2009, 2008, 2007, 2006 and 2005, respectively.
- (5) In 2009, the Company recorded asset impairment charges of \$0.2 million related to the impairment of assets of certain theater operations and a revision in the estimates related to the residual values of certain leased assets. Asset impairment charges amounted to \$nil, \$0.5 million, \$1.0 million and less than \$0.1 million in 2008, 2007, 2006 and 2005, respectively, after the Company assessed the carrying value of certain assets.
- (6) In 2009, the Company repurchased all of its outstanding \$160.0 million aggregate principal amount of the Company's 9.625% Senior Notes. The Company paid cash to reacquire its bonds, thereby releasing the Company from further obligations to various holders under the Indenture governing the Senior Notes. The Company accounted for the bond repurchase in accordance with the Debt Topic of the FASB Accounting Standards Codification whereby the net carrying amount of the debt extinguished was the face value of the bonds adjusted for any unamortized premium, discount and costs of issuance, which resulted in a loss of \$0.6 million.



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- (7) In 2006, the Company recorded an increase to the deferred tax valuation allowance of \$6.2 million based on the Company's recoverability assessments of deferred tax balances carried forward from the prior year. At December 31, 2006, and continuing to through the current year, the Company determined that based on the weight of available evidence, positive and negative, a full valuation allowance for the net deferred tax assets was required.

### BALANCE SHEETS DATA

<i>(in thousands of U.S. dollars)</i>	As at December 31,				
	2009	2008	2007	2006	2005
Cash, cash equivalents and short-term investments	\$ 20,081	\$ 27,017	\$ 16,901	\$ 27,238	\$ 32,495
Total assets <sup>(1)</sup>	\$247,545	\$228,667	\$207,982	\$227,291	\$239,448
Total indebtedness	\$ 50,000	\$180,000	\$160,000	\$160,000	\$160,000
Total shareholders' equity (deficiency)	\$ 45,010	\$ (96,774)	\$ (85,370)	\$ (58,232)	\$ (46,054)

- (1) Includes the assets of discontinued operations.

### QUARTERLY STATEMENTS OF OPERATIONS SUPPLEMENTARY DATA (UNAUDITED)

<i>(in thousands of U.S. dollars, except per share amounts)</i>	2009			
	Q1 <sup>(1)</sup>	Q2 <sup>(1)</sup>	Q3 <sup>(1)</sup>	Q4
Revenues	\$ 33,136	\$ 40,362	\$ 43,476	\$ 54,237
Costs and expenses applicable to revenues	18,928	19,679	24,697	26,355
Gross margin	\$ 14,208	\$ 20,683	\$ 18,779	\$ 27,882
Net (loss) earnings from continuing operations	\$ (2,565)	\$ 2,723	\$ 1,157	\$ 3,882
Net (loss) earnings from discontinued operations	(77)	(161)	(95)	157
Net (loss) earnings	\$ (2,642)	\$ 2,562	\$ 1,062	\$ 4,039
Net (loss) earnings per share — basic	\$ (0.06)	\$ 0.06	\$ 0.02	\$ 0.07
Net (loss) earnings per share — diluted	\$ (0.06)	\$ 0.05	\$ 0.02	\$ 0.06

	2008			
	Q1 <sup>(1)</sup>	Q2 <sup>(1)</sup>	Q3 <sup>(1)</sup>	Q4 <sup>(1)</sup>
Revenues	\$ 22,486	\$ 20,244	\$ 32,565	\$ 27,423
Costs and expenses applicable to revenues	12,359	14,352	17,508	20,946
Gross margin	\$ 10,127	\$ 5,892	\$ 15,057	\$ 6,477
Net loss from continuing operations	\$ (10,265)	\$ (12,165)	\$ (2,079)	\$ (9,001)
Net earnings (loss) from discontinued operations	6	(28)	(28)	(42)
Net loss	\$ (10,259)	\$ (12,193)	\$ (2,107)	\$ (9,043)
Net loss per share — basic	\$ (0.25)	\$ (0.29)	\$ (0.05)	\$ (0.21)
Net loss per share — diluted	\$ (0.25)	\$ (0.29)	\$ (0.05)	\$ (0.21)

- (1) The Company reclassified the owned and operated Vancouver and Tempe IMAX theaters' operations from continuing operations to discontinued operations as it does not anticipate having significant future cash flows from these theaters or any involvement in the day to day operations of these theaters. As a result, the respective prior period's figures have been reclassified to conform to the current year's presentation.

**Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations**

**GENERAL**

IMAX Corporation, together with its wholly-owned subsidiaries (the "Company"), is one of the world's leading entertainment technology companies, specializing in motion picture technologies and large-format motion picture presentations. The Company's principal business is the design and manufacture of large-format digital and film-based theater systems ("IMAX theater systems") and the sale or lease of IMAX theater systems or the contribution of IMAX theater systems under revenue-sharing arrangements to its customers. The IMAX theater systems are based on proprietary and patented technology for both large-format digital projectors and large-format 15-perforation film frame, 70mm format ("15/70-format") projectors. The Company's customers who purchase, lease or otherwise acquire the IMAX theater systems are theater exhibitors that operate commercial theaters (particularly multiplexes), museums, science centers, or destination entertainment sites. The Company generally does not own IMAX theaters, but licenses the use of its trademarks along with the sale, lease or contribution of its equipment. The Company refers to all theaters using the IMAX theater system as "IMAX theaters."

The Company derives revenue principally from the sale or long-term lease of its theater systems and associated maintenance and extended warranty services, the installation of theater systems under joint revenue sharing arrangements, the provision of film production and digital re-mastering services, the distribution of certain films, and the provision of post-production services, including the conversion of two-dimensional ("2D") and three-dimensional ("3D") Hollywood feature films for exhibition on IMAX theater systems around the world. The Company also derives revenue from the operation of its own theaters, camera rentals and the provision of aftermarket parts for its system components.

The Company believes the IMAX theater network is the most extensive large-format theater network in the world with 430 theater systems (309 commercial, 121 institutional) operating in 48 countries as at December 31, 2009. This compares to 351 theater systems (231 commercial, 120 institutional) operating in 42 countries as at December 31, 2008.

Important factors that the Company's Chief Executive Officer ("CEO") Richard L. Gelfond uses in assessing the Company's business and prospects include revenue and gross margins from the Company's operating segments, film performance, earnings from operations as adjusted for unusual items that the Company views as non-recurring, short- and long-term cash flow projections, the success of strategic initiatives such as the securing of new film projects (particularly IMAX DMR films) and the viability of new businesses, the signing and financial performance of theater system arrangements (particularly its joint revenue sharing arrangements), and the overall execution, reliability and consumer acceptance of the Company's proprietary digital projector and related technologies.

On April 1, 2009, Mr. Gelfond, who had served as Co-Chief Executive Officer and Co-Chairman with Bradley J. Wechsler, assumed the role of sole CEO. Also on April 1, 2009, Mr. Wechsler assumed the role of sole Chairman of the Company's Board of Directors. Mr. Gelfond remains a member of the Company's Board of Directors.

On June 25, 2009, the Company announced the appointment of Gary Moss to the newly created position of Chief Operating Officer effective July 20, 2009.

On November 16, 2009, the Company amended and restated the terms of its existing senior secured credit facility, which had been scheduled to mature on October 31, 2010. The amended and restated facility (the "Credit Facility"), with a scheduled maturity on October 31, 2013, has a maximum borrowing capacity of \$75.0 million, consisting of revolving loans of up to \$40.0 million, subject to a borrowing base calculation and including a sublimit of \$20.0 million for letters of credit, and a term loan of \$35.0 million. Certain of the Company's subsidiaries serve as guarantors (the "Guarantors") of the Company's obligations under the Credit Facility. The Credit Facility is collateralized by a first priority security interest in all of the present and future assets of the Company and the Guarantors.

**IMAX Systems, Theater System Maintenance and Joint Revenue Sharing Arrangements**

The Company provides IMAX theater systems to customers on a sales or long-term lease basis, typically with initial terms of 10 to 20 years. These agreements typically provide for three major sources of cash flows: initial fees, ongoing fees (which include a fixed minimum amount per annum and contingent fees in excess of the minimum payments) and maintenance and extended warranty fees. The initial fees vary depending on the system configuration and location of the theater and generally are paid to the Company in installments commencing upon the signing of the agreement. Finance income is derived over the term of the sales or sales-type lease arrangement as the unearned income on financed sales or sales-type leases is earned. Ongoing fees are paid monthly over the term of the contract, commencing after the theater system has been installed and are generally equal to the greater of a fixed minimum amount per annum or a percentage of box-office receipts.

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The revenue earned from customers under the Company's theater system lease or sales agreements can vary from quarter to quarter and year to year based on a number of factors including the mix of theater system configurations sold or leased, the timing of installation of the theater systems, the nature of the arrangement and other factors specific to individual contracts, although the typical rent or sales price for its various theater system configurations does not generally vary significantly from region to region. The Company has taken steps in recent years to accelerate the growth of the global IMAX theater network and the sale or lease of its products by developing a lower-cost theater system and a new digitally-based theater system, both designed to appeal to broader customer bases, particularly in commercial multiplex markets. Although these theater systems are lower-cost, the Company has endeavored to successfully maintain its per unit margins on a percentage basis and to maintain the aggregate revenues and gross margins through increased volume. Recently, the Company has signed a number of deals for digital upgrades to its commercial customers and intends to continue to sell these digital upgrades in the future at lower margins than its traditional deals, for strategic reasons.

Revenues on theater system sales and sales-type leases are recognized at different times than when cash is collected.

Over the last several years, the Company has entered into a number of joint revenue sharing arrangements, pursuant to which the Company receives a portion of a theater's box-office and concession revenue in exchange for contributing a theater system at theater operators' venues. Under these arrangements, the Company receives no up-front fee, and the Company retains title to the theater system. The Company believes that its joint revenue sharing arrangements represent an effective way for it to deploy capital, add incremental theater growth and realize the benefits of network economics more quickly. By contributing the theater system, with the exhibitor responsible for the theater retrofit costs, the capital cost for exhibitors to deploy an IMAX theater is lower, which, in turn, has resulted in a rapid expansion of the IMAX network and has provided the Company with an increasingly significant portion of the IMAX box-office from its licensed theaters, as well as a continuing portion of the IMAX DMR film revenue from its film studio partners. Unlike the Company's typical theater system arrangements, where a significant portion of the cash is received and revenue is recognized upon installation of the system and/or public opening of the theater, revenues under joint revenue sharing arrangements are dependent on the success of films released to IMAX theaters. Joint revenue sharing arrangements generally have a 7 to 10-year initial term and may be renewed by the customer for an additional term.

The revenue earned from customers under the Company's joint revenue sharing arrangements can vary from quarter to quarter and year to year based on a number of factors including film performance, the mix of theater system configurations, the timing of installation of the theater systems, the nature of the arrangement, the location, size and management of the theater and other factors specific to individual arrangements. Revenue on theater systems under joint revenue sharing arrangements is recognized when box-office and concession revenues are reported by the theater operator, provided collection is reasonably assured.

An annual maintenance and extended warranty fee is generally payable, except for theater systems under joint revenue sharing arrangements, commencing in the second year of theater operations. Both ongoing fees and maintenance and extended warranty fees are typically indexed to a local consumer price index.

See "Critical Accounting Policies" below for further discussion on the Company's revenue recognition policies.

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### Theater Network

The following chart shows the number of the Company's theater systems by configuration in the theater network as of December 31:

	<u>2009</u> <u>Theater</u> <u>Network</u> <u>Base</u>	<u>2008</u> <u>Theater</u> <u>Network</u> <u>Base</u>
Flat Screen (2D)	36	40
Dome Screen (2D)	65	67
IMAX 3D Dome (3D)	2	2
IMAX 3D GT (3D)	88	90
IMAX 3D SR (3D)	51	49
IMAX MPX (3D)	37	57
IMAX digital (3D)	<u>151</u>	<u>46</u>
Total	<u>430</u>	<u>351</u>

Approximately 63.0% of IMAX system configurations in operation are located within North America (defined as the United States and Canada) and approximately 33.1% of IMAX theater systems arrangements in backlog are scheduled to be installed within North America. The North American commercial exhibitor market represents an important customer base for the Company in terms of both collections under existing long-term lease and sales arrangements and potential future theater system contracts, including joint revenue sharing arrangements. Along with numerous international and regional operators, the Company has targeted these North American operators for the sale or lease of its IMAX digital projection system, as well as for joint revenue sharing arrangements. While the Company is pleased with its recent progress in the North American commercial exhibitor market, there is no assurance that the Company's progress in North America will continue or that the Company's North American commercial exhibitors will not encounter future financial difficulties. To minimize the Company's credit risk in this area, the Company retains title to the underlying theater systems leased, performs initial and ongoing credit evaluations of its customers and makes ongoing provisions for its estimates of potentially uncollectible amounts.

The Company developed and, in July 2008, introduced a proprietary IMAX digitally-based projection system that it believes delivers higher quality imagery than other digital systems and is consistent with the Company's brand. As of December 31, 2009, the Company had installed 151 digital theater systems, including 27 digital upgrades, and has an additional 115 digital systems in its backlog. The dramatic print cost savings associated with the elimination of analog film prints with the IMAX digital system has led to greater profitability for the Company by increasing the number of films released to the IMAX network, which in turn has resulted in more theaters in the Company's network, more profits per theater, more profits for studios releasing their films to the network and higher returns for the theaters in which the Company shares revenues under joint revenue sharing arrangements. The Company's digital system also has a lower cost of goods sold than its film-based ones. While there are a number of risks inherent in the Company's digital strategy including technology risks, the aggregate reliability percentage of the Company's digital projectors installed to date is 99.8%. The Company believes that its digital product provides a differentiated experience to moviegoers that is consistent with what they have come to expect from the IMAX brand. The introduction of a digital platform for a large portion of its customer base has been compelling for a number of reasons. The savings to the studios as a result of eliminating film prints are considerable, as the typical cost of an IMAX film print ranges from \$20 thousand per 2D print to \$45 thousand per 3D print. Removing those costs significantly increases the profit of an IMAX release for a studio which, the Company believes, provides more incentive for studios to release their films to the IMAX network. In 2009, the Company released 12 new films converted through the IMAX DMR to the IMAX theater network process compared to 8 films in 2008. Furthermore, the Company has announced the release of 10 DMR films to IMAX theaters in 2010, plus 1 IMAX original production. The Company anticipates announcing additional DMR titles in 2010, which are expected to be released to IMAX theaters in 2010 and beyond. The Company similarly believes that economics change favorably for its exhibitor clients as a result of a digital theater system, since lower print costs (which total approximately \$200 per movie per system), and the increased programming flexibility that digital delivery provides allows theaters to program at least 12-14 IMAX DMR films per year, thereby increasing both customer choice and total box-office revenue. Moreover, digital systems also typically cost exhibitors less to install than film-based systems, require smaller space in the projection booth and result in more DMR films being available to exhibitors, further improving exhibitor returns. Finally, digital transmission will allow for the opportunity to show attractive alternative programming, such as live sporting events and concerts, in the immersive environment of an IMAX theater.

### *Sales Backlog*

The Company's sales backlog fluctuates in both number of systems and dollar value from quarter to quarter depending on the signing of new theater system arrangements, which adds to backlog, and the installation and acceptance of theater systems and the settlement of contracts, both of which reduce backlog. Sales backlog typically represents the fixed contracted revenue under signed theater system sale and lease agreements that the Company believes will be recognized as revenue upon installation and acceptance of the associated theater. Sales backlog includes initial fees along with the present value of contractual ongoing fees due over the lease term, but excludes amounts allocated to maintenance and extended warranty revenues as well as fees in excess of contractual ongoing fees that might be received in the future. The value of sales backlog does not include revenue from theaters in which the Company has an equity interest, joint revenue sharing arrangements, operating leases, letters of intent or long-term conditional theater commitments. During the year ended December 31, 2009, the Company signed contracts for 35 IMAX theater systems, including 32 theater systems under sales and lease arrangements valued at \$32.3 million (17 contracts valued at \$17.1 million are included in backlog as of December 31, 2009, relating to 2009 signings) and 3 theater systems under joint revenue sharing arrangements. At December 31, 2009, the sales backlog included 136 theater systems consisting of arrangements for 94 sales, sales-type lease and operating lease systems, valued at \$117.2 million and 42 theater systems under joint revenue sharing arrangements for which there is no backlog value. The Company believes that the contractual obligations for theater system installations that are listed in sales backlog are valid and binding commitments.

The Company's backlog of sales and sale-type lease arrangements can be segregated both by territory of future installation and by customer type. The percentage of backlog relevant to each territory (based on installed dollar value of anticipated theater system revenue as of December 31, 2009) is as follows: Central and South America — 43.0%, Asia — 40.1%, North America — 5.3%, Europe — 7.0%, Africa — 3.0% and Middle East — 1.6%. In addition, 94.7% of backlog represents future installations to commercial theater customers and 5.3% to institutional customers.

The Company's backlog of theater systems under joint revenue sharing arrangements can be segregated by both territory of future installation and by customer type. The percentage of backlog relevant to each territory (based on the number of systems at December 31, 2009) is as follows: North America — 90.5%, Europe — 7.1% and Australia — 2.4%. All 42 theater systems under joint revenue sharing arrangements in backlog are for commercial theater customers.

The Company estimates that approximately 53 of the 136 theater systems arrangements currently in backlog will be installed in 2010, with the remainder being recognized in subsequent periods. In addition, the Company anticipates that it will install a number of digital system upgrades in 2010. The Company also expects additional theater system arrangement installations both to be added to backlog as new signings and to be recognized in 2010. The configuration of the Company's backlog as of December 31, 2009, by product type has been disclosed on page 7 of the Company's 2009 Form 10-K.

In the normal course of its business, the Company will have customers who, for a number of reasons including the inability to obtain certain consents, approvals or financing, are unable to proceed with a theater system installation. Once the determination is made that the customer will not proceed with installation, the agreement with the customer is generally terminated or amended. If the agreement is terminated, once the Company and the customer are released from all their future obligations under the agreement, all or a portion of the initial rents or fees that the customer previously made to the Company are recognized as revenue.

### **Film Production and Digital Re-Mastering (IMAX DMR)**

Films produced by the Company are typically financed through third parties, whereby the Company will generally receive a film production fee in exchange for producing the film and a distribution fee for distributing the film. The ownership rights to such films may be held by the film sponsors, the film investors and/or the Company. In the past, the Company frequently financed film production internally, but has moved to a model utilizing a majority of third-party funding for the large-format films it produces and distributes. In 2009, the Company, along with Warner Bros. Pictures ("WB"), released *Under the Sea 3D: An IMAX 3D Experience*. The Company did not release any Company-produced films in 2008.

The Company developed a proprietary technology to digitally re-master live-action films into 15/70-format film or IMAX digital cinema package ("DCP") format at a modest cost for exhibition in IMAX theaters. This system, known as IMAX DMR, digitally enhances the image resolution of motion picture films for projection on IMAX screens while maintaining or enhancing the visual clarity and sound quality to levels for which *The IMAX Experience* is known. This technology has opened the IMAX theater network

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up to releases of Hollywood films, particularly new films which are released to IMAX theaters simultaneously with their broader domestic release. The Company believes that the development of this new technology is key to helping it execute its strategy of expanding its commercial theater network by establishing IMAX theaters as a distribution platform for Hollywood films. In 2009, 12 films converted through the IMAX DMR process were released to IMAX theaters (8 films converted through the IMAX DMR process were released in 2008). The Company has announced the release of 10 IMAX DMR titles to IMAX theaters in 2010. The Company anticipates announcing additional DMR titles in 2010 to be released to IMAX theaters in 2010 and beyond.

### **Film Distribution**

The Company is a significant distributor of large-format films. The Company generally distributes films which it produced or for which it has acquired distribution rights from independent producers. The Company generally receives a percentage of the theater box-office receipts as a distribution fee.

### **Theater Operations**

At December 31, 2009, the Company has four owned and operated theaters. The results from theaters that have been closed are presented as discontinued operations as the continuing cash flows are not generated from either a migration or a continuation of activities. In addition, the Company has a commercial arrangement with one theater resulting in the sharing of profits and losses. The Company also provides management services to two theaters.

### **INTERNATIONAL ACTIVITIES**

A significant portion of the Company's sales are made to customers located outside the United States and Canada. During 2009, 2008, and 2007, approximately 35%, 32% and 36%, respectively, of the Company's revenue was derived outside the United States and Canada. The Company expects that international operations will continue to be a significant portion of the Company's revenue in the future. In order to minimize exposure to exchange rate risk, the Company prices theater systems (the largest component of revenue) in U.S. dollars except in Canada, Japan and parts of Europe, where they may be priced in local currency. Annual ongoing fees and maintenance and extended warranty fees follow a similar currency policy. To further minimize its exposure to foreign exchange risk related to operating expenses denominated in Canadian dollars, the Company has entered into foreign currency derivative contracts between the U.S. dollar and the Canadian dollar.

### **CRITICAL ACCOUNTING POLICIES**

The Company prepares its consolidated financial statements in accordance with United States Generally Accepted Accounting Principles ("U.S. GAAP").

The preparation of these consolidated financial statements requires management to make estimates and judgments that affect the reported amounts of assets, liabilities, revenues and expenses. On an ongoing basis, management evaluates its estimates, including those related to fair values associated with the individual elements in multiple element arrangements; residual values of leased theater systems; economic lives of leased assets; allowances for potential uncollectibility of accounts receivable, financing receivables and net investment in leases; provisions for inventory obsolescence; ultimate revenues for film assets; impairment provisions for film assets, long-lived assets and goodwill; depreciable lives of property, plant and equipment; useful lives of intangible assets; pension plan and post retirement assumptions; accruals for contingencies including tax contingencies; valuation allowances for deferred income tax assets; and, estimates of the fair value and expected exercise dates of stock-based payment awards. Management bases its estimates on historic experience, future expectations and other assumptions that are believed to be reasonable at the date of the consolidated financial statements. Actual results may differ from these estimates due to uncertainty involved in measuring, at a specific point in time, events which are continuous in nature, and differences may be material. The Company's significant accounting policies are discussed in note 2 to the audited consolidated financial statements in Item 8 of the Company's 2009 Form 10-K..

The Company considers the following significant estimates, assumptions and judgments to have the most significant effect on its results:

### **Revenue Recognition**

The Company generates revenue from various sources as follows:

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- Design, manufacture, sale and lease of proprietary theater systems for IMAX theaters principally owned and operated by commercial and institutional customers located in 48 countries as of December 31, 2009;
- Production, digital re-mastering, post-production and/or distribution of certain films shown throughout the IMAX theater network;
- Operation of certain IMAX theaters primarily in the United States and Canada;
- Provision of other services to the IMAX theater network, including ongoing maintenance and extended warranty services for IMAX theater systems; and
- Other activities, which includes short-term rental of cameras and aftermarket sales of projector system components.

### ***Multiple Element Arrangements***

The Company's revenue arrangements with certain customers may involve multiple elements consisting of a theater system (projector, sound system, screen system and, if applicable, 3D glasses cleaning machine); services associated with the theater system including theater design support, supervision of installation, and projectionist training; a license to use the IMAX brand; 3D glasses; maintenance and extended warranty services; and licensing of films. The Company evaluates all elements in an arrangement to determine what are considered typical deliverables for accounting purposes and which of the deliverables represent separate units of accounting based on the applicable accounting standards in the Leases Topic of the Financial Accounting Standards Board ("FASB") Accounting Standards Codification ("ASC" or "Codification"); the Guarantees Topic of the FASB ASC; the Entertainment – Films Topic of the FASB ASC; and the Revenue Recognition Topic of the FASB ASC. If separate units of accounting are either required under the relevant accounting standards or determined to be applicable under the Revenue Recognition Topic, the total consideration received or receivable in the arrangement is allocated based on the applicable guidance in the above noted standards.

### ***Theater Systems***

The Company has identified the projection system, sound system, screen system and, if applicable, 3D glasses cleaning machine, theater design support, supervision of installation, projectionist training and the use of the IMAX brand to be a single deliverable and a single unit of accounting (the "System Deliverable"). When an arrangement does not include all the elements of a System Deliverable, the elements of the System Deliverable included in the arrangement are considered by the Company to be a single deliverable and a single unit of accounting. The Company is not responsible for the physical installation of the equipment in the customer's facility; however, the Company supervises the installation by the customer. The customer has the right to use the IMAX brand from the date the Company and the customer enter into an arrangement.

The Company's System Deliverable arrangements involve either a lease or a sale of the theater system. Consideration in the Company's arrangements that are not joint revenue sharing arrangements consists of upfront or initial payments made before and after the final installation of the theater system equipment and ongoing payments throughout the term of the lease or over a period of time, as specified in the arrangement. The ongoing payments are the greater of an annual fixed minimum amount or a certain percentage of the theater box-office. Amounts received in excess of the annual fixed minimum amounts are considered contingent payments. The Company's arrangements are non-cancellable, unless the Company fails to perform its obligations. In the absence of a material default by the Company, there is no right to any remedy for the customer under the Company's arrangements. If a material default by the Company exists, the customer has the right to terminate the arrangement and seek a refund only if the customer provides notice to the Company of a material default and only if the Company does not cure the default within a specified period. Recently, the Company has entered into a number of joint revenue sharing arrangements, where the Company receives a portion of a theater's box-office and concession revenue in exchange for placing a theater system at theater operators' venues. Under these arrangements, the Company receives no up-front fee, and the Company retains title to the theater system. Joint revenue sharing arrangements typically have 7 to 10 year terms with renewal provisions. The Company's joint revenue sharing arrangements are non-cancellable.

### ***Sales Arrangements***

For arrangements qualifying as sales, the revenue allocated to the System Deliverable is recognized in accordance with the Revenue Recognition Topic of the FASB ASC, when all of the following conditions have been met: (i) the projector, sound system and screen system have been installed and are in full working condition, (ii) the 3D glasses cleaning machine, if applicable, has been delivered, (iii) projectionist training has been completed, and (iv) the earlier of (a) receipt of written customer acceptance certifying the completion of installation and run-in testing of the equipment and the completion of projectionist training or (b) public opening of the theater, provided there is persuasive evidence of an arrangement, the price is fixed or determinable and collectibility is reasonably assured.



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The initial revenue recognized consists of the initial payments received and the present value of any future initial payments and fixed minimum ongoing payments that have been attributed to this unit of accounting. Contingent payments in excess of the fixed minimum ongoing payments are recognized when reported by theater operators, provided collectibility is reasonably assured.

The Company has also agreed, on occasion, to sell equipment under lease or at the end of a lease term. Consideration agreed to for these lease buyouts is included in revenues from equipment and product sales, when persuasive evidence of an arrangement exists, the fees are fixed or determinable, collectibility is reasonably assured and title to the theater system passes from the Company to the customer.

In a limited number of sales arrangements for the theater systems designed for multiplex owners (the "MPX" theater systems), the Company provided customers with a right to acquire, for a specified period of time, digital upgrades (each upgrade consisting of a projector, certain sound system components and screen enhancements) at a fixed or variable discount towards a future price of such digital upgrades. Up to the end of the second quarter of 2009, the Company was not able to determine the fair value of a digital upgrade. Accordingly, the Company deferred all consideration received and receivable under such arrangements for the delivered MPX and the upgrade right, except for the amount allocated to maintenance and extended warranty services provided to the customers for the installed system. This revenue was deferred until the upgrade right expired, if applicable, or a digital upgrade was delivered. In the third quarter of 2009, the Company determined the fair value of digital upgrades and the upgrade rights. For any such sales arrangements where the upgrade right has not expired and the digital upgrade has not yet been delivered, the Company has allocated the consideration received and receivable (excluding the amount allocated to maintenance and extended warranty services) to the upgrade right based on its fair value and to the delivered MPX theater system based on the residual of the consideration received and receivable. The revenue related to the digital upgrade continues to be deferred, until the digital upgrade is delivered provided the other revenue recognition criteria are met. The revenue related to the MPX system is recognized at the allocation date as the system was previously delivered provided the other revenue recognition criteria are met. Costs related to the installed MPX systems for which revenue has not been recognized are included in inventories until the conditions for revenue recognition are met. The Company also provides customers, in certain cases, with sales arrangements for multiple systems consisting of a combination of MPX theater systems and complete digital theater systems for a specified price. The Company allocates the actual or implied discount between the delivered and undelivered theater systems on a relative fair value basis, provided all of the other conditions for recognition of a theater system are met.

### ***Lease Arrangements***

The Company uses the Leases Topic of the FASB ASC to evaluate whether an arrangement is a lease and the classification of the lease. Arrangements not within the scope of the accounting standard are accounted for either as a sales or services arrangement, as applicable.

A lease arrangement that transfers substantially all of the benefits and risks incident to ownership of the equipment is classified as a sales-type lease based on the criteria established in the accounting standard; otherwise the lease is classified as an operating lease. Prior to commencement of the lease term for the equipment, the Company may modify certain payment terms or make concessions. If these circumstances occur, the Company reassesses the classification of the lease based on the modified terms and conditions.

For sales-type leases, the revenue allocated to the System Deliverable is recognized when the lease term commences, which the Company deems to be when all of the following conditions have been met: (i) the projector, sound system and screen system have been installed and are in full working condition, (ii) the 3D glasses cleaning machine, if applicable, has been delivered, (iii) projectionist training has been completed, and (iv) the earlier of (a) receipt of the written customer acceptance certifying the completion of installation and run-in testing of the equipment and the completion of projectionist training or (b) public opening of the theater, provided collectibility is reasonably assured.

The initial revenue recognized for sales-type leases consists of the initial payments received and the present value of future initial payments and fixed minimum ongoing payments computed at the interest rate implicit in the lease. Contingent payments in excess of the fixed minimum payments are recognized when reported by theater operators, provided collectibility is reasonably assured.

The determination of the fair value of the leased equipment requires judgment and can impact the split between initial revenue and finance income over the lease term.



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For operating leases, initial payments and fixed minimum ongoing payments are recognized as revenue on a straight-line basis over the lease term. For operating leases, the lease term is considered to commence when all of the following conditions have been met: (i) the projector, sound system and screen system have been installed and are in full working condition, (ii) the 3D glasses cleaning machine, if applicable, has been delivered, (iii) projectionist training has been completed, and (iv) the earlier of (a) receipt of the written customer acceptance certifying the completion of installation and run-in testing of the equipment and the completion of projectionist training or (b) public opening of the theater. Contingent payments in excess of fixed minimum ongoing payments are recognized as revenue when reported by theater operators, provided collectibility is reasonably assured.

For joint revenue sharing arrangements, where the Company receives a portion of a theater's box-office and concession revenue in exchange for placing a theater system at the theater operator's venue, revenue is recognized when box-office and concession revenues are reported by the theater operator, provided collectibility is reasonably assured.

Equipment and components allocated to be used in future joint revenue sharing arrangements, as well as direct labor costs and an allocation of direct production costs, are included in assets under construction until such equipment is installed and in working condition, at which time the equipment is depreciated on a straight-line basis over the lesser of the term of the joint revenue sharing arrangement and the equipment's anticipated useful life.

### ***Finance Income***

Finance income is recognized over the term of the lease or over the period of time specified in the sales arrangement, provided collectibility is reasonably assured. Finance income recognition ceases when the Company determines that the associated receivable is not recoverable.

### ***Terminations, Consensual Buyouts and Concessions***

The Company enters into theater system arrangements with customers that provide for customer payment obligations prior to the scheduled installation of the theater system. During the period of time between signing and the installation of the theater system, which may extend several years, certain customers may be unable to, or elect not to, proceed with the theater system installation for a number of reasons including business considerations, or the inability to obtain certain consents, approvals or financing. Once the determination is made that the customer will not proceed with installation, the arrangement may be terminated under the default provisions of the arrangement or by mutual agreement between the Company and the customer (a "consensual buyout"). Terminations by default are situations when a customer does not meet the payment obligations under an arrangement and the Company retains the amounts paid by the customer. Under a consensual buyout, the Company and the customer agree, in writing, to a settlement and to release each other of any further obligations under the arrangement or an arbitrated settlement is reached. Any initial payments retained or additional payments received by the Company are recognized as revenue when the settlement arrangements are executed and the cash is received, respectively. These termination and consensual buyout amounts are recognized in Other revenues.

In addition, the Company could agree with customers to convert their obligations for other theater system configurations that have not yet been installed to arrangements to acquire or lease the IMAX digital theater system. The Company considers these situations to be a termination of the previous arrangement and origination of a new arrangement for the IMAX digital theater system. The Company continues to defer an amount of any initial fees received from the customer such that the aggregate of the fees deferred and the net present value of the future fixed initial and ongoing payments to be received from the customer equals the fair value of the IMAX digital theater system to be leased or acquired by the customer. Any residual portion of the initial fees received from the customer for the terminated theater system is recorded in Other revenues at the time when the obligation for the original theater system is terminated and the new theater system arrangement is signed.

The Company may offer certain incentives to customers to complete theater system transactions including payment concessions or free services and products such as film licenses or 3D glasses. Reductions in, and deferral of, payments are taken into account in determining the sales price either by a direct reduction in the sales price or a reduction of payments to be discounted in accordance with the Leases or Interest Topics of the FASB ASC. Free products and services are accounted for as separate units of accounting. Other consideration given by the Company to customers are accounted for in accordance with the Revenue Recognition Topic of the FASB ASC.

### ***Maintenance and Extended Warranty Services***

Maintenance and extended warranty services may be provided under a multiple element arrangement or as a separately priced contract. Revenues related to these services are deferred and recognized on a straight-line basis over the contract period and are

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recognized in Services revenues. Maintenance and extended warranty services includes maintenance of the customer's equipment and replacement parts. Under certain maintenance arrangements, maintenance services may include additional training services to the customer's technicians. All costs associated with this maintenance and extended warranty program are expensed as incurred. A loss on maintenance and extended warranty services is recognized if the expected cost of providing the services under the contracts exceeds the related deferred revenue.

### ***Film Production and IMAX DMR Services***

In certain film arrangements, the Company produces a film financed by third parties, whereby the third party retains the copyright and the Company obtains exclusive distribution rights. Under these arrangements, the Company is entitled to receive a fixed fee or to retain as a fee the excess of funding over cost of production (the "production fee"). The third parties receive a portion of the revenues received by the Company on distributing the film, which is charged to costs and expenses applicable to revenues-services. The production fees are deferred, and recognized as a reduction in the cost of the film, based on the ratio of the Company's distribution revenues recognized in the current period to the ultimate distribution revenues expected from the film.

Revenue from film production services where the Company does not hold the associated distribution rights are recognized in Services revenue when performance of the contractual service is complete, provided there is persuasive evidence of an agreement, the fee is fixed or determinable and collectibility is reasonably assured.

Revenues from digitally re-mastering (IMAX DMR) films where third parties own or hold the copyrights and the rights to distribute the film are derived in the form of processing fees and recoupments calculated as a percentage of box-office receipts generated from the re-mastered films. Processing fees are recognized as Services revenue when the performance of the related re-mastering service is completed, provided there is persuasive evidence of an arrangement, the fee is fixed or determinable and collectibility is reasonably assured. Recoupments, calculated as a percentage of box-office receipts, are recognized as Services revenues when box-office receipts are reported by the third party that owns or holds the related film right, provided collectibility is reasonably assured.

Losses on film production and IMAX DMR services are recognized as costs and expenses applicable to revenues-services in the period when it is determined that the Company's estimate of total revenues to be realized by the Company will not exceed estimated total production costs to be expended on the film production and the cost of IMAX DMR services.

### ***Film Distribution***

Revenue from the licensing of films is recognized in Services revenues when persuasive evidence of a licensing arrangement exists, the film has been completed and delivered, the license period has begun, the fee is fixed or determinable and collectibility is reasonably assured. When license fees are based on a percentage of box-office receipts, revenue is recognized when box-office receipts are reported by exhibitors, provided collectibility is reasonably assured.

### ***Film Post-Production Services***

Revenues from post-production film services are recognized in Services revenue when performance of the contracted services is complete provided there is persuasive evidence of an arrangement, the fee is fixed or determinable and collectibility is reasonably assured.

### ***Theater Operations Revenue***

The Company recognizes revenue in Services revenue from its owned and operated theaters resulting from box-office ticket and concession sales as tickets are sold, films are shown and upon the sale of various concessions. The sales are cash or credit card transactions with theatergoers based on fixed prices per seat or per concession item.

In addition, the Company enters into commercial arrangements with third party theater owners resulting in the sharing of profits and losses which are recognized in Services revenue when reported by such theaters. The Company also provides management services to certain theaters and recognizes revenue over the term of such services.

### ***Other***

Revenues on camera rentals are recognized in Rental revenue over the rental period.

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Revenue from the sale of 3D glasses is recognized in Equipment and product sales revenue when the 3D glasses have been delivered to the customer.

Other service revenues are recognized in Services revenues when the performance of contracted services is complete.

### **Allowances for Accounts Receivable and Financing Receivables**

Allowances for doubtful accounts receivable are based on the Company's assessment of the collectibility of specific customer balances, which is based upon a review of the customer's credit worthiness, past collection history and the underlying asset value of the equipment, where applicable. Interest on overdue accounts receivable is recognized as income as the amounts are collected.

The Company monitors the performance of the theaters to which it has leased or sold theater systems which are subject to ongoing payments. When facts and circumstances indicate that there is a potential impairment in the accounts receivable, net investment in lease or a financing receivable, the Company will evaluate the potential outcome of either renegotiations involving changes in the terms of the receivable or defaults on the existing lease or financed sale agreements. The Company will record a provision if it is considered probable that the Company will be unable to collect all amounts due under the contractual terms of the arrangement or a renegotiated lease amount will cause a reclassification of the sales-type lease to an operating lease.

When the net investment in lease or the financing receivable is impaired, the Company will recognize a provision for the difference between the carrying value in the investment and the present value of expected future cash flows discounted using the effective interest rate for the net investment in the lease or the financing receivable. If the Company expects to recover the theater system, the provision is equal to the excess of the carrying value of the investment over the fair value of the equipment.

When the minimum lease payments are renegotiated and the lease continues to be classified as a sales-type lease, the reduction in payments is applied to reduce unearned finance income.

These provisions are adjusted when there is a significant change in the amount or timing of the expected future cash flows or when actual cash flows differ from cash flow previously expected.

Once a net investment in lease or financing receivable is considered impaired, the Company does not recognize interest income until the collectibility issues are resolved. When finance income is not recognized, any payments received are applied against outstanding gross minimum lease amounts receivable or gross receivables from financed sales.

### **Inventories**

Inventories are carried at the lower of cost, determined on an average cost basis, and net realizable value except for raw materials, which are carried out at the lower of cost and replacement cost. Finished goods and work-in-process include the cost of raw materials, direct labor, theater design costs, and an applicable share of manufacturing overhead costs.

The costs related to theater systems under sales and sales-type lease arrangement are relieved from inventory to costs and expenses applicable to revenues-equipment and product sales when revenue recognition criteria are met. The costs related to theater systems under operating lease arrangements and joint revenue sharing arrangements are transferred from inventory to assets under construction in property, plant and equipment when allocated to a signed joint revenue sharing arrangement or when the arrangement is first classified as an operating lease.

The Company records provisions for excess and obsolete inventory based upon current estimates of future events and conditions, including the anticipated installation dates for the current backlog of theater system contracts, technological developments, signings in negotiation, growth prospects within the customers' ultimate marketplace and anticipated market acceptance of the Company's current and pending theater systems.

Finished goods inventories can contain theater systems for which title has passed to the Company's customer, under the contract, but the revenue recognition criteria as discussed above have not been met.

## **Asset Impairments**

The Company performs an impairment test on its goodwill on an annual basis, coincident with the year-end, as well as in quarters where events or changes in circumstances suggest that the carrying amount may not be recoverable.

Goodwill impairment is assessed at the reporting unit level by comparing the unit's carrying value, including goodwill, to the fair value of the unit. Significant estimates are involved in the impairment test. The carrying values of each unit are subject to allocations of certain assets and liabilities that the Company has applied in a systematic and rational manner. The fair value of the Company's units is assessed using a discounted cash flow model. The model is constructed using the Company's budget and long-range plan as a base.

Long-lived asset impairment testing is performed at the lowest level of an asset group at which identifiable cash flows are largely independent. In performing its review for recoverability, the Company estimates the future cash flows expected to result from the use of the asset or asset group and its eventual disposition. If the sum of the expected future cash flows is less than the carrying amount of the asset or asset group, an impairment loss is recognized in the consolidated statement of operations. Measurement of the impairment loss is based on the excess of the carrying amount of the asset or asset group over the fair value calculated using discounted expected future cash flows.

The Company's estimates of future cash flows involve anticipating future revenue streams, which contain many assumptions that are subject to variability, as well as estimates for future cash outlays, the amounts of which, and the timing of which are both uncertain. Actual results that differ from the Company's budget and long-range plan could result in a significantly different result to an impairment test, which could impact earnings.

## **Foreign Currency Translation**

Monetary assets and liabilities of the Company's operations which are denominated in currencies other than the functional currency are translated into the functional currency at the exchange rates prevailing at the end of the period. Non-monetary items are translated at historical exchange rates. Revenue and expense transactions are translated at exchange rates prevalent at the transaction date. Such exchange gains and losses are included in the determination of earnings in the period in which they arise.

Foreign currency derivatives are recognized and measured on the balance sheet at fair value. Changes in the fair value (gains or losses) are recognized in the consolidated statement of operations except for derivatives designated and qualifying as foreign currency hedging instruments. For foreign currency hedging instruments, the effective portion of the gain or loss in a hedge of a forecasted transaction is reported in other comprehensive income and reclassified to the consolidated statement of operations when the forecasted transaction occurs. Any ineffective portion is recognized immediately in the consolidated statement of operations.

## **Pension Plan and Postretirement Benefit Obligations Assumptions**

The Company's pension plan and postretirement benefit obligations and related costs are calculated using actuarial concepts, within the framework of the Compensation – Retirement Benefits Topic of the FASB ASC. A critical assumption to this accounting is the discount rate. The Company evaluates this critical assumption annually or when otherwise required to by accounting standards. Other assumptions include factors such as expected retirement date, mortality rate, rate of compensation increase, and estimates of inflation.

The discount rate enables the Company to state expected future cash payments for benefits as a present value on the measurement date. The guideline for setting this rate is a high-quality long-term corporate bond rate. A lower discount rate increases the present value of benefit obligations and increases pension expense. The Company's discount rate was determined by considering the average of pension yield curves constructed from a large population of high-quality corporate bonds. The resulting discount rate reflects the matching of plan liability cash flows to the yield curves.

The discount rate used is a key assumption in the determination of the pension benefit obligation and expense. At December 31, 2009, a 1.0% change in the discount rate used could result in a \$1.7 — \$2.0 million increase or decrease in the pension benefit obligation with a corresponding benefit or charge recognized in other comprehensive income in the year. A one year delay in Mr. Gelfond's retirement date would increase the discount rate by 0.5% and have a less than \$0.2 million impact on the expected pension payment.

**Deferred Tax Asset Valuation**

As of December 31, 2009, the Company had net deferred income tax assets of \$nil. The Company's management assesses realization of its deferred tax assets based on all available evidence in order to conclude whether it is more likely than not that the deferred tax assets will be realized. Available evidence considered by the Company includes, but is not limited to, the Company's historic operation results, projected future operating earnings results, reversing temporary differences, contracted sales backlog at December 31, 2009, changing business circumstances, and the ability to realize certain deferred tax assets through loss and tax credit carry-back and carry-forward strategies. At December 31, 2009, the Company has determined that based on the weight of the available evidence, both positive and negative, a full valuation allowance for the net deferred tax assets was required.

When there is a change in circumstances that causes a change in judgment about the realizability of the deferred tax assets, the Company would adjust all or a portion of the applicable valuation allowance in the period when such change occurs.

**Tax Exposures**

The Company is subject to ongoing tax exposures, examinations and assessments in various jurisdictions. Accordingly, the Company may incur additional tax expense based upon the outcomes of such matters. In addition, when applicable, the Company adjusts tax expense to reflect the Company's ongoing assessments of such matters which require judgment and can materially increase or decrease its effective rate as well as impact operating results. The Company provides for such exposures in accordance with Income Taxes Topic of the FASB ASC.

**Stock-Based Compensation**

The Company utilizes a lattice-binomial option-pricing model (the "Binomial Model") to determine the fair value of stock-based payment awards. The fair value determined by the Binomial Model is affected by the Company's stock price as well as assumptions regarding a number of highly complex and subjective variables. These variables include, but are not limited to, the Company's expected stock price volatility over the term of the awards, and actual and projected employee stock option exercise behaviors. The Binomial Model also considers the expected exercise multiple which is the multiple of exercise price to grant price at which exercises are expected to occur on average. Option-pricing models were developed for use in estimating the value of traded options that have no vesting or hedging restrictions and are fully transferable. Because the Company's employee stock options and stock appreciation rights have certain characteristics that are significantly different from traded options, and because changes in the subjective assumptions can materially affect the estimated value, in management's opinion, the Binomial Model best provides an accurate measure of the fair value of the Company's employee stock options and stock appreciation rights. Although the fair value of employee stock options and stock appreciation rights is determined in accordance with the Equity topic of the FASB ASC using an option-pricing model, that value may not be indicative of the fair value observed in a willing buyer/willing seller market transaction.

For the years ended December 31, the following assumptions were used:

	2009	2008	2007
Average risk-free interest rate	3.14%	2.68%	4.28%
Market risk premium	n/a	n/a	5.16% - 5.73%
Beta	n/a	n/a	0.71 - 0.94
Expected option life (in years)	4.94 - 5.85	3.49 - 5.85	2.74 - 5.44
Expected volatility	62%	61% - 62%	61% - 62%
Annual termination probability	0% - 10.30%	9.52% - 11.20%	9.52% - 11.87%
Dividend yield	0%	0%	0%

**Impact of Recently Issued Accounting Pronouncements**

See note 3 to the consolidated financial statements in Item 8 of the Company's 2009 Form 10-K for information regarding the Company's recent changes in accounting policies and the impact of recently issued accounting pronouncements impacting the Company.

**DISCONTINUED OPERATIONS**

On December 11, 2009, the Company closed its owned and operated Tempe IMAX theater. The Company recognized lease termination and guarantee obligations of \$0.5 million to the landlord, which were offset by derecognition of other liabilities of \$0.9 million, for a net gain of \$0.4 million. In a related transaction, the Company leased the projection system and inventory of the Tempe IMAX theater to a third party theater exhibitor. Revenue from this operating lease transaction will be recognized on a straight-line basis over the term of the lease. In the year ended December 31, 2009, revenues for the Tempe IMAX theater were \$0.8 million (2008 – \$1.5 million, 2007 – \$1.9 million) and the Company recognized a loss of \$0.5 million in 2009 (2008 – loss of \$0.3 million, 2007 – loss of less than \$0.1 million) from the operation of the theater. The above transactions are reflected as discontinued operations as there are no significant continuing cash flows from either a migration or a continuation of activities. The remaining assets and liabilities of the owned and operated Tempe IMAX theater are included in the Company’s consolidated balance sheet as of December 31, 2009 and are disclosed in note 23(e) to the audited consolidated financial statements in Item 8 of the Company’s 2009 Form 10-K.

On September 30, 2009, the Company closed its owned and operated Vancouver IMAX theater. The amount of loss to the Company pertaining to lease and guarantee obligations owing to the landlord was estimated at \$0.3 million, which the Company recognized at September 30, 2009. In 2009, revenues for the Vancouver IMAX theater were \$1.1 million (2008 – \$2.0 million, 2007 – \$2.3 million) and the Company recognized a loss of \$0.1 million in 2009 (2008 – income of \$0.2 million, 2007 – income of \$0.3 million) from the operation of the theater. The above transactions are reflected as discontinued operations as there are no continuing cash flows from either a migration or a continuation of activities. The remaining assets and liabilities of the Vancouver owned and operated theater are included in the Company’s consolidated balance sheet as of December 31, 2009 and are disclosed in note 23(e) to the audited consolidated financial statements in Item 8 of the Company’s 2009 Form 10-K.

On December 31, 2007, the Company entered into a lease termination agreement, which extinguished all of its obligations to its landlord with respect to the Company’s owned and operated Providence IMAX theater. As a result of the lease termination, the Company recorded a non-cash gain of \$1.5 million associated with the reversal of deferred lease credits recorded in prior periods. In a related transaction, the Company sold the theater projection system and inventory for the Providence IMAX theater to a third party theater exhibitor for \$1.0 million (consisting of \$0.6 million cash and \$0.4 million of discounted future minimum payments) which was recorded as a gain from discontinued operations. Furthermore, during 2007, the Company had recognized an operating loss of \$0.5 million (2006 — \$0.2 million, 2005 — \$0.1 million) from the operation of the theater.

As a result of the closure of the Tempe and Vancouver IMAX theaters in 2009, the Company currently operates 4 theaters.

**ASSET IMPAIRMENTS AND OTHER SIGNIFICANT CHARGES (RECOVERIES)**

The following table identifies the Company’s charges and recoveries relating to the impairment of assets:

<i>(in thousands of U.S. dollars)</i>	<b>Years Ended December 31,</b>		
	<b>2009</b>	<b>2008</b>	<b>2007</b>
<b>Asset impairments</b>			
Property, plant and equipment <sup>(1)</sup>	\$ 180	\$ —	\$ 105
IMAX MPX theater systems under lease	—	—	64
Financing receivables	—	—	316
<b>Other significant charges (recoveries):</b>			
Accounts receivable	127	382	(163)
Financing receivables	1,377	1,595	1,958
Inventories	897	2,489	3,960
<b>Total asset impairments and other significant charges</b>	<b>\$ 2,581</b>	<b>\$ 4,466</b>	<b>\$ 6,240</b>

(1) The Company reclassified the owned and operated Vancouver and Tempe IMAX theaters’ operations from continuing operations to discontinued operations as it does not anticipate having significant future cash flows from these theaters or any involvement in the day to day operations of these theaters. As a result, the respective prior period’s figures of less than \$0.1 million and \$0.1 million in 2008 and 2007, respectively, have been reclassified to conform to the current year’s presentation.

### **Asset Impairments**

The Company recorded an asset impairment charge of \$0.2 million against fixed assets after the Company assessed the carrying value of certain assets in light of their future expected use. The Company recognized that the carrying values for the assets exceeded the expected undiscounted future cash flows. During 2008 and 2007, the Company recorded total asset impairment charges of \$nil million and \$0.5 million, respectively.

### **Other Significant Charges (Recoveries)**

The Company recorded a net provision of \$0.1 million in 2009 (2008 — \$0.4 million, 2007 — \$0.2 million net recovery) in accounts receivable.

In 2009, the Company also recorded a net provision of \$1.4 million in financing receivables (2008 — \$1.6 million, 2007 — \$2.0 million) as the collectibility associated with certain leases was uncertain.

In 2009, the Company recorded a charge of \$0.9 million (2008 — \$2.5 million, 2007 — \$4.0 million) in costs and expenses applicable to revenues, primarily for its film-based projector inventories due to a reduction in the net realizable value resulting from the Company's development of a proprietary digital projection system.

### **RESULTS OF OPERATIONS**

As identified in note 20 to the audited consolidated financial statements in Item 8 of the Company's 2009 Form 10-K, the Company has eight reportable segments identified by category of product sold or service provided: IMAX systems; theater system maintenance; joint revenue sharing arrangements; film production and IMAX DMR; film distribution; film post-production; theater operations; and other. The IMAX systems segment designs, manufactures, sells or leases IMAX theater projection system equipment. The theater system maintenance segment maintains IMAX theater projection system equipment in the IMAX theater network. The joint revenue sharing arrangements segment installs IMAX theater projection system equipment to an exhibitor in exchange for a certain percentage of box-office and concession revenue. The film production and IMAX DMR segment produces films and performs film re-mastering services. The film distribution segment distributes films for which the Company has distribution rights. The film post-production segment provides film post-production and film print services. The theater operations segment owns and operates certain IMAX theaters. The other segment includes camera rentals and other miscellaneous items. The accounting policies of the segments are the same as those described in note 2 to the audited consolidated financial statements in Item 8 of the Company's 2009 Form 10-K.

The Company's Management's Discussion and Analysis of Financial Condition and Results of Operations have been organized and discussed with respect to the above stated segments. Management feels that a discussion and analysis based on its segments is significantly more relevant as the Company's Consolidated Statements of Operations captions combine results from several segments.



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The following table sets forth the breakdown of revenue and gross margin by segment:

(In thousands of U.S. dollars)	Revenue			Gross Margin		
	Years Ended December 31,			Years Ended December 31,		
	2009	2008	2007	2009	2008	2007
<b>IMAX Systems</b>						
Sales and sales-type leases <sup>(1)</sup>	\$ 53,923	\$ 24,476	\$ 30,994	\$ 26,441	\$ 9,284	\$ 11,825
Ongoing rent, fees, and finance income <sup>(2)</sup>	10,581	10,307	9,788	9,075	9,090	8,414
	<u>64,504</u>	<u>34,783</u>	<u>40,782</u>	<u>35,516</u>	<u>18,374</u>	<u>20,239</u>
<b>Theater System Maintenance</b>	18,246	16,331	15,991	8,361	7,117	6,970
<b>Joint Revenue Sharing Arrangements</b>	21,598	3,435	2,343	13,261	(1,865)	1,362
<b>Film</b>						
Production and IMAX DMR	35,648	17,944	19,863	19,979	6,992	4,915
Distribution	12,365	9,559	11,018	2,147	3,120	3,484
Post-production	3,604	6,929	5,693	939	3,451	2,552
	<u>51,617</u>	<u>34,432</u>	<u>36,574</u>	<u>23,065</u>	<u>13,563</u>	<u>10,951</u>
<b>Theater Operations<sup>(3)</sup></b>	11,810	10,532	12,407	649	(39)	796
<b>Other</b>	3,436	3,205	3,558	700	403	500
	<u>\$ 171,211</u>	<u>\$ 102,718</u>	<u>\$ 111,655</u>	<u>\$ 81,552</u>	<u>\$ 37,553</u>	<u>\$ 40,818</u>

(1) Includes initial payments and the present value of fixed minimum payments from equipment, sales and sales-type lease transactions.

(2) Includes fees income from operating leases, contingent fees from operating and sales-type leases, contingent fees from sales arrangements and finance income.

(3) Excludes the impact of discontinued operations.

### Year Ended December 31, 2009 versus Year Ended December 31, 2008

The Company reported net income of \$5.0 million or \$0.10 per basic share and \$0.09 per diluted share for the year ended December 31, 2009 as compared to a net loss of \$33.6 million or \$0.79 per share on a basic and diluted basis for the year ended December 31, 2008. Net income for the year includes a \$15.4 million charge (2008 — less than \$0.1 million) or \$0.28 per share for variable share-based compensation expense largely due to the increase in the Company's stock price during the year (from \$4.46 per share to \$13.31 per share) and its impact on stock appreciation rights and restricted common shares. Excluding the impact of variable share-based compensation expense, net income would have been \$20.5 million or \$0.38 per share in 2009, as compared to a net loss of \$33.6 million or \$0.79 per share in 2008.

#### Revenues and Gross Margin

The Company's revenues for the year ended December 31, 2009 increased by 66.7% to \$171.2 million from \$102.7 million in 2008 due in large part to increases in revenue from its IMAX systems, joint revenue sharing arrangements and film segments. The gross margin across all segments in 2009 was \$81.6 million, or 47.6% of total revenue, compared to \$37.6 million, or 36.6% of total revenue in 2008.

#### IMAX Systems

IMAX systems revenue increased 85.4% to \$64.5 million in 2009 as compared to \$34.8 million in 2008, resulting primarily from an increase in systems installed and recognized as compared to the prior year.

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Revenue from sales and sales-type leases increased 120.3% to \$53.9 million in 2009 from \$24.5 million in 2008. The Company recognized revenue on 43 theater systems which qualified as either sales or sales-type leases in 2009 versus 15 in 2008. There were 40 new theater systems with a value of \$49.0 million and 3 used theater systems with an aggregate value of \$2.6 million recognized into revenue in 2009, as compared to 15 new theater systems with a total value of \$22.4 million recognized in 2008. The Company's introduction of the digital projection system in 2008 is the primary reason for the increase in the number of theater system unit sales and leases, as the digital projection system changes the economics favorably for the Company's clients by providing increased programming flexibility and lower print costs which total approximately \$200 per movie per system.

Average revenue per sales and sales-type lease systems was \$1.3 million in 2009 as compared to \$1.5 million in 2008. The lower average revenue per sales and sales-type lease systems experienced reflects the digital upgrade of 16 theater systems which were sold at a lower selling price as compared to a full digital system, for strategic reasons. Excluding digital upgrades, average revenue per sales and sales-type lease systems was \$1.5 million in 2009, which is consistent with the average of \$1.5 million experienced in 2008. The breakdown in mix of sales and sales-type lease, operating lease and joint revenue sharing arrangement (see discussion below) installations by theater system configuration in 2009 and 2008 is outlined in the table below.

	2009	2008
Sales and Sales-type lease systems — installed and recognized		
2D SR Dome	1	—
IMAX 3D GT	3	2
IMAX 3D SR	4	1
IMAX 3D MPX	—	7
IMAX digital	35 (1)	5 (2)
	<u>43</u>	<u>15</u>
IMAX 3D MPX — installed and deferred	—	3
	<u>43</u>	<u>18</u>
Operating lease — installed and operating		
IMAX 3D MPX(1)	1	1
Joint revenue sharing arrangements — installed and operating		
IMAX digital	74 (1)	41 (2)
	<u>118</u>	<u>60</u>

(1) Includes the digital upgrade of 25 systems (14 sales arrangements, 2 treated previously as operating lease arrangements and 9 systems under joint revenue sharing arrangements) from film-based to digital.

(2) Includes the digital upgrade of 2 systems (one sales arrangement and one system under a joint revenue sharing arrangement) from film-based to digital.

As noted in the table above, 3 theater systems installed in 2008 were under sales arrangements subject to provisions providing the customer with an upgrade to a digital system at a discounted price when available, for strategic reasons. Had the transactions not included this digital upgrade clause, the Company would have recognized \$3.8 million in revenue and \$2.0 million in gross margin related to these sales in 2008. The Company's policy is such that once the digital upgrade is provided or the fair value for the upgrade is established, the Company allocates total contract consideration, including any upgrade revenues, between the delivered and undelivered elements on a residual basis and recognizes the revenue allocated to the delivered elements with their associated costs. In 2009, the Company installed 3 digital upgrades, as compared to 1 in 2008, where recognition was previously deferred under the Company's digital upgrade policy.

Settlement revenue was \$2.0 million in 2009 as compared to \$0.9 million in 2008 which related primarily to consensual buyouts for uninstalled theater systems.

IMAX systems margin fluctuates as a result of the mix of theater system configurations recognized in each respective year. IMAX theater systems gross margin from sales and sales-type leases, excluding the impact of settlements and asset impairment charges, decreased to 54.1% in 2009, from 59.4% in 2008. The lower gross margin experienced in 2009 reflects the digital upgrade of 16 locations under sales arrangements sold at lower margins for strategic reasons, and lower margins from the sale of 3 used systems.

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Gross margin on new sales and sales-type leases systems increased to 57.0% in 2009 from 55.3% in the prior year which is a direct result of the theater system configurations recognized in each respective period. Excluded from the IMAX systems margin calculation in 2008 is a \$2.4 million charge as the Company recorded a write-down of its film-based projector inventories primarily due to the introduction of its digital projection system in July 2008.

Ongoing rent revenue and finance income increased to \$10.6 million in 2009 from \$10.3 million in 2008. Gross margin for ongoing rent and finance income was consistent at \$9.1 million in 2009 and 2008. The change in revenue is a function of new systems under sales or lease agreements that began operations in 2009. Contingent fees included in this caption amounted to \$3.6 million and \$3.7 million in 2009 and 2008, respectively.

In 2009, the Company installed and recognized revenue for 1 new theater system that qualified as an operating lease, which is consistent with 2008. In 2009, these two theater systems under operating lease arrangements were upgraded to digital theater systems under sales arrangements. The Company recognizes revenue on operating leases over the term of the leases.

### **Theater System Maintenance**

Theater system maintenance revenue increased 11.7% to \$18.2 million in 2009 as compared to \$16.3 million in 2008. Theater system maintenance gross margin increased to \$8.4 million in 2009 from \$7.1 million in 2008. In 2009 and 2008, the Company recorded a write-down of its film-based service parts inventories of \$0.8 million and \$0.1 million, respectively. Absent this write-down, the margin would have been \$9.2 million and \$7.2 million in 2009 and 2008, respectively. Maintenance revenue continues to grow as the number of theaters in the IMAX network grows. Maintenance margins vary depending on the mix of theater system configurations in the theater network and the date of installation.

### **Joint Revenue Sharing Arrangements**

Revenue from joint revenue sharing arrangements increased 528.8% to \$21.6 million in 2009 compared to \$3.4 million in 2008. The Company ended the year with 117 theaters operating under joint revenue sharing arrangements as compared to 52 theaters at the end of 2008. In 2008, 40 of the 52 theaters were installed in the third and fourth quarters, resulting in less than a full year of revenues being recorded. The increase in revenues from joint revenue sharing arrangements was due to the greater number of theaters operating in the current year as compared to the prior year, and stronger performance of the films exhibited in 2009 versus 2008, as discussed below.

The gross margin from joint revenue sharing arrangements in 2009 increased to \$13.3 million compared to a loss of \$1.9 million in 2008. The increase was largely due to the increase in the number of joint revenue sharing theaters operating in the current year as compared to the prior year. Included in the 2009 gross margin were certain advertising, marketing and selling expenses of \$3.4 million associated with the initial launch of 65 new theaters opened during the year, similar to the \$1.8 million associated with the initial launch of 40 new theaters in 2008. In addition, accelerated depreciation on existing film-based systems of \$1.5 million was recorded in 2008. Excluding these launch expenses and accelerated depreciation charges, the gross margin would have been \$16.7 million in 2009, compared to \$1.4 million in 2008.

### **Film**

The Company's revenues from its film segments increased 49.9% to \$51.6 million in 2009 from \$34.4 million in 2008.

Film production and IMAX DMR revenues increased 98.7% to \$35.6 million in 2009 from \$17.9 million in 2008. The increase in film production and IMAX DMR revenues was due primarily to the overall growth of the IMAX theater network and stronger film performance for the films exhibited. Gross box office generated by IMAX DMR films increased 107.8% to \$270.8 million in 2009 versus \$130.3 million in 2008. In 2009, a significant portion of the gross-box office was generated by the exhibition of 14 films which included *The Day the Earth Stood Still: The IMAX Experience*, the re-release of *The Dark Knight: The IMAX Experience*, *Jonas Bros: The 3D Concert Experience*, *Watchmen: The IMAX Experience*, *Monsters vs. Aliens: An IMAX 3D Experience*, *Star Trek: The IMAX Experience*, *Night at the Museum: Battle of the Smithsonian: The IMAX Experience*, *Transformers: Revenge of the Fallen: The IMAX Experience*, *Harry Potter and the Half Blood Prince: An IMAX 3D Experience*, *Cloudy with a Chance of Meatballs: An IMAX 3D Experience*, *Where the Wild Things Are: The IMAX Experience*, *Michael Jackson's This Is It: The IMAX Experience*, *Disney's A Christmas Carol: An IMAX 3D Experience* and *Avatar: An IMAX 3D Experience* as compared to 8 primary films exhibited in 2008, which included *The Spiderwick Chronicles: The IMAX Experience*, *Shine A Light: The IMAX Experience*, *Speed Racer: The IMAX Experience*, *Kung Fu Panda: The IMAX Experience*, *The Dark Knight: The IMAX Experience*, *Eagle Eye: The IMAX Experience*, *Madagascar: Escape 2 Africa: The IMAX Experience* and *The Day the Earth Stood Still: The IMAX Experience*.

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*Avatar: An IMAX 3D Experience* has broken all performance records for an IMAX DMR film. Through March 11, 2010, *Avatar* has generated total IMAX DMR gross box office revenue of over \$200.0 million, \$54.2 million of which was generated in 2009.

Film distribution revenues increased 29.4% to \$12.4 million in 2009 from \$9.6 million in 2008 due to the introduction and strong performance of *Under the Sea 3D*, a movie co-produced by the Company and WB and which was released on February 13, 2009. The Company did not distribute any original titles in 2008.

Film post-production revenues decreased 48.0% to \$3.6 million in 2009 from \$6.9 million in 2008 primarily due to a decrease in third party business.

The Company's gross margin from its film segments increased 70.0% in 2009 to \$23.1 million from \$13.6 million in 2008. Film production and IMAX DMR gross margins increased to \$20.0 million from \$7.0 million in 2008 largely due to an increase in IMAX DMR revenue resulting from the exhibition of 14 films in 2009 as compared to 8 in 2008. The increase was partially offset by lower film distribution and film post-production margins. The film distribution margin of \$2.1 million in 2009 was lower than the \$3.1 million experienced in 2008. Film post-production gross margin decreased by \$2.5 million due to a decrease in third party business as compared to the prior year.

### **Theater Operations**

Theater operations revenue in 2009 increased 12.1% to \$11.8 million compared to \$10.5 million in 2008. This increase was attributable to increases in average ticket prices and attendance at certain of the Company's owned theaters primarily due to the stronger performance of the films exhibited in 2009 as compared to 2008.

Theater operations margin increased \$0.7 million from 2008 primarily due to an increase in revenues largely associated with IMAX DMR films exhibited.

### **Other**

Other revenue increased to \$3.4 million in 2009 compared to \$3.2 million in 2008. Other revenue primarily includes revenue generated from the Company's camera and rental business and after market sales of projection system parts and 3D glasses.

The gross margin on other revenue was \$0.3 million higher in 2009 as compared to 2008.

### **Selling, General and Administrative Expenses**

Selling, general and administrative expenses increased to \$56.2 million in 2009, as compared to \$43.7 million in 2008. The \$12.5 million increase experienced from the prior year comparative period was largely the result of the following:

- a \$16.5 million increase in the Company's stock-based compensation expense (including \$15.4 million for variable share-based awards) primarily due to an increase in the Company's stock price during the period (an increase from \$4.46 to \$13.31 per share in 2009 as compared to a decrease from \$6.82 per share to \$4.46 per share in the prior year) and its impact on variable awards such as stock appreciation rights. The Company has no present intention to issue such variable awards in the future; and
- a \$2.1 million increase in legal and professional fees, including professional fees of approximately \$1.0 million in connection with the termination of a service arrangement.

These increases were partially offset by:

- a \$1.4 million decrease in staff-related costs and compensation costs, which was the result of a decrease in salaries and benefits primarily due to a lower average Canadian dollar denominated salary expense (including a \$0.9 million benefit from hedged forward contracts) and a \$0.6 million decrease in travel and entertainment costs;
- a \$3.6 million decrease due to a gain from unhedged forward contracts and foreign exchange translation adjustments. In 2009, the Company recorded a foreign exchange gain of \$2.9 million due to an increase in the exchange rates of foreign currency denominated receivables, other working capital balances and foreign currency unhedged forward contracts, as compared to a loss of \$0.7 million recorded in 2008. See note 16(b) of the audited consolidated financial statements in Item 8 of the Company's 2009 Form 10-K for more information; and
- a \$1.1 million decrease in other general corporate expenditures.

### ***Research and Development***

Research and development expenses decreased to \$3.8 million in 2009 compared to \$7.5 million in 2008. The expenses incurred in 2008 principally reflect a high level of research and development activities pertaining to development of the Company's proprietary digitally-based theater projector, which was launched in July 2008. Through research and development, the Company continues to design and develop digital technologies, cinema-based equipment, software and other technologies to enhance its product offerings. The Company believes that the motion picture industry has been and will continue to be affected by the development of digital technologies, particularly in the areas of content creation (image capture), post-production (editing and special effects), distribution and display. Consequently, the Company has made significant investments in digital technologies, including the development of proprietary, patent-pending technology related to a digital projector, as well as technologies to digitally enhance image resolution and quality of motion picture films, and convert monoscopic (2D) to stereoscopic (3D) images. The Company also holds a number of patents, patents pending and intellectual property rights in these areas. In addition, the Company holds numerous digital patents and long-term relationships with key manufacturers and suppliers in digital technology. However, there can be no assurance that the Company will be awarded patents covering its technology or that competitors will not develop similar technologies, or that the validity of the Company's existing patents will not be subjected to challenge.

In recent years, a number of companies have introduced digital 3D projection technology and a number of Hollywood features have been exhibited in 3D using these technologies. According to the National Association of Theater Owners, there are approximately 3,500 conventional-sized screens in U.S. multiplexes equipped with such digital 3D systems. The Company believes that its many competitive strengths, including the IMAX brand name, its patented theater geometry, the quality and immersiveness of *The IMAX Experience*, its IMAX DMR technology significantly differentiate the Company's 3D presentations from any other 3D presentations. Consistent with this view, for the films released to both IMAX 3D theaters and conventional 3D theaters, the IMAX theaters have significantly outperformed the conventional theaters on a per-screen revenue basis.

The Company expects to explore new areas of brand extension including: 3D in-home entertainment technology, the digital re-mastering and 2D-to-3D conversion of movie and television content; increased post-production opportunities; alternative theater content partnerships with technology, studio, programming, content and consumer electronics companies. Accordingly, the Company anticipates increased research and development costs for 2010 compared with 2009.

### ***Receivable Provisions, Net of Recoveries***

Receivable provisions, net of recoveries for accounts receivable and financing receivables, amounted to a net provision of \$1.1 million in 2009, as compared to \$2.0 million in 2008.

The Company's accounts receivables and financing receivables are subject to credit risk. The Company's accounts receivable and financing receivables are concentrated with the theater exhibition industry and film entertainment industry. To minimize the Company's credit risk, the Company retains title to underlying theater systems leased, performs initial and ongoing credit evaluations of its customers and makes ongoing provisions for its estimate of potentially uncollectible amounts. Accordingly, the Company believes it has adequately protected itself against exposures relating to receivables and contractual commitments. The Company's policy is to not use any financial instruments for trading or other speculative purposes.

### ***Asset Impairments and Other Significant Charges (Recoveries)***

The Company recorded an asset impairment charge of \$0.2 million against fixed assets after the Company assessed the carrying value of certain assets in light of their future expected cash flows. The Company recognized that the carrying values for the assets exceeded the expected undiscounted future cash flows. During 2008, the Company recorded total asset impairment charges of \$nil million.

The Company recorded a net provision of \$0.1 million in 2009 (2008 — \$0.4 million) in accounts receivable.

In 2009, the Company also recorded a net provision of \$1.4 million in financing receivables (2008 — \$1.6 million) as the collectibility associated with certain leases was uncertain.

In 2009, the Company recorded a charge of \$0.9 million (2008 — \$2.5 million) in costs and expenses applicable to revenues, primarily for its film-based projector inventories due to a reduction in the net realizable value resulting from the Company's development of a proprietary digital projection system in July 2008.

### ***Interest Income and Expense***

Interest income decreased to less than \$0.1 million in 2009, as compared to \$0.4 million in 2008.

Interest expense decreased to \$13.8 million in 2009 as compared to \$17.7 million in 2008. During the year, the Company repurchased all \$160.0 million aggregate principal amount of the its outstanding 9.625% Senior Notes which resulted in a decrease in the Company's interest expense for the year ended December 31, 2009. Included in interest expense is the amortization of deferred finance costs in the amount of \$1.0 million and \$1.3 million in 2009 and 2008, respectively, relating to the Company's Senior Notes. The Company's policy is to defer and amortize, over the life of the debt instrument, all the costs relating to a debt financing which are paid directly to the debt provider. The Company expects to experience a further decrease in interest expense in 2010 and beyond as a result of the settlement of the Senior Notes and the negotiation of the amended Credit Facility. A full year's cash-interest expense on the Senior Notes was \$15.4 million, while interest expense attributable to the maximum borrowing possible under the Credit Facility (\$75.0 million) using December 31, 2009 rates would be approximately \$2.6 million.

### ***Income Taxes***

The Company's effective tax rate differs from the statutory tax rate and varies from year to year primarily as a result of numerous permanent differences, investment and other tax credits, the provision for income taxes at different rates in foreign and other provincial jurisdictions, enacted statutory tax rate increases or reductions in the year, changes due to foreign exchange, changes in the Company's valuation allowance based on the Company's recoverability assessments of deferred tax assets, and favourable or unfavourable resolution of various tax examinations. There was no change in the Company's estimates of the recoverability of its deferred tax assets based on an analysis of both positive and negative evidence including projected future earnings.

On March 12, 2009, the Government of Canada enacted Bill C-10, which included legislation allowing corporations to elect to file their Canadian corporate tax returns in the corporation's functional currency. The Company has submitted an election to file the 2008 and subsequent Canadian corporate tax returns in U.S. dollars. As a result of the election and its impact on the Company's opening 2008 tax return balances in Canada, the Company has recorded an increase in the gross deferred tax asset of \$14.1 million, which has been fully offset by a corresponding valuation allowance. Other significant changes in the effective rate include the effects of legislative changes regarding enacted rate reductions and extensions of carryforward periods relating to investment tax credits in Canada. In addition, the Company redeemed its Senior Notes in the year resulting in foreign exchange gains and other capital gains, against which the Company has applied its available capital and net operating losses.

As of December 31, 2009, the Company had net deferred income tax assets after valuation allowance of \$nil (December 31, 2008 — \$nil). As of December 31, 2009, the Company had a net deferred income tax asset before valuation allowance of \$71.6 million, against which the Company is carrying a \$71.6 million valuation allowance. Based on current trends, the Company believes it is reasonably possible that some or all of the valuation allowance will be released in 2010. The determination of whether a valuation allowance is required will be based on the weight of available evidence, both positive and negative, available to the Company.

In connection with the Company's adoption of the Income Taxes Topic of the FASB ASC (previously FIN 48), as of January 1, 2007, the Company recorded a net increase to its deficit of \$2.1 million (including approximately \$0.9 million related to accrued interest and penalties) related to the measurement of potential international withholding tax requirements and a decrease in reserves for income taxes. As of December 31, 2009 and 2008, the Company had total unrecognized tax benefits (including interest and penalties) of \$4.4 million and \$4.4 million, respectively, for international withholding taxes. All of the unrecognized tax benefits could impact the Company's effective tax rate if recognized. While the Company believes it has adequately provided for all tax positions, amounts asserted by taxing authorities could differ from the Company's accrued position. Accordingly, additional provisions on federal, provincial, state and foreign tax-related matters could be recorded in the future as revised estimates are made or the underlying matters are settled or otherwise resolved.

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A reconciliation of the beginning and ending amount of unrecognized tax benefits (excluding interest and penalties) is as follows:

<i>(In thousands of U.S. Dollars)</i>	2009	2008
Balance at January 1,	\$ 3,244	\$ 2,991
Additions based on tax positions related to the current year	318	456
Additions for tax positions of prior years	55	47
Reductions for tax positions of prior years	—	—
Settlements	—	—
Reductions resulting from lapse of applicable statute of limitations	(380)	(250)
Balance at December 31,	<u>\$ 3,237</u>	<u>\$ 3,244</u>

Consistent with its historical financial reporting, the Company has classified interest and penalties related to income tax liabilities, when applicable, as part of interest expense in its consolidated statements of operations rather than income tax expense. The Company recognized approximately \$0.1 million and \$0.2 million in potential interest and penalties associated with unrecognized tax benefits for the years ended December 31, 2009 and 2008, respectively.

The number of years with open tax audits varies depending on the tax jurisdiction. The Company's major taxing jurisdictions include Canada, the province of Ontario and the United States (including multiple states).

The Company's 2003 through 2009 tax years remain subject to examination by the IRS for U.S. federal tax purposes, and the 2005 through 2009 tax years remain subject to examination by the appropriate governmental agencies for Canadian federal tax purposes. There are other on-going audits in various other jurisdictions that are not material to our financial statements.

### **Discontinued Operations**

On December 11, 2009, the Company closed its owned and operated Tempe IMAX theater. The Company recognized lease termination and guarantee obligations of \$0.5 million to the landlord, which were offset by derecognition of other liabilities of \$0.9 million, for a net gain of \$0.4 million. In a related transaction, the Company leased the projection system and inventory of the Tempe IMAX theater to a third party theater exhibitor. Revenue from this operating lease transaction will be recognized on a straight-line basis over the term of the lease. For the year ended December 31, 2009, revenues for the Tempe IMAX theater were \$0.8 million (2008 – \$1.5 million) and the Company recognized a loss of \$0.5 million in 2009 (2008 — loss of \$0.3 million) from the operation of the theater. The above transactions are reflected as discontinued operations as there are no significant continuing cash flows from either a migration or a continuation of activities. The remaining assets and liabilities of the owned and operated Tempe IMAX theater are included in the Company's consolidated balance sheet as of December 31, 2009 and are disclosed in note 23(e) to the audited consolidated financial statements in Item 8 of the Company's 2009 Form 10-K.

On September 30, 2009, the Company closed its owned and operated Vancouver IMAX theater. The amount of loss to the Company pertaining to lease and guarantee obligations owing to the landlord was estimated at \$0.3 million which the Company recognized at December 31, 2009. For the year ended December 31, 2009, revenues for the Vancouver IMAX theater were \$1.1 million (2008 – \$2.0 million) and the Company recognized a loss of \$0.1 million in 2009 (2008 – income of \$0.2 million) from the operation of the theater. The above transactions are reflected as discontinued operations as there are no continuing cash flows from either a migration or a continuation of activities. The remaining assets and liabilities of the Vancouver owned and operated theater are included in the Company's consolidated balance sheet as of December 31, 2009 and are disclosed in note 23(e) to the audited consolidated financial statements in Item 8 of the Company's 2009 Form 10-K.

### **Pension Plan**

The Company has an unfunded defined benefit pension plan, the Supplemental Executive Retirement Plan (the "SERP"), covering Messrs. Gelfond and Wechsler. As of December 31, 2009, the Company had an unfunded and accrued projected benefit obligation of approximately \$29.9 million (December 31, 2008 — \$26.4 million) in respect of the SERP. At the time the Company established the SERP, it also took out life insurance policies on Messrs. Gelfond and Wechsler with coverage amounts of \$21.5 million in aggregate. The Company may use the proceeds of life insurance policies taken on Messrs. Gelfond and Wechsler to be applied towards the benefits due and payable under the SERP, although there can be no assurance that the Company will ultimately do so. As of December 31, 2009, the cash surrender value of the insurance policies is \$7.3 million (December 31, 2008 — \$6.2 million).



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The net periodic benefit cost was \$1.5 million and \$1.8 million in 2009 and 2008, respectively. The components of net periodic benefit cost were as follows:

	Years ended December 31	
	2009	2008
Service cost	\$ 643	\$ 793
Interest cost	1,341	1,251
Amortization of prior service credit	145	(248)
Amortization of actuarial gain	(681)	—
Pension expense	<u>\$ 1,448</u>	<u>\$ 1,796</u>

The plan experienced an actuarial loss of \$2.4 million during 2009, resulting in an increase in the pension obligation from \$26.4 million at December 31, 2008, to \$29.9 million at December 31, 2009. The primary factor contributing to this loss is a decrease in the Pension Benefit Guaranty Corporation (“PBGC”) published annuity interest rates used to determine the lump sum payment under the plan, as well as a decrease in the Citigroup Pension Discount Curve discount rate from 5.11% in the prior year to 1.50%.

As at December 31, 2009, Mr. Wechsler’s benefits were 100% vested while the benefits of Mr. Gelfond were approximately 95.9% vested. The vesting percentage of a member whose employment terminates other than by voluntary retirement or upon a change in control is 100%. Upon a termination for cause, prior to a change of control, the executive will forfeit any and all benefits to which such executive may have been entitled, whether or not vested.

On October 1, 2009, the Company paid benefits of \$0.9 million to Mr. Wechsler in accordance with the terms of the SERP. Mr. Wechsler is further entitled to receive monthly annuity payments until the earlier of a change of control or August 1, 2010, at which time he is entitled to receive remaining benefits in the form of a lump sum payment.

### **Stock-Based Compensation**

The Company utilizes the Binomial Model to determine the fair value of stock-based payment awards. The fair value determined by the Binomial Model is affected by the Company’s stock price as well as assumptions regarding a number of highly complex and subjective variables. These variables include, but are not limited to, the Company’s expected stock price volatility over the term of the awards, and actual and projected employee stock option exercise behaviors. The Binomial Model also considers the expected exercise multiple which is the multiple of exercise price to grant price at which exercises are expected to occur on average. Option-pricing models were developed for use in estimating the value of traded options that have no vesting or hedging restrictions and are fully transferable. Because the Company’s employee stock options and stock appreciation rights have certain characteristics that are significantly different from traded options, and because changes in the subjective assumptions can materially affect the estimated value, in management’s opinion, the Binomial Model best provides an accurate measure of the fair value of the Company’s employee stock options and stock appreciation rights. Although the fair value of employee stock options and stock appreciation rights is determined in accordance with the Equity topic of the FASB ASC using an option-pricing model, that value may not be indicative of the fair value observed in a willing buyer/willing seller market transaction.

Stock-based compensation expense recognized under the Compensation – Stock Compensation Topic of the FASB ASC for 2009, 2008 and 2007 was \$17.7 million, \$1.5 million and \$3.4 million, respectively.

### **Years Ended December 31, 2008 versus Years Ended December 31, 2007**

The Company reported net loss of \$33.6 million or \$0.79 per share on a basic and diluted basis for the year ended December 31, 2008 as compared to a net loss of \$26.9 million or \$0.67 per share on a basic and diluted basis for the year ended December 31, 2007.

### **Revenues and Gross Margin**

The Company’s revenues in 2008 were \$102.7 million as compared to \$111.7 million in 2007, a decrease of 8.0% due in large part to a decrease in theater systems revenue.

The gross margin across all segments in 2008 was \$37.6 million or 36.6% of total revenue as compared to \$40.8 million, or 36.6% of total revenue in 2007. Excluding the impact of settlement arrangements and asset impairment charges on film-based projector inventories, the gross margin for 2008 was 38.7% as compared to 38.9% in 2007.

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### IMAX Systems

IMAX systems revenue decreased to \$34.8 million in 2008 from \$40.8 million in 2007. Revenue from sales and sales-type leases decreased to \$24.5 million in 2008 from \$31.0 million in 2007, a decrease of 21.0%. The decrease was due to fewer systems that qualified as sales or sales-type leases being recognized in 2008 as compared to 2007 (15 versus 19) and a decrease in settlement revenue from \$2.4 million in 2007 to \$0.9 million in 2008.

The Company recognized revenue on 15 theater systems with a value of \$22.4 million which qualified as either sales or sales-type leases in 2008 as compared to 19 sales or sales-type leases in 2007. The theater systems recognized in 2008 were all new systems. Of the 19 sales or sales-type leases in 2007, 15 were new theater systems with a total value of \$23.1 million and 4 related to the sale of used theater systems with an aggregate value of \$5.0 million. The Company believes that its revenue and system installations were negatively impacted in 2007 and the first half of 2008 by its announced introduction of a digital projection system in mid-2008, as customers either delayed purchasing and/or installation decisions in anticipation of the digital deployment, and in the second half of 2008 as a result of a shortage in supply of certain components of the digital system.

Average revenue per sales and sales-type lease systems in 2008 and 2007 was consistent at \$1.5 million. The breakdown in mix of the sales and sales-type lease, joint revenue sharing arrangements (see discussion below) and operating lease installations by theater system configuration in 2008 and 2007 is outlined in the table below.

	2008	2007
Sales and Sales-type lease systems – installed and recognized		
IMAX 2D GT	—	1
IMAX 2D SR DOME	—	1
IMAX 3D GT	2	5
IMAX 3D SR	1	2
IMAX 3D MPX	7	10
IMAX digital	5 <sup>(1)</sup>	—
	15	19
IMAX 3D MPX – installed and deferred	3	2
	18	21
Operating lease – installed and operating		
IMAX 3D MPX	1	—
Joint revenue sharing arrangements – installed and operating		
IMAX 3D MPX	—	6
IMAX digital	41 <sup>(1)</sup>	—
	60	27

(1) Includes the digital upgrade of two systems (one system sale and one system under a joint revenue sharing arrangement) from film-based to digital.

As noted in the table above, three theater systems under sales arrangements that were installed in the year ended December 31, 2008, are subject to provisions providing the customer with an upgrade to a digital system at a discounted price when available. Had these transactions not contained a digital upgrade clause, the Company would have recognized \$3.8 million in revenue and \$2.0 million in gross margin related to these sales. Two theater systems under sales arrangements subject to such provisions were installed in 2007. Had these transactions not contained a digital upgrade clause, the Company would have recognized \$3.0 million in revenue and \$1.8 million in gross margin related to these sales. One of the two theater systems deferred in 2007 was recognized as a digital system installation in the fourth quarter of 2008, as the Company provided the digital upgrade to the customer. For the remaining deferred systems, the Company expects that once the digital upgrade is provided or the fair value for the upgrade is established the Company will allocate total contract consideration, including any upgrade revenues, between the delivered and undelivered elements on a fair value basis and recognize the revenue allocated to the delivered elements with their associated costs.

Included in settlement revenue are the following types of arrangements: \$nil related to arrangements to convert from one system configuration to a different configuration (2007 — \$nil); \$0.9 million related to consensual buyouts for uninstalled theater systems (2007 — \$2.4 million); \$nil related to termination of agreements after customer default (2007 — \$nil).

IMAX systems margin fluctuates as a result of the mix of theater system configurations recognized in each respective year. IMAX theater systems margin, excluding the impact of settlements and asset impairment charges on film-based projector inventories, was

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59.4% in 2008, an increase from the 55.1% experienced in 2007. Gross margins on the sale of new systems in 2008 were 55.3% of revenues as compared to 54.0% for new systems sold in 2007. Gross margins for the four used systems sold in 2007 were 65.0%. The Company recorded a write-down of its film-based projector inventories of \$2.4 million and \$3.3 million in 2008 and 2007, respectively, primarily due to the introduction of its digital projection system in 2008.

Ongoing rent, fees and finance income in 2008 were 5.3% higher compared to 2007, primarily due to growth of the theater network, the addition of one new operating lease in 2008 and the renewal of end-of-term sales-type lease contracts for an additional term not included in the original lease term, which results in the Company treating the renewal as a new lease arrangement classified as an operating lease. Contingent fees included in this caption amounted to \$3.7 million in 2008 as compared to \$3.8 million in 2007.

In 2008, the Company installed and recognized revenue for one new theater system that qualified as an operating lease as compared to none in 2007. The Company recognizes revenue on operating leases over the term of the leases.

### **Theater System Maintenance**

Theater system maintenance revenue in 2008 increased by 2.1% to \$16.3 million from \$16.0 million in 2007 primarily due to an increase in the size of the theater network. Theater system maintenance gross margin, excluding the impact of asset impairment charges on film-based service inventories, was 44.2% and 47.1% of maintenance revenue in 2008 and 2007, respectively. The Company recorded a write-down of its film-based service inventories of \$0.1 million and \$0.6 million in 2008 and 2007, respectively, primarily due to the introduction of its digital projection system in 2008. Maintenance revenues continue to grow as the number of theaters in the IMAX theater network grows.

### **Joint Revenue Sharing Arrangements**

Revenue from joint revenue sharing arrangements increased to \$3.4 million in 2008 from \$2.3 million in 2007. This increase was largely due to the rollout of 40 new theater systems under joint revenue sharing arrangements in 2008, many of which became operational in the fourth quarter. At December 31, 2008, there were a total of 52 theaters systems in operation under joint revenue sharing arrangements as compared to 11 at the end of 2007.

The gross margin from joint revenue sharing arrangements in 2008 decreased from \$1.4 million in 2007 to a loss of \$1.9 million in 2008. Impacting the gross margin for 2008 were certain advertising, marketing and selling expenses of \$1.8 million associated with the initial launch of the new theaters and accelerated depreciation on existing film-based systems of \$1.5 million. The accelerated depreciation charges were specifically related to the earlier than anticipated digital upgrade of such theaters, which will enable these theaters to exhibit more DMR films (including those with a short release window) than had they remained film-based. Excluding these launch expenses and accelerated depreciation charges, the gross margin would have been \$1.4 million in 2008, consistent with the gross margin of \$1.4 million experienced in 2007.

The Company expects to see an increase in revenue in 2009 as compared to 2008 from joint revenue sharing arrangements as the Company's theater network continues to grow, more digital theaters are installed and more digital content is played in the network.

### **Film**

Film revenues decreased to \$34.4 million in 2008 from \$36.6 million in 2007, primarily due to lower revenue from traditional programming and IMAX DMR films. The Company believes that the change in release date from November 2008 to July 2009 of *Harry Potter and the Half-Blood Prince: An IMAX 3D Experience* had a negative effect on its IMAX DMR revenues for 2008, as the *Harry Potter* film franchise has performed well historically in IMAX theaters. Film production and IMAX DMR revenues decreased to \$17.9 million in 2008 from \$19.9 million in 2007 due primarily to the weaker box-office performance of the IMAX DMR films exhibited in 2008 as compared to the films exhibited in the prior year. The 2008 film slate consisted of *The Spiderwick Chronicles: The IMAX Experience*, *Shine A Light: The IMAX Experience*, *Speed Racer: The IMAX Experience*, *Kung Fu Panda: The IMAX Experience*, *The Dark Knight: The IMAX Experience*, *Eagle Eye: The IMAX Experience*, *Madagascar: Escape 2 Africa: The IMAX Experience* and *The Day the Earth Stood Still: The IMAX Experience*. In 2007, the films primarily contributing to the higher IMAX DMR revenue included the successful releases of *Harry Potter and the Order of the Phoenix: An IMAX 3D Experience*, *Spider-Man 3: The IMAX Experience*, *300: The IMAX Experience*, *Night at the Museum: The IMAX Experience*, *Beowulf: An IMAX 3D Experience* and *I am Legend: The IMAX Experience*.

Film post-production revenues increased to \$6.9 million in 2008 from \$5.7 million in 2007, mainly due to an increase in third party business at the Company's post-production unit.

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Film distribution revenues decreased to \$9.6 million in 2008 from \$11.0 million in 2007, a decrease of 13.2%, primarily due to lower revenues from *Deep Sea 3D*, released in March 2006. The Company did not distribute any new original production titles in 2008 and 2007. *Under the Sea 3D*, the sequel to *Deep Sea 3D*, was released on February 13, 2009.

The Company's gross margin from its total film segment was \$13.6 million in 2008 or 39.4% of total film revenue as compared to \$11.0 million, or 29.9% of total film revenue in 2007. The gross margin from film production and IMAX DMR increased to \$7.0 million in 2008 from \$4.9 million in 2007, primarily due to a lower average cost per IMAX DMR film in 2008 in comparison to 2007. The film distribution margin decreased to \$3.1 million in 2008 from \$3.5 million in 2007, primarily due to a decrease in revenues. The gross margin from post-production was \$3.5 million in 2008 as compared to \$2.6 million in 2007, driven largely by an increase in revenues relating to third party business.

### **Theater Operations**

In 2008, theater operations revenue decreased to \$10.5 million in 2008 from \$12.4 million in 2007. This decrease was attributable to a 12.5% decrease in attendance, offset slightly by an increase in average ticket prices.

The Company's owned and operated theater gross margin decreased from \$0.8 million in 2007 to a loss of less than \$0.1 million in 2008 primarily due to the decrease in revenues and higher film rental fees to studios, associated with IMAX DMR films.

### **Other**

Other revenue was \$3.2 million in 2008 as compared to \$3.6 million in 2007. The gross margin on other revenue was \$0.4 million in 2008 as compared to \$0.5 million in 2007.

### **Selling, General and Administrative Expenses**

Selling, general and administrative expenses were \$43.7 million in 2008 versus \$44.7 million in 2007. The decrease experienced in 2008 was largely the result of the following:

- a \$4.5 million decrease in legal and professional fees, including costs incurred in connection with certain regulatory matters and the restatement of the Company's financial results in 2007;
- a \$2.0 million decrease in the Company's stock-based compensation expense, including a recovery on variable awards, based on the decline in the Company's stock price during the period;

These decreases were offset by:

- a \$1.6 million increase in staff-related costs and compensation costs, which was the result of an increase in salaries and benefits of \$0.4 million primarily due to merit increases and a higher average Canadian dollar denominated salary expense; an increase in severance expense of \$0.8 million; and a \$0.4 million increase in travel and entertainment costs, reflecting increased business activities;
- a \$1.5 million increase in capital tax expense, primarily due to a \$1.1 million net recovery recorded in 2007; and
- a \$2.4 million increase in foreign exchange translation adjustments. During 2008, the Company recorded a foreign exchange loss of \$0.7 million largely due to a decline in the exchange rates of foreign currency denominated receivables and other working capital balances, as compared to a gain of \$1.7 million recorded in 2007.

### **Receivable Provisions, Net of Recoveries**

For the two years ended December 31, 2008 and 2007 receivable provisions, net of recoveries, for accounts receivable and financing receivables amounted to a net provision of \$2.0 million and \$1.8 million, respectively. The Company recorded a net provision of \$0.4 million (2007 — \$0.2 million net recovery) in accounts receivable. The Company recorded a net provision of \$1.6 million (2007 — \$2.0 million net provision) in financing receivables as the collectibility associated with certain leases was uncertain. Included in the 2007 provisions are accounts receivable and financing receivable recoveries of \$0.6 million and \$0.5 million, respectively, relating to the collection of previously recorded receivables for one customer which was fully provided for in prior periods.

### **Asset Impairments and Other Significant Charges**

For the two years ended December 31, 2008 and 2007 the Company recorded asset impairment charges of \$nil and \$0.6 million, respectively, related to the impairment of assets of certain property, plant and equipment and a revision in the estimates related to the

residual values of certain leased assets. The Company recognized that the carrying values for the assets exceeded the expected undiscounted future cash flows.

In 2008, the Company recorded a charge of \$2.5 million (2007 — \$4.0 million) in costs and expenses applicable to revenues, primarily for its film-based projector inventories due to a reduction in the net realizable value resulting from the Company's development of a proprietary digital projection system. Specifically, IMAX systems includes inventory write-downs of \$2.4 million in 2008 (2007 — \$3.3 million). Theater system maintenance includes inventory write-downs of \$0.1 million in 2008 (2007 — \$0.6 million.) Furthermore, the 2007 charge includes \$0.1 million recorded in the Company's post-production unit.

#### ***Interest Income and Expenses***

For the years ended December 31, 2008, and 2007, interest income was \$0.4 million and \$0.9 million, respectively.

For the years ended December 31, 2008, and 2007, interest expense was \$17.7 million and \$17.1 million, respectively. Included in interest expense is the amortization of deferred finance costs in the amount of \$1.4 million in 2008 (2007 — \$1.3 million). The Company's policy is to defer and amortize all the costs relating to a debt financing, paid directly to the debt provider, over the life of the debt instrument.

#### ***Income Taxes***

The Company's effective tax rate differs from the statutory tax rate and will vary from year to year primarily as a result of numerous permanent differences, investment and other tax credits, the provision for income taxes at different rates in foreign and other provincial jurisdictions, enacted statutory tax rate increases or reductions in the year, changes due to foreign exchange, changes in the Company's valuation allowance based on the Company's recoverability assessments of deferred tax assets, and favourable or unfavourable resolution of various tax examinations. There was no change in the Company's estimates of the recoverability of its deferred tax assets based on an analysis of both positive and negative evidence including projected future earnings.

As at December 31, 2008, the Company had net deferred income tax assets after valuation allowance of \$nil (December 31, 2007 — \$nil). As at December 31, 2008, the Company had a net deferred income tax asset before valuation allowance of \$62.4 million, against which the Company is carrying a \$62.4 million valuation allowance.

#### ***Research and Development***

For the years ended December 31, 2008 and 2007 research and development expenses amounted to \$7.5 million and \$5.8 million, respectively. The expenses primarily reflect significant research and development activities pertaining to the development of the Company's new proprietary digitally-based theater projector which the Company introduced in July of 2008. As at December 31, 2008, the Company had installed 46 IMAX digital theater projection systems and had signed contracts to install an additional 167 digital systems.

#### ***Discontinued Operations***

There were no discontinued operations in 2008.

On December 31, 2007, the Company entered into a lease termination agreement, which extinguished all of its obligations to its landlord with respect to the Company's owned and operated Providence IMAX theater. As a result of the lease termination, the Company recorded a non-cash gain of \$1.5 million associated with the reversal of deferred lease credits recorded in prior periods. In a related transaction, the Company sold the theater projection system and inventory for the Providence IMAX theater to a third party theater exhibitor for \$1.0 million (consisting of \$0.6 million cash and \$0.4 million of discounted future minimum payments) which was recorded as a gain from discontinued operations. Furthermore, during 2007, the Company had recognized an operating loss of \$0.5 million from the operation of the theater. The above transactions are reflected as discontinued operations as there are no significant continuing cash flows generated from either a migration or a continuation of activities.

## Outlook

Based on the Company's expectation of 2010 theater system installations, particularly those under joint revenue sharing arrangements, and its estimate of the number and quality of the films to be released in 2010, the Company anticipates higher revenues in 2010 as compared to 2009.

In 2009, 93 IMAX theater systems were installed, not including digital upgrades. In 2009, the Company experienced an increase of 22.5% for the overall IMAX theater network and 33.8% for the IMAX commercial theater network over the prior year. In addition, the Company currently estimates that approximately 53 of the 136 theater systems arrangements in its backlog as of December 31, 2009 will be installed and accepted in 2010. By the end of 2010, the Company's total theater network is expected to have increased by approximately 15% over the prior year and its commercial theater network by approximately 20% over the prior year as the majority of the new 2010 systems are to be installed in commercial settings. However, the Company cautions that theater system installations slip from period to period in the course of the Company's business and such slippages remain a recurring and unpredictable part of its business. These slippages and delays could impact the timing of revenue recognition. In addition, each year the Company installs a number of systems that are signed in that same calendar year.

The recent growth of the IMAX theater network is largely attributable to the introduction of the Company's digital projector in 2008, which the Company believes provides a differentiated experience to moviegoers that is consistent with what they have come to expect from the IMAX brand, and is a compelling proposition for a large portion of its customer base for a number of reasons. The savings to the studios as a result of eliminating film prints are considerable, as the typical cost of an IMAX film print ranges from \$20 thousand per 2D print to \$45 thousand per 3D print. Removing those costs significantly increases the profit of an IMAX release for a studio which, the Company believes, provides more incentive for studios to release their films to IMAX theaters. The Company similarly believes that the digital systems changes the economics favorably for its exhibition clients, since lower print costs (which total approximately \$200 per movie per system), and the increased programming flexibility that digital delivery provides allows theaters to program at least 12-14 IMAX DMR films per year, thereby increasing both customer choice and total box-office revenue. Finally, the Company believes that digital transmission will allow attractive alternate programming, such as live sporting events and concerts, to be shown in the immersive environment of an IMAX theater. To date, the Company has signed agreements with exhibitors for 293 digital projection systems, including digital upgrades and agreements signed in 2010 for 27 digital systems, of which 151 theaters were open to the public as of December 31, 2009. In addition, the Company intends to continue to provide digital upgrades to its customers at lower margins for strategic reasons.

The Company's improved financial performance in 2009 is attributable not only to the growth of the IMAX theater network, but also to the strength of the 2009 film slate and the increased number of films that were released to the IMAX theater network in 2009. The Company expects further improved financial performance in 2010 as a result of growth in the IMAX theater network, including an increase in the number of theaters under joint revenue sharing arrangements, and the strength of the 2010 film slate.

To date, the Company has announced the release of 10 DMR films to its theater network in 2010:

- *Alice In Wonderland: An IMAX 3D Experience* (Walt Disney Studios, March 2010);
- *How To Train Your Dragon: An IMAX 3D Experience* (Paramount Pictures, March 2010);
- *Iron Man 2: The IMAX Experience* (Marvel Entertainment and Paramount Pictures, May 2010);
- *Shrek Forever After: An IMAX 3D Experience* (Dreamworks Animation, May 2010);
- *Prince of Persia: The Sands of Time: The IMAX Experience* (Walt Disney Pictures, May 2010);
- *Toy Story 3: An IMAX 3D Experience* (Walt Disney Pictures Studios Motion Pictures, June 2010);
- *The Twilight Saga: Eclipse: The IMAX Experience* (Summit Entertainment, June 2010);
- *Inception: The IMAX Experience* (WB, July 2010);
- *Aftershock: The IMAX Experience* (Huayi Brothers Group, July 2010, primarily to be distributed in China and Asia); and
- *Tron Legacy: An IMAX 3D Experience* (Walt Disney Pictures, December 2010).

The Company also remains in active negotiations with virtually all of Hollywood's studios for additional films to fill out its short and long-term film slate. The Company anticipates the release of additional DMR films to IMAX theaters in 2010.

In addition, the Company, in conjunction with WB and the National Aeronautics and Space Administration (NASA), will release *Hubble 3D: The IMAX Experience* to its network in March 2010. *Hubble 3D: The IMAX Experience*, narrated by three-time Academy-Award® nominee Leonardo DiCaprio, chronicles a team of astronauts' journey to the Hubble Space Telescope.

The increased number of IMAX DMR films released to the IMAX theater network can minimize the impact of an individual film's weak performance. In addition, the increased number of titles, more closely spaced, can mean a greater opportunity to capitalize on the

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early weeks of a movie's release, when over half of a given title's gross box office is typically generated. However, the Company cautions that films can be subject to delays in production or changes in release schedule, which can negatively impact the number, timing and type of IMAX DMR and IMAX original films released to the IMAX theater network.

In June 2009, the Company and Huayi Bros. Media Corporation Ltd., China's largest privately owned media group, announced an agreement to release up to 3 mainstream, commercial Chinese pictures to IMAX theaters in China, other parts of Asia and key North American markets beginning in July 2010 with the film *Aftershock*. The Company continues to evaluate DMR opportunities in other international markets as it believes that making local content available in IMAX theaters abroad will support the Company's growth in international markets. The Company's recent announcement of its international only release of *Prince of Persia: Sands of Time: The IMAX Experience* marks the Company's effort to enhance its international film slate. The Company anticipates additional international only releases in the future, which is a key component of the Company's future growth.

As previously noted, the Company anticipates continued improved financial performance for 2010. The global financial environment, however, remains volatile and the U.S. and global economies could remain significantly challenged for an indeterminate period of time. While historically the movie industry has been somewhat resistant to economic downturns and 2009 was a strong year for box office returns, and while the Company has taken steps to mitigate the effect of the economic downturn on its operations, present economic conditions, which are beyond the Company's control, could lead to a decrease in discretionary consumer spending. It is difficult to predict the severity and duration of any decrease in consumer spending resulting from the economic downturn and what affect it may have on the movie industry in general and IMAX DMR box-office results in particular. According to various industry reports and trade publications, 2009 domestic gross box office totalled approximately \$10.4 billion, a 9.5% increase over 2008 and IMAX DMR films continued to significantly outperform other lower-cost formats on a per screen basis.

To date, the Company has signed joint revenue sharing arrangements for 169 theater systems, 117 of which have been installed as of December 31, 2009. As the Company adds joint revenue sharing systems to its theater base, the Company's revenues are increasingly dependent on the performance of the films released in IMAX DMR, which directly impact box-office and concessions revenues. Accordingly, the Company's revenues are increasingly exposed to any decline in attendance at commercial IMAX theaters. If the industry were to face declining admissions, commercial exhibitors could become less willing or, as a result of disruptions in the capital and credit markets that may limit exhibitors' access to capital, less able to invest capital in new IMAX theaters or to fulfil their existing obligations to the Company. As a result, the Company's revenues could be lower than expected.

Additionally, the Company expects to explore new areas of brand extension including: 3D in-home entertainment technology; digital re-mastering and 2D-to-3D conversion of movie and television content; increased post-production opportunities; alternative theater content and partnering with technology, studio, programming, content and consumer electronics companies.

## **LIQUIDITY AND CAPITAL RESOURCES**

### **Credit Facility**

On November 16, 2009, the Company amended and restated the terms of its senior secured credit facility, which had been scheduled to mature on October 31, 2010. The amended and restated facility (the "Credit Facility") with a scheduled maturity of October 31, 2013, has a maximum borrowing capacity of \$75.0 million, consisting of revolving loans of up to \$40.0 million, subject to a borrowing base calculation (as described below) and including a sublimit of \$20.0 million for letters of credit, and a term loan of \$35.0 million. Certain of the Company's subsidiaries will serve as guarantors (the "Guarantors") of the Company's obligations under the Credit Facility. The Credit Facility is collateralized by a first priority security interest in all of the present and future assets of the Company and the Guarantors.

The terms of the Credit Facility are set forth in the Amended and Restated Credit Agreement (the "Credit Agreement"), dated November 16, 2009, among the Company, Wachovia Capital Finance Corporation (Canada), as agent, lender, sole lead arranger and sole bookrunner, ("Wachovia") and Export Development Canada, as lender ("EDC"), together with Wachovia, (the "Lenders") and in various collateral and security documents entered into by the Company and the Guarantors. Each of the Guarantors has also entered into a guarantee in respect of the Company's obligations under the Credit Facility.

The revolving portion of the Credit Facility permits maximum aggregate borrowings equal to the lesser of:

(i) \$40.0 million, and

(ii) a collateral calculation based on the percentages of the book values of the Company's net investment in sales-type leases, financing receivables, certain trade accounts receivable, finished goods inventory allocated to backlog contracts and the appraised



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values of the expected future cash flows related to operating leases and the Company's owned real property, reduced by certain accruals and accounts payable and subject to other conditions, limitations and reserve right requirements.

On November 17, 2009, the Company repaid \$20.0 million in outstanding indebtedness under the revolving portion of the Credit Facility which had been carried over from the prior credit facility and the Company borrowed \$35.0 million from the term loan portion of the Credit Facility. Furthermore, on December 17, 2009, the Company borrowed \$20.0 million under the revolving portion of the Credit Facility and subsequently repaid \$5.0 million before the end of the year. Total amounts drawn and available under the Credit Facility at December 31, 2009, were \$50.0 million and \$24.8 million, respectively.

The revolving portion of the Credit Facility bears interest, at the Company's option, at either (i) LIBOR plus a margin of 2.75% per annum, or (ii) Wachovia's prime rate plus a margin of 1.25% per annum. The term loan portion of the Credit Facility bears interest at the Company's option, at either (i) LIBOR plus a margin of 3.75% per annum, or (ii) Wachovia's prime rate plus a margin of 2.25% per annum. Under the Credit Facility, the effective interest rate for the year ended December 31, 2009, for the term loan portion was 4.09% (2008 – n/a) and 2.29% for the revolving portion (2008 — 4.43%).

The Credit Facility provides that so long as the term loan remains outstanding, the Company will be required to maintain: (i) a ratio of funded debt (as defined in the Credit Agreement) to EBITDA (as defined in the Credit Agreement) of not more than 2:1 through December 31, 2010, and (ii) a ratio of funded debt to EBITDA of not more than 1.75:1 thereafter. If the Company repays the term loan in full, it will remain subject to such ratio requirements only if Excess Availability (as defined in the Credit Agreement) is less than \$10.0 million or Cash and Excess Availability (as defined in the Credit Agreement) is less than \$15.0 million. The ratio of funded debt to EBITDA was 0.85:1 at December 31, 2009, where Funded Debt (as defined in the Credit Agreement) is the sum of all obligations evidenced by notes, bonds, debentures or similar instruments and was \$50.0 million. EBITDA is calculated as follows:

### EBITDA per Credit Facility:

*(In thousands of U.S. Dollars)*

Net earnings	\$ 5,021
Add (subtract):	
Provision for income taxes	274
Interest expense net of interest income	13,747
Depreciation and amortization including film asset amortization <sup>(1)</sup>	17,919
Write-downs net of recoveries including asset impairments and receivable provisions <sup>(1)</sup>	2,581
Stock and other non-cash compensation	19,183
Other, net	(229)
	<u>\$ 58,496</u>

(1) See note 19 to the accompanying audited consolidated financial statements in Item 8.

The Company will also be required to maintain a Fixed Charge Coverage Ratio (as defined in the Credit Agreement) of not less than 1.1:1.0; provided, however, that if the Company will have repaid the term loan in full, it will remain subject to such ratio requirement only if Excess Availability is less than \$10.0 million or Cash and Excess Availability is less than \$15.0 million. The Company's fixed charge ratio at December 31, 2009 was 41.6:1.0. At all times, under the terms of the Credit Facility, the Company is required to maintain minimum Excess Availability of not less than \$5.0 million and minimum Cash and Excess Availability of not less than \$15.0 million. These amounts were \$29.8 million and \$49.8 million, respectively at December 31, 2009.

The Credit Facility contains typical affirmative and negative covenants, including covenants that limit or restrict the ability of the Company and the Guarantors to: incur certain additional indebtedness; make certain loans, investments or guarantees; pay dividends; make certain asset sales; incur certain liens or other encumbrances; conduct certain transactions with affiliates and enter into certain corporate transactions.

The Credit Facility also contains customary events of default, including upon an acquisition or change of control or upon a change in the business and assets of the Company or a Guarantor that in each case is reasonably expected to have a material adverse effect on the Company or Guarantor. If an event of default occurs and is continuing under the Credit Facility, the Lenders may, among other things, terminate their commitments and require immediate repayment of all amounts owed by the Company.

## Letters of Credit and Other Commitments

As of December 31, 2009, the Company has letters of credit and advance payment guarantees of \$0.3 million outstanding (December 31, 2008 — \$1.4 million), of which the entire balance has been secured by the Credit Facility.

The Company also has a \$10.0 million facility for advance payment guarantees and letters of credit through the Bank of Montreal for use solely in conjunction with guarantees fully insured by EDC (the “Bank of Montreal Facility”). The Bank of Montreal Facility is unsecured and includes typical affirmative and negative covenants, including delivery of annual consolidated financial statements within 120 days of the end of the fiscal year. The Bank of Montreal Facility is subject to periodic annual reviews. As of December 31, 2009, the Company had letters of credit outstanding of \$3.6 million compared with \$5.2 million as of December 31, 2008, under the Bank of Montreal Facility.

## Senior Notes due December 2010

In 2009, the Company repurchased all \$160.0 million aggregate principal amount of its outstanding 9.625% Senior Notes due December 1, 2010, which represented the aggregate principal amount outstanding. The Company paid cash of \$159.1 million to reacquire its bonds, thereby releasing the Company from further obligations to various holders under the indenture governing the Senior Notes (the “Indenture”). The Company accounted for the bond repurchase in accordance with the Debt Topic of the FASB ASC whereby the net carrying amount of the debt extinguished was the face value of the bonds adjusted for any unamortized premium, discount and costs of issuance, which resulted in a loss of \$0.6 million in 2009.

As of December 31, 2008, the Company had outstanding \$160.0 million in principal amount of its 9.625% Senior Notes.

## Cash and Cash Equivalents

As of December 31, 2009, the Company’s principal sources of liquidity included cash and cash equivalents of \$20.1 million, the Credit Facility, trade accounts receivable of \$37.7 million and anticipated collection from financing receivables due in the next 12 months of \$12.4 million. As of December 31, 2009, the Company had drawn down \$50.0 million on the Credit Facility, and had letters of credit of \$0.3 million outstanding under the Credit Facility and \$3.6 million under the Bank of Montreal Facility.

During the year ended December 31, 2009, the Company’s operations, including investment in film assets, provided cash of \$13.8 million and the Company used cash of \$26.5 million to fund capital expenditures, principally to build equipment for use in joint revenue sharing arrangements. As a result of the repayment of its outstanding Senior Notes in 2009, the Company expects lower future interest payments (a savings of approximately \$15.0 million in comparison to 2008 interest expense) resulting in higher cash flows from operations. Based on management’s current operating plan for 2010, the Company expects to continue to use cash as it deploys additional theater systems under joint revenue sharing arrangements. Cash flows from joint revenue sharing arrangements are derived from the theater box office and concession revenues and the Company invested directly in the roll out of 65 new theater systems and 9 digital upgrades under joint revenue sharing arrangements in 2009.

The Company believes that cash flow from operations together with existing cash and borrowing available under the Credit Facility will be sufficient to fund the Company’s business operations, including its strategic initiatives relating to existing joint revenue sharing arrangements for the next 12 months.

The Company’s operating cash flow will be adversely affected if management’s projections of future signings for theater systems and film productions, installations and film performance are not realized. The Company forecasts its short-term liquidity requirements on a quarterly and annual basis. Since the Company’s future cash flows are based on estimates and there may be factors that are outside of the Company’s control (see “Risk Factors” in Item 1A in the Company’s 2009 Form 10-K), there is no guarantee that the Company will continue to be able to fund its operations through cash flows from operations. Under the terms of the Company’s typical sale and sales-type lease agreement, the Company receives substantial cash payments before the Company completes the performance of its obligations. Similarly, the Company receives cash payments for some of its film productions in advance of related cash expenditures.

### *Operating Activities*

The Company’s net cash provided by operating activities is affected by a number of factors, including the proceeds associated with new signings of theater system lease and sale agreements in the year, costs associated with contributing systems under joint revenue sharing arrangements, the box-office performance of films distributed by the Company and/or exhibited in the Company’s theaters,

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increases or decreases in the Company's operating expenses, including research and development, and the level of cash collections received from its customers.

Cash provided by operating activities amounted to \$13.8 million in 2009. Changes in other non-cash operating assets as compared to 2008 include: an increase of \$7.2 million in financing receivables; an increase of \$13.4 million in accounts receivable; a decrease of \$10.1 million in inventories; an increase of \$0.7 million in prepaid expenses; and a decrease of \$1.4 million in other assets which includes a \$0.7 million decrease in commissions and other deferred selling expenses and a \$0.7 million decrease in insurance recoveries receivable. Changes in other non-cash operating liabilities as compared to December 31, 2008 include: a decrease in deferred revenue of \$13.5 million related to amounts relieved from deferred revenue related to theater system installations in the current period offset by backlog payments received; an increase in accounts payable of \$1.5 million and a decrease of less than \$0.1 million in accrued liabilities. Included in accrued liabilities at December 31, 2009, was \$29.9 million in respect of accrued pension obligations.

### *Investing Activities*

Net cash used in investing activities amounted to \$27.6 million in 2009 compared to \$22.4 million in 2008, which includes an investment in joint revenue sharing equipment of \$25.1 million, purchases of \$1.4 million in property, plant and equipment, an increase in other assets of \$0.7 million and an increase in other intangible assets of \$0.3 million.

### *Financing Activities*

Net cash provided by financing activities in 2009, amounted to \$7.2 million due to the issuance of common shares in the period, net of common share issuance costs, offset by the use of proceeds to repurchase Senior Note indebtedness.

### *Capital Expenditures*

Capital expenditures, which included the Company's investment in joint revenue sharing equipment, purchase of property, plant and equipment net of sales proceeds and investments in film assets, were \$35.7 million in 2009 as compared to \$31.4 million in 2008. The Company anticipates a consistent level of capital expenditures in 2010 as compared to 2009 related, in part, to the anticipated roll-out of approximately 40 theaters pursuant to joint revenue sharing arrangements in 2010, all of which the Company currently intends to fund through cash on hand, cash from operations and availability under the Credit Facility.

### *Prior Year Cash Flow Activities*

Net cash used by operating activities amounted to \$6.5 million in the year ended December 31, 2008. Changes in other non-cash operating assets and liabilities included a \$0.2 million increase in financing receivables, a decrease of \$1.9 million in accounts receivable, a decrease in inventories of \$0.8 million, a \$0.2 million decrease in prepaid expenses, which mostly relates to prepaid film print costs which will be expensed over the period to be benefited; and a \$0.8 million increase in other assets, which primarily relates to commissions and other deferred selling expenses, an increase in accounts payable of \$0.1 million, an increase in deferred revenue of \$12.4 million, related to 2008 signings and backlog payments thereon, less amounts relieved from deferred revenue related to theater system installations in 2008, and a decrease of \$2.5 million in accrued liabilities. Net cash used in investing activities in the year ended December 31, 2008 amounted to \$22.4 million, which includes an investment in joint revenue sharing equipment of \$18.5 million, purchases of \$2.8 million in property, plant and equipment net of sales proceeds, an increase in other assets of \$0.7 million, an increase in other intangible assets of \$0.4 million. Net cash provided by financing activities in 2008 amounted to \$39.0 million primarily due to an increase of \$20.0 million in bank indebtedness and the issuance of common shares in the year, net of common share issuance costs offset by debt modification fees paid of \$0.2 million.

Capital expenditures including the Company's investment in joint revenue sharing equipment, purchase of property, plant and equipment net of sales proceeds and investments in film assets were \$31.4 million in the year ended December 31, 2008.

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### Rental Obligations

The Company's total minimum annual rental payments to be made under operating leases as of December 31, 2009 are as follows:

(In thousands of U.S. Dollars)

2010	\$ 6,113
2011	5,869
2012	5,563
2013	2,076
2014	872
Thereafter	2,248
	<u>\$ 22,741</u>

### Digital Projection System

In July 2008, the Company introduced its proprietary digital projection system. The IMAX digital projection system delivers *The IMAX Experience* and helps drive profitability for studios, exhibitors and IMAX theaters by eliminating the need for film prints, increasing program flexibility and ultimately increasing the number of movies shown on IMAX screens. The system can run both IMAX and IMAX 3D presentations.

As of December 31, 2009, the Company had 151 digital theaters installed and operating in exhibitor theaters and 115 digital theater system arrangements in its backlog, which include the significant transactions described below.

On December 7, 2007, the Company announced a significant joint revenue sharing arrangement with American-Multi Cinemas, Inc. ("AMC") for the installation of 100 digital projection systems to be installed in the latter half of 2008 through 2010. The Company has projected that the deal will ultimately double the size of the commercial IMAX theater network in North America and triple the number of IMAX theaters in North American multiplexes, which are the primary targets of the Company's business efforts. The system roll-out has been implemented in three phases of 50 systems, 25 systems and 25 systems, respectively, with the rollout of each phase being subject to the achievement of certain performance thresholds. The Company has met those thresholds for all phases as of December 31, 2009, the Company has installed 71 of the 100 digital projection systems contracted for under the agreement with AMC.

The Company and Regal Cinemas, Inc ("Regal") announced on March 24, 2008 a joint revenue sharing agreement to install 31 digital projection systems at Regal locations in 20 major U.S. markets. As of December 31, 2009, the Company has installed 24 of the 31 digital projection systems. In June 2008, the Company and Hoyts Multiplex Cinemas PTY Ltd ("Hoyts") entered into a joint revenue sharing arrangement for 4 digital projection systems. To date, the Company has installed 3 of the 4 digital projection systems. In July 2008, the Company signed a joint revenue sharing arrangement with Tokyu Recreation Co., Ltd ("Tokyu") to install up to 4 digital projection systems, 4 of which were installed as of December 31, 2009. In September 2008, the Company signed a joint revenue sharing arrangement with Cineplexx Kinobetriebe GMBH ("Cineplexx") for 3 digital projection systems, 2 of which were installed as of December 31, 2009.

On October 20, 2009, the Company and Pathé Netherlands, a Europalaces/Pathé company and the largest exhibitor in The Netherlands, announced an agreement to install 2 new IMAX theater systems, as well as a digital upgrade to the exhibitor's existing film-based system, as part of an expanded joint revenue sharing arrangement between the two companies. In the fourth quarter of 2009, the Company installed 1 new digital theater system and the digital upgrade contracted for under the Agreement.

On March 10, 2010, the Company announced a joint revenue sharing arrangement with CJ CGV Co., Ltd., the largest multiplex cinema chain in South Korea ("CJ CGV"), for up to 15 digital projection systems. Under the terms of its agreement with the Company, CJ CGV will add 10 new digital theaters under joint revenue sharing arrangements, with the option for 5 additional systems and will upgrade 4 of its existing film-based IMAX theatres (which are not under joint revenue sharing arrangements) to digital.

The Company anticipates meeting the cash requirements needed to manufacture the digital projection systems it is obligated to deliver under its joint revenue sharing arrangements through a combination of cash on hand, cash inflows from future operations and draws on its Credit Facility.

In addition, on March 10, 2008, the Company announced an agreement for 35 digital theater systems (under its traditional sales/sales-type-lease structure) with RACIMEC to be installed in Central and South America and the Caribbean. RACIMEC has made an initial cash-payment in connection with the terms of its agreement with the Company.

## **Pension and Postretirement Obligations**

The Company has an unfunded defined benefit pension plan, the SERP, covering Messrs. Gelfond and Wechsler. As of December 31, 2009, the Company had an unfunded and accrued projected benefit obligation of approximately \$29.9 million (December 31, 2008 — \$26.4 million) in respect of the SERP. At the time the Company established the SERP, it also took out life insurance policies on Messrs. Gelfond and Wechsler with coverage amounts of \$21.5 million in aggregate. The Company may use the proceeds of life insurance policies taken on Messrs. Gelfond and Wechsler to be applied towards the benefits due and payable under the SERP, although there can be no assurance that the Company will ultimately do so. As of December 31, 2009, the cash surrender value of the insurance policies is \$7.3 million (December 31, 2008 — \$6.2 million).

In July 2000, the Company agreed to maintain health benefits for Messrs. Gelfond and Wechsler upon retirement. As of December 31, 2009, the Company had an unfunded benefit obligation of \$0.5 million (December 31, 2008 — \$0.4 million).

Under the terms of the SERP, if Mr. Gelfond's employment terminates other than for cause prior to August 1, 2010, he is entitled to receive SERP benefits in the form of monthly annuity payments until the earlier of a change of control or August 1, 2010, at which time he is entitled to receive remaining benefits in the form of a lump sum payment. If Mr. Gelfond's employment terminates other than for cause on or after August 1, 2010, he is entitled to receive SERP benefits in the form of a lump sum payment. SERP benefit payments to Mr. Gelfond are subject to a deferral for six months after the termination of his employment, at which time Mr. Gelfond will be entitled to receive interest on the deferred amount credited at the applicable federal rate for short-term obligations.

Under the terms of the SERP, monthly annuity payments payable to Mr. Wechsler, whose employment as Co-CEO terminated effective April 1, 2009, were deferred for six months and were paid in the form of a lump sum plus interest on the deferred amount on October 1, 2009. Thereafter, in accordance with the terms of the SERP, Mr. Wechsler is entitled to receive monthly annuity payments until the earlier of a change of control or August 1, 2010, at which time he is entitled to receive remaining benefits in the form of a lump sum payment.

On March 8, 2006, the Company and Messrs. Gelfond and Wechsler negotiated an amendment to the SERP which reduced the related pension expense to the Company effective January 1, 2006. Under the terms of the SERP amendment, to reduce ongoing costs to the Company, the cost of living adjustment and surviving spouse benefits previously owed to Messrs. Gelfond and Wechsler are each reduced by 50%, subject to a recoupment of a percentage of such benefits upon a change of control of the Company, and the net present value of the reduced pension benefit payments is accelerated and paid out upon a change of control of the Company. The amendment resulted in reduction of the accrued pension liability by \$6.2 million, a reduction in other assets of \$3.4 million and a past services credit of \$2.8 million. The benefits were 50% vested as at July 2000, the SERP initiation date. The vesting percentage increases on a straight-line basis from inception until age 55. As at December 31, 2009, the benefits of Mr. Wechsler were 100% vested while the benefits of Mr. Gelfond were approximately 95.9% vested. The vesting percentage of a member whose employment terminates other than by voluntary retirement or upon a change in control shall be 100%. Upon a termination for cause, prior to a change of control, the executive shall forfeit any and all benefits to which such executive may have been entitled, whether or not vested.

On May 4, 2007, the Company amended the SERP to provide for the determination of benefits to be 75% of the member's best average 60 consecutive months of earnings over the member's employment history from 75% of the member's best average 60 consecutive months of earnings over the past 120 months. The actuarial liability was remeasured to reflect this amendment. The amendment resulted in a \$1.0 million increase to the pension liability and a corresponding \$1.0 million charge to other comprehensive income.

## **OFF-BALANCE SHEET ARRANGEMENTS**

There are currently no off-balance sheet arrangements that have or are reasonably likely to have a current or future material effect on the Company's financial condition.

**CONTRACTUAL OBLIGATIONS**

Payments to be made by the Company under contractual obligations are as follows:

<i>(In thousands of U.S. Dollars)</i>	Payments Due by Period						
	Total Obligations	2010	2011	2012	2013	2014	Thereafter
Credit Facility <sup>(1)</sup>	\$ 50,000	\$ 11,667	\$ 17,500	\$ 5,833	\$ 15,000	\$ —	\$ —
Capital lease obligations	164	94	27	23	20	—	—
Operating lease obligations	22,741	6,113	5,869	5,563	2,076	872	2,248
Pension obligations <sup>(2)</sup>	30,776	15,195	15,581	—	—	—	—
Postretirement benefits obligations	137	13	26	29	33	36	—
Purchase obligations	9,274	9,274	—	—	—	—	—
	<u>\$ 113,092</u>	<u>\$ 42,356</u>	<u>\$ 39,003</u>	<u>\$ 11,448</u>	<u>\$ 17,129</u>	<u>\$ 908</u>	<u>\$ 2,248</u>

- (1) Interest on the Credit Facility is payable monthly in arrears based on the applicable variable rate.
- (2) The SERP assumptions include that Mr. Wechsler will receive a lump sum payment at August 1, 2010 and that Mr. Gelfond will receive a lump sum payment in 2011 upon retirement at the end of the current term of his employment agreement, although Mr. Gelfond has not informed the Company that he intends to retire at that time.

**Item 7A. Quantitative and Qualitative Disclosures about Market Risk**

The Company is exposed to market risk from foreign currency exchange rates and interest rates, which could affect operating results, financial position and cash flows. Market risk is the potential change in an instrument's value caused by, for example, fluctuations in interest and currency exchange rates. The Company's primary market risk exposure is the risk of unfavorable movements in exchange rates between the U.S. dollar and the Canadian dollar. The Company does not use financial instruments for trading or other speculative purposes.

**Foreign Exchange Rate Risk**

A majority of the Company's revenue is denominated in U.S. dollars while a significant portion of its costs and expenses is denominated in Canadian dollars. A portion of the Company's net U.S. dollar cash flows is converted to Canadian dollars to fund Canadian dollar expenses through the spot market. In Japan, the Company has ongoing operating expenses related to its operations. Net Japanese yen cash flows are converted to U.S. dollars through the spot market. The Company also has cash receipts under leases denominated in Japanese yen, Euros and Canadian dollars.

The Company manages its exposure to foreign exchange rate risks through our regular operating and financing activities and, when appropriate, through the use of derivative financial instruments. These derivative financial instruments are utilized to hedge economic exposures as well as reduce earnings and cash flow volatility resulting from shifts in market rates.

For the year ended December 31, 2009, the Company recorded a foreign exchange gain of \$3.8 million as compared with a foreign exchange loss of \$0.7 million in 2008.

Beginning in the fourth quarter of 2008 and continuing in 2009, the Company entered into a series of foreign currency forward contracts to manage the Company's risks associated with the volatility of foreign currencies with settlement dates throughout 2009 and 2010. In addition, at December 31, 2009, the Company held foreign currency forward contracts to manage foreign currency risk on future anticipated Canadian dollar expenditures that were not considered foreign currency hedges by the Company. Foreign currency derivatives are recognized and measured in the balance sheet at fair value. Changes in the fair value (gains or losses) are recognized in the consolidated statement of operations except for derivatives designated and qualifying as foreign currency hedging instruments. For foreign currency hedging instruments, the effective portion of the gain or loss in a hedge of a forecasted transaction is reported in other comprehensive income and reclassified to the consolidated statement of operations when the forecasted transaction occurs. Any ineffective portion is recognized immediately in the consolidated statement of operations. The notional value of these

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contracts at December 31, 2009 was \$2.8 million (December 31, 2008 — \$13.1 million). A gain of \$1.7 million was recorded to Other Comprehensive Income with respect to the appreciation in the value of these contracts in 2009 (2008 — \$0.2 million). A gain of \$1.3 million was reclassified from Accumulated Other Comprehensive Income to selling, general and administrative expenses in 2009 (2008 — \$nil). Appreciation or depreciation on forward contracts not meeting the requirements for hedge accounting in the Derivatives and Hedging Topic of the FASB ASC are recorded to selling, general and administrative expenses. The notional value of forward contracts that do not qualify for hedge accounting at December 31, 2009 was \$4.5 million (December 31, 2008 — \$17.1 million).

For all derivative instruments, the Company is subject to counterparty credit risk to the extent that the counterparty may not meet its obligations to the Company. To manage this risk, the Company enters into derivative transactions only with major financial institutions.

At December 31, 2009, the Company's net investment in leases and working capital items, which aggregate to \$2.7 million, are denominated in Canadian dollars and Euros. Assuming a 10% appreciation or depreciation in foreign currency exchange rates from the quoted foreign currency exchange rates at December 31, 2009, the potential change in the fair value of foreign currency-denominated net investment in leases and working capital items would be \$0.3 million.

### **Interest Rate Risk Management**

The Company's earnings are also affected by changes in interest rates due to the impact those changes have on its interest income from cash, and its interest expense from variable-rate borrowings under the Credit Facility.

As at December 31, 2009, the Company's borrowings under the Credit Facility were \$50.0 million (December 31, 2008 — \$20.0 million).

The Company's largest exposure with respect to variable rate debt comes from changes in the London Interbank Offered Rate (LIBOR). The Company had variable rate debt instruments representing approximately 24.7% and 6.1% percent of its total liabilities at December 31, 2009 and 2008, respectively. If the Company's interest rates average 10 percent more in 2010 than they did at December 31, 2009, the Company's interest expense would increase by approximately \$0.2 million and interest income from cash would increase by approximately less than \$0.1 million. These amounts are determined by considering the impact of the hypothetical interest rates on the Company's variable rate debt and cash balances at December 31, 2009.

At December 31, 2009 the Company is not exposed to any market risk for fixed rate debt as the Company repurchased all of the remaining \$160.0 million of its Senior Notes due December 2010 in 2009. In 2008, the fair values of the Company's long-term debt were estimated using quoted market prices, as disclosed in note 21 to the audited consolidated financial statements in Item 8 of the Company's 2009 Form 10-K.



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**Item 8. Financial Statements and Supplementary Data**

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**Report of Independent Registered Public Accounting Firm**

To the Shareholders of IMAX Corporation:

In our opinion, the accompanying consolidated balance sheets and the related consolidated statements of operations, cash flows and shareholders' equity (deficiency) present fairly, in all material respects, the financial position of IMAX Corporation and its subsidiaries at December 31, 2009 and December 31, 2008, and the results of their operations and their cash flows for each of the three years in the period ended December 31, 2009 in conformity with accounting principles generally accepted in the United States of America. In addition, in our opinion, the financial statement schedule listed in the index under Item 15(a)(2) presents fairly, in all material respects, the information set forth therein when read in conjunction with the related consolidated financial statements. Also in our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of December 31, 2009, based on criteria established in *Internal Control — Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). The Company's management is responsible for these financial statements, the financial statement schedule, for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting, included in Management's Report on Internal Control over Financial Reporting under Item 9A of its 2009 Annual Report on Form 10-K. Our responsibility is to express opinions on these financial statements, on the financial statement schedule, and on the Company's internal control over financial reporting based on our integrated audits. We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the financial statements are free of material misstatement and whether effective internal control over financial reporting was maintained in all material respects. Our audits of the financial statements included examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. Our audit of internal control over financial reporting included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, and testing and evaluating the design and operating effectiveness of internal control based on the assessed risk. Our audits also included performing such other procedures as we considered necessary in the circumstances. We believe that our audits provide a reasonable basis for our opinions.

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (i) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (ii) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

/s/ PricewaterhouseCoopers LLP

Chartered Accountants, Licensed Public Accountants

Toronto, Ontario

March 11, 2010

**IMAX CORPORATION**  
**CONSOLIDATED BALANCE SHEETS**  
**In accordance with United States Generally Accepted Accounting Principles**  
*(In thousands of U.S. dollars)*

	<u>As at December 31, 2009</u>	
	<u>2009</u>	<u>2008</u>
<b>Assets</b>		
Cash and cash equivalents	\$ 20,081	\$ 27,017
Accounts receivable, net of allowance for doubtful accounts of \$2,770 (December 31, 2008 — \$2,901)	37,652	22,982
Financing receivables (note 4)	62,585	56,138
Inventories (note 5)	10,271	19,822
Prepaid expenses	2,609	1,998
Film assets (note 6)	3,218	3,923
Property, plant and equipment (note 7)	54,820	39,405
Other assets (note 8)	15,140	16,074
Goodwill	39,027	39,027
Other intangible assets (note 10)	2,142	2,281
<b>Total assets</b>	<b><u>\$ 247,545</u></b>	<b><u>\$ 228,667</u></b>
<b>Liabilities</b>		
Bank indebtedness (note 12)	\$ 50,000	\$ 20,000
Accounts payable	16,803	15,790
Accrued liabilities (notes 6, 9(f), 13(a), 13(c), 15(c), 22, 23(e) and 24)	77,853	58,199
Deferred revenue	57,879	71,452
Senior Notes due December 2010 (note 11)	—	160,000
<b>Total liabilities</b>	<b><u>202,535</u></b>	<b><u>325,441</u></b>
<b>Commitments and contingencies</b> (notes 13 and 14)		
<b>Shareholders' equity (deficiency)</b>		
Capital stock (note 15) common shares — no par value. Authorized — unlimited number.		
Issued and outstanding — 62,831,974 (December 31, 2008 — 43,490,631)	280,048	141,584
Other equity	6,044	5,183
Deficit	(241,988)	(247,009)
Accumulated other comprehensive income (note 25)	906	3,468
<b>Total shareholders' equity (deficiency)</b>	<b><u>45,010</u></b>	<b><u>(96,774)</u></b>
<b>Total liabilities and shareholders' equity (deficiency)</b>	<b><u>\$ 247,545</u></b>	<b><u>\$ 228,667</u></b>

*(the accompanying notes are an integral part of these consolidated financial statements)*

**IMAX CORPORATION**  
**CONSOLIDATED STATEMENTS OF OPERATIONS**  
**In accordance with United States Generally Accepted Accounting Principles**  
*(In thousands of U.S. dollars, except per share amounts)*

	Years Ended December 31,		
	2009	2008 (note 23)	2007 (note 23)
<b>Revenues</b>			
Equipment and product sales	\$ 57,304	\$ 27,853	\$ 32,500
Services (note 16(c))	82,052	61,477	64,972
Rentals (note 16(c))	25,758	8,207	7,107
Finance income	4,235	4,300	4,649
Other (note 16(a))	1,862	881	2,427
	<u>171,211</u>	<u>102,718</u>	<u>111,655</u>
<b>Costs and expenses applicable to revenues (note 2(n))</b>			
Equipment and product sales	29,040	17,182	21,546
Services (note 16(c))	49,891	40,771	46,254
Rentals	10,093	7,043	2,987
Other	635	169	50
	<u>89,659</u>	<u>65,165</u>	<u>70,837</u>
<b>Gross margin</b>	<b>81,552</b>	<b>37,553</b>	<b>40,818</b>
Selling, general and administrative expenses (note 16(b)) (including share-based compensation expense of \$17.5 million, \$1.0 million and \$2.9 million for 2009, 2008, 2007, respectively)	56,207	43,681	44,716
Research and development	3,755	7,461	5,789
Amortization of intangibles	546	526	547
Receivable provisions, net of recoveries (note 17)	1,067	1,977	1,795
Asset impairments (note 18)	180	—	485
<b>Earnings (loss) from operations</b>	<b>19,797</b>	<b>(16,092)</b>	<b>(12,514)</b>
Interest income	98	381	862
Interest expense	(13,845)	(17,707)	(17,093)
Loss on repurchase of Senior Notes due December 2010 (note 11)	(579)	—	—
<b>Earnings (loss) from continuing operations before income taxes</b>	<b>5,471</b>	<b>(33,418)</b>	<b>(28,745)</b>
Provision for income taxes	(274)	(92)	(472)
<b>Earnings (loss) from continuing operations</b>	<b>5,197</b>	<b>(33,510)</b>	<b>(29,217)</b>
(Loss) earnings from discontinued operations (note 23(d))	(176)	(92)	2,277
<b>Net earnings (loss)</b>	<b>\$ 5,021</b>	<b>\$ (33,602)</b>	<b>\$ (26,940)</b>
<b>Earnings (loss) per share: (note 15(d))</b>			
Net earnings (loss) per share — basic:			
Net earnings (loss) per share from continuing operations	\$ 0.10	\$ (0.79)	\$ (0.72)
Net earnings per share from discontinued operations	—	—	0.05
	<u>\$ 0.10</u>	<u>\$ (0.79)</u>	<u>\$ (0.67)</u>
Net earnings (loss) per share — diluted:			
Net earnings (loss) per share from continuing operations	\$ 0.09	\$ (0.79)	\$ (0.72)
Net earnings per share from discontinued operations	—	—	0.05
	<u>\$ 0.09</u>	<u>\$ (0.79)</u>	<u>\$ (0.67)</u>

*(the accompanying notes are an integral part of these consolidated financial statements)*

**IMAX CORPORATION**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS**  
**In accordance with United States Generally Accepted Accounting Principles**  
*(In thousands of U.S. dollars)*

	Years Ended December 31,		
	2009	2008 <small>(note 23)</small>	2007 <small>(note 23)</small>
<b>Cash provided by (used in):</b>			
<b>Operating Activities</b>			
Net earnings (loss)	\$ 5,021	\$ (33,602)	\$ (26,940)
Net loss (earnings) from discontinued operations (note 23(d))	176	92	(2,277)
Items not involving cash:			
Depreciation and amortization (notes 19(c) and 20(a))	19,051	18,018	17,671
Write-downs, net of recoveries (notes 19(d) and 20(a))	2,581	4,466	6,240
Change in deferred income taxes	8	(749)	(68)
Stock and other non-cash compensation	19,183	3,320	4,789
Foreign currency exchange (gain) loss	(974)	480	(1,165)
Gain on sale of property, plant and equipment	—	(43)	—
Loss on repurchase of Senior Notes due December 2010 (note 11)	579	—	—
Change in cash surrender value of life insurance	(330)	(270)	(215)
Investment in film assets	(9,235)	(10,145)	(11,381)
Changes in other non-cash operating assets and liabilities (note 19(a))	(21,885)	11,925	8,024
Net cash (used in) provided by operating activities from discontinued operations	(393)	(40)	(899)
<b>Net cash provided by (used in) operating activities</b>	<b>13,782</b>	<b>(6,548)</b>	<b>(6,221)</b>
<b>Investing Activities</b>			
Purchase of property, plant and equipment	(1,426)	(2,805)	(2,150)
Investment in joint revenue sharing equipment	(25,072)	(18,478)	—
Proceeds from sale of property, plant and equipment	—	43	—
Acquisition of other assets	(748)	(748)	(900)
Acquisition of other intangible assets	(320)	(430)	(377)
Purchases of short-term investments	—	—	(6,457)
Proceeds from maturities of short-term investments	—	—	8,572
Net cash provided by investing activities from discontinued operations	—	—	575
<b>Net cash used in investing activities</b>	<b>(27,566)</b>	<b>(22,418)</b>	<b>(737)</b>
<b>Financing Activities</b>			
Increase in bank indebtedness (note 12)	55,000	20,000	—
Repayment of bank indebtedness (note 12)	(25,000)	—	—
Repurchase of Senior Notes due December 2010 (note 11)	(159,104)	—	—
Common shares issued — public offerings, net of offering expenses paid (note 15(b))	130,774	—	—
Common shares issued — private offering (note 15(b))	—	17,931	—
Common shares issued — stock options exercised (note 15(b))	6,332	1,202	420
Financing costs related to Senior Notes due 2010	—	—	(1,430)
Shelf registration fees paid	(150)	—	—
Debt modification fees paid	—	(114)	(284)
Fees paid pertaining to amended Credit Facility agreement	(671)	—	—
<b>Net cash provided by (used in) financing activities</b>	<b>7,181</b>	<b>39,019</b>	<b>(1,294)</b>
Effects of exchange rate changes on cash	(333)	63	30
<b>(Decrease) increase in cash and cash equivalents during year</b>	<b>(6,936)</b>	<b>10,116</b>	<b>(8,222)</b>
Cash and cash equivalents, beginning of year	27,017	16,901	25,123
<b>Cash and cash equivalents, end of year</b>	<b>\$ 20,081</b>	<b>\$ 27,017</b>	<b>\$ 16,901</b>

*(the accompanying notes are an integral part of these consolidated financial statements)*

**IMAX CORPORATION**  
**CONSOLIDATED STATEMENTS OF SHAREHOLDERS' EQUITY (DEFICIENCY)**  
**In accordance with United States Generally Accepted Accounting Principles**  
*(In thousands of U.S. dollars)*

	Number of Common Shares Issued and Outstanding	Capital Stock	Other Equity	Deficit	Accumulated Other Comprehensive Income (Loss) (note 25)	Total Shareholders' Equity (Deficiency)	Comprehensive Income (Loss)
<b>Balance as at December 31, 2006</b>	<b>40,285,574</b>	<b>\$ 122,024</b>	<b>\$ 2,937</b>	<b>\$ (184,375)</b>	<b>\$ 1,182</b>	<b>\$ (58,232)</b>	
Net loss	—	—	—	(26,940)	—	(26,940)	\$ (26,940)
Paid-in capital for non-employee stock options granted (note 15(c))	—	—	424	—	—	424	—
Employee stock options exercised	137,500	431	(11)	—	—	420	—
Paid-in capital for employee stock options granted (note 15(c))	—	—	738	—	—	738	—
Adoption of FIN 48	—	—	—	(2,092)	—	(2,092)	—
Unrecognized prior service costs (net of income tax recovery of \$516)	—	—	—	—	(1,081)	(1,081)	(1,081)
Unrecognized actuarial gain (net of income tax provision of \$585)	—	—	—	—	1,393	1,393	1,393
							<u>\$ (26,628)</u>
<b>Balance as at December 31, 2007</b>	<b>40,423,074</b>	<b>\$ 122,455</b>	<b>\$ 4,088</b>	<b>\$ (213,407)</b>	<b>\$ 1,494</b>	<b>\$ (85,370)</b>	
Common shares issued for private offering	2,726,447	17,681	—	—	—	17,681	—
Net loss	—	—	—	(33,602)	—	(33,602)	(33,602)
Paid-in capital for non-employee stock options granted (note 15(c))	—	—	416	—	—	416	—
Employee stock options exercised	238,745	751	(14)	—	—	737	—
Non-employee stock options exercised	102,365	697	(232)	—	—	465	—
Paid-in capital for employee stock options granted (note 15(c))	—	—	925	—	—	925	—
Unrecognized prior service costs (net of income tax recovery of \$66) (note 22)	—	—	—	—	(181)	(181)	(181)
Unrecognized actuarial gain (net of income tax provision of \$770) (note 22)	—	—	—	—	2,029	2,029	2,029
Unrealized net gain on derivative instruments (net of income tax provision of \$46) (note 21)	—	—	—	—	126	126	126
							<u>\$ (31,628)</u>
<b>Balance as at December 31, 2008</b>	<b>43,490,631</b>	<b>\$ 141,584</b>	<b>\$ 5,183</b>	<b>\$ (247,009)</b>	<b>\$ 3,468</b>	<b>\$ (96,774)</b>	
Common shares issued for public offering	18,034,706	130,682	—	—	—	130,682	—
Net earnings	—	—	—	5,021	—	5,021	5,021
Paid-in capital for non-employee stock options granted (note 15(c))	—	—	215	—	—	215	—
Employee stock options exercised	1,103,091	6,391	(962)	—	—	5,429	—
Non-employee stock options exercised	203,546	1,391	(488)	—	—	903	—
Paid-in capital for employee stock options granted (note 15(c))	—	—	2,096	—	—	2,096	—
Unrecognized prior service costs (net of income tax provision of \$38) (note 22)	—	—	—	—	107	107	107
Unrecognized actuarial loss (net of income tax recovery of \$nil) (note 22)	—	—	—	—	(3,075)	(3,075)	(3,075)
Unrealized net gain on derivative instruments (net of income tax recovery of \$46) (note 21)	—	—	—	—	406	406	406
							<u>\$ 2,459</u>
<b>Balance as at December 31, 2009</b>	<b>62,831,974</b>	<b>\$ 280,048</b>	<b>\$ 6,044</b>	<b>\$ (241,988)</b>	<b>\$ 906</b>	<b>\$ 45,010</b>	

*(The accompanying notes are an integral part of these consolidated financial statements.)*

**IMAX CORPORATION**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
**In accordance with United States Generally Accepted Accounting Principles**  
*(Tabular amounts in thousands of U.S. dollars, unless otherwise stated)*

**1. Description of the Business**

IMAX Corporation together with its consolidated wholly-owned subsidiaries (the “Company”) is an entertainment technology company specializing in digital and film-based motion picture technologies, whose principal activities are the:

- Design, manufacture, sale and lease of proprietary theater systems for IMAX theaters principally owned and operated by commercial and institutional customers located in 48 countries as at December 31, 2009;
- Production, digital re-mastering, post-production and/or distribution of certain films shown throughout the IMAX theater network;
- Operation of certain theaters primarily in the United States and Canada;
- Provision of other services to the IMAX theater network, including ongoing maintenance and extended warranty services for IMAX theater systems; and
- Other activities, which includes short-term rental of cameras and aftermarket sales of projector system components.

The Company refers to all theaters using the IMAX theater system as “IMAX theaters.”

The Company’s revenues from equipment and product sales include the sale and sales-type leasing of its theater systems and sales of their associated parts and accessories, contingent rentals on sales-type leases and contingent additional payments on sales transactions.

The Company’s revenues from services include the provision of maintenance and extended warranty services, digital re-mastering services, film production and film post-production services, film distribution, and the operation of its owned and operated theaters.

The Company’s rentals include revenues from the leasing of its theater systems that are operating leases, contingent rentals on operating leases, joint revenue sharing arrangements and the rental of the Company’s cameras and camera equipment.

The Company’s finance income represents interest income arising from the sales-type leasing and financed sale of the Company’s theater systems.

The Company’s other revenues include the settlement of contractual obligations with customers.

**2. Summary of Significant Accounting Policies**

Significant accounting policies are summarized as follows:

The Company prepares its consolidated financial statements in accordance with U.S. GAAP.

**(a) Basis of Consolidation**

The consolidated financial statements include the accounts of the Company together with its wholly-owned subsidiaries, except for subsidiaries which the Company has identified as variable interest entities (“VIEs”) where the Company is not the primary beneficiary.

The Company has evaluated its various variable interests to determine whether they are VIEs as required by the Consolidation Topic of the Financial Accounting Standards Board (“FASB”) Accounting Standards Codification (“ASC” or “Codification”). The Company has 7 film production companies that are VIEs.



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In the first quarter of 2009, the Company entered into an agreement with a third party which resulted in the Company reconsidering whether it is the primary beneficiary of a wholly-owned film production subsidiary. The Company determined that it is not the primary beneficiary as the Company no longer absorbs the majority of expected losses or expected residual returns. As a result, the Company de-consolidated this film production subsidiary.

As the Company is exposed to the majority of the expected losses for 2 of the film production companies, the Company has determined that it is the primary beneficiary of these entities. The Company continues to consolidate these entities, with no material impact on the operating results or financial condition of the Company, as these production companies have total assets and total liabilities of less than \$0.1 million as at December 31, 2009 (December 31, 2008 — less than \$0.1 million). For the other 5 film production companies which are VIEs, the Company did not consolidate these film entities since it does not bear the majority of the expected losses or expected residual returns. The Company equity accounts for these entities. As at December 31, 2009, these 5 VIEs have total assets of \$3.8 million (December 31, 2008 — \$4.5 million) and total liabilities of \$3.8 million (December 31, 2008 — \$4.5 million). Earnings of the investees included in the Company's consolidated statement of operations amounted to \$nil in 2009, (2008 — \$nil). The carrying value of these investments in VIEs that are not consolidated is \$nil at December 31, 2009 (December 31, 2008 — \$nil). A loss in value of an investment other than a temporary decline is recognized as a charge to the consolidated statement of operations.

All significant intercompany accounts and transactions, including all unrealized intercompany profits on transactions with equity-accounted investees, have been eliminated.

### **(b) Use of Estimates**

The preparation of consolidated financial statements in conformity with U.S. GAAP requires management to make estimates and judgments that affect the reported amounts of assets and liabilities and disclosures of contingent assets and liabilities at the date of consolidated financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could be materially different from these estimates. Significant estimates made by management include, but are not limited to: fair values associated with the individual elements in multiple element arrangements; residual values of leased theater systems; economic lives of leased assets; allowances for potential uncollectibility of accounts receivable, financing receivables and net investment in leases; provisions for inventory obsolescence; ultimate revenues for film assets; impairment provisions for film assets, long-lived assets and goodwill; depreciable lives of property, plant and equipment; useful lives of intangible assets; pension plan assumptions; accruals for contingencies including tax contingencies; valuation allowances for deferred income tax assets; and, estimates of the fair value of stock-based payment awards.

### **(c) Cash and Cash Equivalents**

The Company considers all highly liquid investments with an original maturity of three months or less to be cash equivalents.

### **(d) Short-Term Investments**

Short-term investments have maturities of more than three months and less than one year from the date of purchase.

As at December 31, 2009 and 2008, the Company did not hold any short-term investments.

### **(e) Accounts Receivable and Financing Receivables**

Allowances for doubtful accounts receivable are based on the Company's assessment of the collectibility of specific customer balances, which is based upon a review of the customer's credit worthiness, past collection history and the underlying asset value of the equipment, where applicable. Interest on overdue accounts receivable is recognized as income as the amounts are collected.

The Company monitors the performance of the theaters to which it has leased or sold theater systems which are subject to ongoing payments. When facts and circumstances indicate that there is a potential impairment in the net investment in lease or a financing receivable, the Company will evaluate the potential outcome of either renegotiations involving changes in the terms of the receivable or defaults on the existing lease or financed sale agreements. The Company will record a provision if it is considered probable that the Company will be unable to collect all amounts due under the contractual terms of the arrangement or a renegotiated lease amount will cause a reclassification of the sales-type lease to an operating lease.

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When the net investment in lease or the financing receivable is impaired, the Company will recognize a provision for the difference between the carrying value in the investment and the present value of expected future cash flows discounted using the effective interest rate for the net investment in the lease or the financing receivable. If the Company expects to recover the theater system, the provision is equal to the excess of the carrying value of the investment over the fair value of the equipment.

When the minimum lease payments are renegotiated and the lease continues to be classified as a sales-type lease, the reduction in payments is applied to reduce unearned finance income.

These provisions are adjusted when there is a significant change in the amount or timing of the expected future cash flows or when actual cash flows differ from cash flow previously expected.

Once a net investment in lease or financing receivable is considered impaired, the Company does not recognize interest income until the collectibility issues are resolved. When finance income is not recognized, any payments received are applied against outstanding gross minimum lease amounts receivable or gross receivables from financed sales.

### ***(f) Inventories***

Inventories are carried at the lower of cost, determined on an average cost basis, and net realizable value except for raw materials, which are carried at the lower of cost and replacement cost. Finished goods and work-in-process include the cost of raw materials, direct labor, theater design costs, and an applicable share of manufacturing overhead costs.

The costs related to theater systems under sales and sales-type lease arrangement are relieved from inventory to costs and expenses applicable to revenues-equipment and product sales when revenue recognition criteria are met. The costs related to theater systems under operating lease arrangements and joint revenue sharing arrangements are transferred from inventory to assets under construction in property, plant and equipment when allocated to a signed joint revenue sharing arrangement or when the arrangement is first classified as an operating lease.

The Company records provisions for excess and obsolete inventory based upon current estimates of future events and conditions, including the anticipated installation dates for the current backlog of theater system contracts, technological developments, signings in negotiation, growth prospects within the customers' ultimate marketplace and anticipated market acceptance of the Company's current and pending theater systems.

Finished goods inventories can contain theater systems for which title has passed to the Company's customer (as the theater system has been delivered to the customer) but the revenue recognition criteria as discussed in note 2(n) have not been met.

### ***(g) Film Assets***

Costs of producing films, including labor, allocated overhead, capitalized interest, and costs of acquiring film rights are recorded as film assets and accounted for in accordance with Entertainment-Films Topic of the FASB ASC. Production financing provided by third parties that acquire substantive rights in the film is recorded as a reduction of the cost of the production. Film assets are amortized and participation costs are accrued using the individual-film-forecast method in the same ratio that current gross revenues bear to current and anticipated future ultimate revenues. Estimates of ultimate revenues are prepared on a title-by-title basis and reviewed regularly by management and revised where necessary to reflect the most current information. Ultimate revenues for films include estimates of revenue over a period not to exceed ten years following the date of initial release.

Film exploitation costs, including advertising costs, are expensed as incurred.

Costs, including labor and allocated overhead, of digitally re-mastering films where the copyright is owned by a third party and the Company shares in the revenue of the third party are included in film assets. These costs are amortized using the individual-film-forecast method in the same ratio that current gross revenues bear to current and anticipated future ultimate revenues from the re-mastered film.

The recoverability of film assets is dependent upon commercial acceptance of the films. If events or circumstances indicate that the recoverable amount of a film asset is less than the unamortized film costs, the film asset is written down to its fair value. The Company determines the fair value of its film assets using a discounted cash flow model.

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### **(h) Property, Plant and Equipment**

Property, plant and equipment are recorded at cost and are depreciated on a straight-line basis over their estimated useful lives as follows:

Theater system components (1)	—	Over the shorter of the initial term of the arrangement and the equipment's anticipated useful life (7 to 20 years)
Camera equipment	—	5 to 10 years
Buildings	—	20 to 25 years
Office and production equipment	—	3 to 5 years
Leasehold improvements	—	over the shorter of the initial term of the underlying leases plus any reasonably assured renewal terms, and the useful life of the asset

(1) includes equipment under joint revenue sharing arrangements.

Equipment and components allocated to be used in future operating leases and joint revenue sharing arrangements, as well as direct labour costs and an allocation of direct production costs, are included in assets under construction until such equipment is installed and in working condition, at which time the equipment is depreciated on a straight-line basis over the lesser of the term of the joint revenue sharing arrangement and the equipment's anticipated useful life.

The Company reviews the carrying values of its property, plant and equipment for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset or asset group might not be recoverable. Assets are grouped at the lowest level for which identifiable cash flows are largely independent when testing for, and measuring for, impairment. In performing its review of recoverability, the Company estimates the future cash flows expected to result from the use of the asset or asset group and its eventual disposition. If the sum of the expected undiscounted future cash flows is less than the carrying amount of the asset or asset group, an impairment loss is recognized in the consolidated statements of operations. Measurement of the impairment loss is based on the excess of the carrying amount of the asset or asset group over the fair value calculated using discounted expected future cash flows.

A liability for the fair value of an asset retirement obligation associated with the retirement of tangible long-lived assets and the associated asset retirement costs are recognized in the period in which the liability and costs are incurred if a reasonable estimate of fair value can be made using a discounted cash flow model. The associated asset retirement costs are capitalized as part of the carrying amount of the long-lived asset and subsequently amortized over the asset's useful life. The liability is accreted over the period to expected cash outflows.

#### **(i) Other Assets**

Other assets include insurance recoveries, the cash surrender value of life insurance policies, deferred charges on debt financing, deferred selling costs that are direct and incremental to the acquisition of sales contracts, and foreign currency derivatives.

Costs of debt financing are deferred and amortized over the term of the debt.

Selling costs related to an arrangement incurred prior to recognition of the related revenue are deferred and expensed to costs and expenses applicable to revenues upon (i) recognition of the contract's theater system revenue or (ii) abandonment of the sale arrangement.

Insurance recoveries, the cash surrender value of life insurance policies and foreign currency derivatives are accounted for at fair value using quoted prices in active markets (Level 1 input in accordance with the Fair Value Measurements Topic of the FASB ASC hierarchy).

#### **(j) Goodwill**

Goodwill represents the excess of purchase price over the fair value of net identifiable assets acquired in a purchase business combination. Goodwill is not subject to amortization and is tested for impairment annually, or more frequently if events or circumstances indicate that the asset might be impaired. Impairment of goodwill is tested at the reporting unit level by comparing the reporting unit's carrying amount, including goodwill, to the fair value of the reporting unit. The fair value of the reporting unit is estimated using a discounted cash flow approach. If the carrying amount of the reporting unit exceeds its fair value, then a second step is performed to measure the amount of impairment loss, if any, by comparing the fair value of each identifiable asset and liability in

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the reporting unit to the total fair value of the reporting unit. Any impairment loss is expensed in the consolidated statement of operations and is not reversed if the fair value subsequently increases.

### **(k) Other Intangible Assets**

Patents, trademarks and other intangibles are recorded at cost and are amortized on a straight-line basis over estimated useful lives ranging from 4 to 10 years. In 2006, the Company adjusted the estimated useful life of some of its patents on a prospective basis to reflect the Company's planned transition to a digital projector, for a large portion of its commercial theater customer base, resulting in increased amortization expense of less than \$0.1 million per year until 2010.

The Company reviews the carrying values of its other intangible assets for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset or asset group might not be recoverable. Assets are grouped at the lowest level for which identifiable cash flows are largely independent when testing for, and measuring for, impairment. In performing its review for recoverability, the Company estimates the future cash flows expected to result from the use of the asset or asset group and its eventual disposition. If the sum of the expected undiscounted future cash flows is less than the carrying amount of the asset or asset group, an impairment loss is recognized in the consolidated statement of operations. Measurement of the impairment loss is based on the excess of the carrying amount of the asset or asset group over the fair value calculated using discounted expected future cash flows.

### **(l) Deferred Revenue**

Deferred revenue represents cash received prior to revenue recognition criteria being met for theater system sales or leases, film contracts, maintenance and extended warranty services, film related services and film distribution.

### **(m) Income Taxes**

Income taxes are accounted for under the liability method whereby deferred income tax assets and liabilities are recognized for the expected future tax consequences of temporary differences between the accounting and tax bases of assets and liabilities. Deferred income tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which temporary differences are expected to be recovered or settled. The effect on deferred income tax assets and liabilities of a change in tax rates or laws is recognized in the consolidated statement of operations in the period in which the change is enacted. Investment tax credits are recognized as a reduction of income tax expense.

The Company assesses realization of deferred income tax assets and, based on all available evidence, concludes whether it is more likely than not that the net deferred income tax assets will be realized. A valuation allowance is provided for the amount of deferred income tax assets not considered to be realizable.

The Company is subject to ongoing tax exposures, examinations and assessments in various jurisdictions. Accordingly, the Company may incur additional tax expense based upon the outcomes of such matters. In addition, when applicable, the Company adjusts tax expense to reflect the Company's ongoing assessments of such matters which require judgment and can materially increase or decrease its effective rate as well as impact operating results. The Company provides for such exposures in accordance with the Income Taxes Topic of the FASB ASC.

### **(n) Revenue Recognition**

#### *Multiple Element Arrangements*

The Company's revenue arrangements with certain customers may involve multiple elements consisting of a theater system (projector, sound system, screen system and, if applicable, 3D glasses cleaning machine); services associated with the theater system including theater design support, supervision of installation, and projectionist training; a license to use of the IMAX brand; 3D glasses; maintenance and extended warranty services; and licensing of films. The Company evaluates all elements in an arrangement to determine what are considered typical deliverables for accounting purposes and which of the deliverables represent separate units of accounting based on the applicable accounting guidance in the Leases Topic of the FASB ASC; the Guarantees Topic of the FASB ASC; the Entertainment-Film Topic of FASB ASC; and the Revenue Recognition Topic of FASB. If separate units of accounting are either required under the relevant accounting standards or determined to be applicable under the Revenue Recognition Topic, the total consideration received or receivable in the arrangement is allocated based on the applicable guidance in the above noted standards.

*Theater Systems*

The Company has identified the projection system, sound system, screen system and, if applicable, 3D glasses cleaning machine, theater design support, supervision of installation, projectionist training and the use of the IMAX brand to be a single deliverable and a single unit of accounting (the "System Deliverable"). When an arrangement does not include all the elements of a System Deliverable, the elements of the System Deliverable included in the arrangement are considered by the Company to be a single deliverable and a single unit of accounting. The Company is not responsible for the physical installation of the equipment in the customer's facility; however, the Company supervises the installation by the customer. The customer has the right to use the IMAX brand from the date the Company and the customer enter into an arrangement.

The Company's System Deliverable arrangements involve either a lease or a sale of the theater system. Consideration in the Company's arrangements, that are not joint revenue sharing arrangements, consist of upfront or initial payments made before and after the final installation of the theater system equipment and ongoing payments throughout the term of the lease or over a period of time, as specified in the arrangement. The ongoing payments are the greater of an annual fixed minimum amount or a certain percentage of the theater box-office. Amounts received in excess of the annual fixed minimum amounts are considered contingent payments. The Company's arrangements are non-cancellable, unless the Company fails to perform its obligations. In the absence of a material default by the Company, there is no right to any remedy for the customer under the Company's arrangements. If a material default by the Company exists, the customer has the right to terminate the arrangement and seek a refund only if the customer provides notice to the Company of a material default and only if the Company does not cure the default within a specified period.

*Sales Arrangements*

For arrangements qualifying as sales, the revenue allocated to the System Deliverable is recognized in accordance with the Revenue Recognition Topic of the FASB ASC, when all of the following conditions have been met: (i) the projector, sound system and screen system have been installed and are in full working condition, (ii) the 3D glasses cleaning machine, if applicable, has been delivered, (iii) projectionist training has been completed and (iv) the earlier of (a) receipt of written customer acceptance certifying the completion of installation and run-in testing of the equipment and the completion of projectionist training or (b) public opening of the theater, provided there is persuasive evidence of an arrangement, the price is fixed or determinable and collectibility is reasonably assured.

The initial revenue recognized consists of the initial payments received and the present value of any future initial payments and fixed minimum ongoing payments that have been attributed to this unit of accounting. Contingent payments in excess of the fixed minimum ongoing payments are recognized when reported by theater operators, provided collection is reasonably assured.

The Company has also agreed, on occasion, to sell equipment under lease or at the end of a lease term. Consideration agreed to for these lease buyouts is included in revenues from equipment and product sales, when persuasive evidence of an arrangement exists, the fees are fixed or determinable, collectibility is reasonably assured and title to the theater system passes from the Company to the customer.

In a limited number of sales arrangements for MPX theater systems, the Company provided customers with a right to acquire, for a specified period of time, digital upgrades (each upgrade consisting of a projector, certain sound system components and screen enhancements) at a fixed or variable discount towards a future price of such digital upgrades. Up to the end of the second quarter of 2009, the Company was not able to determine the fair value of a digital upgrade. Accordingly, the Company deferred all consideration received and receivable under such arrangements for the delivered MPX and the upgrade right, except for the amount allocated to maintenance and extended warranty services provided to the customers for the installed system. This revenue was deferred until the upgrade right expired, if applicable, or a digital upgrade was delivered. In the third quarter of 2009, the Company determined the fair value of digital upgrades and the upgrade rights. For any such sales arrangements where the upgrade right has not expired and the digital upgrade has not yet been delivered, the Company has allocated the consideration received and receivable (excluding the amount allocated to maintenance and extended warranty services) to the upgrade right based on its fair value and to the delivered MPX theater system based on the residual of the consideration received and receivable. The revenue related to the digital upgrade continues to be deferred, until the digital upgrade is delivered provided the other revenue recognition criteria are met. The revenue related to the MPX system is recognized at the allocation date as the system was previously delivered provided the other revenue recognition criteria are met. Costs related to the installed MPX systems for which revenue has not been recognized are included in inventories until the conditions for revenue recognition are met. The Company also provides customers, in certain cases, with sales arrangements for multiple systems consisting of a combination of MPX theater systems and complete digital theater systems for a specified price. The Company allocates the actual or implied discount between the delivered and undelivered theater systems on a relative fair value basis, provided all of the other conditions for recognition of a theater system are met.

### *Lease Arrangements*

The Company uses the Leases Topic of FASB ASC to evaluate whether an arrangement is a lease within the scope of the accounting standard. Arrangements not within the scope of the accounting standard are accounted for either as a sales or services arrangement, as applicable.

For lease arrangements, the Company determines the classification of the lease in accordance with the Leases Topic of FASB ASC. A lease arrangement that transfers substantially all of the benefits and risks incident to ownership of the equipment is classified as a sales-type lease based on the criteria established by the accounting standard; otherwise the lease is classified as an operating lease. Prior to commencement of the lease term for the equipment, the Company may modify certain payment terms or make concessions. If these circumstances occur, the Company reassesses the classification of the lease based on the modified terms and conditions.

For sales-type leases, the revenue allocated to the System Deliverable is recognized when the lease term commences, which the Company deems to be when all of the following conditions have been met: (i) the projector, sound system and screen system have been installed and are in full working condition, (ii) the 3D glasses cleaning machine, if applicable, has been delivered, (iii) projectionist training has been completed and (iv) the earlier of (a) receipt of the written customer acceptance certifying the completion of installation and run-in testing of the equipment and the completion of projectionist training or (b) public opening of the theater, provided collection is reasonably assured.

The initial revenue recognized for sales-type leases consists of the initial payments received and the present value of future initial payments and fixed minimum ongoing payments computed at the interest rate implicit in the lease. Contingent payments in excess of the fixed minimum payments are recognized when reported by theater operators, provided collection is reasonably assured.

For operating leases, initial payments and fixed minimum ongoing payments are recognized as revenue on a straight-line basis over the lease term. For operating leases, the lease term is considered to commence when all of the following conditions have been met: (i) the projector, sound system and screen system have been installed and in full working condition, (ii) the 3D glasses cleaning machine, if applicable, has been delivered, (iii) projectionist training has been completed and (iv) the earlier of (a) receipt of the written customer acceptance certifying the completion of installation and run-in testing of the equipment and the completion of projectionist training or (b) public opening of the theater. Contingent payments in excess of fixed minimum ongoing payments are recognized as revenue when reported by theater operators, provided collection is reasonably assured.

For joint revenue sharing arrangements, where the Company receives a portion of a theater's box-office and concession revenues in exchange for placing a theater system at the theater operator's venue, revenue is recognized when box-office and concession revenues are reported by the theater operator, provided collection is reasonably assured. Revenue recognized related to these arrangements is included in Rental revenue.

### *Finance Income*

Finance income is recognized over the term of the sales-type lease or financed sales receivable, provided collection is reasonably assured. Finance income recognition ceases when the Company determines that the associated receivable is not recoverable.

### *Improvements and Modifications*

Improvements and modifications to the theater system after installation are treated as separate revenue transactions, if and when the Company is requested to perform these services. Revenue is recognized for these services when the performance of the services has been completed, provided there is persuasive evidence of an arrangement, the fee is fixed or determinable and collection is reasonably assured.

### *Cost of Equipment and Product Sales*

Theater systems and other equipment subject to sales-type leases or sales arrangements includes the cost of the equipment and costs related to project management, design, delivery and installation supervision services as applicable. The costs related to theater systems under sales and sales-type lease arrangements are relieved from inventory to costs and expenses applicable to revenues-equipment and product sales when revenue recognition criteria are met. In addition, the Company defers direct selling costs such as sales commissions and other amounts related to these contracts until the related revenue is recognized. These costs included in costs and expenses applicable to revenues-equipment and product sales, totaled \$2.0 million in 2009 (2008 – \$1.0 million, 2007 – \$0.8 million).

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The cost of equipment and product sales prior to direct selling costs was \$27.0 million in 2009 (2008 – \$16.2 million, 2007 – \$20.7 million). The Company may have warranty obligations at or after the time revenue is recognized which require replacement of certain parts that do not affect the functionality of the theater system or services. The costs for warranty obligations for known issues are accrued as charges to costs and expenses applicable to revenues-equipment and product sales at the time revenue is recognized based on the Company's past historical experience and cost estimates.

### *Cost of Rentals*

For theater systems and other equipment subject to an operating lease or placed in a theater operators' venue under a joint revenue sharing arrangement, the cost of equipment is included within property, plant and equipment. Depreciation and impairment losses, if any, are included in cost of rentals based on the accounting policy set out in note 2(h). Commissions are recognized as costs and expenses applicable to revenues-rentals in the month they are earned. These costs totaled \$1.6 million in 2009 (2008 — \$1.0 million, 2007 — \$0.2 million). Direct advertising and marketing costs for each theater are charged to costs and expenses applicable to revenues-rentals as incurred. These costs totaled \$1.8 million in 2009 (2008 — \$0.8 million, 2007 — \$nil).

### *Terminations, Consensual Buyouts and Concessions*

The Company enters into theater system arrangements with customers that contain customer payment obligations prior to the scheduled installation of the theater system. During the period of time between signing and the installation of the theater system, which may extend several years, certain customers may be unable to, or elect not to, proceed with the theater system installation for a number of reasons including business considerations, or the inability to obtain certain consents, approvals or financing. Once the determination is made that the customer will not proceed with installation, the arrangement may be terminated under the default provisions of the arrangement or by mutual agreement between the Company and the customer (a "consensual buyout"). Terminations by default are situations when a customer does not meet the payment obligations under an arrangement and the Company retains the amounts paid by the customer. Under a consensual buyout, the Company and the customer agree, in writing, to a settlement and to release each other of any further obligations under the arrangement or an arbitrated settlement is reached. Any initial payments retained or additional payments received by the Company are recognized as revenue when the settlement arrangements are executed and the cash is received, respectively. These termination and consensual buyout amounts are recognized in Other revenues.

In addition, the Company could agree with customers to convert their obligations for other theater system configurations that have not yet been installed to arrangements to acquire or lease the IMAX digital theater system. The Company considers these situations to be a termination of the previous arrangement and origination of a new arrangement for the IMAX digital theater system. The Company continues to defer an amount of any initial fees received from the customer such that the aggregate of the fees deferred and the net present value of the future fixed initial and ongoing payments to be received from the customer equals the fair value of the IMAX digital theater system to be leased or acquired by the customer. Any residual portion of the initial fees received from the customer for the terminated theater system is recorded in Other revenues at the time when the obligation for the original theater system is terminated and the new theater system arrangement is signed.

The Company may offer certain incentives to customers to complete theater system transactions including payment concessions or free services and products such as film licenses or 3D glasses. Reductions in, and deferral of, payments are taken into account in determining the sales price either by a direct reduction in the sales price or a reduction of payments to be discounted in accordance with the Leases Topic of the FASB ASC or the Interest Topic of the FASB ASC. Free products and services are accounted for as separate units of accounting. Other consideration given by the Company to customers are accounted for in accordance with the Revenue Recognition Topic of the FASB ASC.

### *Maintenance and Extended Warranty Services*

Maintenance and extended warranty services may be provided under a multiple element arrangement or as a separately priced contract. Revenues related to these services are deferred and recognized on a straight-line basis over the contract period and are recognized in Services revenues. Maintenance and extended warranty services includes maintenance of the customer's equipment and replacement parts. Under certain maintenance arrangements, maintenance services may include additional training services to the customer's technicians. All costs associated with this maintenance and extended warranty program are expensed as incurred. A loss on maintenance and extended warranty services is recognized if the expected cost of providing the services under the contracts exceeds the related deferred revenue.



*Film Production and IMAX DMR Services*

In certain film arrangements, the Company produces a film financed by third parties whereby the third party retains the copyright and the Company obtains exclusive distribution rights. Under these arrangements, the Company is entitled to receive a fixed fee or to retain as a fee the excess of funding over cost of production (the "production fee"). The third parties receive a portion of the revenues received by the Company on distributing the film which is charged to costs and expenses applicable to revenues-services. The production fees are deferred, and recognized as a reduction in the cost of the film based on the ratio of the Company's distribution revenues recognized in the current period to the ultimate distribution revenues expected from the film. Film exploitation costs, including advertising and marketing totaled \$1.6 million in 2009 (2008 — \$0.9 million, 2007 — \$1.2 million) and are recorded in costs and expenses applicable to revenues-services as incurred.

Revenue from film production services where the Company does not hold the associated distribution rights are recognized in Services revenues when performance of the contractual service is complete, provided there is persuasive evidence of an agreement, the fee is fixed or determinable and collection is reasonably assured.

Revenues from digitally re-mastering (IMAX DMR) films where third parties own or hold the copyrights and the rights to distribute the film are derived in the form of processing fees and recoupments calculated as a percentage of box-office receipts generated from the re-mastered films. Processing fees are recognized as Services revenues when the performance of the related re-mastering service is completed provided there is persuasive evidence of an arrangement, the fee is fixed or determinable and collection is reasonably assured. Recoupments, calculated as a percentage of box-office receipts, are recognized as Services revenue when box-office receipts are reported by the third party that owns or holds the related film rights, provided collection is reasonably assured.

Losses on film production and IMAX DMR services are recognized as costs and expenses applicable to revenues-services in the period when it is determined that the Company's estimate of total revenues to be realized by the Company will not exceed estimated total production costs to be expended on the film production and the cost of IMAX DMR services.

*Film Distribution*

Revenue from the licensing of films is recognized in Services revenues when persuasive evidence of a licensing arrangement exists, the film has been completed and delivered, the license period has begun, the fee is fixed or determinable and collection is reasonably assured. When license fees are based on a percentage of box-office receipts, revenue is recognized when box-office receipts are reported by exhibitors, provided collection is reasonably assured. Film exploitation costs, including advertising and marketing, totaled \$0.8 million in 2009 (2008 — \$0.7 million, 2007 — \$0.5 million) and are recorded in costs and expenses applicable to revenues-services as incurred.

*Film Post-Production Services*

Revenues from post-production film services are recognized in Services revenues when performance of the contracted services is complete provided there is persuasive evidence of an arrangement, the fee is fixed or determinable and collection is reasonably assured.

*Theater Operations Revenue*

The Company recognizes revenue in Services revenues from its owned and operated theaters resulting from box-office ticket and concession sales as tickets are sold, films are shown and upon the sale of various concessions. The sales are cash or credit card transactions with theatergoers based on fixed prices per seat or per concession item.

In addition, the Company enters into commercial arrangements with third party theater owners resulting in the sharing of profits and losses which are recognized in Services revenues when reported by such theaters. The Company also provides management services to certain theaters and recognizes revenue over the term of such services.

*Other*

Revenues on camera rentals are recognized in Rental revenues over the rental period.

Revenue from the sale of 3D glasses is recognized in Equipment and product sale revenues when the 3D glasses have been delivered to the customer.

Other service revenues are recognized in Service revenues when the performance of contracted services is complete.

**(o) Research and Development**

Research and development costs are expensed as incurred and primarily include projector and sound parts, labor, consulting fees, allocation of overheads and other related materials which pertain to the Company's development of ongoing product and services.

**(p) Foreign Currency Translation**

Monetary assets and liabilities of the Company's operations which are denominated in currencies other than the functional currency are translated into the functional currency at the exchange rates prevailing at the end of the period. Non-monetary items are translated at historical exchange rates. Revenue and expense transactions are translated at exchange rates prevalent at the transaction date. Such exchange gains and losses are included in the determination of earnings in the period in which they arise.

Foreign currency derivatives are recognized and measured in the balance sheet at fair value. Changes in the fair value (gains or losses) are recognized in the consolidated statement of operations except for derivatives designated and qualifying as foreign currency hedging instruments. For foreign currency hedging instruments, the effective portion of the gain or loss in a hedge of a forecasted transaction is reported in other comprehensive income and reclassified to the consolidated statement of operations when the forecasted transaction occurs. Any ineffective portion is recognized immediately in the consolidated statement of operations.

**(q) Stock-Based Compensation**

The Company's stock-based compensation is recognized in accordance with the FASB ASC Topic 505, "Equity" and Topic 718, "Compensation-Stock Compensation."

The Company estimates the fair value of employee stock-based payment awards on the date of grant using fair value measurement techniques such as an option-pricing model. The value of the portion of the employee award that is ultimately expected to vest is recognized as expense over the requisite service periods in the Company's consolidated statement of operations.

The Company utilizes a lattice-binomial option-pricing model ("Binomial Model") to determine the fair value of stock-based payment awards. The fair value determined by the Binomial Model is affected by the Company's stock price as well as assumptions regarding a number of highly complex and subjective variables. These variables include, but are not limited to, the Company's expected stock price volatility over the term of the awards, and actual and projected employee stock option exercise behaviors. The Binomial Model also considers the expected exercise multiple which is the multiple of exercise price to grant price at which exercises are expected to occur on average. Option-pricing models were developed for use in estimating the value of traded options that have no vesting or hedging restrictions and are fully transferable. Because the Company's employee stock options have certain characteristics that are significantly different from traded options, and because changes in the subjective assumptions can materially affect the estimated value, in management's opinion, the Binomial Model best provides a fair measure of the fair value of the Company's employee stock options.

Stock-based compensation expense includes compensation cost for new employee stock-based payment awards granted and employee awards modified, repurchased or cancelled. In addition, compensation expense includes the compensation cost, based on the grant-date fair value calculated for pro forma disclosures under Topic 718, for the portion of awards for which required service had not been rendered that were outstanding. Compensation expense for these employee awards is recognized using the straight-line single-option method. As stock-based compensation expense recognized after January 1, 2006 is based on awards ultimately expected to vest, it has been adjusted for estimated forfeitures. The Codification requires forfeitures to be estimated at the time of grant and revised, if subsequent information indicates that the actual forfeitures are likely to be different from previous estimates. The Company utilizes the market yield on U.S. treasury securities (also known as nominal rate) over the contractual term of the instrument being issued.

*Stock Option Plan*

As the Company stratifies its employees into homogeneous groups in order to calculate fair value under the Binomial Model, ranges of assumptions used are presented for expected option life and annual termination probability. The Company uses historical data to estimate option exercise and employee termination within the valuation model; various groups of employees that have similar historical exercise behavior are considered separately for valuation purposes. The expected volatility rate is estimated based on the Company's historical share-price volatility. The Company utilizes an expected term method to determine expected option life based on such data as vesting periods of awards, historical data that includes past exercise and post-vesting cancellations and stock price history.

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The Company's policy is to issue new shares from treasury to satisfy stock options which are exercised.

### *Restricted Common Shares and Stock Appreciation Rights*

The Company's restricted common shares and stock appreciation rights have been classified as liabilities in accordance with Topic 505. The Company utilizes the Binomial Model to determine the value of these instruments settleable in cash.

### *Awards to Non-Employees*

Stock-based awards for services provided by non-employees are accounted for based on the fair value of the services received or the stock-based award, whichever is more reliably determinable. If the fair value of the stock-based award is used, the fair value is measured at the date of the award and remeasured until the earlier of the date that the Company has a performance commitment from the non-employees, the date performance is completed, or the date the awards vest.

### **(r) Pension Plans and Postretirement Benefits**

The Company has a defined benefit pension plan, the Supplemental Executive Retirement Plan (the "SERP"). As the Company's SERP is unfunded, as at December 31, 2009, a liability is recognized for the projected benefit obligation.

Assumptions used in computing the defined benefit obligations are reviewed annually by management in consultation with its actuaries and adjusted for current conditions. Actuarial gains or losses and prior service costs or credits that arise during the period but are not recognized as components of net periodic benefits cost are recognized as a component of other comprehensive income. Amounts recognized in accumulated other comprehensive income including unrecognized actuarial gains or losses and prior service costs are adjusted as they are subsequently recognized in the consolidated statement of operations as components of net periodic benefit cost. Prior service costs resulting from the pension plan inception or amendments are amortized over the expected future service life of the employees, cumulative actuarial gains and losses in excess of 10% of the projected benefit obligation are amortized over the expected average remaining service life of the employees, and current service costs are expensed when earned. The remaining weighted average future service life of the employees for the year ended December 31, 2009 was 1.00 year.

For defined contribution pension plans, amounts contributed by the Company are recorded as an expense.

A liability is recognized for the unfunded accumulated benefit obligation of the postretirement benefits plan. Assumptions used in computing the accumulated benefit obligation are reviewed by management in consultation with its actuaries and adjusted for current conditions. Current service cost is recognized as earned and actuarial gains and losses are recognized in the consolidated statement of operations immediately.

### **(s) Guarantees**

The FASB ASC Guarantees Topic requires a guarantor to recognize, at the inception of a guarantee, a liability for the fair value of certain guarantees. Disclosures as required under the accounting guidance have been included in note 14(k).

## **3. New Accounting Standards and Accounting Changes**

### ***FASB Establishes Accounting Standards Codification***

In June 2009, the FASB issued Accounting Standards Update No. 2009-01, "Generally Accepted Accounting Principles" ("ASC Topic 105") which establishes the FASB ASC as the official single source of authoritative U.S. GAAP. All existing accounting standards are superseded. All other accounting guidance not included in the Codification will be considered non-authoritative. The Codification also includes all relevant SEC guidance organized using the same topical structure in separate sections within the Codification.

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Following the Codification, the FASB will not issue new standards in the form of Statements, FASB Staff Positions or Emerging Issues Task Force Abstracts. Instead, FASB will issue Accounting Standard Updates which will serve to update the Codification, provide background information about the guidance and provide the basis for conclusions on the changes to the Codification.

The Codification is not intended to change U.S. GAAP, but it will change the way U.S. GAAP is organized and presented. The Company adopted the Codification on July 1, 2009 and the principal impact on the financial statements is limited to disclosures as all future references to authoritative accounting literature will be referenced in accordance with the Codification.

### ***Fair Value Accounting***

ASC 820, "Fair Value Measurements and Disclosures," provides a consistent definition of fair value that focuses on exit price, prioritizes the use of market-based inputs over entity-specific inputs for measuring fair value and establishes a three-level hierarchy for fair value measurements. On January 1, 2008, the Company adopted the applicable sections of ASC 820 for financial assets and financial liabilities and for nonfinancial assets and nonfinancial liabilities that are remeasured at least annually. At that time, the Company elected to defer adoption of ASC 820 for one year for nonfinancial assets and nonfinancial liabilities that are recognized or disclosed at fair value in the financial statements on a nonrecurring basis. On January 1, 2009, the Company adopted the sections of ASC 820 regarding nonfinancial assets and nonfinancial liabilities that are recognized or disclosed at fair value in the financial statements on a nonrecurring basis. The applicable sections of ASC 820 were applied prospectively. The adoption of the various sections of ASC 820 on January 1, 2008 and 2009 did not have a material impact on the Company's financial condition or results of operations.

In April 2009, the FASB updated sections of ASC 825, "Financial Instruments." This update requires disclosures about the fair value of financial instruments for interim reporting periods and annual financial statements. This section update does not require disclosures for earlier periods presented for comparative purposes at initial adoption. This accounting standard update is effective for interim and annual periods ending after June 15, 2009, with early adoption permitted for periods ending after March 15, 2009, on a prospective basis. The Company has adopted the provisions of this guidance for the year ended December 31, 2009 and, accordingly, has expanded its disclosures as presented in note 21(b) to the accompanying audited consolidated financial statements in Item 8.

In April 2009, the FASB updated sections of ASC 820, "Fair Value Measurements and Disclosures." This update provides additional guidance for estimating fair value when an asset or liability experiences a significant decrease in volume and activity in relation to their normal market activity. Additionally, this update provides guidance on identifying circumstances that may indicate if a transaction is not orderly and is effective for interim and annual periods ending after June 15, 2009, with early adoption permitted for periods ending after March 15, 2009, on a prospective basis. The Company has adopted this accounting standard update for the year ended December 31, 2009. The application of the provisions in this guidance did not have a material impact on the Company's financial condition or results of operations.

In August 2009, the FASB issued ASU No. 2009-05, "Codification Amendment to Topic 820, Fair Value Measurements and Disclosures" ("ASU 2009-05"). The objective of Subtopic 820-10 is to reduce the potential ambiguity in financial reporting when measuring the fair value of liabilities providing preparers, investors and other users of the financial statement with a better understanding of how the fair value of liabilities was measured. The update clarified the techniques to be used in circumstances in which a quoted price in an active market for the identical liability is not available and clarified that, when estimating the fair value of a liability, an entity is not required to include a separate input relating to the existence of a restriction that prevents the transfer of a liability. The update is effective for the first reporting period (including interim periods) beginning after issuance with early application permitted if financial statements for prior periods have not been issued. The Company has adopted ASU 2009-05 for the year ended December 31, 2009, which did not have an impact on the Company's audited consolidated financial statements.

### ***Business Combinations and Noncontrolling Interests***

In December 2007, the FASB issued amendments to ASC 810, "Consolidation," to significantly change the accounting for and reporting of business combination transactions and noncontrolling (minority) interests in consolidated financial statements. The objective of the guidance is to improve the relevance, comparability, and transparency of the financial information that a reporting entity provides in its consolidated financial statements by establishing accounting and reporting standards for the non-controlling interest in a subsidiary and for the deconsolidation of a subsidiary. It clarifies that a non-controlling interest in a subsidiary is an ownership interest in the consolidated entity that should be reported as equity in the consolidated financial statements. The guidance is effective for fiscal years, and interim periods within those fiscal years, beginning on or after December 15, 2008. Earlier adoption is prohibited. The Company adopted the provisions of this guidance on January 1, 2009. The application of this guidance did not have an effect on the Company's financial condition or results of operations.

### *Other Accounting Changes*

In December 2007, the FASB issued ASC 808, “Collaborative Arrangements”. The objective of ASC 808 is to define collaborative arrangements and establish reporting requirements for transactions between participants in a collaborative arrangement and between participants in the arrangement and third parties that are not specifically addressed within the scope of other authoritative accounting literature. ASC 808 also establishes the appropriate income statement presentation and classification for joint operating activities and payments between participants, as well as the sufficiency of the disclosures related to these arrangements. ASC 808 is effective for fiscal years, and interim periods within those fiscal years, beginning after December 15, 2008. ASC 808 is to be applied as a change in accounting principle through retrospective application to all prior periods presented for all collaborative arrangements existing as of the effective date, unless it is impracticable to do so. The Company adopted ASC 808 on January 1, 2009. The application of ASC 808 did not have an effect on the Company’s financial condition or results of operations. In accordance with ASC 808, the Company has expanded its disclosures as presented in note 16(c).

In March 2008, the FASB issued disclosure guidance which applies to all derivative instruments and non-derivative instruments that are designated and qualify as hedging instruments and related hedged items. The disclosure guidance requires entities to provide greater transparency through additional disclosures about (a) how and why an entity uses derivative instruments, (b) how derivative instruments and related hedged items are accounted for, and (c) how derivative instruments and related hedged items affect an entity’s financial position, results of operations, and cash flows. The provisions of this guidance require qualitative disclosures about objectives and strategies for using derivatives, quantitative disclosures about fair value amounts and gains and losses on derivative instruments, and disclosures about credit risk related contingent features in derivative agreements. This disclosure guidance is effective for financial statements issued for fiscal years and interim periods beginning after November 15, 2008. On January 1, 2009, the Company adopted the provisions of this guidance and, accordingly, has expanded its disclosures as presented in note 21.

In April 2008, the FASB issued amendments to ASC 275, “Risks and Uncertainties,” and ASC 350, “Intangibles — Goodwill and Other,” that address the determination of the useful life of intangible assets. These sections address the factors that should be considered in developing renewal or extension assumptions used to determine the useful life of a recognized intangible asset. Specifically, the Company is required to use its own historical experience in renewing or extending the estimated life of an intangible asset as opposed to legal, regulatory or contractual provisions that enable renewal or extension of the asset’s legal or contractual life without substantial cost. This guidance is effective for fiscal years beginning after December 15, 2008, and interim periods within those fiscal years, on a prospective basis. Early adoption is prohibited. Intangible assets acquired after January 1, 2009 are accounted for in accordance with the provisions of these sections and the required disclosure is presented in note 10.

In April 2009, the FASB amended sections of ASC 320, “Investments — Debt and Equity Securities.” This section of the Codification revises guidance for determining how and when to recognize other-than-temporary impairments of debt securities for which changes in fair value are not regularly recognized in earnings and the financial statement presentation of such impairments. This section also expands and increases the frequency of disclosures related to other-than-temporary impairments of both debt and equity securities and is effective for interim and annual periods ending after June 15, 2009, with early adoption permitted for periods ending after March 15, 2009, on a prospective basis. . The Company has adopted the provisions of this guidance for the year ended December 31, 2009. The application of this accounting standard update did not have a material impact on the Company’s financial condition or results of operations.

In May 2009, the FASB issued ASC 855, “Subsequent Events,” accounting guidance that establishes general standards for and disclosure of events that occur after the balance sheet date but before the financial statements are issued. In February 2010, the FASB issued ASU No. 2010-09 which amends ASC 855 to remove all requirements for SEC filers to disclose the date through which subsequent events are considered. ASC 855, as amended, requires that all entities disclose any nonrecognized subsequent events that may have occurred. The amendment is effective as of February 2010. The Company has adopted this subsequent event guidance, as amended, for the year ended December 31, 2009. The application did not have an effect on the Company’s financial condition or results of operations.

During 2009, the FASB has issued several ASU’s – ASU No. 2009-02 through ASU No. 2009-17. Except for ASU’s No. 2009-05, 2009-13, 2009-14 and 2009-16 discussed in this 2009 Form 10-K report, the ASU’s entail technical corrections to existing guidance or affect guidance related to specialized industries or entities and therefore have minimal, if any, impact on the Company.

**Recently Issued FASB Accounting Standard Codification Updates**

In June 2009, the FASB issued Statement of Financial Accounting Standards No. 166, “Accounting for Transfers of Financial Assets—an amendment to FASB Statement No. 140” (“SFAS 166”). SFAS 166 amends FASB Statement No. 140, “Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities” (“SFAS 140”) to improve the relevance, representational faithfulness, and comparability of the information that a reporting entity provides in its financial reports about a transfer of financial assets; the effects of a transfer on its financial position, financial performance, and cash flows; and a transferor’s continuing involvement in transferred financial assets. It also removes the concept of qualifying special-purpose entities (“SPEs”) from SFAS 140 and removes the exception from applying FIN 46R to VIEs that are qualifying SPEs. SFAS 166 applies to all entities and is effective for the first annual reporting period beginning after November 15, 2009, for interim periods within that first annual reporting period, and for interim and annual reporting periods thereafter, with earlier application prohibited. The Company is currently evaluating the potential impact of SFAS 166 on its consolidated financial statements.

In June 2009, the FASB issued Statement of Financial Accounting Standards No. 167, “Amendments to FASB Interpretation No. 46(R)” (“SFAS 167”). SFAS 167 amends certain requirements of FIN 46R to improve financial reporting by enterprises involved with VIEs and provides more relevant and reliable information to users of financial statements. Specifically, SFAS 167 eliminates the quantitative approach previously required under FIN 46R for determining the primary beneficiary of a VIE. SFAS 167 has the same scope as FIN 46R, with the addition of entities previously considered qualifying SPEs and is effective for the first annual reporting period beginning after November 15, 2009, for interim periods within that first annual reporting period, and for interim and annual reporting periods thereafter, with earlier application prohibited. The Company is currently evaluating the potential impact of SFAS 167 on its consolidated financial statements.

In October 2009, the FASB issued ASU No. 2009-13, “Revenue Recognition (Topic 605): Multiple-Deliverable Revenue Arrangements (a consensus of the FASB Emerging Issues Task Force)” (“ASU 2009-13”) which amends ASC 605-25, “Revenue Recognition: Multiple-Element Arrangements.” ASU 2009-13 addresses how to determine whether an arrangement involving multiple deliverables contains more than one unit of accounting and how to allocate consideration to each unit of accounting in the arrangement. This ASU replaces all references to fair value as the measurement criteria with the term selling price and establishes a hierarchy for determining the selling price of a deliverable. ASU No. 2009-13 also eliminates the use of the residual value method for determining the allocation of arrangement consideration. Additionally, ASU 2009-13 requires expanded disclosures and is effective for fiscal years beginning on or after June 15, 2010. Earlier application is permitted with required transition disclosures based on the period of adoption. The Company is currently evaluating the potential impact of ASU 2009-13 on its consolidated financial statements.

In October 2009, the FASB issued ASU No. 2009-14, “Software (Topic 985): Certain Revenue Arrangements That Include Software Elements (a consensus of the FASB Emerging Issues Task Force)” (“ASU 2009-14”). ASU 2009-14 amends ASC 985-605, “Software: Revenue Recognition,” such that tangible products, containing both software and non-software components that function together to deliver the tangible product’s essential functionality, are no longer within the scope of ASC 985-605. It also amends the determination of how arrangement consideration should be allocated to deliverables in a multiple-deliverable revenue arrangement. The amendments in this update are effective, on a prospective basis, for revenue arrangements entered into or materially modified in fiscal years beginning on or after June 15, 2010. Earlier application is permitted with required transition disclosures based on the period of adoption. Both ASU 2009-13 and ASU 2009-14 must be adopted in the same period and must use the same transition disclosures. The Company is currently evaluating the potential impact of this standard on its consolidated financial statements.

In December 2009, the FASB issued ASU No. 2009-16, “Accounting for Transfers of Financial Assets” (“ASU 2009-16”). The purpose of this ASU is to bring SFAS 166 (as discussed above) into the Codification. The application of ASU 2009-16 will not have a material impact on the Company’s financial condition or results of operations.

In December 2009, the FASB issued ASU No. 2009-17, “Improvements to Financial Reporting by Enterprises Involved with Variable Interest Entities” (“ASU 2009-17”). The purpose of this ASU is to bring SFAS 167 (as discussed above) into the Codification. The application of ASU 2009-17 will not have a material impact on the Company’s financial condition or results of operations.

In January 2010, the FASB issued ASU No. 2010-06, “Improving Disclosures about Fair Value Measurements,” (“ASU 2010-06”) to amend topic ASC 820 “Fair Value Measurements and Disclosures,” by improving disclosure requirements in order to increase transparency in financial reporting. ASU 2010-06 requires that an entity disclose separately the amounts of significant transfers in and out of Level 1 and 2 fair value measurements and describe the reasons for the transfers. Furthermore, an entity should present information about purchases, sales, issuances, and settlements for Level 3 fair value measurements. ASU 2010-06 also clarifies

existing disclosures for the level of disaggregation and disclosures about input and valuation techniques. The new disclosures and clarifications of existing disclosures are effective for interim and annual reporting periods beginning after December 15, 2009, except for the disclosures about purchases, sales, issuances, and settlements for the activity in Level 3 fair value measurements. Those disclosures are effective for fiscal years beginning after December 15, 2010, and for interim periods within those fiscal years. The Company will adopt all disclosure amendments in ASU 2010-06, except for the amendments to Level 3 fair value measurements as described above, effective January 1, 2010, and will, accordingly, expand disclosures in its 2010 interim reporting.

During 2010, the FASB has issued several ASU's – ASU No. 2010-01 through ASU No. 2010-11. Except for ASU No. 2010-06 and ASU No. 2010-09, discussed above, the ASU's entail technical corrections to existing guidance or affect guidance related to specialized industries or entities and therefore have minimal, if any, impact on the Company.

#### **4. Lease Arrangements**

##### ***(a) General Terms of Lease Arrangements***

A number of the Company's leases are classified as sales-type leases. Certain arrangements that are legal sales are also classified as sales-type leases as certain clauses within the arrangements limit transfer of title or provide the Company with conditional rights to the system. The customer's rights under the Company's lease arrangements are described in note 2(n). The Company classifies its lease arrangements at inception of the arrangement and, if required, after a modification of the lease arrangement, to determine whether they are sales-type leases or operating leases. Under the Company's lease arrangements, the customer has the ability and the right to operate the hardware components or direct others to operate them in a manner determined by the customer. The Company's lease terms are typically non-cancellable for 10 to 20 years with renewal provisions. Except for those sales arrangements that are classified as sales-type leases, the Company's leases generally do not contain an automatic transfer of title at the end of the lease term. The Company's lease arrangements do not contain a guarantee of residual value at the end of the lease term. The customer is required to pay for executory costs such as insurance and taxes and is required to pay the Company for maintenance and extended warranty generally after the first year of the lease until the end of the lease term. The customer is responsible for obtaining insurance coverage for the theater systems commencing on the date specified in the arrangement's shipping terms and ending on the date the theater systems are delivered back to the Company.

The Company has assessed the nature of its joint revenue sharing arrangements and concluded that, based on the guidance in the Revenue Recognition Topic of the ASC, the arrangements contain a lease. Under joint revenue sharing arrangements, the customer has the ability and the right to operate the hardware components or direct others to operate them in a manner determined by the customer. The Company's joint revenue sharing arrangements are typically non-cancellable for 7 to 10 years with renewal provisions. Title to equipment under joint revenue sharing arrangements does not transfer to the customer. The Company's joint revenue sharing arrangements do not contain a guarantee of residual value at the end of the term. The customer is required to pay for executory costs such as insurance and taxes and is required to pay the Company for maintenance and extended warranty throughout the term. The customer is responsible for obtaining insurance coverage for the theater systems commencing on the date specified in the arrangement's shipping terms and ending on the date the theater systems are delivered back to the Company.



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### (b) Financing Receivables

Financing receivables, consisting of net investment in sales-type leases and receivables from the financed sales of its theater systems, are as follows:

	As at December 31,	
	2009	2008
Gross minimum lease payments receivable	\$ 64,779	\$ 72,100
Unearned finance income	(18,939)	(23,558)
Minimum lease payments receivable	45,840	48,542
Accumulated allowance for uncollectible amounts	(5,734)	(4,884)
Net investment in leases	40,106	43,658
Gross financed sales receivables	32,526	18,515
Unearned finance income	(9,869)	(6,035)
Financed sales receivables	22,657	12,480
Accumulated allowance for uncollectible amounts	(178)	—
Net financed sales receivables	22,479	12,480
Total financing receivables	<u>\$ 62,585</u>	<u>\$ 56,138</u>
Net financed sales receivables due within one year	\$ 4,304	\$ 1,948
Net financed sales receivables due after one year	\$ 18,175	\$ 10,532

In 2009, the financed sales receivables had a weighted average effective interest rate of 9.4% (2008 — 9.5%).

### (c) Contingent Fees

Contingent fees, reported as revenue, from customers under various arrangements are as follows:

	Years Ended December 31,		
	2009	2008	2007
Sales	\$ 406	\$ 285	\$ 203
Sales-type leases	1,717	1,730	1,231
Operating leases	1,483	1,681	2,320
Subtotal — sales, sales-type leases and operating leases	3,606	3,696	3,754
Joint revenue sharing arrangements	21,598	3,435	2,343
	<u>\$ 25,204</u>	<u>\$ 7,131</u>	<u>\$ 6,097</u>

### (d) Future Minimum Rental Payments

Future minimum rental payments receivable from operating and sales-type leases at December 31, 2009, for each of the next five years are as follows:

	Operating Leases	Sales-Type Leases
2010	\$ 1,775	\$ 8,142
2011	1,687	6,931
2012	1,584	5,900
2013	1,571	5,700
2014	1,607	5,198
Thereafter	8,318	27,423
Total	<u>\$ 16,542</u>	<u>\$ 59,294</u>

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Total future minimum rental payments receivable from sales-type leases at December 31, 2009 exclude \$5.5 million which represents amounts billed but not yet received.

### 5. Inventories

	As at December 31,	
	2009	2008
Raw materials	\$ 4,045	\$ 6,392
Work-in-process	983	1,863
Finished goods	5,243	11,567
	<u>\$ 10,271</u>	<u>\$ 19,822</u>

At December 31, 2009, finished goods inventory for which title had passed to the customer and revenue was deferred amounted to \$1.6 million (December 31, 2008 — \$5.5 million).

Inventories at December 31, 2009 include provisions for excess and obsolete inventory based upon current estimates of net realizable value considering future events and conditions of \$3.8 million (December 31, 2008 — \$5.3 million).

### 6. Film Assets

	As at December 31,	
	2009	2008
Completed and released films, net of accumulated amortization of \$28,015 (2008 — \$19,502)	\$ 1,897	\$ 333
Films in production	1,136	3,384
Films in development	185	206
	<u>\$ 3,218</u>	<u>\$ 3,923</u>

The Company expects to amortize film costs of \$1.7 million for released films within three years from December 31, 2009 (December 31, 2008 — \$0.3 million). The amount of participation payments to third parties related to these films that the Company expects to pay during 2010 is \$5.0 million (2009 — \$3.1 million).

**7. Property, Plant and Equipment**

	As at December 31, 2009		
	Cost	Accumulated Depreciation	Net Book Value
Equipment leased or held for use			
Theater system components <sup>(1)(2)</sup>	\$ 68,349	\$ 30,240	\$ 38,109
Camera equipment <sup>(5)</sup>	5,954	5,954	—
	<u>74,303</u>	<u>36,194</u>	<u>38,109</u>
Assets under construction <sup>(3)</sup>	3,700	—	3,700
Other property, plant and equipment			
Land	1,593	—	1,593
Buildings	14,723	8,404	6,319
Office and production equipment <sup>(4)</sup>	27,145	24,347	2,798
Leasehold improvements	8,421	6,120	2,301
	<u>51,882</u>	<u>38,871</u>	<u>13,011</u>
	<u>\$ 129,885</u>	<u>\$ 75,065</u>	<u>\$ 54,820</u>
	As at December 31, 2008		
	Cost	Accumulated Depreciation	Net Book Value
Equipment leased or held for use			
Theater system components <sup>(1)(2)</sup>	\$ 48,474	\$ 29,007	\$ 19,467
Camera equipment <sup>(5)</sup>	5,954	5,953	1
	<u>54,428</u>	<u>34,960</u>	<u>19,468</u>
Assets under construction <sup>(3)</sup>	5,063	—	5,063
Other property, plant and equipment			
Land	1,593	—	1,593
Buildings	14,723	7,902	6,821
Office and production equipment <sup>(4)</sup>	28,006	24,371	3,635
Leasehold improvements	8,272	5,447	2,825
	<u>52,594</u>	<u>37,720</u>	<u>14,874</u>
	<u>\$ 112,085</u>	<u>\$ 72,680</u>	<u>\$ 39,405</u>

- (1) Included in theater system components are assets with costs of \$21.3 million (2008 — \$23.5 million) and accumulated depreciation of \$20.2 million (2008 — \$21.3 million) that are leased to customers under operating leases.
- (2) Included in theater system components are assets with costs of \$42.7 million (2008 — \$20.8 million) and accumulated depreciation of \$6.7 million (2008 — \$4.5 million) that are used in joint revenue sharing arrangements.
- (3) Included in assets under construction are components with costs of \$3.1 million (2008 — \$4.8 million) that will be utilized to construct assets to be used in joint revenue sharing arrangements.
- (4) Included in office and production equipment are assets under capital lease with costs of \$1.5 million (2008 — \$1.5 million) and accumulated depreciation of \$1.3 million (2008 — \$1.1 million).
- (5) Fully amortized camera equipment is still in use by the Company.

**8. Other Assets**

	As at December 31,	
	2009	2008
Cash surrender value of life insurance policies	\$ 7,313	\$ 6,237
Commissions and other deferred selling expenses	2,828	3,481
Deferred charges on debt financing	1,489	3,180
Insurance recoveries	2,053	2,747
Foreign currency derivatives	1,389	398
Shelf registration fees	68	—
Other	—	31
	<u>\$ 15,140</u>	<u>\$ 16,074</u>

**9. Income Taxes**

(a) Earnings (loss) from continuing operations before income taxes by tax jurisdiction are comprised of the following:

	Years Ended December 31,		
	2009	2008	2007
Canada	\$ 4,833	\$ (42,285)	\$ (31,113)
United States	497	7,723	1,944
Other	141	1,144	424
	<u>\$ 5,471</u>	<u>\$ (33,418)</u>	<u>\$ (28,745)</u>

(b) The provision for income taxes related to income from continuing operations is comprised of the following:

	Years Ended December 31,		
	2009	2008	2007
<b>Current:</b>			
Canada	\$ (104)	\$ (865)	\$ (384)
Foreign	(162)	24	(156)
	<u>(266)</u>	<u>(841)</u>	<u>(540)</u>
<b>Deferred:</b>			
Canada	(8)	749	68
Foreign	—	—	—
	<u>(8)</u>	<u>749</u>	<u>68</u>
	<u>\$ (274)</u>	<u>\$ (92)</u>	<u>\$ (472)</u>

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(c) The (provision for) recovery of income taxes from continuing operations differs from the amount that would have resulted by applying the combined Canadian federal and provincial statutory income tax rates to earnings (losses) due to the following:

	Years Ended December 31,		
	2009	2008 <sup>(1)</sup>	2007 <sup>(1)</sup>
Income tax (provision) recovery at combined statutory rates	\$ (1,806)	\$ 11,225	\$ 10,283
Adjustments resulting from:			
Non-taxable portion of capital gains and losses	142	—	(978)
Non-deductible stock based compensation	(704)	(467)	(504)
Other non-deductible items	14	(131)	(188)
(Increase) decrease in valuation allowance	(7,327)	(11,560)	3,962
Changes to tax reserves	413	(323)	252
Income tax at different rates in foreign and other provincial jurisdictions	(76)	(648)	(337)
Impact of changes in future enacted tax rates on current year temporary differences	(259)	(1,877)	(2,592)
Carryforward (utilization) of investment and other tax credits (non-refundable)	329	428	1,138
Effect of changes in legislation relating to enacted tax rate reductions	(3,652)	—	(6,533)
Effect of changes in legislation relating to foreign currency election	14,147	—	—
Effect of changes in legislation relating to tax credits	928	511	—
Changes to deferred tax assets and liabilities resulting from audit and other tax return adjustments	(2,216)	1,435	(1,499)
Expiration of losses and credits carried forward	(7)	(549)	(157)
Changes to deferred tax assets and liabilities resulting from foreign exchange	6	1,911	(3,277)
Other	(206)	(47)	(42)
Provision for income taxes, as reported	<u>\$ (274)</u>	<u>\$ (92)</u>	<u>\$ (472)</u>

(1) Prior years' comparatives have been restated to conform to the current year's presentation.

(d) The net deferred income tax asset is comprised of the following:

	As at December 31,	
	2009	2008
Net operating loss carryforwards	\$ 13,757	\$ 17,756
Net capital loss carryforwards	—	4,780
Investment tax credit and other tax credit carryforwards	5,186	3,742
Write-downs of other assets	651	716
Excess tax over accounting basis in property, plant and equipment and inventories	45,941	32,465
Accrued pension liability	7,887	8,278
Other accrued reserves	6,134	3,347
Total deferred incomes tax assets	79,556	71,084
Income recognition on net investment in leases	(7,639)	(7,072)
Accrued gain for tax purposes on Senior Notes due to foreign exchange	—	(1,342)
Other	(284)	(284)
	71,633	62,386
Valuation allowance	(71,633)	(62,386)
Net deferred income tax asset	<u>\$ —</u>	<u>\$ —</u>

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The gross deferred tax assets include an amount of \$1.9 million relating to the tax effect of deductible share issuance costs. This asset has been offset with an equal valuation allowance, both of which have been charged directly to shareholders' equity in the year. In addition, a tax recovery of \$0.1 million was recorded to discontinued operations with an offsetting change in valuation allowance.

(e) Estimated net operating loss carryforwards and estimated tax credit carryforwards expire as follows:

	Investment Tax Credits and Other Tax Credit Carryforwards	Net Operating Loss Carryforwards
2010	\$ —	\$ 47
2011	—	—
2012	—	—
2013	796	—
2014	—	9
Thereafter	5,450	35,495
	<u>\$ 6,246</u>	<u>\$ 35,551</u>

Estimated net operating loss carryforwards can be carried forward to reduce taxable income through to 2029. Estimated capital loss carryforwards amount to \$nil as at December 31, 2009 (2008 — \$34.8 million) and can be carried forward indefinitely to reduce capital gains. Investment tax credits and other tax credits can be carried forward to reduce income taxes payable through to 2029.

As at December 31, 2009, the Company had approximately \$30.9 million of U.S. consolidated federal tax and state tax net operating loss carryforwards. Realization of some or all of the benefit from these U.S. net tax operating losses is dependent on: (i) the Company's ability to generate future taxable income and (ii) the absence of certain "ownership changes" of the Company's common shares. An "ownership change," as defined in the applicable federal income tax rules, would place significant limitations, on an annual basis, on the use of such net operating losses to offset any future taxable income that the Company may generate. Such limitations, in conjunction with the net operating loss expiration provisions, could significantly reduce or effectively eliminate the Company's ability to use its U.S. net operating losses to offset any future taxable income.

(f) Uncertain tax positions

In connection with the Company's adoption of FIN 48, as of January 1, 2007, the Company recorded a net increase to its deficit of \$2.1 million (including approximately \$0.9 million related to accrued interest and penalties) related to the measurement of potential international withholding tax requirements and a decrease in reserves for income taxes. As at December 31, 2009 and December 31, 2008, the Company had total unrecognized tax benefits (including interest and penalties) of \$4.4 million and \$4.4 million, respectively, for international withholding taxes. All of the unrecognized tax benefits could impact the Company's effective tax rate if recognized. While the Company believes it has adequately provided for all tax positions, amounts asserted by taxing authorities could differ from the Company's accrued position. Accordingly, additional provisions on federal, provincial, state and foreign tax-related matters could be recorded in the future as revised estimates are made or the underlying matters are settled or otherwise resolved.

A reconciliation of the beginning and ending amount of unrecognized tax benefits (excluding interest and penalties) is as follows:

*(In thousands of U.S. Dollars)*

Balance at January 1, 2009	\$ 3,244
Additions based on tax positions related to the current year	318
Additions for tax positions of prior years	55
Reductions for tax positions of prior years	—
Settlements	—
Reductions resulting from lapse of applicable statute of limitations	(380)
Balance at December 31, 2009	<u>\$ 3,237</u>

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Consistent with its historical financial reporting, the Company has classified interest and penalties related to income tax liabilities, when applicable, as part of interest expense in its consolidated statements of operations rather than income tax expense. The Company recognized approximately \$0.1 million and \$0.2 million in potential interest and penalties associated with unrecognized tax benefits for the years ended December 31, 2009 and December 31, 2008, respectively.

The number of years with open tax audits varies depending on the tax jurisdiction. The Company's major taxing jurisdictions include Canada, the province of Ontario and the United States (including multiple states).

The Company's 2003 through 2009 tax years remain subject to examination by the IRS for U.S. federal tax purposes, and the 2005 through 2009 tax years remain subject to examination by the appropriate governmental agencies for Canadian federal tax purposes. There are other on-going audits in various other jurisdictions that are not material to the financial statements.

### 10. Other Intangible Assets

	As at December 31, 2009		
	Cost	Accumulated Amortization	Net Book Value
Patents and trademarks	\$ 6,543	\$ 4,452	\$ 2,091
Intellectual property rights	100	49	51
Other	250	250	—
	<u>\$ 6,893</u>	<u>\$ 4,751</u>	<u>\$ 2,142</u>

	As at December 31, 2008		
	Cost	Accumulated Amortization	Net Book Value
Patents and trademarks	\$ 6,357	\$ 4,137	\$ 2,220
Intellectual property rights	100	39	61
Other	250	250	—
	<u>\$ 6,707</u>	<u>\$ 4,426</u>	<u>\$ 2,281</u>

The Company expects to amortize an average of \$0.3 million for each of the next 5 years, respectively. Fully amortized other intangible assets are still in use by the Company.

During 2009, the Company acquired \$0.4 million in patents and trademarks. The residual value of these patents and trademarks was \$0.4 million as at December 31, 2009. The weighted average amortization period for these additions was 10 years.

During 2009, the Company did not incur costs to renew or extend the term of acquired other intangible assets.

### 11. Senior Notes due December 2010

In 2009, the Company repurchased all \$160.0 million aggregate principal amount of its outstanding 9.625% Senior Notes due December 1, 2010, which represented the aggregate principal amount outstanding. The Company paid cash of \$159.1 million to reacquire its bonds, thereby releasing the Company from further obligations to various holders under the Indenture governing the Senior Notes. The Company accounted for the bond repurchase in accordance with the Debt Topic of the FASB ASC whereby the net carrying amount of the debt extinguished was the face value of the bonds adjusted for any unamortized premium, discount and costs of issuance, which resulted in a loss of \$0.6 million in 2009.

As of December 31, 2008, the Company had outstanding \$160.0 million in principal amount of its 9.625% Senior Notes.



## 12. Credit Facility

On February 6, 2004, the Company entered into a Loan Agreement for a secured revolving credit facility, as amended on June 30, 2005, May 16, 2006, November 7, 2007, December 5, 2007 and May 5, 2008 (the "Prior Credit Facility"). The Prior Credit Facility, a revolving credit facility set to expire on October 31, 2010, was amended and restated on November 16, 2009 (as amended and restated, the "Credit Facility").

The Prior Credit Facility permitted maximum aggregate borrowings equal to the lesser of:

- (i) \$40.0 million,
- (ii) a collateral calculation based on percentages of the book values for the Company's net investment in sales-type leases, financing receivables, finished goods inventory allocated to backlog contracts and the appraised values of the expected future cash flows related to operating leases and of the Company's owned real property, reduced by certain accruals and accounts payable, and
- (iii) a minimum level of trailing cash collections in the preceding twenty-six week period (\$58.6 million as at December 31, 2008), reduced for outstanding letters of credit and advance payment guarantees and subject to maintaining a minimum Excess Availability (as defined in the Prior Credit Facility) of \$5.0 million.

The Prior Credit Facility, which was collateralized by a first priority security interest in all of the current and future assets of the Company, contained typical affirmative and negative covenants, including covenants that restrict the Company's ability to: incur certain additional indebtedness; make certain loans, investments or guarantees; pay dividends; make certain asset sales; incur certain liens or other encumbrances; conduct certain transactions with affiliates and enter into certain corporate transactions. In addition, the Prior Credit Facility agreement contained customary events of default, including upon an acquisition or a change of control that may have a material adverse effect on the Company or a guarantor. As at December 31, 2008, the Company was in compliance with all covenants under the agreement.

As at December 31, 2008, the Company's current borrowing capacity under the Prior Credit Facility was \$10.5 million after deduction for outstanding borrowings of \$20.0 million, letters of credit and advance payment guarantees of \$1.4 million and the minimum Excess Availability of \$5.0 million, compared with borrowing capacity, as at December 31, 2007, of \$19.4 million after deduction for outstanding letters of credit of \$10.9 million and excess availability reserve of \$5.0 million.

The Prior Credit Facility bore interest at the applicable prime rate per annum or LIBOR plus a margin as specified therein. As at December 31, 2008, outstanding borrowings bore interest at the United States Prime Interest Rate. The effective interest rate for the year ended December 31, 2008 was 4.43% under the Prior Credit Facility.

On November 16, 2009, the Company amended and restated the terms of its Prior Credit Facility, which had been scheduled to mature on October 31, 2010. The amended and restated Credit Facility with a scheduled maturity of October 31, 2013, has a maximum borrowing capacity of \$75.0 million, consisting of revolving loans of up to \$40.0 million, subject to a borrowing base calculation (as described below) and including a sublimit of \$20.0 million for letters of credit, and a term loan of \$35.0 million. Certain of the Company's subsidiaries will serve as guarantors (the "Guarantors") of the Company's obligations under the Credit Facility. The Credit Facility is collateralized by a first priority security interest in all of the present and future assets of the Company and the Guarantors.

The terms of the Credit Facility are set forth in the Amended and Restated Credit Agreement (the "Credit Agreement"), dated November 16, 2009, among the Company, Wachovia Capital Finance Corporation (Canada), as agent, lender, sole lead arranger and sole bookrunner, ("Wachovia") and Export Development Canada, as lender ("EDC", together with Wachovia, the "Lenders") and in various collateral and security documents entered into by the Company and the Guarantors. Each of the Guarantors has also entered into a guarantee in respect of the Company's obligations under the Credit Facility.

The revolving portion of the Credit Facility permits maximum aggregate borrowings equal to the lesser of:

- (i) \$40.0 million, and
- (ii) a collateral calculation based on the percentages of the book values of the Company's net investment in sales-type leases, financing receivables, certain trade accounts receivable, finished goods inventory allocated to backlog contracts and the appraised values of the expected future cash flows related to operating leases and the Company's owned real property, reduced by certain accruals and accounts payable and subject to other conditions, limitations and reserve right requirements.

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On November 17, 2009, the Company repaid \$20.0 million in outstanding indebtedness under the revolving portion of the Credit Facility which had been carried over from the Prior Credit Facility and the Company borrowed \$35.0 million from the term loan portion of the Credit Facility. Furthermore, on December 17, 2009, the Company borrowed \$20.0 million under the revolving portion of the Credit Facility and subsequently repaid \$5.0 million before the end of the year. Total amounts drawn and available under the Credit Facility at December 31, 2009, were \$50.0 million and \$24.8 million, respectively.

The revolving portion of the Credit Facility bears interest, at the Company's option, at either (i) LIBOR plus a margin of 2.75% per annum, or (ii) Wachovia's prime rate plus a margin of 1.25% per annum. The term loan portion of the Credit Facility bears interest at the Company's option, at either (i) LIBOR plus a margin of 3.75% per annum, or (ii) Wachovia's prime rate plus a margin of 2.25% per annum. Under the Credit Facility, the effective interest rate for the year ended December 31, 2009 for the term loan portion was 4.09% (2008 – n/a) and 2.29% for the revolving portion (2008 — 4.43%).

The Credit Facility provides that so long as the term loan remains outstanding, the Company will be required to maintain: (i) a ratio of funded debt (as defined in the Credit Agreement) to EBITDA (as defined in the Credit Agreement) of not more than 2:1 through December 31, 2010, and (ii) a ratio of funded debt to EBITDA of not more than 1.75:1 thereafter. If the Company repays the term loan in full, it will remain subject to such ratio requirements only if Excess Availability (as defined in the Credit Agreement) is less than \$10.0 million or Cash and Excess Availability (as defined in the Credit Agreement) is less than \$15.0 million. The Company will also be required to maintain a Fixed Charge Coverage Ratio (as defined in the Credit Agreement) of not less than 1.1:1.0; provided, however, that if the Company will have repaid the term loan in full, it will remain subject to such ratio requirement only if Excess Availability is less than \$10.0 million or Cash and Excess Availability is less than \$15.0 million. At all times, under the terms of the Credit Facility, the Company is required to maintain minimum Excess Availability of not less than \$5.0 million and minimum Cash and Excess Availability of not less than \$15.0 million. The Company was in compliance with all of these requirements at December 31, 2009.

As at December 31, 2009, the Company's current borrowing capacity under the revolving portion of the Credit Facility was \$24.8 million after deduction for outstanding borrowings of \$15.0 million, letters of credit and advance payment guarantees of \$0.3 million and the minimum Excess Availability reserve of \$5.0 million, compared with a borrowing capacity, as at December 31, 2008, of \$10.5 million after deduction for outstanding borrowings of \$20.0 million, letters of credit and advanced payment guarantees of \$1.4 million and the minimum Excess Availability reserve of \$5.0 million.

The Credit Facility contains typical affirmative and negative covenants, including covenants that limit or restrict the ability of the Company and the Guarantors to: incur certain additional indebtedness; make certain loans, investments or guarantees; pay dividends; make certain asset sales; incur certain liens or other encumbrances; conduct certain transactions with affiliates and enter into certain corporate transactions.

The Credit Facility also contains customary events of default, including upon an acquisition or change of control or upon a change in the business and assets of the Company or a Guarantor that in each case is reasonably expected to have a material adverse effect on the Company or Guarantor. If an event of default occurs and is continuing under the Credit Facility, the Lenders may, among other things, terminate their commitments and require immediate repayment of all amounts owed by the Company.

In accordance with the loan agreement, the Company is obligated to make payments on the principal of the term loan as follows:

2010	\$ 11,667
2011	17,500
2012	5,833
2013	—
2014	—
Thereafter	—
	<u>\$ 35,000</u>

### Bank of Montreal Facilities

As at December 31, 2009, the Company has available a \$10.0 million facility (December 31, 2008 — \$10.0 million) with the Bank of Montreal for use solely in conjunction with the issuance of performance guarantees and letters of credit fully insured by EDC (the "Bank of Montreal Facility"). As at December 31, 2009, the Company has letters of credit outstanding of \$3.6 million as compared to \$5.2 million as at December 31, 2008 under the Bank of Montreal Facility.

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As at December 31, 2009, the Company has available a \$5.0 million (December 31, 2008 — \$5.0 million) facility with the Bank of Montreal to be solely used to cover the Company's settlement risk on its purchased foreign currency forward contracts. The facility is fully insured by EDC. As at December 31, 2009, the settlement risk on its foreign currency forward contracts was \$nil (December 31, 2008 — \$nil) as the fair value exceeded the notional value of the forward contracts.

### 13. Commitments

(a) The Company's lease commitments consist of rent and equipment under operating leases. The Company accounts for any incentives provided over the term of the lease. Total minimum annual rental payments to be made by the Company under operating leases are as follows:

	<u>Operating Leases</u>	<u>Capital Leases</u>
2010	\$ 6,113	\$ 94
2011	5,869	27
2012	5,563	23
2013	2,076	20
2014	872	—
Thereafter	2,248	—
	<u>\$ 22,741</u>	<u>\$ 164</u>

Rent expense was \$4.9 million for 2009 (2008 — \$5.1 million, 2007 — \$5.2 million) net of sublease rental of \$0.4 million (2008 — \$0.2 million, 2007 — \$0.8 million).

Recorded in the accrued liabilities balance as at December 31, 2009 is \$5.0 million (December 31, 2008 — \$6.2 million) related to accrued rent and lease inducements being recognized as an offset to rent expense over the term of the lease.

Purchase obligations under long-term supplier contracts as at December 31, 2009 were \$9.3 million (December 31, 2008 — \$4.8 million).

(b) As at December 31, 2009, the Company has letters of credit and advance payment guarantees of \$0.3 million (December 31, 2008— \$1.4 million) outstanding, of which the entire balance has been secured by the Credit Facility. As at December 31, 2009, the Company also has outstanding letters of credit of \$3.6 million as compared to \$5.2 million as at December 31, 2008, under the Bank of Montreal Facility.

(c) The Company compensates its sales force with both fixed and variable compensation. Commissions on the sale or lease of the Company's theater systems are payable in graduated amounts from the time of collection of the customer's first payment to the Company up to the collection of the customer's last initial payment. At December 31, 2009, \$0.7 million (December 31, 2008—\$0.5 million) of commissions have been accrued and will be payable in future periods.

#### 14. Contingencies and Guarantees

The Company is involved in lawsuits, claims, and proceedings, including those identified below, which arise in the ordinary course of business. In accordance with the Contingencies Topic of the FASB ASC, the Company will make a provision for a liability when it is both probable that a loss has been incurred and the amount of the loss can be reasonably estimated. The Company believes it has adequate provisions for any such matters. The Company reviews these provisions in conjunction with any related provisions on assets related to the claims at least quarterly and adjusts these provisions to reflect the impacts of negotiations, settlements, rulings, advice of legal counsel and other pertinent information related to the case. Should developments in any of these matters outlined below cause a change in the Company's determination as to an unfavorable outcome and result in the need to recognize a material provision, or, should any of these matters result in a final adverse judgment or be settled for significant amounts, they could have a material adverse effect on the Company's results of operations, cash flows, and financial position in the period or periods in which such a change in determination, settlement or judgment occurs.

The Company expenses legal costs relating to its lawsuits, claims and proceedings as incurred.

(a) In March 2005, the Company, together with Three-Dimensional Media Group, Ltd. ("3DMG"), filed a complaint in the U.S. District Court for the Central District of California, Western Division, against In-Three, Inc. ("In-Three") alleging patent infringement. On March 10, 2006, the Company and In-Three entered into a settlement agreement settling the dispute between the Company and In-Three. On June 12, 2006, the U.S. District Court for the Central District of California, Western Division, entered a stay in the proceedings against In-Three pending the arbitration of disputes between the Company and 3DMG. On May 15, 2006, the Company initiated arbitration against 3DMG before the International Centre for Dispute Resolution in New York ("ICDR"), alleging breaches of the license and consulting agreements between the Company and 3DMG. On June 15, 2006, 3DMG filed an answer denying any breaches and asserting counterclaims that the Company breached the parties' license agreement. On June 21, 2007, the Arbitration Panel unanimously denied 3DMG's Motion for Summary Judgment filed on April 11, 2007 concerning the Company's claims and 3DMG's counterclaims. The proceeding was suspended on May 4, 2009 due to failure of 3DMG to pay fees associated with the proceeding. On November 23, 2009, the ICDR extended suspension of the proceeding until May 2010, at which time the ICDR is scheduled to report back to the parties regarding the status of the proceeding. The Company will continue to pursue its claims vigorously and believes that all allegations made by 3DMG are without merit. The Company further believes that the amount of loss, if any, suffered in connection with the counterclaims would not have a material impact on the financial position or results of operations of the Company, although no assurance can be given with respect to the ultimate outcome of the arbitration.

(b) In January 2004, the Company and IMAX Theatre Services Ltd., a subsidiary of the Company, commenced an arbitration seeking damages before the International Court of Arbitration of the International Chambers of Commerce (the "ICC") with respect to the breach by Electronic Media Limited ("EML") of its December 2000 agreement with the Company. In June 2004, the Company commenced a related arbitration before the ICC against EML's affiliate, E-CITI Entertainment (I) PVT Limited ("E-Citi"), seeking damages as a result of E-Citi's breach of a September 2000 lease agreement. An arbitration hearing took place in November 2005 against E-Citi which considered all claims by the Company. On February 1, 2006, the ICC issued an award on liability finding unanimously in the Company's favor on all claims. Further hearings took place in July 2006 and December 2006. On August 24, 2007, the ICC issued an award unanimously in favor of the Company in the amount of \$9.4 million, consisting of past and future rents owed to the Company under its lease agreements, plus interest and costs. In the award, the ICC upheld the validity and enforceability of the Company's theater system contract. The Company thereafter submitted its application to the arbitration panel for interest and costs. On March 27, 2008, the Panel issued a final award in favor of the Company in the amount of \$11,309,496, plus an additional \$2,512 each day in interest from October 1, 2007 until the date the award is paid, which the Company is seeking to enforce and collect in full.

(c) In June 2004, Robots of Mars, Inc. ("Robots") initiated an arbitration proceeding against the Company in California with the American Arbitration Association pursuant to arbitration provisions in two film production agreements between Robots' predecessor-in-interest and a subsidiary of the Company (Ridefilm), asserting claims for breach of contract, fraud, breach of fiduciary duty and intentional interference with the contract. Robots is seeking an award of contingent compensation that it claims is owed under two production agreements, damages for tort claims, and punitive damages. The arbitration hearing of this matter occurred in June and October 2009. The parties are currently awaiting a final award from the arbitrator. The Company believes the amount of loss, if any, that may be suffered in connection with this proceeding will not have a material impact on the financial position or results of operations of the Company, although no assurance can be given with respect to the ultimate outcome of such arbitration.

(d) The Company and certain of its officers and directors were named as defendants in eight purported class action lawsuits filed between August 11, 2006 and September 18, 2006, alleging violations of U.S. federal securities laws. These eight actions were filed in the U.S. District Court for the Southern District of New York. On January 18, 2007, the Court consolidated all eight class action

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lawsuits and appointed Westchester Capital Management, Inc. as the lead plaintiff and Abbey Spanier Rodd & Abrams, LLP as lead plaintiff's counsel. On October 2, 2007, plaintiffs filed a consolidated amended class action complaint. The amended complaint, brought on behalf of shareholders who purchased the Company's common stock between February 27, 2003 and July 20, 2007, alleges primarily that the defendants engaged in securities fraud by disseminating materially false and misleading statements during the class period regarding the Company's revenue recognition of theater system installations, and failing to disclose material information concerning the Company's revenue recognition practices. The amended complaint also added PricewaterhouseCoopers LLP, the Company's auditors, as a defendant. The lawsuit seeks unspecified compensatory damages, costs, and expenses. The defendants filed a motion to dismiss the amended complaint on December 10, 2007. On September 16, 2008, the Court issued a memorandum opinion and order, denying the motion. On October 6, 2008, the defendants filed an answer to the amended complaint. On October 31, 2008, the plaintiffs filed a motion for class certification. Fact discovery on the merits commenced on November 14, 2008 and is ongoing. On March 13, 2009, the Court granted a second prospective lead plaintiff's request to file a motion for reconsideration of the Court's order naming Westchester Capital Management, Inc. as the lead plaintiff and issued an order denying without prejudice plaintiff's class certification motion pending resolution of the motion for reconsideration. On June 29, 2009, the Court granted the motion for reconsideration and appointed Snow Capital Investment Partners, L.P. as the lead plaintiff and Coughlin Stoia Geller Rudman & Robbins LLP as lead plaintiff's counsel. Westchester Capital Management, Inc. appealed this decision, but the U.S. Court of Appeals for the Second Circuit denied its petition on October 1, 2009. The lawsuit is at an early stage and as a result the Company is not able to estimate a potential loss exposure at this time. The Company will vigorously defend the matter, although no assurances can be given with respect to the outcome of such proceedings. The Company's directors and officers insurance policy provides for reimbursement of costs and expenses incurred in connection with this lawsuit as well as potential damages awarded, if any, subject to certain policy limits and deductibles.

(e) A class action lawsuit was filed on September 20, 2006 in the Ontario Superior Court of Justice against the Company and certain of its officers and directors, alleging violations of Canadian securities laws. This lawsuit was brought on behalf of shareholders who acquired the Company's securities between February 17, 2006 and August 9, 2006. The lawsuit is in an early stage and seeks unspecified compensatory and punitive damages, as well as costs and expenses. As a result, the Company is unable to estimate a potential loss exposure at this time. For reasons released December 14, 2009, the Court granted leave to the Plaintiffs to amend their statement of claim to plead certain claims pursuant to the Securities Act (Ontario) against the Company and granted certification of the action as a class proceeding. These are procedural decisions, and do not contain any binding conclusions on the factual or legal merits of the claim. The Company has commenced certain appeal proceedings with respect to each of the Court's decisions and it is not known when the Ontario court will render decisions on those appeal proceedings. The Company believes the allegations made against it in the statement of claim are meritless and will vigorously defend the matter, although no assurance can be given with respect to the ultimate outcome of such proceedings. The Company's directors and officers insurance policy provides for reimbursement of costs and expenses incurred in connection with this lawsuit as well as potential damages awarded, if any, subject to certain policy limits and deductibles.

(f) On September 7, 2007, Catalyst Fund Limited Partnership II ("Catalyst"), a holder of the Company's Senior Notes, commenced an application against the Company in the Ontario Superior Court of Justice for a declaration of oppression pursuant to sections 229 and 241 of the Canada Business Corporations Act ("CBCA") and for a declaration that the Company is in default of the Indenture governing its Senior Notes. In its application against the Company, Catalyst challenged the validity of the consent solicitation through which the Company requested and obtained a waiver of any and all defaults arising from a failure to comply with the reporting covenant under the Indenture and alleged common law fraud. On September 26, 2008, on the Company's motion, the Ontario Superior Court stayed Catalyst's application in Canada on the basis of Catalyst having brought similar claims against the Company in the State of New York, and ordered Catalyst to pay the Company's costs associated with the motion. On April 27, 2009, the Supreme Court of the State of New York disposed of Catalyst's claims against the Company in the State of New York (see note 14(g) for additional information). The time for Catalyst to appeal the dismissal of its claim by the New York court expired on February 8, 2010, without Catalyst perfecting an appeal.

(g) In a related matter, on December 21, 2007, U.S. Bank National Association, trustee under the Indenture, filed a complaint in the Supreme Court of the State of New York against the Company and Catalyst, requesting a declaration that the theory of default asserted by Catalyst before the Ontario Superior Court of Justice is without merit and further that Catalyst has failed to satisfy certain prerequisites to bondholder action, which are contained in the Indenture (the "U.S. Bank Action"). On February 22, 2008, Catalyst served a Verified Answer to the U.S. Bank Action and filed several cross-claims (the "Cross-Claims") against the Company in the same proceeding. On January 16, 2009, the Company moved for summary judgment, seeking a ruling that the Company satisfies the terms of the declaratory relief requested by the Trustee and the dismissal of the Cross-Claims. On April 27, 2009, the Court granted the Company's motion for summary judgment, disposing of the Cross-Claims. On May 7, 2009, Catalyst filed a notice preserving for a period of nine months its right to appeal the Court's ruling on summary judgment. The time for Catalyst to perfect its appeal has now expired.

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(h) On November 4, 2009, Cinemark USA, Inc. (“Cinemark”) filed a complaint in the United States District Court for the Eastern District of Texas against the Company seeking a declaratory judgment that Cinemark is not infringing certain of the Company’s patents related to theater geometry and that such patents are invalid. The complaint does not set forth a claim by Cinemark for monetary damages against the Company. The Company filed an answer to Cinemark’s complaint on January 8, 2010. The lawsuit is at an early stage and as a result the Company is unable to predict its outcome at this time. The Company will vigorously defend any and all challenges to its patents and other intellectual property rights.

On December 12, 2009, the Company filed a complaint in the Supreme Court of New York against Cinemark alleging breach of contract, fraud, tortious interference with existing and prospective economic relations, breach of the implied warranty of good faith and fair dealing, misappropriation of trade secrets, unjust enrichment and deliberate acts of bad faith in connection with the introduction and operation of a new Cinemark theater prototype. The Company is seeking equitable relief as well as unspecified damages from Cinemark. The lawsuit is at a very early stage and no assurances can be given with respect to the ultimate outcome of the suit.

(i) Since June 2006, the Company has been subject to ongoing informal inquiries by the SEC and the OSC. The Company has been cooperating with these inquiries and believes that they principally relate to the timing of recognition of the Company’s theater system installation revenue in 2005 and related matters. Although the Company cannot predict the timing of developments and outcomes in these inquiries, they could result at any time in developments (including charges or settlement of charges) that could have material adverse effects on the Company. These effects could include payments of fines or disgorgement or other relief with respect to the Company or its officers or employees that could be material to the Company. Such developments could also have an adverse effect on the Company’s defense of the class action lawsuits referred to above. See “Risk Factors” in Item 1A for further discussion of these inquiries and their potential impact on the Company, including the ongoing expenses incurred in connection with cooperating with the authorities.

(j) In addition to the matters described above, the Company is currently involved in other legal proceedings which, in the opinion of the Company’s management, will not materially affect the Company’s financial position or future operating results, although no assurance can be given with respect to the ultimate outcome of any such proceedings.

(k) In the normal course of business, the Company enters into agreements that may contain features that meet the definition of a guarantee. The Guarantees Topic of the FASB ASC defines a guarantee to be a contract (including an indemnity) that contingently requires the Company to make payments (either in cash, financial instruments, other assets, shares of its stock or provision of services) to a third party based on (a) changes in an underlying interest rate, foreign exchange rate, equity or commodity instrument, index or other variable, that is related to an asset, a liability or an equity security of the counterparty, (b) failure of another party to perform under an obligating agreement or (c) failure of another third party to pay its indebtedness when due.

### **Financial Guarantees**

The Company has provided no significant financial guarantees to third parties.

### **Product Warranties**

The following summarizes the accrual for product warranties that was recorded as part of accrued liabilities in the consolidated balance sheets:

	As at December 31,	
	2009	2008
Balance at the beginning of the year	\$ 33	\$ 26
Warranty redemptions	(41)	(3)
Warranties issued	115	10
Revisions	(71)	—
Balance at the end of the year	<u>\$ 36</u>	<u>\$ 33</u>

### ***Director/Officer Indemnifications***

The Company's General By-law contains an indemnification of its directors/officers, former directors/officers and persons who have acted at its request to be a director/officer of an entity in which the Company is a shareholder or creditor, to indemnify them, to the extent permitted by the *Canada Business Corporations Act*, against expenses (including legal fees), judgments, fines and any amount actually and reasonably incurred by them in connection with any action, suit or proceeding in which the directors and/or officers are sued as a result of their service, if they acted honestly and in good faith with a view to the best interests of the Company. The nature of the indemnification prevents the Company from making a reasonable estimate of the maximum potential amount it could be required to pay to counterparties. The Company has purchased directors' and officers' liability insurance. No amount has been accrued in the consolidated balance sheet as at December 31, 2009 with respect to this indemnity.

### ***Other Indemnification Agreements***

In the normal course of the Company's operations, the Company provides indemnifications to counterparties in transactions such as: theater system lease and sale agreements and the supervision of installation or servicing of the theater systems; film production, exhibition and distribution agreements; real property lease agreements; and employment agreements. These indemnification agreements require the Company to compensate the counterparties for costs incurred as a result of litigation claims that may be suffered by the counterparty as a consequence of the transaction or the Company's breach or non-performance under these agreements. While the terms of these indemnification agreements vary based upon the contract, they normally extend for the life of the agreements. A small number of agreements do not provide for any limit on the maximum potential amount of indemnification; however, virtually all of the Company's system lease and sale agreements limit such maximum potential liability to the purchase price of the system. The fact that the maximum potential amount of indemnification required by the Company is not specified in some cases prevents the Company from making a reasonable estimate of the maximum potential amount it could be required to pay to counterparties. During the second quarter of 2009, the Company provided an indemnity to a third party in connection with a terminated service arrangement. Historically, the Company has not made any significant payments under such indemnifications and less than \$0.1 million has been accrued in the accompanying consolidated financial statements with respect to the contingent aspect of these indemnities.

## **15. Capital Stock**

### ***(a) Authorized***

#### ***Common Shares***

The authorized capital of the Company consists of an unlimited number of common shares. The following is a summary of the rights, privileges, restrictions and conditions of the common shares.

The holders of common shares are entitled to receive dividends if, as and when declared by the directors of the Company, subject to the rights of the holders of any other class of shares of the Company entitled to receive dividends in priority to the common shares.

The holders of the common shares are entitled to one vote for each common share held at all meetings of the shareholders.

### ***(b) Changes during the Year***

On June 5, 2009 and August 17, 2009, the Company completed public offerings of 9,800,000 and 5,882,353 common shares, respectively, pursuant to a registration statement declared effective by the SEC. On June 26, 2009 and August 31, 2009, the Company completed the sale of an additional 1,470,000 and 882,353 common shares, respectively, pursuant to the over-allotment options exercised in full by the underwriter of the offerings. The 11,270,000 common shares sold in the June offerings were sold at a public offering price of \$7.15. The 6,764,706 common shares sold in the August offerings were sold at a public offering price of \$8.50. The aggregate net proceeds of the offerings in 2009 was \$130.7 million. The Company used the proceeds of the offerings for the repayment of debt, including a portion of the Senior Notes, and for general corporate purposes.

### ***(c) Stock-Based Compensation***

The Company has five stock-based compensation plans that are described below. The compensation costs recorded in the consolidated statement of operations for these plans were \$17.7 million in 2009 (2008 — \$1.5 million, 2007 — \$3.4 million). No



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income tax benefit is recorded in the consolidated statement of operations for these costs. Total stock-based compensation expense related to nonvested employee stock-based payment awards not yet recognized at December 31, 2009 and the weighted average period over which the awards are expected to be recognized is \$6.8 million and 3.8 years, respectively (2008 — \$4.5 million and 3.2 years, 2007 — \$6.7 million and 2.8 years).

### *Stock Option Plan*

The Company's Stock Option Plan, which is shareholder approved, permits the grant of options to employees, directors and consultants. The Company recorded an expense of \$2.1 million in 2009 (2008 — \$0.9 million, 2007 — \$0.6 million), related to grants issued to employees and directors in the plan.

The Company's policy is to issue new shares from treasury to satisfy stock options which are exercised.

The Company utilizes the Binomial Model to determine the fair value of stock-based payment awards. The fair value determined by the Binomial Model is affected by the Company's stock price as well as assumptions regarding a number of highly complex and subjective variables. These variables include, but are not limited to, the Company's expected stock price volatility over the term of the awards, and actual and projected employee stock option exercise behaviors. The Binomial Model also considers the expected exercise multiple which is the multiple of exercise price to grant price at which exercises are expected to occur on average. Option-pricing models were developed for use in estimating the value of traded options that have no vesting or hedging restrictions and are fully transferable. Because the Company's employee stock options have certain characteristics that are significantly different from traded options, and because changes in the subjective assumptions can materially affect the estimated value, in management's opinion, the Binomial Model best provides a fair measure of the fair value of the Company's employee stock options.

The weighted average fair value of all common share options, granted to employees and directors in 2009 at the measurement date was \$4.45 per share (2008 — \$1.72 per share, 2007 — \$1.67 per share). For the years ended December 31, the following assumptions were used:

	2009	2008	2007
Average risk-free interest rate	3.14%	2.68%	4.28%
Market risk premium	n/a	n/a	5.16% - 5.73%
Beta	n/a	n/a	0.71 - 0.94
Expected option life (in years)	4.94 - 5.85	3.49 - 5.85	2.74 - 5.44
Expected volatility	62%	61% - 62%	61% - 62%
Annual termination probability	0% - 10.30%	9.52% - 11.20%	9.52% - 11.87%
Dividend yield	0%	0%	0%

As at December 31, 2009, the Company has reserved a total of 12,566,395 (December 31, 2008— 8,698,126) common shares for future issuance under the Stock Option Plan, of which options in respect of 6,173,795 common shares are outstanding December 31, 2009. All awards of stock options are made at fair market value of the Company's common shares on the date of grant. "Fair Market Value" of a common share on a given date means the higher of the closing price of a Common Share on the grant date (or the most recent trading date if the grant date is not a trading date) on the NASDAQ Global Market, the Toronto Stock Exchange and such national exchange, as may be designated by the Company's Board of Directors. The options generally vest between one and 5 years and expire 10 years or less from the date granted. The Stock Option Plan provides that vesting will be accelerated if there is a change of control, as defined in the plan. At December 31, 2009, options in respect of 3,618,618 common shares were vested and exercisable.



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The following table summarizes certain information in respect of option activity under the Stock Option Plan:

	Number of Shares			Weighted Average Exercise Price Per Share		
	2009	2008	2007	2009	2008	2007
Options outstanding, beginning of year	6,686,182	5,908,080	5,100,995	\$ 5.97	\$ 6.71	\$ 7.12
Granted	1,051,217	1,472,038	1,066,861	10.00	4.47	4.97
Exercised	(1,306,637)	(341,110)	(137,500)	4.85	3.52	3.06
Forfeited	(35,488)	(84,608)	(43,325)	6.48	5.83	7.23
Expired	(212,229)	(158,000)	(28,000)	16.18	23.95	18.45
Cancelled	(9,250)	(110,218)	(50,951)	18.51	7.51	14.80
Options outstanding, end of period	<u>6,173,795</u>	<u>6,686,182</u>	<u>5,908,080</u>	6.52	5.97	6.71
Options exercisable, end of period	<u>3,618,618</u>	<u>4,451,715</u>	<u>4,605,248</u>	6.22	6.50	6.98

In 2009, the Company cancelled 9,250 from its Stock Option Plan (2008 — 110,218, 2007 — 50,951) surrendered by Company employees for \$nil consideration. Compensation cost which is fully recognized at the cancellation date was not reversed for options cancelled.

As at December 31, 2009, 5,701,539 options were fully vested or are expected to vest with a weighted average exercise price of \$6.42, aggregate intrinsic value of \$40.5 million and weighted average remaining contractual life of 4.3 years. As at December 31, 2009, options that are exercisable have an intrinsic value of \$26.9 million and a weighted average remaining contractual life of 3.3 years. The intrinsic value of options exercised in 2009 was \$5.8 million (2008 — \$1.2 million, 2007 — \$0.4 million).

Not included in the table above relating to the 2007 year are 789,286 options granted in 2006 and 2005 that the Company determined in 2006, exceeded, by approximately 1.6%, certain cap limits for grants set by its Stock Option Plan. As at December 31, 2007 all of the options issued in excess of certain cap limits were either cancelled or forfeited. Relating to 2007, 20,750 of these options with a weighted average exercise price of \$9.86 were forfeited. In June 2007, 195,286 options were voluntarily surrendered by the Company's Co-Chief Executive Officers (the "Co-CEOs") and members of the Board of Directors for no consideration; as a result \$0.2 million in accrued liabilities was credited to Other Equity and the Company settled the remaining options for cash in an amount of \$0.5 million. The options issued in excess of the cap limits were treated as liability-based awards commencing in the third quarter of 2006 as the Company determined it intended to settle the options in cash. The fair value of the options was recalculated each period. For purposes of calculating the fair value of the liability awards in the first quarter of 2007, the Company accelerated the accounting vesting period to March 31, 2007 in order to align with the expected service period of the options. Immediately before the settlement date, the Company had accrued a liability of \$0.7 million. The Company recorded an expense of \$0.4 million for the year ended December 31, 2007 related to these options.

### Options to Non-Employees

During 2009, an aggregate of 100,000 (2008 — 119,875, 2007 — 199,145) common share options to purchase the Company's common stock with an average exercise price of \$4.05 (2008 — \$4.50, 2007 — \$5.35) were granted to certain advisors and strategic partners of the Company. These options have a maximum contractual life of 6 years. The option vesting ranges from immediately to five years. These options were granted under the Stock Option Plan.

As at December 31, 2009 non-employee options outstanding amounted to 219,768 options (2008 — 323,314, 2007 — 315,804) with a weighted average exercise price of \$7.05 (2008 — \$6.33, 2007 — \$6.53). 154,434 options (2008 — 296,584, 2007 — 225,614) were exercisable with an average weighted exercise price of \$8.31 (2008 — \$6.49, 2007 — \$7.12) and the vested options have an aggregate intrinsic value of \$0.8 million (2008 — \$nil, 2007 — \$0.2 million). The weighted average fair value of options granted to non-employees during 2009 at the measurement date was \$2.34 per share (2008 — \$2.58 per share, 2007 — \$2.80 per share), utilizing a Binomial Model with the following underlying assumptions:

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	Years Ended December 31		
	2009	2008	2007
Average risk-free interest rate	2.03%	1.71%	4.43%
Contractual option life	6 years	6 years	6 years
Average expected volatility	62%	62%	61%-62%
Dividend yield	0%	0%	0%

In 2009, the Company recorded a charge of \$0.2 million, (2008 —\$0.6 million, 2007 —\$0.4 million) to cost and expenses applicable to revenues — services related to the non-employee stock options.

### *Restricted Common Shares*

Under the terms of certain employment agreements dated July 12, 2000, the Company is required to issue either 160,000 restricted common shares or pay their cash equivalent. The restricted shares are required to be issued, or payment of their cash equivalent, upon request by the employees at any time. The aggregate intrinsic value of the awards outstanding at December 31, 2009 is \$2.1 million (December 31, 2008 — \$0.7 million). The Company accounts for the obligation as a liability, which is classified within accrued liabilities. The Company recorded an expense of \$1.4 million in 2009 (2008 —\$0.4 million recovery, 2007 —\$0.5 million), due to the changes in the Company's stock price during the period.

### *Stock Appreciation Rights*

There were no stock appreciation rights ("SARs") granted during 2009 and 2008. During 2007, 2,280,000 SARs with a weighted average exercise price of \$6.20 per right were granted to certain Company executives. During 2009, 270,000 SARs were cash settled for \$1.8 million. The average exercise price for the settled SARs was \$4.34 per SAR. As at December 31, 2009, 2,010,000 SARs were outstanding, of which 1,815,000 SARs were exercisable. The SARs vesting period ranges from immediately to 5 years, with a remaining contractual life ranging from 4.00 to 8.01 years at December 31, 2009. The SARs were measured at fair value at the date of grant and are remeasured each period until settled. At December 31, 2009, the SARs had an average fair value of \$7.37 per right (December 31, 2008— \$1.22). The Company accounts for the obligation of these SARs as a liability (December 31, 2009 — \$14.1 million, December 31, 2008 — \$1.9 million), which is classified within accrued liabilities. The Company has recorded a \$14.0 million expense for 2009 (2008 — \$0.4 million, 2007 — \$1.5 million) to selling, general and administrative expenses related to these SARs. The following assumptions were used for measuring the fair value of the SARs:

	As at December 31,	
	2009	2008
Average risk-free interest rate	1.17%	1.95%
Expected option life (in years)	0.15 to 3.48	3.54 - 5.82
Expected volatility	62%	62%
Annual termination probability	0% - 9.69%	0% - 10.01%
Dividend yield	0%	0%

### *Warrants*

There were no warrants issued or outstanding during 2009 or 2008.

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### (d) Earnings (loss) per share

Reconciliations of the numerator and denominator of the basic and diluted per-share computations are comprised of the following:

	Years Ended December 31,		
	2009	2008	2007
Net earnings (loss) from continuing operations applicable to common shareholders	\$ 5,197	\$ (33,510)	\$ (29,217)
Weighted average number of common shares (000's):			
Issued and outstanding, beginning of period	43,490,631	40,423,074	40,285,574
Weighted average number of shares issued during the period	9,330,152	1,970,011	23,021
Weighted average number of shares used in computing basic earnings (loss) per share	52,820,783	42,393,085	40,308,595
Assumed exercise of stock, net of shares assumed	1,697,358	—	—
Weighted average number of shares used in computing diluted earnings (loss) per share	54,518,141	42,393,085	40,308,595

The calculation of diluted earnings (loss) per share for 2008 and 2007 excludes all shares that are issuable upon exercise of options as the impact of these exercises would be antidilutive.

## 16. Consolidated Statements of Operations Supplemental Information

### (a) Other Revenues

The Company enters into theater system arrangements with customers that typically contain customer payment obligations prior to the scheduled installation of the theater systems. During the period of time between signing and theater system installation, certain customers each year are unable to, or elect not to, proceed with the theater system installation for a number of reasons, including business considerations, or the inability to obtain certain consents, approvals or financing. Once the determination is made that the customer will not proceed with installation, the customer and/or the Company may terminate the arrangement by default or by entering into a consensual buyout. In these situations the parties are released from their future obligations under the arrangement, and the initial payments that the customer previously made to the Company and recognized as revenue are typically not refunded. In addition, the Company enters into agreements with customers to terminate their obligations for another theater system configuration, which were in the Company's backlog. Included in Other Revenues are the following types of settlement arrangements:

	Years Ended December 31,		
	2009	2008	2007
Theater system configuration conversions	\$ 136	\$ —	\$ —
Consensual buyouts	1,726	881	2,427
	\$ 1,862	\$ 881	\$ 2,427

### (b) Foreign Exchange

Included in selling, general and administrative expenses in 2009 is a net foreign exchange gain of \$3.8 million (2008 — \$0.7 million net expense, 2007 — \$1.7 million net gain) including the effect of foreign exchange contracts and the translation of foreign currency denominated monetary assets and liabilities. See note 21(c) for additional information.

### (c) Collaborative Arrangements

#### Joint Revenue Sharing Arrangements

In a joint revenue sharing arrangement, the Company receives a portion of a theater's box-office and concession revenues in exchange for placing a theater system at the theater operator's venue. Under joint revenue sharing arrangements, the customer has the ability and the right to operate the hardware components or direct others to operate them in a manner determined by the customer. The

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Company's joint revenue sharing arrangements are typically non-cancellable for 7 to 10 years with renewal provisions. Title to equipment under joint revenue sharing arrangements does not transfer to the customer. The Company's joint revenue sharing arrangements do not contain a guarantee of residual value at the end of the term. The customer is required to pay for executory costs such as insurance and taxes and is required to pay the Company for maintenance and extended warranty throughout the term. The customer is responsible for obtaining insurance coverage for the theater systems commencing on the date specified in the arrangement's shipping terms and ending on the date the theater systems are delivered back to the Company.

As at December 31, 2009, the Company has signed joint revenue sharing agreements with 7 exhibitors for a total of 159 theater systems, of which 117 theaters were operating, the terms of which are similar in nature, rights and obligations.

Amounts attributable to transactions arising between the Company and its customers under joint revenue sharing arrangements are included in Rentals revenue and for 2009 amounted to \$21.6 million (2008 — \$3.4 million, 2007 — \$2.3 million).

### *IMAX DMR*

In an IMAX DMR arrangement, the Company transforms conventional motion pictures into the Company's large format, allowing the release of Hollywood content to the IMAX theater network. In a typical IMAX DMR film arrangement, the Company will absorb its costs for the digital re-mastering and then recoup this cost from a percentage of the gross box-office receipts of the film, which generally range from 10-15%. The Company does not typically hold distribution rights or the copyright to these films.

In 2009, 14 IMAX DMR films were exhibited through the IMAX theater network.

Amounts attributable to transactions arising between the Company and its customers under IMAX DMR arrangements are included in Services revenue and for 2009 amounted to \$35.6 million (2008 — \$17.9 million, 2007 — \$19.9 million).

### *Co-Produced Film Arrangements*

In certain film arrangements, the Company co-produces a film with a third party whereby the third party retains the copyright and rights to the film, except that the Company obtains exclusive theatrical distribution rights to the film. Under these arrangements, both parties contribute funding to the Company's wholly-owned production company for the production of the film and for associated exploitation costs. Clauses in the film arrangements generally provide for the third party to take over the production of the film if the cost of the production exceeds its approved budget or if it appears as though the film will not be delivered on a timely basis.

As at December 31, 2009, the Company has 2 significant co-produced film arrangements and 2 other co-produced film arrangements, the terms of which are similar. In 2009, a total of \$6.4 million (2008 — \$3.8 million, 2007 — \$5.4 million) were attributable to transactions between the Company and other parties involved in the production of the films and have been included in cost and expenses applicable to revenues-services.

## **17. Receivable Provisions, Net of Recoveries**

	<b>Years Ended December 31,</b>		
	<b>2009</b>	<b>2008</b>	<b>2007</b>
Accounts receivable provisions, net of recoveries	\$ 127	\$ 382	\$ (163)
Financing receivables, net of recoveries	940	1,595	1,958
Receivable provisions, net of recoveries	<u>\$ 1,067</u>	<u>\$ 1,977</u>	<u>\$ 1,795</u>

**18. Asset Impairments**

	Years Ended December 31,		
	2009	2008 (1)	2007 (1)
Property, plant and equipment	\$ 180	\$ —	\$ 169
Financing receivables	—	—	316
<b>Total</b>	<b>\$ 180</b>	<b>\$ —</b>	<b>\$ 485</b>

(1) The Company reclassified the owned and operated Vancouver and Tempe IMAX theaters' operations from continuing operations to discontinued operations as it does not anticipate having significant future cash flows from these theaters or any involvement in the day to day operations of these theaters. As a result, the respective prior period's figures of less than \$0.1 million and \$0.1 million in 2008 and 2007, respectively, have been reclassified to conform to the current year's presentation.

The Company recorded an asset impairment charge of \$0.2 million against property, plant and equipment after the Company assessed the carrying value of certain assets in light of their future expected cash flows (2008 — \$nil, 2007 — \$0.5 million). Included in the 2007 asset impairment charge is \$0.3 million as the Company revised its estimates on the realizability of the residual values on certain of its sales-type leases.

**19. Consolidated Statements of Cash Flows Supplemental Information**

(a) Changes in other non-cash operating assets and liabilities are comprised of the following:

	Years Ended December 31,		
	2009	2008	2007
Decrease (increase) in:			
Accounts receivable	\$ (13,444)	\$ 1,944	\$ 675
Financing receivables	(7,162)	(199)	6,093
Inventories	10,082	837	(1,603)
Prepaid expenses	(686)	189	1,244
Commissions and other deferred selling expenses	708	(749)	(542)
Insurance recoveries	694	(122)	(2,624)
Increase (decrease) in:			
Accounts payable	1,500	145	874
Accrued and other liabilities	(42)	(2,487)	(910)
Deferred revenue	(13,535)	12,367	4,817
	<b>\$ (21,885)</b>	<b>\$ 11,925</b>	<b>\$ 8,024</b>

(b) Cash payments made on account of:

	Years Ended December 31,		
	2009	2008	2007
Income taxes	\$ 519	\$ 518	\$ 854
Interest	\$ 13,864	\$ 15,961	\$ 15,680

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(c) Depreciation and amortization are comprised of the following:

	Years Ended December 31,		
	2009	2008 (1)	2007 (1)
Film assets(2)	\$ 8,592	\$ 8,305	\$ 10,574
Property, plant and equipment			
Joint revenue sharing arrangements	4,625	3,512	804
Other property, plant and equipment	4,156	4,255	4,478
Other intangible assets	546	526	547
Deferred financing costs	1,132	1,420	1,268
	<u>\$ 19,051</u>	<u>\$ 18,018</u>	<u>\$ 17,671</u>

- (1) The Company reclassified the owned and operated Vancouver and Tempe IMAX theaters' operations from continuing operations to discontinued operations as it does not anticipate having significant future cash flows from these theaters or any involvement in the day to day operations of these theaters. As a result, the respective prior period's figures have been reclassified to conform to the current year's presentation.
- (2) Included in film asset amortization is a charge of \$0.2 million (2008 — \$2.1 million, 2007 — \$0.7 million) relating to changes in estimates based on the ultimate recoverability of future films.

(d) Write-downs, net of recoveries, are comprised of the following:

	Years Ended December 31,		
	2009	2008	2007
Asset impairments			
Property, plant and equipment(1)	180	—	105
IMAX MPX theater systems under lease	—	—	64
Financing receivables	—	—	316
Other significant charges			
Accounts receivables	127	382	(163)
Financing receivables	1,377	1,595	1,958
Inventories(2)	897	2,489	3,960
	<u>\$ 2,581</u>	<u>\$ 4,466</u>	<u>\$ 6,240</u>

- (1) The Company reclassified the owned and operated Vancouver and Tempe IMAX theaters' operations from continuing operations to discontinued operations as it does not anticipate having significant future cash flows from these theaters or any involvement in the day to day operations of these theaters. As a result, the respective prior period's figures have been reclassified to conform to the current year's presentation.
- (2) In 2009, the Company recorded a charge of \$0.9 million (2008 — \$2.5 million, 2007 — \$4.0 million, respectively) in costs and expenses applicable to revenues, primarily for its film-based projector inventories due to lower net realizable values resulting from the Company's development of a digital projection system. Specifically, IMAX systems includes inventory write-downs of less than \$0.1 million (2008 — \$2.4 million, 2007 — \$3.3 million). Theater system maintenance includes inventory write-downs of \$0.8 million (2008 — \$0.1 million, 2007 — \$0.6 million). Furthermore, the 2007 charge includes \$0.1 million recorded in the Company's post-production unit.

**20. Segmented Information**

The Company has eight reportable segments identified by category of product sold or service provided: IMAX systems; theater system maintenance; joint revenue sharing arrangements; film production and IMAX DMR; film distribution; film post-production; theater operations; and other. The IMAX systems segment designs, manufactures, sells or leases IMAX theater projection system equipment. The theater system maintenance segment maintains IMAX theater projection system equipment in the IMAX theater network. The joint revenue sharing arrangements segment provides IMAX theater projection system equipment to an exhibitor in exchange for a share of the box-office and concession revenues. The film production and IMAX DMR segment produces films and performs film re-mastering services. The film distribution segment distributes films for which the Company has distribution rights. The film post-production segment provides film post-production and film print services. The theater operations segment owns and operates certain IMAX theaters. The other segment includes camera rentals and other miscellaneous items. The accounting policies of the segments are the same as those described in note 2.

The Company's Chief Operating Decision Maker ("CODM"), as defined in the Segment Reporting Topic of the FASB ASC, assesses segment performance based on segment revenues, gross margins and film performance. Selling, general and administrative expenses, research and development costs, amortization of intangibles, receivables provisions (recoveries), interest revenue, interest expense and tax provision (recovery) are not allocated to the segments.

Transactions between the film production and IMAX DMR segment and the film post-production segment are valued at exchange value. Inter-segment profits are eliminated upon consolidation, as well as for the disclosures below.

Transactions between the other segments are not significant.

**(a) Operating Segments**

	Years Ended December 31,		
	2009	2008	2007
<b>Revenue</b>			
IMAX systems	\$ 64,504	\$ 34,783	\$ 40,782
Theater system maintenance	18,246	16,331	15,991
Joint revenue sharing arrangements	21,598	3,435	2,343
Films			
Production and IMAX DMR	35,648	17,944	19,863
Distribution	12,365	9,559	11,018
Post-production	3,604	6,929	5,693
Theater operations <sup>(1)</sup>	11,810	10,532	12,407
Other	3,436	3,205	3,558
<b>Total</b>	<u>\$ 171,211</u>	<u>\$ 102,718</u>	<u>\$ 111,655</u>
<b>Gross margins</b>			
IMAX systems <sup>(2)(4)</sup>	\$ 35,516	18,374	20,239
Theater system maintenance <sup>(2)</sup>	8,361	7,117	6,970
Joint revenue sharing arrangements <sup>(3)(4)</sup>	13,261	(1,865)	1,362
Films			
Production and IMAX DMR <sup>(4)</sup>	19,979	6,992	4,915
Distribution <sup>(4)</sup>	2,147	3,120	3,484
Post-production	939	3,451	2,552
Theater operations <sup>(1)</sup>	649	(39)	796
Other	700	403	500
<b>Total</b>	<u>\$ 81,552</u>	<u>\$ 37,553</u>	<u>\$ 40,818</u>

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	Years Ended December 31,		
	2009	2008	2007
<b>Depreciation and amortization</b>			
IMAX systems	\$ 4,133	\$ 4,507	\$ 3,990
Theater systems maintenance	191	149	21
Joint revenue sharing arrangements	4,625	3,512	804
Films			
Production and IMAX DMR	9,338	9,040	11,819
Distribution	229	309	406
Post-production	456	416	485
Theater operations(1)	79	85	146
Total	<u>\$ 19,051</u>	<u>\$ 18,018</u>	<u>\$ 17,671</u>

	Years Ended December 31,		
	2009	2008	2007
<b>Asset Impairments and Write-Downs, Net of Recoveries</b>			
IMAX systems(4)	\$ 1,734	\$ 4,373	\$ 5,429
Theater systems maintenance	847	93	564
Joint revenue sharing arrangements	—	—	—
Films			
Production and IMAX DMR	—	—	—
Post-production	—	—	142
Theater operations(1)	—	—	105
Total	<u>\$ 2,581</u>	<u>\$ 4,466</u>	<u>\$ 6,240</u>

	Years Ended December 31,		
	2009	2008	2007
<b>Purchase of property, plant and equipment</b>			
IMAX systems	\$ 862	\$ 1,575	\$ 1,330
Theater system maintenance	12	22	38
Joint revenue sharing arrangements	25,072	18,478	—
Films			
Production and IMAX DMR	313	571	489
Distribution	63	114	98
Post-production	131	362	27
Theater operation	45	161	168
Total	<u>\$ 26,498</u>	<u>\$ 21,283</u>	<u>\$ 2,150</u>



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	As at December 31,	
	2009	2008
<b>Assets</b>		
IMAX systems	\$ 98,530	\$ 107,640 (5)
Theater system maintenance	12,415	14,120 (5)
Joint revenue sharing arrangements	62,812	37,145 (5)
Films		
Production and IMAX DMR	15,357	14,891
Distribution	5,688	5,106
Post-production	7,554	3,086
Theater operations	776	873
Other	1,864	845
Corporate and other non-segment specific assets	42,549	44,961
Total	<u>\$ 247,545</u>	<u>\$ 228,667</u>

- (1) In 2009, the Company closed its owned and operated Vancouver and Tempe IMAX theaters and reclassified the operations from continuing operations to discontinued operations. As a result, the respective prior period's figures have been reclassified to conform to the current year's presentation.
- (2) Includes a charge of \$0.9 million in 2009 (2008 — \$2.5 million, 2007 — \$4.0 million), in costs and expenses applicable to revenues, primarily for film-based projector inventories. Specifically, IMAX systems includes inventory write-downs of less than \$0.1 million in 2009 (2008 — \$2.4 million, 2007 — \$3.3 million). Theater system maintenance includes inventory write-downs of \$0.8 million in 2009 (2008 — \$0.1 million, 2007 — \$0.6 million). Furthermore, the 2007 charge includes \$0.1 million recorded in the Company's post-production unit.
- (3) The Company adjusted the estimated useful life of its film-based IMAX MPX projection systems in use by existing joint revenue sharing theaters, on a prospective basis, to reflect the Company's accelerated transition to a digital projection system for these theaters resulting in increased depreciation expense of less than \$0.1 million and \$1.5 million and \$nil in 2009, 2008 and 2007, respectively.
- (4) IMAX systems includes commission costs of \$2.0 million, \$1.0 million and \$0.8 million in 2009, 2008 and 2007, respectively. Joint revenue sharing arrangements includes advertising, marketing and commission costs of \$3.4 million, \$1.8 million and \$0.2 million in 2009, 2008 and 2007, respectively. Production and DMR includes marketing costs of \$1.6 million, \$0.9 million and \$1.2 million in 2009, 2008 and 2007, respectively. Distribution includes marketing costs of \$0.8 million, \$0.7 million and \$0.5 million in 2009, 2008 and 2007, respectively.
- (5) As a result of the classification of theater system maintenance and joint revenue sharing arrangement segments in 2008, goodwill has been reallocated on a relative fair market value basis to the IMAX systems segment, theater system maintenance segment and joint revenue sharing arrangements segment. Goodwill had previously been wholly allocated to the IMAX systems segment.

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### (b) Geographic Information

Revenue by geographic area is based on the location of the theater.

	Years Ended December 31,		
	2009	2008 (1)	2007 (1)
<b>Revenue</b>			
Canada	\$ 4,592	\$ 3,131	\$ 3,616
United States	106,715	66,390	67,454
Europe	15,984	14,460	13,645
Asia (excluding China)	8,659	5,628	7,361
China	15,858	3,263	11,497
Mexico	5,163	5,000	2,750
Rest of World	14,240	4,846	5,332
Total	<u>\$ 171,211</u>	<u>\$ 102,718</u>	<u>\$ 111,655</u>

(1) In 2009, the Company closed its owned and operated Vancouver and Tempe IMAX theaters and reclassified the operations from continuing operations to discontinued operations. As a result, the respective prior period's figures have been reclassified to conform to the current year's presentation.

No single country in the Rest of the World, Europe or Asia (excluding China) classifications comprises more than 5% of total revenue.

	As at December 31,	
	2009	2008
<b>Property, plant and equipment</b>		
Canada	\$ 14,931	\$ 17,627
United States	35,358	19,928
Europe	1,728	1,528
Japan	1,553	3
Rest of World	1,250	319
Total	<u>\$ 54,820</u>	<u>\$ 39,405</u>

## 21. Financial Instruments

### (a) Financial Instruments

The Company maintains cash with various major financial institutions. The Company's cash is invested with highly rated financial institutions.

The Company's accounts receivables and financing receivables are subject to credit risk. The Company's accounts receivable and financing receivables are concentrated with the theater exhibition industry and film entertainment industry. To minimize the Company's credit risk, the Company retains title to underlying theater systems leased, performs initial and ongoing credit evaluations of its customers and makes ongoing provisions for its estimate of potentially uncollectible amounts. The Company believes it has adequately provided for related exposures surrounding receivables and contractual commitments. The Company's policy is to not use any financial instruments for trading or other speculative purposes.

**(b) Fair Value Measurements**

The carrying values of the Company’s cash and cash equivalents, accounts receivable, accounts payable and accrued liabilities due within one year approximate fair values due to the short-term maturity of these instruments. The Company’s other financial instruments at December 31, are comprised of the following:

	2009		2008	
	Carrying Amount	Estimated Fair Value	Carrying Amount	Estimated Fair Value
Senior Notes due December 2010	\$ —	\$ —	\$ 160,000	\$ 122,800
Borrowings under Credit Facility	\$ 50,000	\$ 50,000	\$ 20,000	\$ 20,000
Financed sales receivable	\$ 22,479	\$ 22,745	\$ 12,480	\$ 11,957
Net investment in sales-type leases	\$ 40,106	\$ 40,910	\$ 43,658	\$ 42,671
Foreign exchange contracts — designated forwards	\$ 532	\$ 532	\$ 172	\$ 172
Foreign exchange contracts — non-designated forwards	\$ 857	\$ 857	\$ 226	\$ 226

The estimated fair values of the Senior Notes due December 2010 are estimated based on traded prices (Level 1 input in accordance with the Fair Value Measurements Topic of the FASB ASC hierarchy) as at December 31, 2008.

The carrying value of the borrowings under the Credit Facility approximate fair value as the interest rates offered under the Credit Facility are close to December 31, 2009 and 2008 market rates for the Company for debt of the same remaining maturities (Level 2 input in accordance with the Fair Value Measurements Topic of the FASB ASC hierarchy) as at December 31, 2009 and 2008.

The estimated fair values of the financed sales receivable and net investment in sales-type leases are estimated based on discounting future cash flows at currently available interest rates with comparable terms (Level 2 input in accordance with the Fair Value Measurements Topic of the FASB ASC hierarchy) as at December 31, 2009 and 2008.

The fair value of foreign currency derivatives are determined using quoted prices in active markets (Level 1 input in accordance with the Fair Value Measurements Topic of the FASB ASC hierarchy) for identical instruments at the measurement date.

**(c) Foreign Exchange Risk Management**

The Company is exposed to market risk from changes in foreign currency rates. A majority portion of the Company’s revenues is denominated in U.S. dollars while a substantial portion of its costs and expenses is denominated in Canadian dollars. A portion of the net U.S. dollar cash flows of the Company is periodically converted to Canadian dollars to fund Canadian dollar expenses through the spot market. In Japan, the Company has ongoing operating expenses related to its operations in Japanese yen. Net Japanese yen cash flows are converted to U.S. dollars generally through the spot market. The Company also has cash receipts under leases denominated in Japanese yen, Canadian dollar and Euros which are converted to U.S. dollars generally through the spot market.

Beginning in the fourth quarter of 2008 and continuing in 2009, the Company entered into a series of foreign currency forward contracts to manage the Company’s risks associated with the volatility of foreign currencies. Certain of these foreign currency forward contracts met the criteria required for hedge accounting under the Derivatives and Hedging Topic of the FASB ASC at inception, and continue to meet hedge effectiveness tests at December 31, 2009 (the “Foreign Currency Hedges”), with settlement dates throughout 2009 and 2010. In addition, at December 31, 2009, the Company held foreign currency forward contracts to manage foreign currency risk on future anticipated Canadian dollar expenditures that were not considered Foreign Currency Hedges by the Company. Foreign currency derivatives are recognized and measured in the balance sheet at fair value. Changes in the fair value (gains or losses) are recognized in the consolidated statement of operations except for derivatives designated and qualifying as foreign currency hedging instruments. For foreign currency hedging instruments, the effective portion of the gain or loss in a hedge of a forecasted transaction is reported in other comprehensive income (“OCI”) and reclassified to the consolidated statement of operations when the forecasted transaction occurs. Any ineffective portion is recognized immediately in the consolidated statement of operations.

The following tabular disclosures reflect the impact that derivative instruments and hedging activities have on the Company’s consolidated financial statements:

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Notional value of foreign exchange contracts:

	As at December 31,	
	2009	2008
<b>Derivatives designated as hedging instruments:</b>		
Foreign exchange contracts — Forwards	\$ 2,815	\$ 13,072
<b>Derivatives not designated as hedging instruments:</b>		
Foreign exchange contracts — Forwards	4,500	17,050
	<u>\$ 7,315</u>	<u>\$ 30,122</u>

Fair value of foreign exchange contracts :

	Balance Sheet Location	As at December 31,	
		2009	2008
<b>Derivatives designated as hedging instruments:</b>			
Foreign exchange contracts — Forwards	Other assets	\$ 532	\$ 172
<b>Derivatives not designated as hedging instruments:</b>			
Foreign exchange contracts — Forwards	Other assets	857	226
		<u>\$ 1,389</u>	<u>\$ 398</u>

Derivatives in Foreign Currency Hedging relationships for the:

		Years Ended December 31,		
		2009	2008	2007
Foreign exchange contracts — Forwards	Derivative Gain (Loss) Recognized in OCI (Effective Portion)	\$ 1,656	\$ 172	\$ —
		<u>\$ 1,656</u>	<u>\$ 172</u>	<u>\$ —</u>

	Location of Derivative Gain (Loss) Reclassified from AOCI into Income (Effective Portion)	Years Ended December 31,		
		2009	2008	2007
Foreign exchange contracts — Forwards	Selling, general and administrative expenses	\$ 1,296	\$ —	\$ —
		<u>\$ 1,296</u>	<u>\$ —</u>	<u>\$ —</u>

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Non Designated Derivatives in Foreign Currency relationships for the:

	<u>Location of Derivative Gain</u>	<u>Years Ended December 31,</u>		
		<u>2009</u>	<u>2008</u>	<u>2007</u>
Foreign exchange contracts — Forwards	Selling, general and administrative expenses	\$ 2,257	\$ 226	\$ —
		<u>\$ 2,257</u>	<u>\$ 226</u>	<u>\$ —</u>

## **22. Employees Pension and Postretirement Benefits**

### **(a) Defined Benefit Plan**

The Company has an unfunded U.S. defined benefit pension plan, the SERP, covering Richard L. Gelfond, Chief Executive Officer (“CEO”) of the Company and Bradley J. Wechsler, Chairman of the Company’s Board of Directors. The SERP provides for a lifetime retirement benefit from age 55 determined as 75% of the member’s best average 60 consecutive months of earnings over the member’s employment history. The benefits were 50% vested as at July 2000, the SERP initiation date. The vesting percentage increases on a straight-line basis from inception until age 55. As at December 31, 2009, the benefits of Mr. Wechsler were 100% vested while the benefits of Mr. Gelfond were approximately 95.9% vested. The vesting percentage of a member whose employment terminates other than by voluntary retirement or upon a change in control shall be 100%. Upon a termination for cause, prior to a change of control, the executive shall forfeit any and all benefits to which such executive may have been entitled, whether or not vested.

Under the terms of the SERP, if Mr. Gelfond’s employment terminates other than for cause prior to August 1, 2010, he is entitled to receive SERP benefits in the form of monthly annuity payments until the earlier of a change of control or August 1, 2010, at which time he is entitled to receive remaining benefits in the form of a lump sum payment. If Mr. Gelfond’s employment terminates other than for cause on or after August 1, 2010, he is entitled to receive SERP benefits in the form of a lump sum payment. SERP benefit payments to Mr. Gelfond are subject to a deferral for six months after the termination of his employment, at which time Mr. Gelfond will be entitled to receive interest on the deferred amount credited at the applicable federal rate for short-term obligations.

Under the terms of the SERP, monthly annuity payments payable to Mr. Wechsler, whose employment as Co-CEO terminated effective April 1, 2009, were deferred for six months and were paid in the form of a lump sum plus interest on the deferred amount on October 1, 2009. Thereafter, in accordance with the terms of the SERP, Mr. Wechsler is entitled to receive monthly annuity payments until the earlier of a change of control or August 1, 2010, at which time he is entitled to receive remaining benefits in the form of a lump sum payment.

On March 8, 2006, the Company and Messrs. Gelfond and Wechsler negotiated an amendment to the SERP which reduced the related pension expense to the Company effective January 1, 2006. Under the terms of the SERP amendment, to reduce ongoing costs to the Company, the cost of living adjustment and surviving spouse benefits previously owed to Messrs. Gelfond and Wechsler are each reduced by 50%, subject to a recoupment of a percentage of such benefits upon a change of control of the Company, and the net present value of the reduced pension benefit payments is accelerated and paid out upon a change of control of the Company. The amendment resulted in reduction of the accrued pension liability by \$6.2 million, a reduction in other assets of \$3.4 million and a past services credit of \$2.8 million.

On May 4, 2007, the Company amended the SERP to provide for the determination of benefits to be 75% of the member’s best average 60 consecutive months of earnings over the member’s employment history from 75% of the member’s best average 60 consecutive months of earnings over the past 120 months. The actuarial liability was remeasured to reflect this amendment. The amendment resulted in a \$1.0 million increase to the pension liability and a corresponding \$1.0 million charge to other comprehensive income.

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The following assumptions were used to determine the obligation and cost status of the Company's SERP at the plan measurement dates:

	As at December 31,	
	2009	2008
Discount rate	1.50%	5.11%
Lump sum interest rate:		
First 20 years	4.89%	6.02%
Thereafter	4.63%	5.48%
Cost of living adjustment on benefits	1.20%	1.20%
Rate of increase in qualifying compensation levels	0.00%	0.00%

The amounts accrued for the SERP are determined as follows:

	Years Ended December 31,	
	2009	2008
Projected benefit obligation:		
Obligation, beginning of year	\$ 26,381	\$ 27,136
Service cost	643	793
Interest cost	1,341	1,251
Benefits paid	(894)	—
Actuarial loss (gain)	2,391	(2,799)
Obligation, end of year and unfunded status	<u>\$ 29,862</u>	<u>\$ 26,381</u>

The following table provides disclosure of the pension benefit obligation recorded in the consolidated balance sheet:

	As at December 31,	
	2009	2008
Accrued benefits cost	\$ (29,862)	\$ (26,381)
Accumulated other comprehensive income	(793)	(3,723)
Net amount recognized in the consolidated balance sheets	<u>\$ (30,655)</u>	<u>\$ (30,104)</u>

The following table provides disclosure of pension expense for the SERP for the year ended December 31:

	Years ended December 31		
	2009	2008	2007
Service cost	\$ 643	\$ 793	\$ 685
Interest cost	1,341	1,251	1,335
Amortization of prior service credit	145	(248)	(612)
Amortization of actuarial gain	(681)	—	—
Pension expense	<u>\$ 1,448</u>	<u>\$ 1,796</u>	<u>\$ 1,408</u>

The accumulated benefit obligation for the SERP was \$29.9 million at December 31, 2009 (2008 — \$26.4 million).

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The following amounts were included in accumulated other comprehensive income and will be recognized as components of net periodic benefit cost in future periods:

	As at December 31,		
	2009	2008	2007
Prior service cost (credits)	\$ —	\$ 145	\$ (102)
Unrecognized actuarial (gain) loss	(793)	(3,868)	(1,069)
	<u>\$ (793)</u>	<u>\$ (3,723)</u>	<u>\$ (1,171)</u>

No contributions are expected to be made for the SERP during 2009 except to meet benefit payment obligations as they come due. The Company expects prior service costs of \$nil and actuarial gains of \$0.8 million to be recognized as a component of net periodic benefit cost in 2010.

The following benefit payments are expected to be made as per the current SERP assumptions and the terms of the SERP in each of the next five years, and in the aggregate:

2010	\$ 15,195 (1)
2011	15,581
2012	—
2013	—
2014	—
Thereafter	—
	<u>\$ 30,776</u>

- (1) The SERP assumptions include that Mr. Wechsler will receive a lump sum payment at August 1, 2010 and that Mr. Gelfond will receive a lump sum payment in 2011 upon retirement at the end of the current term of his employment agreement.

At the time the Company established the SERP, it also took out life insurance policies for Mr. Wechsler and Mr. Gelfond with coverage amounts of \$21.5 million in aggregate to which the Company is the beneficiary. The Company may use the cash surrender value proceeds of life insurance policies taken on Mr. Wechsler and Mr. Gelfond to be applied towards the benefits due and payable under the SERP, although there can be no assurance that the Company will ultimately do so. At December 31, 2009, the cash surrender value of the insurance policies is \$7.3 million (2008 — \$6.2 million) and has been included in other assets.

### **(b) Defined Contribution Pension Plan**

The Company also maintains defined contribution pension plans for its employees, including its executive officers. The Company makes contributions to these plans on behalf of employees in an amount up to 5% of their base salary subject to certain prescribed maximums. During 2009, the Company contributed and expensed an aggregate of \$0.8 million (2008 — \$0.9 million, 2007 — \$0.8 million) to its Canadian plan and an aggregate of \$0.2 million (2008 — \$0.1 million, 2007 — \$0.2 million) to its defined contribution employee pension plan under Section 401(k) of the U.S. Internal Revenue Code.

### **(c) Postretirement Benefits**

The Company has an unfunded postretirement plan covering Mr. Wechsler and Mr. Gelfond. The plan provides that the Company will maintain health benefits for Mr. Wechsler and Mr. Gelfond until they become eligible for medicare and, thereafter, the Company will provide Medicare supplement coverage as selected by the Mr. Wechsler and Mr. Gelfond.

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The amounts accrued for the plan are determined as follows:

	As at December 31,	
	2009	2008
Obligation, beginning of year	\$ 438	\$ 402
Interest cost	26	25
Actuarial (gain) loss	(8)	11
Obligation, end of year	<u>\$ 456</u>	<u>\$ 438</u>

The following details the net cost components, all related to continuing operations, and underlying assumptions of postretirement benefits other than pensions:

	Years Ended December 31,		
	2009	2008	2007
Interest cost	\$ 26	\$ 25	\$ 27
Actuarial (gain) loss	(8)	11	—
	<u>\$ 18</u>	<u>\$ 36</u>	<u>\$ 27</u>

Weighted average assumptions used to determine the benefit obligation are:

	As at December 31,		
	2009	2008	2007
Discount rate	5.75%	6.00%	6.30%

Weighted average assumptions used to determine the net postretirement benefit expense are:

	Years Ended December 31		
	2009	2008	2007
Discount rate	4.50%	5.00%	5.00%

The following benefit payments are expected to be made as per the current plan assumptions in each of the next five years:

2010	\$13
2011	\$26
2012	\$29
2013	\$33
2014	\$36
Thereafter	\$—

### 23. Discontinued Operations

#### (a) Tempe Theater

On December 11, 2009, the Company closed its owned and operated Tempe IMAX theater. The Company recognized lease termination and guarantee obligations of \$0.5 million to the landlord, which were offset by derecognition of other liabilities of \$0.9 million, for a net gain of \$0.4 million. In a related transaction, the Company leased the projection system and inventory of the Tempe IMAX theater to a third party theater exhibitor. Revenue from this operating lease transaction will be recognized on a straight-line basis over the term of the lease. For the year ended December 31, 2009, revenues for the Tempe IMAX theater were \$0.8 million (2008 – \$1.5 million, 2007 – \$1.9 million) and the Company recognized a loss of \$0.5 million in 2009 (2008 – loss of



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\$0.3 million, 2007 – loss of less than \$0.1 million) from the operation of the theater. The above transactions are reflected as discontinued operations as there are no significant continuing cash flows from either a migration or a continuation of activities. The remaining assets and liabilities of the owned and operated Tempe IMAX theater are included in the Company's consolidated balance sheets are disclosed in note 23(e).

In addition, the prior years' amounts in the consolidated statements of operations and the consolidated statements of cash flows have been adjusted to reflect the reclassification of the owned and operated Tempe IMAX theater as a discontinued operation.

### **(b) Starboard Theater Ltd**

On September 30, 2009, the Company closed its owned and operated Vancouver IMAX theater. The amount of loss to the Company pertaining to lease and guarantee obligations owing to the landlord was estimated at \$0.3 million which the Company recognized as at September 30, 2009. In 2009, revenues for the Vancouver IMAX theater were \$1.1 million (2008 — \$2.0 million, 2007 — \$2.3 million). The Company recognized a loss of \$0.1 million (net of income tax provision of \$nil), income of \$0.2 million (net of income tax recovery of \$nil) and income of \$0.3 million (net of income tax recovery of \$nil) in 2009, 2008 and 2007, respectively, from the operation of the theater. The above transactions are reflected as discontinued operations as there are no continuing cash flows from either a migration or a continuation of activities. The remaining assets and liabilities of the owned and operated Vancouver IMAX theater included in the Company's consolidated balance sheets are disclosed in note 23(e).

In addition, the prior years' amounts in the consolidated statements of operations and the consolidated statements of cash flows have been adjusted to reflect the reclassification of the owned and operated Vancouver IMAX theater as a discontinued operation.

### **(c) Rhode Island Providence Theater LLC**

On December 31, 2007, the Company entered into a lease termination agreement, which extinguished all of its obligations to its landlord with respect to the Company's owned and operated Providence IMAX theater. As a result of the lease termination, the Company recorded a non-cash gain of \$1.5 million associated with the reversal of deferred lease credits recorded in prior periods. In a related transaction, the Company sold the theater projection system and inventory for the Providence IMAX theater to a third party theater exhibitor for \$1.0 million (consisting of \$0.6 million cash and \$0.4 million of discounted future minimum payments) which was recorded as a gain from discontinued operations. Furthermore, during 2007, the Company had recognized an operating loss of \$0.5 million from the operation of the theater. The above transactions are reflected as discontinued operations as there are no significant continuing cash flows from either a migration or a continuation of activities.

### **(d) Operating Results for Discontinued Operations**

The net earnings from discontinued operations summarized in the consolidated statements of operations, were comprised of the following:

	Years Ended December 31,		
	2009	2008	2007
Gain on termination of Tempe theater lease (net of tax recovery of \$nil)	\$ 437	\$ —	\$ —
Gain on termination of Providence theater lease (net of tax recovery of \$nil)	—	—	1,511
Gain on sale of IMAX theater system to a third party exhibitor (net of tax recovery of \$nil)	—	—	1,014
Loss from Tempe Theater (net of tax recovery of \$nil, respectively)	(525)	(263)	(31)
(Loss) earnings from Vancouver Theater (net of tax recovery of \$nil, respectively)	(88)	171	306
Loss from Providence Theater (net of tax recovery of \$nil)	—	—	(523)
Net (loss) earnings from discontinued operations	\$ (176)	\$ (92)	\$ 2,277

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### (e) Assets and Liabilities of Discontinued Operations

The assets and liabilities related to the Tempe and Vancouver theaters are included in the consolidated balance sheet of IMAX Corporation and are comprised of the following:

	As at December 31,	
	2009	2008
Cash	\$ 299	\$ 606
Accounts receivable	129	155
Inventories	—	11
Prepaid expenses	—	74
Property, plant and equipment	—	185
Total assets	<u>\$ 428</u>	<u>\$ 1,031</u>
Accounts payable	\$ 149	\$ 227
Accrued liabilities	1,018	1,483
Deferred revenue	—	38
Total liabilities	<u>\$ 1,167</u>	<u>\$ 1,748</u>

### 24. Asset Retirement Obligations

The Company has accrued costs related to obligations in respect of required reversion costs for its owned and operated theaters under long-term real estate leases which will become due in the future. The Company does not have any legal restrictions with respect to settling any of these long-term leases. A reconciliation of the Company's liability in respect of required reversion costs is shown below:

	Years Ended December 31,		
	2009	2008	2007
Beginning balance, January 1	\$ 297	\$ 301	\$ 229
Accretion expense	24	13	72
Reduction in asset retirement obligation due to lease renegotiation	(54)	(17)	—
Ending balance, December 31	<u>\$ 267</u>	<u>\$ 297</u>	<u>\$ 301</u>

### 25. Accumulated Other Comprehensive Income Supplemental Information

Components of accumulated other comprehensive income consist of:

	As at December 31,	
	2009	2008
Unrecognized prior service (cost) credits on defined benefit pension plan (net of income tax recovery of \$nil, 2008 – \$38)	\$ —	\$ (107)
Unrecognized actuarial (loss) gain on defined benefit pension plan (net of income tax provision of \$1,064, 2008 – \$1,064)	(271)	2,804
Foreign currency translation adjustments	645	645
Hedging gain (net of income tax provision of \$nil, 2008 – \$46)	532	126
Accumulated other comprehensive income	<u>\$ 906</u>	<u>\$ 3,468</u>

**Item 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure**

None

**Item 9A. Controls and Procedures**

**EVALUATION OF DISCLOSURE CONTROLS AND PROCEDURES**

The Company maintains disclosure controls and procedures designed to ensure that information required to be disclosed in reports filed under the Securities Exchange Act of 1934, as amended, is recorded, processed, summarized and reported within the specified time periods and that such information is accumulated and communicated to management, including the CEO and CFO, to allow timely discussions regarding required disclosure. There are inherent limitations to the effectiveness of any system of disclosure controls and procedures, including the possibility of human error and the circumvention or overriding of the controls and procedures. Accordingly, even effective disclosure controls and procedures can only provide reasonable assurance of achieving their control objectives.

The Company's management, with the participation of its CEO and its CFO, has evaluated the effectiveness of the Company's "disclosure controls and procedures" (as defined in the Securities Exchange Act of 1934 Rules 13a-15(e) or 15d-15(e)) as at December 31, 2009 and has concluded that, as of the end of the period covered by this report, the Company's disclosure controls and procedures were adequate and effective. The Company will continue to periodically evaluate its disclosure controls and procedures and will make modifications from time to time as deemed necessary to ensure that information is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms.

**MANAGEMENT'S ANNUAL REPORT ON INTERNAL CONTROL OVER FINANCIAL REPORTING**

Management is responsible for establishing and maintaining adequate internal control over financial reporting for the Company.

Management has used the Committee of Sponsoring Organizations of the Treadway Commission ("COSO") framework in Internal Control-Integrated Framework to assess the effectiveness of the Company's internal control over financial reporting.

Management has assessed the effectiveness of the Company's internal control over financial reporting, as at December 31, 2009, and has concluded that such internal control over financial reporting was effective as at that date.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

PricewaterhouseCoopers LLP, which has audited the Company's consolidated financial statements for the year ended December 31, 2009 accompanying this Annual Report, has also audited the effectiveness of the Company's internal control over financial reporting as at December 31, 2009 as stated in their report on page 69.

**CHANGES IN INTERNAL CONTROL OVER FINANCIAL REPORTING**

There were no changes in the Company's internal control over financial reporting which occurred during the year ended December 31, 2009, that have materially affected, or are reasonably likely to materially affect, the Company's internal control over financial reporting.

**Item 9 B. Other Information**

None.

## PART III

### **Item 10. Directors, Executive Officers and Corporate Governance**

The information required by Item 10 is incorporated by reference from the information under the following captions in the Company's Proxy Statement: "Item No. 1 — Election of Directors;" "Executive Officers;" "Section 16(a) Beneficial Ownership Reporting Compliance;" "Code of Ethics;" and "Audit Committee."

### **Item 11. Executive Compensation**

The information required by Item 11 is incorporated by reference from the information under the following captions in the Company's Proxy Statement: "Compensation Discussion and Analysis;" "Summary Compensation Table;" "Grant of Plan-Based Awards;" "Outstanding Equity Awards at Fiscal Year-End;" "Options Exercised;" "Pension Benefits;" "Employment Agreements and Potential Payments upon Termination or Change-in-Control;" "Compensation of Directors;" and "Compensation Committee Interlocks and Insider Participation."

### **Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters**

The information required by Item 12 is incorporated by reference from the information under the following captions in the Company's Proxy Statement: "Equity Compensation Plans;" "Principal Shareholders of Voting Shares;" and "Security Ownership of Directors and Management."

### **Item 13. Certain Relationships and Related Transactions, and Director Independence**

The information required by Item 13 is incorporated by reference from the information under the following caption in the Company's Proxy Statement: "Certain Relationships and Related Transactions," "Review, Approval and Ratification of Transactions with Related Persons," and "Director Independence."

### **Item 14. Principal Accounting Fees and Services**

The information required by Item 14 is incorporated by reference from the information under the following captions in the Company's Proxy Statement: "Audit Fees;" "Audit-Related Fees;" "Tax Fees;" "All Other Fees;" and "Audit Committee's Pre-Approved Policies and Procedures."

## PART IV

### **Item 15. Exhibits and Financial Statement Schedules**

#### **(a)(1) Financial Statements**

The consolidated financial statements filed as part of this Report are included under Item 8 in Part II.

Report of Independent Registered Public Accounting Firm, which covers both the financial statements and financial statement schedule in (a)(2), is included under Item 8 in Part II.

#### **(a)(2) Financial Statement Schedules**

Financial statement schedule for each year in the three-year period ended December 31, 2009.

II. Valuation and Qualifying Accounts.

#### **(a)(3) Exhibits**

The items listed as Exhibits 10.1 to 10.28 relate to management contracts or compensatory plans or arrangements.

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<u>Exhibit No.</u>	<u>Description</u>
3.1	Articles of Amalgamation of IMAX Corporation, dated January 1, 2002, as amended by the Articles of Amendment of IMAX Corporation, dated June 25, 2004. Incorporated by reference to Exhibit 4.1 to IMAX Corporation's Registration statement on Form S-3 (File No. 333-157300).
*3.2	By-Law No. 1 of IMAX Corporation enacted on June 3, 2004.
4.1	Shareholders' Agreement, dated as of January 3, 1994, among WGIM Acquisition Corporation, the Selling Shareholders as defined therein, Wasserstein Perella Partners, L.P., Wasserstein Perella Offshore Partners, L.P., Bradley J. Wechsler, Richard L. Gelfond and Douglas Trumbull (the "Selling Shareholders' Agreement"). Incorporated by reference to Exhibit 4.1 to IMAX Corporation's Form 10-K for the year ended December 31, 2006 (File No. 000-24216).
4.2	Amendment, dated as of March 1, 1994, to the Selling Shareholders' Agreement. Incorporated by reference to Exhibit 4.2 to IMAX Corporation's Form 10-K for the year ended December 31, 2006 (File No. 000-24216).
4.3	Registration Rights Agreement, dated as of February 9, 1999, by and among IMAX Corporation, Wasserstein Perella Partners, L.P., Wasserstein Perella Offshore Partners, L.P., WPPN Inc., the Michael J. Biondi Voting Trust, Bradley J. Wechsler and Richard L. Gelfond. Incorporated by reference to Exhibit 4.3 to IMAX Corporation's Form 10-K for the year ended December 31, 2006 (File No. 000-24216).
10.1	Stock Option Plan of IMAX Corporation, dated June 18, 2008. Incorporated by reference to Exhibit 10.1 to IMAX Corporation's Form 10-Q for the quarter ended June 30, 2008 (File No. 000-24216).
10.2	IMAX Corporation Supplemental Executive Retirement Plan, as amended and restated as of January 1, 2006. Incorporated by reference to Exhibit 10.2 to IMAX Corporation's Form 10-K for the year ended December 31, 2006 (File No. 000-24216).
10.3	Employment Agreement, dated July 1, 1998, between IMAX Corporation and Bradley J. Wechsler. Incorporated by reference to Exhibit 10.3 to IMAX Corporation's Form 10-K for the year ended December 31, 2006 (File No. 000-24216).
10.4	Amended Employment Agreement, dated July 12, 2000, between IMAX Corporation and Bradley J. Wechsler. Incorporated by reference to Exhibit 10.4 to IMAX Corporation's Form 10-K for the year ended December 31, 2006 (File No. 000-24216).
10.5	Amended Employment Agreement, dated March 8, 2006, between IMAX Corporation and Bradley J. Wechsler. Incorporated by reference to Exhibit 10.8 to IMAX Corporation's Form 10-K for the year ended December 31, 2005 (File No. 000-24216).
10.6	Amended Employment Agreement, dated February 15, 2007, between IMAX Corporation and Bradley, J. Wechsler. Incorporated by reference to Exhibit 10.31 to IMAX Corporation's Form 8-K dated February 16, 2007 (File No. 000-24216).
10.7	Amended Employment Agreement, dated December 31, 2007, between IMAX Corporation and Bradley J. Wechsler. Incorporated by reference to Exhibit 10.7 to IMAX Corporation's Form 10-K for the year ended December 31, 2007 (File No. 000-24216).
10.8	Services Agreement, dated December 11, 2008, between IMAX Corporation and Bradley J. Wechsler. Incorporated by reference to Exhibit 10.8 to IMAX Corporation's Form 10-K for the year ended December 31, 2008 (File No. 000-24216).
10.9	Employment Agreement, dated July 1, 1998, between IMAX Corporation and Richard L. Gelfond. Incorporated by reference to Exhibit 10.7 to IMAX Corporation's Form 10-K for the year ended December 31, 2006 (File No. 000-24216).
10.10	Amended Employment Agreement, dated July 12, 2000, between IMAX Corporation and Richard L. Gelfond. Incorporated by reference to Exhibit 10.8 to IMAX Corporation's Form 10-K for the year ended December 31, 2006 (File No. 000-24216).
10.11	Amended Employment Agreement, dated March 8, 2006, between IMAX Corporation and Richard L. Gelfond. Incorporated by reference to Exhibit 10.14 to IMAX Corporation's Form 10-K for the year ended December 31, 2005 (File No. 000-24216).
10.12	Amended Employment Agreement, dated February 15, 2007, between IMAX Corporation and Richard L. Gelfond. Incorporated by reference to Exhibit 10.30 to IMAX Corporation's Form 8-K dated February 16, 2007 (File No. 000-24216).
10.13	Amended Employment Agreement, dated December 31, 2007, between IMAX Corporation and Richard L. Gelfond. Incorporated by reference to Exhibit 10.12 to IMAX Corporation's Form 10-K for the year ended December 31, 2007 (File No. 000-24216)
10.14	Amended Employment Agreement, dated December 11, 2008, between IMAX Corporation and Richard L. Gelfond. Incorporated by reference to Exhibit 10.14 to IMAX Corporation's Form 10-K for the year ended December 31, 2008 (File No. 000-2416).
10.15	Employment Agreement, dated March 9, 2006, between IMAX Corporation and Greg Foster. Incorporated by reference to Exhibit 10.18 to IMAX Corporation's Form 10-K for the year ended December 31, 2005 (File No. 000-24216).
10.16	First Amending Agreement, dated December 31, 2007, between IMAX Corporation and Greg Foster. Incorporated by reference to Exhibit 10.14 to IMAX Corporation's Form 10-K for the year ended December 31, 2007 (File No. 000-24216)

## Table of Contents

<u>Exhibit No.</u>	<u>Description</u>
10.17	Employment Agreement, dated May 17, 1999, between IMAX Corporation and Robert D. Lister. Incorporated by reference to Exhibit 10.15 to IMAX Corporation's Form 10-K for the year ended December 31, 2007 (File No. 000-24216)
10.18	Letter Agreement, dated August 21, 2000 between IMAX Corporation and Robert D. Lister. Incorporated by reference to Exhibit 10.15 to IMAX Corporation's Form 10-K for the year ended December 31, 2006 (File No. 000-24216).
10.19	Amended Employment Agreement, dated April 4, 2001 between IMAX Corporation and Robert D. Lister. Incorporated by reference to Exhibit 10.17 to IMAX Corporation's Form 10-K for the year ended December 31, 2007 (File No. 000-24216).
10.20	Amended Employment Agreement, dated January 1, 2004, between IMAX Corporation and Robert D. Lister. Incorporated by reference to Exhibit 10.17 to IMAX Corporation's Registration Statement on Form S-4 (File No. 333-113141).
10.21	Third Amending Agreement, dated February 14, 2006, between IMAX Corporation and Robert D. Lister. Incorporated by reference to Exhibit 10.21 to IMAX Corporation's Form 8-K dated February 20, 2006 (File No. 000-24216).
10.22	Fourth Amending Agreement, dated October 5, 2006, between IMAX Corporation and Robert D. Lister. Incorporated by reference to Exhibit 10.28 to IMAX Corporation's Form 10-Q for the quarter ended September 30, 2006 (File No. 000-24216).
10.23	Fifth Amending Agreement, dated December 31, 2007, between IMAX Corporation and Robert D. Lister. Incorporated by reference to Exhibit 10.21 to IMAX Corporation's Form 10-K for the year ended December 31, 2007 (File No. 000-24216)
10.24	Stock Appreciation Rights Agreement, dated December 31, 2007, between IMAX Corporation and Robert D. Lister. Incorporated by reference to Exhibit 10.22 to IMAX Corporation's Form 10-K for the year ended December 31, 2007 (File No. 000-24216)
*10.25	Sixth Amending Agreement, dated December 31, 2009, between IMAX Corporation and Robert D. Lister.
10.26	Employment Agreement, dated May 14, 2007, between IMAX Corporation and Joseph Sparacio. Incorporated by reference to Exhibit 10.25 to IMAX Corporation's Form 10-Q for the quarter ended September 30, 2007 (File No. 000-24216).
*10.27	First Amending Agreement, dated May 14, 2009, between IMAX Corporation and Joseph Sparacio.
10.28	Statement of Directors' Compensation, dated August 11, 2005. Incorporated by reference to Exhibit 10.20 to IMAX Corporation's Form 10-Q for the quarter ended September 30, 2005 (File No. 000-24216).
*10.29	Amended and Restated Credit Agreement, dated November 16, 2009 by and between IMAX Corporation and Wachovia Capital Finance Corporation (Canada) and Export Development Canada.
10.30	Securities Purchase Agreement, dated as of May 5, 2008, by and between IMAX Corporation, Douglas Family Trust, James Douglas and Jean Douglas Irrevocable Descendants' Trust, James E. Douglas, III, and K&M Douglas Trust. Incorporated by reference to Exhibit 10.32 to IMAX Corporation's Form 10-Q for the quarter ended March 31, 2008 (File No. 000-24216).
10.31	Amendment No. 1 to Securities Purchase Agreement, dated December 1, 2008, by and between IMAX Corporation, Douglas Family Trust, James Douglas and Jean Douglas Irrevocable Descendants' Trust, James E. Douglas, III, and K&M Douglas Trust. Incorporated by reference to Exhibit 10.34 to IMAX Corporation's Form 10-K for the year ended December 31, 2008 (File No. 000-24216)
*21	Subsidiaries of IMAX Corporation.
*23	Consent of PricewaterhouseCoopers LLP.
*24	Power of Attorney of certain directors.
*31.1	Certification Pursuant to Section 302 of the Sarbanes — Oxley Act of 2002, dated March 11, 2010, by Richard L. Gelfond.
*31.2	Certification Pursuant to Section 302 of the Sarbanes — Oxley Act of 2002, dated March 11, 2010, by Joseph Sparacio.
*32.1	Certification Pursuant to Section 906 of the Sarbanes — Oxley Act of 2002, dated March 11, 2010, by Richard L. Gelfond.
*32.2	Certification Pursuant to Section 906 of the Sarbanes — Oxley Act of 2002, dated March 11, 2010, by Joseph Sparacio.

\* Filed herewith

**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

IMAX CORPORATION

Date: March 11, 2010

By:                           /s/ JOSEPH SPARACIO    
Joseph Sparacio  
Executive Vice-President & Chief Financial Officer  
(Principal Financial Officer)

Date: March 11, 2010

By:                           /s/ JEFFREY VANCE    
Jeffrey Vance  
Vice-President, Finance & Controller  
(Principal Financial Officer)

**IMAX CORPORATION**  
**Schedule II**  
**Valuation and Qualifying Accounts**  
*(In thousands of U.S. dollars)*

	Balance at beginning of year	Additions/ (recoveries) charged to expenses	Other additions/ (deductions) <sup>(1)</sup>	Balance at end of year
<b>Allowance for net investment in leases</b>				
Year ended December 31, 2007	\$ 2,445	\$ 1,958	\$ (251)	\$ 4,152
Year ended December 31, 2008	\$ 4,152	\$ 1,595	\$ (863)	\$ 4,884
Year ended December 31, 2009	\$ 4,884	\$ 761	\$ 89	\$ 5,734
<b>Allowance for financed sale receivables</b>				
Year ended December 31, 2007	\$ —	\$ —	\$ —	\$ —
Year ended December 31, 2008	\$ —	\$ —	\$ —	\$ —
Year ended December 31, 2009	\$ —	\$ 178	\$ —	\$ 178
<b>Allowance for doubtful accounts receivable</b>				
Year ended December 31, 2007	\$ 3,253	\$ (163)	\$ (45)	\$ 3,045
Year ended December 31, 2008	\$ 3,045	\$ 382	\$ (526)	\$ 2,901
Year ended December 31, 2009	\$ 2,901	\$ 127	\$ (258)	\$ 2,770
<b>Inventories valuation allowance</b>				
Year ended December 31, 2007	\$ 637	\$ 3,960	\$ (310)	\$ 4,287
Year ended December 31, 2008	\$ 4,287	\$ 2,489	\$(1,435)	\$ 5,341
Year ended December 31, 2009	\$ 5,341	\$ 897	\$(2,488)	\$ 3,750
<b>Deferred income tax valuation allowance</b>				
Year ended December 31, 2007	\$54,602	\$ (4,610)	\$ —	\$49,992
Year ended December 31, 2008	\$49,992	\$11,560	\$ 834	\$62,386
Year ended December 31, 2009	\$62,386	\$ 7,327	\$ 1,920	\$71,633
<b>Provision for loans receivable</b>				
Year ended December 31, 2007	\$ —	\$ —	\$ —	\$ —
Year ended December 31, 2008	\$ —	\$ —	\$ —	\$ —
Year ended December 31, 2009	\$ —	\$ —	\$ —	\$ —

(1) Deductions represent write-offs of amounts previously charged to the provision.



**IMAX CORPORATION**

**Exhibit 3.2**

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**IMAX CORPORATION**

**By-Law No. 1**

**June 2004**

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**IMAX CORPORATION**

**Exhibit 3.2**

RESOLVED that By-Law No. 1 of the Corporation be repealed and replaced with the following:

**BY-LAW NO. 1**

A by-law regulating generally the transaction of the business and affairs of IMAX Corporation.

**Section 1**

**INTERPRETATION**

1.1 **Definitions.** In this by-law, which may be cited as the By-law, unless the context otherwise requires:

“Act” means the *Canada Business Corporations Act*, R.S.C. 1985, C. 44 and any statute that may be substituted therefor, as from time to time amended;

“Articles” includes the original or restated articles of incorporation, articles of amendment, articles of amalgamation, articles of continuance, articles of reorganization, articles of arrangement and articles of revival of the Corporation;

“Board” means the Board of Directors of the Corporation;

“Corporation” means IMAX Corporation;

“meeting of shareholders” means any meeting of shareholders including an annual meeting and a special meeting;

“non-business day” means Saturday, Sunday and any other day that is a holiday as defined in the Interpretation Act (Canada);

“recorded address” means in the case of a shareholder his address as recorded in the securities register; and in the case of joint shareholders the address appearing in the securities register in respect of such joint holding or the first address so appearing if there are two or more; and in the case of a director, officer or auditor, his latest address as recorded in the records of the Corporation.

1.2 **Construction.** Save as aforesaid, words and expressions defined in the Act have the same meanings when used herein; and words importing the singular include the plural and vice versa; words importing gender include the masculine, feminine and neuter genders; and words importing persons include individuals, bodies corporate, partnerships, associations, trusts, executors, administrators, legal representatives, and unincorporated organizations and any number or aggregate of persons.

**Section 2**

**MEETINGS OF SHAREHOLDERS**

2.1 **Meetings of Shareholders.** The annual meeting of shareholders shall be held in each year on a date to be determined by the Board. The Board, one of the Co-Chairmen or the Chairman if there is only one, a Vice-Chairman, one of the Co-Chief Executive Officers, or the Chief Executive Officer if there is only one, may call a special meeting of shareholders, at any time, provided however, that one of the Co-Chief Executive Officers or the Chief Executive Officer if there is only one, shall have approved the date, time and agenda for such meeting.

## IMAX CORPORATION

### Exhibit 3.2

- 2.2 **Chairman, Secretary and Scrutineers.** The chairman of any meeting of shareholders shall be the first mentioned of such of the following officers who is present at the meeting: one of the Co-Chief Executive Officers or the Chief Executive Officer if there is only one, one of the Co-Chairmen or the Chairman if there is only one, a Vice-Chairman or a Vice-President who is a director of the Corporation. If no such officer is present within fifteen minutes from the time fixed for holding the meeting, the persons present and entitled to vote shall choose one of their number to act as chairman. The secretary of any meeting of shareholders shall be the Secretary of the Corporation. If the Secretary is absent, the chairman shall appoint some person, who need not be a shareholder, to act as secretary of the meeting. The chairman may appoint one or more persons who need not be shareholders to act as scrutineers at the meeting.
- 2.3 **Persons Entitled to be Present.** The only persons entitled to be present at a meeting of shareholders shall be those entitled to vote thereat, the directors, the auditor of the Corporation and others who, although not entitled to vote, are entitled or required under any provision of the Act or the Articles to be present. Any other person may be admitted with the consent of the meeting or of the chairman of the meeting.
- 2.4 **Quorum.** Except as otherwise provided in the Articles, a quorum for the transaction of business at any meeting of shareholders shall be at least two persons present in person, each being a shareholder entitled to vote thereat or a duly appointed proxyholder for such a shareholder and together holding or representing by proxy not less than 33-1/3% of the outstanding shares of the Corporation entitled to be voted at the meeting.
- 2.5 **Procedures at Meetings.** The Board may determine the procedures to be followed at any meeting of shareholders including, without limitation, the rules of order. Subject to the foregoing, the chairman of a meeting may determine the procedures of the meeting in all respects.

### Section 3

#### DIRECTORS

- 3.1 **Number of Directors; Filling Vacancies.** Subject to the Act and the Articles and the contractual obligations of the Corporation then in effect, the number of directors of the Corporation may be fixed from time to time by resolution of the Board, and any vacancies on the Board, whether arising due to an increase in the number of directors or otherwise, may be filled by the Board.
- 3.2 **Term of Office.** Subject to Section 3.3 hereof, each director shall be elected for a term as provided in the Articles.
- 3.3 **Qualification of Directors.** In addition to the disqualifications provided for in the Act, a director who is a salaried officer of the Corporation other than any of the Co-Chief Executive Officers or the Chief Executive Officer if there is only one, any of the Co-Chairmen or the Chairman if there is only one, or a Vice-Chairman, shall cease to hold office as a director when he ceases to be a salaried officer of the Corporation.
- 3.4 **Quorum.** A majority of the directors holding office at any particular time shall constitute a quorum of the Board.

## IMAX CORPORATION

### Exhibit 3.2

3.5 **Meeting Following Annual Meeting.** The Board shall meet without notice as soon as practicable after each annual meeting of shareholders to transact such business as may come before the meeting and to appoint by election:

- (1) the Chairman or one or more Co-Chairmen;
- (2) one or more Vice-Chairmen;
- (3) the Chief Executive Officer or one or more Co-Chief Executive Officers;
- (4) the Secretary;
- (5) one or more Vice-Presidents; and
- (6) such other officers as the Board chooses to appoint.

Each of the officers appointed by the Board, whether at the meeting of the Board after the annual meeting of shareholders or at any other meeting shall perform such duties and have such powers as are customarily performed and held by such officers, subject to any limitations or specific duties required to be performed or specific powers bestowed by the Board from time to time.

3.6 **Other Meetings of the Board.** Meetings of the board shall be held from time to time at a date, time and place determined by one of the Co-Chairmen, or the Chairman if there is only one, a Vice-Chairman or a majority of the directors, provided however, that other than for regular quarterly meetings of the board and the meeting following the annual meeting of shareholders, and one of the Co-Chief Executive Officers or the Chief Executive Officer if there is only one shall have approved the date, time and agenda for such meeting.

3.7 **Notice of Meeting.** Notice of the time and place of each meeting of the Board requiring notice shall be given to each director not less than forty-eight (48) hours before the time at which the meeting is to be held.

3.8 **Chairman.** The chairman of any meeting of the Board shall be the first mentioned of such of the following officers who is present at the meeting: one of the Co-Chairmen or the Chairman if there is only one, one of the Co-Chief Executive Officers or the Chief Executive Officer if there is only one, a Vice-Chairman or a Vice-President who is a director of the Corporation. If no such officer is present, the directors present shall choose one of their number to act as chairman.

3.9 **Votes to Govern.** Subject to the Articles and this by-law at all meetings of the Board, every question shall be decided by a majority of the votes cast. The chairman of any meeting may vote as a director and, in the event of an equality of votes, the chairman shall not be entitled to a second or casting vote.

3.10 **Remuneration.** No director who is a salaried officer of the Corporation shall be entitled to any remuneration for the performance of his duties as a director. If any director or officer of the Corporation shall be employed by or shall perform services for the Corporation otherwise than as a director or officer or shall be a member of a firm or a shareholder, director or officer of a body corporate which is employed by or performs services for the Corporation, the fact of his being a director or officer of the Corporation shall not disentitle such director or officer or such firm or body corporate, as the case may be, from receiving proper remuneration for such services.

3.11 **Interest of Directors and Officers Generally in Contracts.** No director or officer shall be disqualified by his office from contracting with the Corporation nor shall any contract or arrangement entered into by or on behalf of the Corporation with any director or officer or in which any director or officer is in any way interested be liable to be voided nor shall any director or officer so contracting or being so interested be liable to account to the Corporation for any profit realized by any such contract or arrangement by reason of such director or officer holding that office or of the fiduciary relationship thereby established; provided that the director or officer shall have complied with the provisions of the Act.

## IMAX CORPORATION

### Exhibit 3.2

#### Section 4

#### COMMITTEES

- 4.1 **Committees.** The Board shall, from time to time, appoint members of an Audit Committee, a Compensation Committee and a Governance Committee and such additional committees as it deems necessary and, subject to the Act, delegate to the committees such powers of the Board and assign to the committees such duties, as the Board considers appropriate.
- 4.2 **Composition of Committees.** To the extent required by regulatory requirements applicable to the Corporation, at least a majority of the members of the Audit and Compensation Committees shall be directors who are independent directors for the purposes of such regulatory requirements applicable to the Corporation. Subject to the foregoing, the composition of each committee shall have been proposed to the Board by one of the Co-Chief Executive Officers or the Chief Executive Officer if there is only one.
- 4.3 **Operation of Committees.** In the case of each committee, a majority of members holding office at any particular time shall constitute a quorum for the transaction of business at that time. The Board shall appoint a chairman of each committee. Each committee shall meet at the call of its chairman, on not less than forty-eight (48) hours notice to each member of the committee prior to the date on which the meeting is to be held. All acts or proceedings of any committee shall be reported to the Board at or before the next meeting thereof.

#### Section 5

#### THE TRANSACTION OF BUSINESS

- 5.1 **Execution of Instruments.** Contracts, documents or instruments in writing requiring execution by the Corporation shall be signed by any two officers or directors, and all contracts, documents or instruments in writing so signed shall be binding upon the Corporation without any further authorization or formality. The board is authorized from time to time by resolution to appoint any officer or officers or any other person or persons on behalf of the Corporation to sign and deliver either contracts, documents or instruments in writing generally or to sign either manually or by facsimile signature and deliver specific contracts, documents or instruments in writing. The term “contracts, documents or instruments in writing” as used in this by-law shall include deeds, mortgages, charges, conveyances, powers of attorney, transfers and assignments of property of all kinds including specifically but without limitation transfers and assignments of shares, warrants, bonds, debentures or other securities and all paper writings.
- 5.2 **Banking Arrangements.** The banking business of the Corporation, or any part thereof, shall be transacted with such banks, trust companies or other financial institutions as the board may designate, appoint or authorize from time to time by resolution and all such banking business, or any part thereof, shall be transacted on the Corporation’s behalf by such one or more officers and/or other persons as the board may designate, direct or authorize from time to time by resolution and to the extent therein provided.

## IMAX CORPORATION

### Exhibit 3.2

#### Section 6

#### DIVIDENDS

- 6.1 **Dividends.** The Board may from time to time declare dividends payable to shareholders according to their respective rights.
- 6.2 **Dividend Payment.** A dividend payable in money may be paid by cheque drawn on the Corporation's bankers, or one of them, to the order of each registered holder of shares of a class or series in respect of which the dividend has been declared, and mailed by prepaid ordinary mail to such registered holder at his recorded address. In the case of joint holders the cheque shall, unless such joint holders otherwise direct, be made payable to the order of all of such joint holders and mailed to them at their recorded address. The Corporation may pay a dividend by cheque to a registered holder or to joint holders other than in the manner herein set out, if the registered holder or joint holders so request.
- 6.3 **Idem.** The Corporation may, when so directed by a registered holder of a share in respect of which a dividend in money has been declared, pay the dividend in the manner so directed.
- 6.4 **Non-receipt or Loss of Dividend Cheques.** In the event of non-receipt or loss of any dividend cheque by the person to whom it is sent, the Corporation shall issue to such person a replacement cheque for a like amount on such terms as to indemnity, reimbursement of expenses and evidence of non-receipt or loss and of entitlement as the Board or the Vice-President in charge of finance may from time to time prescribe, whether generally or in a particular case.

#### Section 7

#### PROTECTION OF DIRECTORS AND OFFICERS

- 7.1 **Indemnification of Directors and Officers.** The Corporation shall indemnify a director or officer of the Corporation, a former director or officer of the Corporation or a person who acts or acted at the Corporation's request as a director or officer of a body corporate of which the Corporation is or was a shareholder or creditor, and his heirs and legal representatives to the extent permitted by the Act.
- 7.2 **Indemnity of Others.** Except as otherwise required by the Act and subject to paragraph 7.1, the Corporation may from time to time indemnify and save harmless any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation) by reason of the fact that he is or was an employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee, agent of or participant in another body corporate, partnership, joint venture, trust or other enterprise, against expenses (including legal fees), judgments, fines and any amount actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted honestly and in good faith with a view to the best interests of the Corporation and, with respect to any criminal or administrative action or proceeding that is enforced by a monetary penalty, had reasonable grounds for believing that his conduct was lawful. The termination of any action, suit or proceeding by judgment, order, settlement or conviction shall not, of itself, create a presumption that the person did not act honestly and in good faith with a view to the best interests of the Corporation and, with respect to any criminal or administrative action or proceeding that is enforced by a monetary penalty, had no reasonable grounds for believing that his conduct was lawful.

## IMAX CORPORATION

### Exhibit 3.2

- 7.3 **Right of Indemnity Not Exclusive.** The provisions for indemnification contained in the by-laws of the Corporation shall not be deemed exclusive of any other rights to which any person seeking indemnification may be entitled under any agreement, vote of shareholders or directors or otherwise, both as to action in his official capacity and as to action in another capacity, and shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs and legal representatives of such a person.
- 7.4 **No Liability of Directors or Officers for Certain Matters.** To the extent permitted by law, no director or officer for the time being of the Corporation shall be liable for the acts, receipts, neglects or defaults of any other director or officer or employee or for joining in any receipt or act for conformity or for any loss, damage or expense happening to the Corporation through the insufficiency or deficiency of title to any property acquired by the Corporation or for or on behalf of the Corporation or for the insufficiency or deficiency of any security in or upon which any of the moneys of or belonging to the Corporation shall be placed out or invested or for any loss or damage arising from the bankruptcy, insolvency or tortious act of any person, firm or body corporate with whom or which any moneys, securities or other assets belonging to the Corporation shall be lodged or deposited or for any loss, conversion, misapplication or misappropriation of or any damage resulting from any dealings with any moneys, securities or other assets belonging to the Corporation or for any other loss, damage or misfortune whatever which may happen in the execution of the duties of his respective office or trust or in relation thereto unless the same shall happen by or through his failure to act honestly and in good faith with a view to the best interests of the Corporation and in connection therewith to exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. If any director or officer of the Corporation shall be employed by or shall perform services for the Corporation otherwise than as a director or officer or shall be a member of a firm or a shareholder, director or officer of a body corporate which is employed by or performs services for the Corporation, the fact of his being a director or officer of the Corporation shall not disentitle such director or officer or such firm or body corporate, as the case may be, from receiving proper remuneration for such services.

### Section 8

#### MISCELLANEOUS

- 8.1 **Omissions and Errors.** The accidental omission to give any notice to any shareholder, officer or auditor or the non-receipt of any notice by any such person or any error in any notice not affecting the substance thereof shall not invalidate any action taken at any meeting to which the notice related.
- 8.2 **Persons Entitled by Death or Operation of Law.** Every person who, by operation of law, transfer, death of a shareholder or any other means whatsoever, becomes entitled to any share, shall be bound by every notice in respect of such share which shall have been duly given to the shareholder from whom he derives his title to such share prior to his name and address being entered on the securities register.
- 8.3 **Waiver of Notice.** A shareholder, proxyholder, director, officer or auditor may at any time waive any notice, or waive or abridge the time for any notice, required to be given to him under any provision of the Act, the regulations thereunder, the Articles or otherwise and such waiver or abridgment, whether given before or after the meeting or other event of which notice is required to be given, shall cure any default or defect in the giving or in the time of such notice, as the case may be. Any such waiver or abridgment shall be in writing except a waiver of notice of a meeting of shareholders or of the Board or of a committee of the Board which may be given in any manner.

**IMAX CORPORATION**

**Exhibit 3.2**

- 8.4 **Invalidity of any Provisions of this By-law.** The invalidity or unenforceability of any provision of this by-law shall not affect the validity or enforceability of the remaining provisions of this by-law.

**Section 9**

**REPEAL**

- 9.1 **Repeal.** By-Law No. 1 of the Corporation adopted and confirmed by the shareholders of the Corporation on June 7, 1999 is repealed on the coming into force of this by-law. Such repeal shall not affect the previous operation of any by-law of the Corporation or its predecessors or affect the validity of any act done or right, privilege, obligation or liability acquired or incurred under or the validity of any contract or agreement made pursuant to such by-law prior to its repeal. All officers and persons acting under the by-law so repealed shall continue to act as if appointed by the directors under the provisions of this by-law or the Act until their successors are appointed.



**IMAX CORPORATION**

**EXHIBIT 10.25**

**SIXTH AMENDING AGREEMENT**

This Amendment to Employment Agreement dated as of December 31st, 2009 (the "Amending Agreement") is made between:

**IMAX CORPORATION**, a corporation incorporated under the laws of Canada (hereinafter referred to as the "Company"),

and

**ROBERT D. LISTER** (the "Executive")

**WHEREAS**, the Company wishes to enter into this Amending Agreement to amend and extend the Employment Agreement dated as of May 17, 1999 between Imax Ltd, the Company and Executive, as modified and amended by those Amending Agreements dated as of April 4, 2001, January 1, 2004, February 14th, 2006, October 5th, 2006 and December 31st, 2007 (together, the "Agreement"), whereunder the Executive provides services to the Company, and the Executive wishes to so continue such engagement, as hereinafter set forth;

**AND WHEREAS**, on January 1, 2001 Imax Ltd. assigned all of its rights and obligations pursuant to the Agreement to the Company, and the Executive has consented to such assignment.

**NOW, THEREFORE**, in consideration of good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Section 1.3 of the Agreement shall be deleted and replaced with the following:

"Section 1.3 Term of Employment. The Employee's employment under this Agreement commenced on the 17th day of May, 1999 (the "Commencement Date") and shall terminate on the earlier of (i) January 1, 2013, or (ii) the termination of the Employee's employment pursuant to this Agreement. The period commencing as of the Commencement Date and ending on January 1, 2013 or such later date to which the term of the Employee's employment under this Agreement shall have been extended is hereinafter referred to as the "Employment Term."

2. Section 2.1 of the Agreement shall be deleted and replaced with the following:

"Section 2.1 Base Salary. The Executive's Base Salary shall be increased as follows:

(i) to US \$464,622 effective January 1, 2010; and (ii) to US \$487,853 effective January 1, 2011. The Executive's Base Salary shall be subject to review in connection with his performance review in 2012."

3. Section 2.3 of the Agreement (Stock Options) shall be amended by the addition of the following language:

"Effective as soon as is practicable after the date hereof, the Executive shall be granted non-qualified options (the "Options") to purchase 180,000 shares of common stock of the Company

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(the "Common Shares"), at an exercise price per Common Share equal to the Fair Market Value, as defined in the Company's Stock Option Plan. The Options shall vest as to 10% on the first anniversary of the grant date, 15% on the second anniversary of the grant date, 20% on the third anniversary of the grant date, 25% on the fourth anniversary of the grant date and 30% on the fifth anniversary of the grant date, and shall otherwise be treated in accordance with the terms of the Agreement."

4. Section 2.2 of the Agreement (Bonus) shall be amended by the addition of the following language:

"Effective as of January 1, 2010, and applicable to the Management Bonus paid in respect of fiscal 2010 and thereafter, Executive's target annual bonus pool eligibility shall be increased as follows: (i) to 37.5% of his Base Salary in respect of 2010; (ii) to 38.75% of his Base Salary in respect of 2011; and (iii) to 40% of his Base Salary in respect of 2012, subject to the foregoing provisions regarding changes to the plan."

Except as amended herein, all other terms of the Agreement shall remain in full force, unamended.

IN WITNESS WHEREOF, the Company and the Executive have duly executed and delivered this Amending Agreement on this 31st day of December, 2009.

**IMAX CORPORATION**

By: /s/ Richard L. Gelfond

Name: Richard L. Gelfond

Title: Chief Executive Officer

By: /s/ G. Mary Ruby

Name: G. Mary Ruby

Title: Exec VP Corporate Services & Corporate Secretary

SIGNED, SEALED AND DELIVERED

in the presence of:

/s/ Mary Barto

Witness

**EXECUTIVE:**

/s/ Robert D. Lister

Robert D. Lister

**IMAX CORPORATION**

**EXHIBIT 10. 27**

**FIRST AMENDING AGREEMENT**

This Amendment to Employment Agreement dated as of May 14th, 2009 (the "Amending Agreement") is made between:

**IMAX CORPORATION**, a corporation incorporated under the laws of Canada (hereinafter referred to as the "Company"),  
and

**JOESPH SPARACIO**, of the Town of Holmdel in the State of New Jersey  
(the "Executive"),

**WHEREAS**, the Company wishes to enter into this Amending Agreement to amend and extend the Employment Agreement dated as of May 14, 2007 between the Company and Executive (together, the "Agreement"), whereunder the Executive provides services to the Company, and the Executive wishes to so continue such engagement, as on the same terms and conditions as set out thereunder.

**NOW, THEREFORE**, in consideration of good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Section 1.3 of the Agreement shall be deleted and replaced with the following:

"Section 1.3 Term of Employment. The Executive's employment under this Agreement commenced on the 14th day of May, 2007 (the "Commencement Date") and shall terminate on the earlier of (i) May 14, 2010, or (ii) the termination of the Executive's employment pursuant to this Agreement. The period commencing as of the Commencement Date and ending on May 13, 2010 or such later date to which the term of the Executive's employment under this Agreement shall have been extended is hereinafter referred to as the "Employment Term. The Company shall notify the Executive at least six (6) months prior to the anniversary of this Amending agreement of its intentions with respect to renewing the Agreement.

Except as amended herein, all other terms of the Agreement shall remain in full force, unamended.

IN WITNESS WHEREOF, the Company and the Executive have duly executed and delivered this mending Agreement on this 14<sup>th</sup> day of May, 2009.

**IMAX CORPORATION**

By: /s/ Robert D. Lister  
Name: Robert D. Lister  
Title: Senior Exec VP & General Counsel

By: /s/ G. Mary Ruby  
Name: G. Mary Ruby  
Title: Exec VP, Corporate Services & Corporate Secretary

SIGNED, SEALED AND DELIVERED  
in the presence of:

/s/ Tamara R. Steele  
Witness

**EXECUTIVE:**

/s/ Joe Sparacio  
Joe Sparacio

**IMAX CORPORATION**

**EXHIBIT 10.29**

**Execution Copy**

**Amended and Restated Credit Agreement**

by and between

**IMAX CORPORATION**

as Borrower

- and -

**WACHOVIA CAPITAL FINANCE CORPORATION (CANADA)**

as Agent, Lender, Sole Lead Arranger and Sole Bookrunner

- and -

**EXPORT DEVELOPMENT CANADA**

as Lender

Dated: November 16, 2009

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## AMENDED AND RESTATED CREDIT AGREEMENT

This Amended and Restated Credit Agreement dated November 16, 2009 is entered into by and between IMAX Corporation, a corporation incorporated pursuant to the laws of Canada ("**Borrower**"), Wachovia Capital Finance Corporation (Canada), formerly named Congress Financial Corporation (Canada), an Ontario corporation, as agent for and on behalf of the Secured Parties (in such capacity, "**Agent**") and as a Lender, and Export Development Canada, as a Lender.

### WITNESSETH:

**WHEREAS** Borrower and Congress Financial Corporation (Canada) ("**Original Lender**") entered into a loan agreement dated February 6, 2004 which was amended pursuant to:

- (a) a first amendment to the Loan Agreement dated June 30, 2005;
- (b) a second amendment to the Loan Agreement dated May 16, 2006;
- (c) a second amendment to the Loan Agreement dated May 16, 2006 (which amended, restated and replaced in its entirety the second amendment to the Loan Agreement referred to in subparagraph (b) above);
- (d) a third amendment to the Loan Agreement dated September 30, 2007;
- (e) a fourth amendment to the Loan Agreement dated December 5, 2007; and
- (f) a fifth amendment to the Loan Agreement dated May 5, 2008,

(collectively, the "**Original Loan Agreement**");

**WHEREAS** Lenders, Agent and Borrower desire to amend and restate the Original Loan Agreement as set forth herein; and

**WHEREAS** each Lender is willing to (severally and not jointly) make loans and provide such financial accommodations to Borrower on a *pro rata* basis according to their Commitment to Borrower on the terms and conditions set forth herein and Agent is willing to act as agent for Lenders on the terms and conditions set forth herein and the other Financing Agreements;

**NOW, THEREFORE**, in consideration of the mutual conditions and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

### **SECTION 1. DEFINITIONS**

All terms used herein which are defined in the PPSA shall have the meanings given therein unless otherwise defined in this Agreement. All references to the plural herein shall also mean the singular and to the singular shall also mean the plural unless the context otherwise requires. All references to Borrower, Lenders and Agent pursuant to the definitions set forth in

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the recitals hereto, or to any other person herein, shall include their respective successors and assigns. The words “**hereof**”, “**herein**”, “**hereunder**”, “**this Agreement**” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not any particular provision of this Agreement and as this Agreement now exists or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced. The word “**including**” when used in this Agreement shall mean “**including, without limitation**”. References herein to any statute or any provision thereof include such statute or provision as amended, revised, re-enacted, and/or consolidated from time to time and any successor statute thereto. An Event of Default shall exist or continue or be continuing until such Event of Default is waived in accordance with Section 12.3 or, without derogating from the cure rights, if any, provided to Borrower in Section 10 hereof, is cured in a manner satisfactory to Agent, if such Event of Default is capable of being cured as determined by Agent. Any accounting term used herein unless otherwise defined in this Agreement shall have the meanings customarily given to such term in accordance with GAAP. Canadian Dollars and the sign “**CDN\$**” mean lawful money of Canada. “**US Dollars**” and the sign “**\$**” mean lawful money of the United States of America. All monetary amounts referred to in this Agreement are in US Dollars unless otherwise stated. For purposes of this Agreement, the following terms shall have the respective meanings given to them below:

#### 1.1 “Accounts”

“**Accounts**” shall mean all present and future rights of Borrower to payment for goods sold or leased or for services rendered, including the right of Borrower to payments made pursuant to the Contracts and Leases, which are not evidenced by instruments or chattel paper, and whether or not earned by performance, excluding Excluded Accounts.

#### 1.2 “Adjusted Euro Dollar Rate”

“**Adjusted Euro Dollar Rate**” shall mean, with respect to each Interest Period for any Euro Dollar Rate Loan, the rate per annum (rounded upwards, if necessary, to the next one-sixteenth (1/16) of one percent (1%)) determined by dividing:

- (a) the Euro Dollar Rate for such Interest Period by:
- (b) a percentage equal to:
  - (i) one (1) minus
  - (ii) the Reserve Percentage.

For purposes hereof, “**Reserve Percentage**” shall mean the reserve percentage, expressed as a decimal, prescribed by any United States or foreign banking authority for determining the reserve requirement which is or would be applicable to deposits of US Dollars in a non-United States or an international banking office of the US Reference Bank, used to fund a Euro Dollar Rate Loan or any Euro Dollar Rate Loan made with the proceeds of such deposit, whether or not the US Reference Bank, actually holds or has made any such deposits or loans. The Adjusted Euro Dollar Rate shall be adjusted on and as of the effective day of any change in the Reserve Percentage.

**1.3 “Affiliate” or “affiliate”**

“Affiliate” or “affiliate” shall have the meaning ascribed thereto in the *Business Corporations Act* (Canada).

**1.4 “Agreed Currency”**

“Agreed Currency” shall have the meaning set forth in Section 13.7 hereof.

**1.5 “Application”**

“Application” shall mean the Application, Indemnity and Consent Foreign Exchange Facility Guarantee between Borrower and BMO.

**1.6 “Appraisal”**

“Appraisal” shall mean an appraisal conducted by the Appraiser at the cost of Borrower, such appraisal to be in form, scope, methodology and with assumptions acceptable to Agent and addressed to Agent and Lenders and upon which Agent and Lenders are permitted to rely.

**1.7 “Appraiser”**

“Appraiser” means Hilco Appraisal Services, LLC, Great American Group or any other appraiser mutually acceptable to Agent and Borrower.

**1.8 “Arranger”**

“Arranger” shall mean Wachovia Capital Finance Corporation (Canada) in its role hereunder as sole lead arranger and bookrunner.

**1.9 “Assignment Agreement”**

“Assignment Agreement” shall have the meaning set forth in Section 11.1(a)(iv) hereof.

**1.10 “Assignment of Capital Leases and Operating Leases”**

“Assignment of Capital Leases and Operating Leases” shall mean the amended and restated Assignment of Capital Leases and Operating Leases dated the date hereof between Borrower, as assignor, and Agent, as assignee, as the same now exists or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced.

**1.11 “Assignment of Contracts on Backlog and Long Term Receivables Contracts”**

“Assignment of Contracts on Backlog and Long Term Receivables Contracts” shall mean the amended and restated Assignment of Contracts in Backlog and Long Term Receivables Contracts dated the date hereof between Borrower, as assignor, and Agent, as assignee, as the same now exists or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced.

### 1.12 "Availability Reserves"

"**Availability Reserves**" shall mean, as of any date of determination, such amounts as Agent may from time to time establish and revise reducing the amount of Revolving Loans and Letter of Credit Accommodations which would otherwise be available to Borrower under the Lending Formulas: (a) to reflect events, conditions, contingencies or risks which, as determined by Agent, do or may reasonably be expected to affect either: (i) the Collateral or any other property which is security for the Obligations or its value; (ii) the assets or business of Borrower or any Obligor; or (iii) the security interests and other rights of Agent in the Collateral (including the enforceability, perfection and priority thereof); or (b) to reflect Agent's good faith belief that any collateral report or financial information furnished by or on behalf of Borrower or any Obligor to Agent is or may have been incomplete, inaccurate or misleading in any material respect; or (c) to reflect Agent's good faith estimate of the amount of any Priority Payables Reserve; or (d) in respect of any state of facts which Agent determines, in good faith, constitutes an Event of Default or Default. The amount of any Availability Reserve established by Agent shall have a reasonable relationship to the event, condition or circumstance which is the basis for such Availability Reserve as determined by Agent in good faith.

### 1.13 "BIA"

"**BIA**" shall mean the *Bankruptcy and Insolvency Act* (Canada).

### 1.14 "Blocked Account Agreement"

"**Blocked Account Agreement**" shall mean the amended and restated blocked account agreement dated on or about the date hereof among Borrower, Agent and the Bank of Montreal, as the same now exists or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced.

### 1.15 "Blocked Accounts"

"**Blocked Accounts**" shall have the meaning set forth in Section 6.3(a) hereof.

### 1.16 "BMO"

"**BMO**" shall mean Bank of Montreal.

### 1.17 "BMO FEFC Term Sheet"

"**BMO FEFC Term Sheet**" shall mean the term sheet dated November 27, 2008 between Borrower and BMO with respect to a \$5,000,000 Foreign Exchange Forward Contract Facility by BMO in favour of Borrower.

### 1.18 "BMO Term Sheet"

"**BMO Term Sheet**" shall mean the term sheet dated January 31, 2008, as amended on October 2, 2008, between Borrower and BMO with respect to the issuance of:



- (a) a US\$10,000,000 Demand, Revolving Letter of Credit Facility by BMO in favour of Borrower (the “**BMO LC Facility**”);
- (b) a CDN\$25,000 Mastercard Businesscard Facility by BMO in favour of Borrower (the “**Mastercard Facility**”); and
- (c) a \$300,000 Directline for Business – Foreign Exchange Settlement Facility by BMO in favour of Borrower (the “**F/X Facility**”).

**1.19 “Borrowing Base Certificate”**

“**Borrowing Base Certificate**” shall mean the borrowing base certificate, together with the completed exhibits thereto, to be delivered by Borrower pursuant to, *inter alia*, Section 7.1, the form of which is attached herewith as Schedule 1.19.

**1.20 “Business Day”**

“**Business Day**” shall mean a day (other than a Saturday, Sunday or statutory holiday in Ontario, Illinois or New York) on which Agent’s Toronto office and banks in Chicago and New York City are open for business in the normal course.

**1.21 “Capital Lease Obligations”**

“**Capital Lease Obligations**” shall mean all monetary obligations of Borrower and its Subsidiaries under a capital lease and, for the purposes of this Agreement, the amount of such obligations shall be the capitalized amount thereof, determined in accordance with GAAP;

**1.22 “Capital Leases”**

“**Capital Leases**” shall mean, collectively, all of the leases listed on Schedule 1.22, as may be amended, updated and/or restated from time to time in accordance with the reporting requirements set out in Section 7.1(a) hereof, each of which are theatre system leases that transfer substantially all of the benefits and risks of ownership to Clients and meet the criteria established by the FASB Statement of Financial Accounting Standards No. 13.

**1.23 “Capital Leases Lending Formula”**

“**Capital Leases Lending Formula**” shall have the meaning set forth in Section 2.1(a)(iii) hereof.

**1.24 “Cash and Excess Availability”**

“**Cash and Excess Availability**” shall mean the US Dollar Amount as determined by Agent, equal to the sum of (a) Excess Availability, (b) cash, and (c) in Agent’s discretion, highly liquid securities with a known market value.

**1.25 “Cash Dominion Event”**

“Cash Dominion Event” shall mean the occurrence and continuance of the earlier of: (i) an Event of Default; or (ii) the Excess Availability falling below \$5,000,000.

**1.26 “CCAA”**

“CCAA” shall mean the *Companies’ Creditors Arrangement Act* (Canada).

**1.27 “CCAA Plan”**

“CCAA Plan” shall have the meaning set forth in Section 9.18 hereof.

**1.28 “Client”**

“Client” shall mean any Person, other than Borrower, who is now or hereafter becomes a party to a Capital Lease, an Operating Lease, Contract in Backlog and/or a Long Term Receivables Contract, as applicable, and “Clients” means all such Persons.

**1.29 “Code”**

“Code” shall mean the *United States Internal Revenue Code* of 1986, as amended from time to time, and the rules and regulations promulgated thereunder from time to time.

**1.30 “Collateral”**

“Collateral” shall mean, collectively, the Real Property and Collateral (as such term is defined in the General Security Agreement).

**1.31 “Commitments”**

“Commitments” shall mean (a) as to any Lender, the aggregate of such Lender’s Revolving Loan Commitment and Term Loan Commitment as set forth below such Lender’s name on the signature page of this Agreement or, if such Lender’s name does not appear on the signature page of this Agreement, in the most recent Assignment Agreement executed by such Lender and (b) as to all Lenders, the aggregate of all Lenders’ Revolving Loan Commitments and Term Loan Commitments to Borrower, which aggregate commitment is Seventy-Five Million US Dollars (\$75,000,000.00).

**1.32 “Compliance Certificate”**

“Compliance Certificate” shall mean the compliance certificate substantially in the form attached hereto as Schedule 1.32.

**1.33 “Contracts and Leases”**

“Contracts and Leases” shall mean, collectively, any one or all of the Capital Leases, the Operating Leases, the Contracts in Backlog and the Long Term Receivable Contracts.

### 1.34 "Contracts in Backlog"

"Contracts in Backlog" shall mean, collectively, contracts designated by Borrower internally as "contracts in backlog" as listed on Schedule 1.34, as may be amended, updated and/or restated from time to time in accordance with requirements set out in Section 7.1(a) hereof.

### 1.35 "Default"

"Default" shall mean an event, circumstance or omission which, with any of the giving of notice or a lapse of time or both would constitute an Event of Default.

### 1.36 "DMR Fees"

"DMR Fees" shall mean fees paid to Borrower by film studios in respect of the exhibition of commercial films in the IMAX theatre network.

### 1.37 "EBITDA"

"EBITDA" shall mean, for any period with respect to Borrower, an amount equal to the consolidated net income or net loss before interest, taxes, depreciation, amortization and any other non-cash and non-operating charges or other impairments as approved by Agent.

### 1.38 "EDC"

"EDC" shall mean Export Development Canada.

### 1.39 "EDC Indemnity Agreement"

"EDC Indemnity Agreement" shall mean the indemnity agreement dated April 24, 2008 given by Borrower and certain Obligors in favour of EDC.

### 1.40 "Eligible Accounts"

"Eligible Accounts" shall mean Accounts created by Borrower which are and continue to be acceptable to Agent based on the criteria set forth below. In general, Accounts shall be Eligible Accounts if:

- (a) such Accounts arise from the actual and *bona fide* sale and delivery of goods by Borrower or rendition of services by Borrower in the ordinary course of its business which transactions are completed in accordance with the terms and provisions contained in any documents related thereto;
- (b) such Accounts are not unpaid more than sixty (60) days after the original due date for same;
- (c) such Accounts are not unpaid more than ninety (90) days after the date of the original invoice for them;

(d) such Accounts comply with the terms and conditions contained in Section 7.2(b) hereof;

(e) such Accounts are not contra accounts, do not arise from sales on consignment, guaranteed sale, sale and return, sale on approval, or other terms under which payment by the account debtor may be conditional or contingent;

(f) the chief executive office of the account debtor with respect to such Accounts is located in Canada or in the United States of America or, if the chief executive office of the account debtor is not located in Canada or in the United States of America, the Account is payable in Canadian Dollars or US Dollars and, at Agent's option, if either: (i) the account debtor has delivered to Borrower an irrevocable letter of credit issued or confirmed by a bank satisfactory to Agent and payable only in Canada in the currency in which the Account is denominated, sufficient to cover such Account, in form and substance satisfactory to Agent and, if required by Agent, the original of such letter of credit has been delivered to Agent or Agent's agent and the issuer thereof has been notified of the assignment of the proceeds of such letter of credit to Agent; or (ii) such Account is fully insured under credit insurance payable to Agent issued by an insurer and on terms and in an amount acceptable to Agent; or (iii) such Account is otherwise acceptable in all respects to Agent (subject to such lending formula with respect thereto as Agent may determine);

(g) such Accounts do not consist of progress billings (other than those in respect of billings to film studios in respect of DMR Fees), bill and hold invoices or retainage invoices, except as to bill and hold invoices, if Agent shall have received an agreement in writing from the account debtor, in form and substance satisfactory to Agent, confirming the unconditional obligation of the account debtor to take the goods related thereto and pay such invoice;

(h) the account debtor with respect to such Accounts has not asserted a counterclaim, defense or dispute and does not have, and does not engage in transactions which may give rise to, any right of set-off against such Accounts (but the portion of the Accounts of such account debtor in excess of the amount at any time and from time to time owed by Borrower to such account debtor or claimed owed by such account debtor may be deemed Eligible Accounts);

(i) there are no facts, events or occurrences which would impair the validity, enforceability or collectability of such Accounts or reduce the amount payable or delay payment thereunder;

(j) such Accounts are subject to the first priority, valid and perfected Lien of Agent and are not subject to any prior ranking Lien or other Lien except Permitted Liens and any goods giving rise thereto are not, and were not at the time of the sale thereof, subject to any Liens except Permitted Liens;

(k) neither the account debtor nor any officer or employee of the account debtor with respect to such Accounts is an Affiliate of Borrower;

(l) the account debtors with respect to such Accounts are not any foreign government, the federal government of Canada, any Province, political subdivision, department, agency or instrumentality thereof unless, upon Agent's request, the *Financial Administration Act* (Canada)

or any similar provincial or local law, if applicable, has been complied with in a manner satisfactory to Agent;

(m) there are no proceedings or actions which are threatened or pending against the account debtors with respect to such Accounts which might result in any material adverse change in any such account debtor's financial condition;

(n) such Accounts of a single account debtor or its Affiliates do not constitute more than ten percent (10%) of all otherwise Eligible Accounts or twenty-five percent (25%) with respect to American Multi-Cinemas, Inc., Regal Cinemas, Inc. and Cineplex Entertainment Limited Partnership or such Accounts of Studios on a combined basis do not constitute more than seventy-five percent (75%) of all otherwise Eligible Accounts (but the portion of the Accounts not in excess of such percentages may be deemed Eligible Accounts);

(o) such Accounts are not owed by an account debtor who has Accounts unpaid more than sixty (60) days after the date of the original due date for them which constitute more than fifty percent (50%) of the total Accounts of such account debtor;

(p) such Accounts are not owed by an account debtor who has Accounts unpaid more than ninety (90) days after the date of the original invoice for them which constitute more than fifty percent (50%) of the total Accounts of such account debtor;

(q) such Accounts are not subject to any rebates to the account debtors (but the portion of the Accounts remaining unimpaired after reserving for all potentially applicable rebates may be deemed Eligible Accounts);

(r) such Accounts are not subject to any price protection or other terms, statutory or otherwise, under which payment by the account debtor may be reduced;

(s) such Accounts do not arise under lease or long term receivables or payments due from joint venturers or under any Contract or Lease and are not given credit under any other Lending Formula;

(t) such Accounts are owed by account debtors whose total indebtedness to Borrower does not exceed the credit limit with respect to such account debtors as determined by Agent from time to time (but the portion of the Accounts not in excess of such credit limit may be deemed Eligible Accounts); and

(u) such Accounts are owed by account debtors deemed credit-worthy at all times by Agent, as determined by Agent.

General criteria for Eligible Accounts may be established and revised from time to time by Agent. Any Accounts which are not Eligible Accounts shall nevertheless be part of the Collateral.

#### 1.41 "Eligible Capital Leases"

"Eligible Capital Leases" shall mean those leases, from time to time, which are and continue to be acceptable to Agent based on the general criteria set forth below which Agent, in good faith, may revise from time to time. In general, a Capital Lease shall be an Eligible Capital Lease if:

- (a) it is with a Client deemed creditworthy at all times by Agent, as determined by Agent in good faith;
- (b) it is with a Client that has not asserted a *bona fide* counterclaim, defence or dispute (other than as to a *de minimus* amount) under the applicable Capital Lease and if so, the value of such Capital Lease shall be reduced by the amount of such counterclaim, defense or dispute;
- (c) it is with a Client that does not have, and does not engage in transactions which may give rise to, any right of set-off against the Capital Lease; provided that the existence of any such right of set-off shall not by itself cause such Capital Lease to cease to continue to be an Eligible Capital Lease but its appraised value, for purposes of Section 2.1(a)(iii)(B) hereof, will be reduced by Agent by an amount determined by Agent in good faith;
- (d) there are no facts, events or occurrences which would impair the validity, enforceability or collectability of the Capital Lease or materially reduce the amount payable or delay payment thereunder, including any event of default or event which would, with notice or the passage of time, constitute an event of default under the Capital Lease;
- (e) it is subject to the first priority, valid and perfected Lien of Agent and is not subject to any prior ranking Liens or other Liens except Permitted Liens;
- (f) it is with a Client which is not itself, nor any officer or employee thereof, an officer, employee or agent of or affiliated with Borrower, directly or indirectly, by virtue of family membership, ownership, control, management or otherwise;
- (g) there are no proceedings or actions which are threatened or pending against the Client which could reasonably be expected to result in any material adverse change in such Client's financial condition;
- (h) unless otherwise permitted by Agent, and with the exception of Capital Leases for which the Client is RACIMEC International Group, American Multi-Cinemas, Inc., Regal Cinemas, Inc. and Cineplex Entertainment Limited Partnership, it is not with a Client which, together with its Affiliates, constitutes more than ten (10%) percent of all otherwise Eligible Capital Leases and, in the case of RACIMEC International Group, American Multi-Cinemas, Inc., Regal Cinemas, Inc. and Cineplex Entertainment Limited Partnership, constitutes more than twenty-five (25%) percent of all otherwise Eligible Capital Leases (but the portion of the Capital Leases not in excess of such applicable percentages continue to be Eligible Capital Leases);
- (i) Borrower and/or any Obligor is the lessor under the applicable Capital Lease;

(j) Borrower and/or any Obligor, as applicable, has not transferred title to the equipment leased to the Client pursuant to the applicable Capital Lease; provided however that Capital Leases pursuant to which title has been transferred to the Client but which are required to be defined as Capital Leases under GAAP shall be deemed to be Capital Leases; and

(k) notwithstanding that there are any restrictions on assignability in respect of such Capital Lease.

Any Capital Lease, which is not considered to be an Eligible Capital Lease in accordance with the foregoing requirements, is nevertheless considered to form part of the Collateral.

#### **1.42 “Eligible Contracts in Backlog”**

“**Eligible Contracts in Backlog**” shall mean Contracts in Backlog, from time to time, which are and continue to be acceptable to Agent based on the general criteria set forth below which Agent, in good faith, may revise from time to time. In general, a Contract in Backlog shall be an Eligible Contract in Backlog if:

(a) it is with a Client deemed creditworthy at all times by Agent, as determined by Agent in good faith;

(b) it is with a Client that has not asserted a *bona fide* counterclaim, defence or dispute (other than as to a *de minimus* amount) under the applicable Contract in Backlog and if so, the value of the relevant Eligible Finished Goods Inventory shall be reduced by the amount of such counterclaim, defense or dispute;

(c) it is with a Client that does not have, and does not engage in transactions which may give rise to, any right of set-off against the Eligible Finished Goods Inventory; provided that the existence of any such right of set-off shall not by itself cause such Eligible Finished Goods Inventory to cease to continue to be Eligible Finished Goods Inventory but its appraised value, for purposes of Section 2.1(a)(iv)(B) hereof, will be reduced by Agent by an amount determined by Agent in good faith;

(d) there are no facts, events or occurrences which would impair the validity, enforceability or collectability of the Contract in Backlog or materially reduce the amount payable or delay payment thereunder, including any event of default or event which would, with notice or the passage of time, constitute an event of default under the Contract in Backlog;

(e) it is subject to the first priority, valid and perfected Lien of Agent and is not subject to any prior ranking Lien or other Lien except Permitted Liens;

(f) it is with a Client which is not itself, nor any officer or employee thereof, an officer, employee or agent of or affiliated with Borrower, directly or indirectly, by virtue of family membership, ownership, control, management or otherwise;

(g) there are no proceedings or actions which are threatened or pending against the Client which could reasonably be expected to result in any material adverse change in such Client’s financial condition;

(h) unless otherwise permitted by Agent and with the exception of RACIMEC International Group, American Multi-Cinemas, Inc., Regal Cinemas, Inc. and Cineplex Entertainment Limited Partnership, it is not with a Client which, together with its Affiliates, constitutes, without duplication, more than ten percent (10%) percent of all otherwise Eligible Contracts, Leases and Inventory and, in the case of RACIMEC International Group, American Multi-Cinemas, Inc., Regal Cinemas, Inc. and Cineplex Entertainment Limited Partnership, constitutes, without duplication, more than twenty-five percent (25%) of all otherwise Eligible Contracts, Leases and Inventory (but the portion of the Finished Goods Inventory not in excess of such applicable percentages continues to be Eligible Finished Goods Inventory);

(i) notwithstanding that there are restrictions on assignability in respect of such Contracts in Backlog; and

(j) it is with a Client formed under a joint venture arrangement by Borrower on terms acceptable to Agent.

Any Finished Goods Inventory which is not considered to be Eligible Finished Goods Inventory in accordance with the foregoing requirements, is nevertheless considered to form part of the Collateral.

#### **1.43 “Eligible Contracts, Leases and Inventory”**

“**Eligible Contracts, Leases and Inventory**” shall mean, collectively, any one of or all of the Eligible Capital Leases, Eligible Operating Leases, Eligible Finished Goods Inventory and Eligible Long Term Receivables Contracts.

#### **1.44 “Eligible Finished Goods Inventory”**

“**Eligible Finished Goods Inventory**” means Finished Goods Inventory that has been assigned by Borrower to Eligible Contracts in Backlog.

#### **1.45 “Eligible Long Term Receivables Contracts”**

“**Eligible Long Term Receivables Contracts**” shall mean those contracts of Borrower, from time to time, which are and continue to be acceptable to Agent based on the general criteria set forth below which Agent, in good faith, may revise from time to time. In general, a Long Term Receivables Contract shall be an Eligible Long Term Receivable Contract if:

(a) it is with a Client deemed creditworthy at all times by Agent, as determined by Agent in good faith;

(b) it is with a Client that has not asserted a *bona fide* counterclaim, defence or dispute (other than as to a *de minimus* amount) under the applicable Long Term Receivables Contract; provided that the existence of such counterclaim, defence or dispute shall not by itself cause such Long Term Receivables Contract to cease to continue to be Eligible Long Term Receivables Contract but its appraised value, for purposes of Section 2.1(a)(v)(B) hereof, will be reduced by Agent by an amount determined by Agent in good faith;



(c) it is with a Client that does not have, and does not engage in transactions which may give rise to, any right of set-off against the Long Term Receivables Contract; provided that the existence of any such right of set-off shall not by itself cause such Long Term Receivables Contract to cease to continue to be Eligible Long Term Receivables Contract but its appraised value, for purposes of Section 2.1(a)(v)(B) hereof, will be reduced by Agent by an amount determined by Agent in good faith;

(d) there are no facts, events or occurrences which would impair the validity, enforceability or collectability of the Long Term Receivables Contract or materially reduce the amount payable or delay payment thereunder, including any event of default or event which would, with notice or the passage of time, constitute an event of default under the Long Term Receivable Contract;

(e) it is subject to the first priority, valid and perfected Lien of Agent and is not subject to any prior ranking Lien or other Lien except Permitted Liens;

(f) it is with a Client which is not itself, nor any officer or employee thereof, an officer, employee or agent of or affiliated with Borrower, directly or indirectly, by virtue of family membership, ownership, control, management or otherwise;

(g) there are no proceedings or actions which are threatened or pending against the Client which could reasonably be expected to result in any material adverse change in such Client's financial condition;

(h) unless otherwise permitted by Agent and with the exception of RACIMEC International Group, American Multi-Cinemas, Inc., Regal Cinemas, Inc. and Cineplex Entertainment Limited Partnership, it is not with a Client which, together with its Affiliates, constitutes, without duplication, more than ten (10%) percent of all otherwise Eligible Contracts, Leases and Inventory and, in the case of RACIMEC International Group, American Multi-Cinemas, Inc., Regal Cinemas, Inc. and Cineplex Entertainment Limited Partnership, constitutes, without duplication, more than twenty-five percent (25%) of all otherwise Eligible Contracts, Leases and Inventory (but the portion of the Long Term Receivables Contracts not in excess of such applicable percentages continues to be Eligible Long Term Receivables Contracts); and

(i) notwithstanding that there are restrictions on assignability in respect of such Long Term Receivables Contracts.

Any Long Term Receivables Contract, which is not considered to be an Eligible Long Term Receivables Contract in accordance with the foregoing requirements, is nevertheless considered to form part of the Collateral.

#### **1.46 "Eligible Operating Leases"**

"**Eligible Operating Leases**" shall mean those leases, from time to time, which are and continue to be acceptable to Agent based on the general criteria set forth below which Agent, in good faith, may revise from time to time. In general, an Operating Lease shall be an Eligible Operating Lease if:

- (a) it is with a Client deemed creditworthy at all times by Agent, as determined by Agent in good faith;
- (b) it is with a Client that has not asserted a *bona fide* counterclaim, defence or dispute (other than as to a *de minimus* amount) under the applicable Operating Lease and if so, the value of such Operating Lease shall be reduced by the amount of such counterclaim, defense or dispute;
- (c) it is with a Client that does not have, and does not engage in transactions which may give rise to, any right of set-off against the Operating Lease; provided that the existence of any such right of set-off shall not by itself cause such Operating Lease to cease to continue to be an Eligible Operating Lease but its appraised value, for purposes of Section 2.1(a)(ii) hereof, will be reduced by Agent by an amount determined by Lender in good faith;
- (d) there are no facts, events or occurrences which would impair the validity, enforceability or collectability of the Operating Lease or materially reduce the amount payable or delay payment thereunder, including any event of default or event which would, with notice or the passage of time, constitute an event of default under the Operating Lease;
- (e) it is subject to the first priority, valid and perfected Lien of Agent and is not subject to any prior ranking Lien or other Lien except Permitted Liens;
- (f) it is with a Client which is not itself, nor any officer or employee thereof, an officer, employee or agent of or affiliated with Borrower, directly or indirectly, by virtue of family membership, ownership, control, management or otherwise;
- (g) there are no proceedings or actions which are threatened or pending against the Client which could reasonably be expected to result in any material adverse change in such Client's financial condition;
- (h) unless otherwise permitted by Agent, and with the exception of Operating Leases for which the Client is RACIMEC International Group, American Multi-Cinemas, Inc., Regal Cinemas, Inc. and Cineplex Entertainment Limited Partnership, it is not with a Client which, together with its Affiliates, constitutes more than ten percent (10%) of all otherwise Eligible Operating Leases and, in the case of RACIMEC International Group, American Multi-Cinemas, Inc., Regal Cinemas, Inc. and Cineplex Entertainment Limited Partnership, constitutes more than twenty-five percent (25%) of all otherwise Eligible Operating Leases (but the portion of the Operating Leases not in excess of such applicable percentages continue to be Eligible Operating Leases);
- (i) Borrower and/or any Obligor is the lessor under the applicable Operating Lease;
- (j) Borrower and/or any Obligor, as applicable, has not transferred title to the equipment leased to the Client pursuant to the applicable Operating Lease; and
- (k) notwithstanding that there are any restrictions on assignability in respect of such Operating Lease.

Any Operating Lease, which is not considered to be an Eligible Operating Lease in accordance with the foregoing requirements, is nevertheless considered to form part of the Collateral.

#### 1.47 “Eligible Transferee”

“Eligible Transferee” shall mean

(a) any Lender;

(b) the parent company of any Lender and/or any Affiliate of such Lender;

(c) any Person that is engaged in the business of making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its business and is administered or managed by a Lender or with respect to any Lender that is a fund which invests in commercial loans and similar extensions of credit, any other fund that invests in commercial loans and similar extensions of credit and is managed by the same investment advisor as such Lender or by an Affiliate of such investment advisor; and

(d) any other commercial bank, financial institution or “accredited investor” (as defined under Ontario Securities Commission Rule 45-106) approved by Agent and, unless an Event of Default has occurred and is continuing, Borrower (each such approval not to be unreasonably withheld or delayed),

provided, however, that,

(i) neither Borrower nor any Affiliate of Borrower;

(ii) nor any Person to whom any indebtedness (other than the Obligations) is owed by Borrower or any Obligor;

(iii) nor any natural person;

(iv) nor any Person that is a competitor of Borrower,

in each case of the foregoing clauses (i), (ii) and (iii), and (iv), shall qualify as an Eligible Transferee (each, a “**Prohibited Transferee**”).

#### 1.48 “Environmental Laws”

“**Environmental Laws**” shall mean with respect to any Person all federal (United States of America and Canada), state, provincial, district, local, municipal and foreign laws, statutes, rules, regulations, ordinances, orders, directives, permits, licenses and consent decrees relating to health, safety, hazardous, dangerous or toxic substances, waste or material, pollution and environmental matters, as now or at any time hereafter in effect, applicable to such Person and/or its business and facilities (whether or not owned by it), including laws relating to emissions, discharges, releases or threatened releases of pollutants, contamination, chemicals, or hazardous, toxic or dangerous substances, materials or wastes into the environment (including, ambient air, surface water, ground water, land surface or subsurface strata) or otherwise relating to the

generation, manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of pollutants, contaminants, chemicals, or hazardous, toxic or dangerous substances, materials or wastes.

#### **1.49 “Equipment”**

“**Equipment**” shall mean all of Borrower’s now owned and hereafter acquired equipment, machinery, computers and computer hardware and software (whether owned or licensed), vehicles, tools, furniture, fixtures, all attachments, accessions and property now or hereafter affixed thereto or used in connection therewith, and substitutions and replacements thereof, wherever located.

#### **1.50 “Equivalent Amount”**

“**Equivalent Amount**” in one currency on any day means the amount of that currency into which a specified amount of another currency can be converted at the Spot Rate (or if such rate is not available, such other rate as Agent may determine).

#### **1.51 “ERISA”**

“**ERISA**” shall mean the *Employee Retirement Income Security Act of 1974*, together with all rules, regulations and interpretations thereunder or related thereto.

#### **1.52 “ERISA Affiliate”**

“**ERISA Affiliate**” shall mean any person required to be aggregated with Borrower or any of its Subsidiaries under Sections 414(b), 414(c), 414(m) or 414(o) of the Code.

#### **1.53 “ERISA Event”**

“**ERISA Event**” shall mean

(a) any “reportable event” as defined in Section 4043(c) of ERISA or the regulations issued thereunder, with respect to a US Pension Plan, other than events as to which the requirement of notice has been waived in regulations by the Pension Benefit Guaranty Corporation;

(b) the adoption of any amendment to a US Pension Plan that would require the provision of security pursuant to Section 401(a)(29) of the Code or Section 307 of ERISA;

(c) a complete or partial withdrawal by Borrower or any ERISA Affiliate from a Multiemployer Plan or a cessation of operations which is treated as such a withdrawal or notification that a Multiemployer Plan is in reorganization;

(d) the filing of a notice of intent to terminate a US Pension Plan under Section 4041 or 4041A of ERISA, or the commencement of proceedings by the Pension Benefit Guaranty Corporation to terminate a US Pension Plan;

(e) an event or condition which would reasonably be expected to constitute grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Plan;

(f) the imposition of any liability under Title IV of ERISA, other than the Pension Benefit Guaranty Corporation premiums due but not delinquent under Section 4007 of ERISA, upon Borrower or any ERISA Affiliate in excess of \$500,000; and

(g) any other event or condition with respect to any US Pension Plan subject to Title IV of ERISA maintained, or contributed to, by any ERISA Affiliate that could reasonably be expected to result in liability of Borrower in excess of \$500,000.

#### **1.54 “Euro Dollar Rate”**

“**Euro Dollar Rate**” shall mean the rate of interest, based on a 360 day year, appearing on Reuters Screen LIBOR01 Page (or on any successor or substitute page of such service or any successor to or substitute for such service as determined by Agent) as the London interbank offered rate for deposits in US Dollars for a term comparable to the applicable Interest Period as selected by Borrower (but if more than one rate is specified on such page, the rate will be an arithmetic average of all such rates rounded upwards, in Agent’s discretion, to the nearest 1/100<sup>th</sup> of one percent (1%)) on or about 9:00 a.m. New York time three (3) Business Days prior to the commencement of such Interest Period.

#### **1.55 “Euro Dollar Rate Loans”**

“**Euro Dollar Rate Loans**” shall mean any Loans or portion thereof on which interest is payable based on the Adjusted Euro Dollar Rate in accordance with the terms hereof.

#### **1.56 “Event of Default”**

“**Event of Default**” shall have the meaning set forth in Section 10.1 hereof.

#### **1.57 “Excess Availability”**

“**Excess Availability**” shall mean the US Dollar Amount, calculated at any time and as determined by Agent, equal to:

(a) the lesser of, subject to the sub-limit in respect of Letter of Credit Accommodations:

- (i) the amount of the Revolving Loans and Letter of Credit Accommodations available to Borrower as of such time based on the Lending Formulas, as determined by Agent less the Availability Reserves from time to time established by Agent; or
- (ii) the Maximum Revolving Credit plus \$5,000,000; less

(b) the sum of:

- (i) the amount of all then outstanding and unpaid Obligations (not including the then outstanding and unpaid amount of the Term Loan); and
- (ii) the aggregate amount of: (A) all due but unpaid tax obligations; and (B) past due trade payables which remain unpaid for more than ninety (90) days past the original invoice for same, of Borrower as of such time.

**1.58 “Excluded Accounts”**

“**Excluded Accounts**” means all present and future rights, revenues and bank accounts of Borrower or its Subsidiaries in respect of, and which are used to make or receive payments in relation to: (i) third party film productions; (ii) third party joint ventures; and (iii) owned and operated theatres, each of which is excluded from the Trailing Cash Collections. As of the date hereof, the Excluded Accounts are as set out in Schedule 1.58 hereto.

**1.59 “Fair Market Value”**

“**Fair Market Value**” shall mean an estimated amount, determined as of the effective date of the applicable Appraisal, expressed in US Dollars, that may be reasonably realized from an orderly liquidation of the applicable Collateral net of the amount of deductions for all commissions, taxes and other Liquidation Expenses by the Appraiser and set out in the applicable Appraisal.

**1.60 “Financing Agreements”**

“**Financing Agreements**” shall mean, collectively, this Agreement, the Original Loan Agreement, the General Security Agreement, the Assignment of Capital Leases and Operating Leases, the Assignment of Contracts in Backlog and Long Term Receivables Contracts, the Blocked Account Agreement, the IP Collateral License Agreement and all notes, guarantees, security agreements and other agreements, documents and instruments previously, now or at any time hereafter executed and/or delivered by Borrower or any Obligor in connection with this Agreement and the Original Loan Agreement excluding any Swap Agreement, in each case, as the same now exist or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced.

**1.61 “Finished Goods Inventory”**

“**Finished Goods Inventory**” means the finished goods Inventory of Borrower, as listed on Schedule 1.61 as amended, updated and/or restated from time to time in accordance with the reporting requirements set out in Section 7.1(a) hereof, that has been designated by Borrower as a Contract in Backlog.

**1.62 “Finished Goods Inventory Lending Formula”**

“**Finished Goods Inventory Lending Formula**” shall have the meaning set forth in Section 2.1(a)(iv) hereof.

### 1.63 “Fiscal Quarter”

“Fiscal Quarter” shall mean each of the following three (3) month periods in any fiscal year of Borrower: January 1 to March 31, April 1 to June 30, July 1 to September 30 and October 1 to December 31.

### 1.64 “Fixed Charge Coverage Ratio”

“Fixed Charge Coverage Ratio” shall mean, with respect to Borrower and its Subsidiaries on a consolidated basis for any applicable period, determined in accordance with GAAP, the quotient of, for each applicable period:

(a) EBITDA minus Unfunded Capital Expenditures minus the sum of taxes paid in the period for which the test relates and taxes due in the period for which the test relates but which have not been paid at the time of the test (less tax refunds in cash received by Borrower and its Subsidiaries in the period for which the test relates) minus the sum of payments made pursuant to Section 9.10(l) and Section 9.11(b) (but excluding any such payments to the extent funded through the incurrence of additional indebtedness permitted under Section 9.9(i) or to the extent funded through equity issuances); divided by:

(b) interest paid and interest due within the period that the test is being done but which has not been paid at the time of the test (excluding interest with respect to the Senior Note Indebtedness) plus any principal due, excluding any early principal prepayments of the Term Loan permitted hereunder, but including, for the avoidance of doubt, any scheduled interest and principal payments with respect to indebtedness permitted under Section 9.9(i).

For the avoidance of doubt, Agent and Borrower agree that the Compliance Certificate attached hereto as Schedule 1.32 accurately details the method for calculating the Fixed Charge Coverage Ratio.

### 1.65 “Funded Debt”

“Funded Debt” shall mean, at any time:

(a) all obligations for the deferred purchase price of property or services (other than current trade payables incurred in the ordinary course of business);

(b) all obligations evidenced by notes, bonds, debentures or similar instruments;

(c) Capital Lease Obligations;

(d) the aggregate outstanding amount of all Obligations (other than the Mark to Market Exposure of all Swap Agreements or other swap, hedge or similar agreements of Borrower and its Subsidiaries and undrawn amounts under the Letter of Credit Accommodations);

(e) the Mark to Market Exposure of all Swap Agreements or other swap, hedge or similar agreements of Borrower and its Subsidiaries to the extent not reserved by Agent as an Availability Reserve;

(f) the principal amount of all indebtedness with respect to purchase money security interests;

(g) the principal amount of any other indebtedness for borrowed money (including the Senior Note Indebtedness); and

(h) guarantees of items referenced in subsections (a) through (g) of this definition in each case, of Borrower and its Subsidiaries at such time on a consolidated basis (without duplication).

**1.66 “Funding Bank”**

“**Funding Bank**” shall have the meaning set forth in Section 3.2(a) hereof.

**1.67 “FX Guarantee”**

“**FX Guarantee**” shall mean the Foreign Exchange Facility Guarantee dated November 27, 2008 given by EDC to BMO.

**1.68 “GAAP”**

“**GAAP**” shall mean generally accepted accounting principles in the United States of America as in effect from time to time as set forth in the opinions and pronouncements of the relevant U.S. public and private accounting boards and institutes which are applicable to the circumstances as of the date of determination consistently applied.

**1.69 “General Security Agreement”**

“**General Security Agreement**” shall mean the amended and restated general security agreement dated the date hereof given by Borrower in favour of Agent as security for payment and performance of the Obligations, as the same now exists or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced.

**1.70 “Governmental Authority”**

“**Governmental Authority**” shall mean any government, parliament, legislature, municipal or local government, or any regulatory authority, agency, commission or board of any government, parliament or legislature, or any court or (without limitation to the foregoing) any other law, regulation or rule-making entity (including any central bank, fiscal or monetary authority regulating banks), having or purporting to have jurisdiction in the relevant circumstances, or any Person acting or purporting to act under the authority of any of the foregoing (including any arbitrator).

**1.71 “Hazardous Materials”**

“**Hazardous Materials**” shall mean any hazardous, toxic or dangerous substances, materials and wastes, including hydrocarbons (including naturally occurring or man-made petroleum and hydrocarbons), flammable explosives, asbestos, urea formaldehyde insulation, radioactive



materials, biological substances, polychlorinated biphenyls, pesticides, herbicides and any other kind and/or type of pollutants or contaminants (including materials which include hazardous constituents), sewage, sludge, industrial slag, solvents and/or any other similar substances, materials, or wastes and including any other substances, materials or wastes that are or become regulated under any Environmental Law (including any that are or become classified as hazardous or toxic under any Environmental Law).

**1.72 “Information Certificate”**

“**Information Certificate**” shall mean the Information Certificate of Borrower constituting Exhibit A hereto containing material information with respect to Borrower, its business and assets provided by or on behalf of Borrower to Agent in connection with the preparation of the Financing Agreements and the financing arrangements provided for herein.

**1.73 “Interest Period”**

“**Interest Period**” means, with respect to each Euro Dollar Rate Loan, a period of one (1) month, two (2) months or three (3) months duration as Borrower may elect, the exact duration to be determined in accordance with customary practice in the applicable Euro Dollar Rate market or customary practice of Agent; provided that Borrower may not elect an Interest Period which will end after the Maturity Date.

**1.74 “Interest Rate”**

“**Interest Rate**” shall mean:

- (a) as to Revolving Loans, the Adjusted Euro Dollar Rate plus 2.75% per annum or the US Prime Rate plus 1.25% per annum, as applicable; or
- (b) as to the Term Loan, the Adjusted Euro Dollar Rate plus 3.75% per annum or the US Prime Rate plus 2.25% per annum, as applicable; or
- (c) notwithstanding the rates described in subparagraphs (a) and (b) above, without notice and at Agent’s option, the rate of three percent (3%) per annum in excess of the applicable Interest Rate described above shall apply in respect of the Obligations described below upon the occurrence and continuance of the events described below, without duplication:
  - (i) on non-contingent Obligations: (A) for the period on and after the date of maturity or termination hereof until such time as Agent has received full and final payment of all such Obligations; and (B) for the period from and after the date of the occurrence of an Event of Default so long as such Event of Default is continuing as determined by Agent (notwithstanding entry of any judgment against Borrower); and
  - (ii) on the amount of Revolving Loans and Letter of Credit Accommodations at any time outstanding that is in excess of the amounts available to Borrower under Section 2 hereof (whether or not such excess(es) arise or

are made with or without Agent's or any Lender's knowledge or consent and whether made before or after an Event of Default).

**1.75 "Inventory"**

"**Inventory**" shall mean all of Borrower's now owned and hereafter existing or acquired raw materials, work in process, finished goods and all other inventory of whatsoever kind or nature, wherever located.

**1.76 "IP Collateral"**

"**IP Collateral**" shall mean all of the Intellectual Property as such term is defined in the General Security Agreement.

**1.77 "IP Collateral License Agreement"**

"**IP Collateral License Agreement**" shall mean the amended and restated intellectual property license agreement dated the date hereof granting Agent and its successors, transferees and assignees, a non-exclusive, royalty free perpetual license to the IP Collateral, but effective only upon the occurrence and continuance of an IP Grace Period, as the same now exists or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced.

**1.78 "IP Grace Period"**

"**IP Grace Period**" shall mean the period commencing the date upon which Agent exercises its remedies pursuant to Sections 10.2(a) and/or Section 10.2(b) hereof and ending one hundred and twenty (120) days thereafter.

**1.79 "Lenders"**

"**Lenders**" shall mean Wachovia Capital Finance Corporation (Canada), EDC, their respective successors and assigns and any other Person party hereto from time to time as a lender.

**1.80 "Lending Formulas"**

"**Lending Formulas**" shall mean, collectively, the Eligible Accounts Lending Formula, the Operating Leases Lending Formula, the Capital Leases Lending Formula, the Finished Goods Inventory Lending Formula, the Long Term Receivables Contract Lending Formula and the Real Property Lending Formula.

**1.81 "Letter of Credit Accommodations"**

"**Letter of Credit Accommodations**" shall mean the letters of credit, merchandise purchase or other guarantees denominated in US Dollars which are from time to time either (a) issued or opened by Agent for the account of Borrower or any Obligor or (b) with respect to which Lenders have agreed to indemnify the issuer or guaranteed to the issuer the performance by Borrower or any Obligor of its obligations to such issuer, and shall include the existing letters of

credit, merchandise purchase and other guarantees issued and currently outstanding under the Original Loan Agreement.

**1.82 “License Agreements”**

“License Agreements” shall have the meaning set forth in the General Security Agreement.

**1.83 “Lien”**

“Lien” shall mean any security interest, mortgage, pledge, hypothec, lien, charge or other lien of any nature whatsoever (including those created by statute).

**1.84 “Liquidation Expenses”**

“Liquidation Expenses” shall mean all costs, fees, expenses and all other charges including operating fees, administration fees, trustee’s fees, receiver fees and court mandated costs directly incurred by Agent in connection with the disposition of the Collateral.

**1.85 “Loans”**

“Loans” shall mean collectively the Revolving Loans and the Term Loan.

**1.86 “Long Term Receivable Contracts Lending Formula”**

“Long Term Receivable Contracts Lending Formula” shall have the meaning set forth in Section 2.1(a)(v) hereof.

**1.87 “Long Term Receivables Contracts”**

“Long Term Receivables Contracts” shall mean, collectively, all of the contracts listed on Schedule 1.87, as may be amended, updated and/or restated from time to time in accordance with the requirements set out in Section 7.1(a) hereof, each of which are contracts that relate to the sale of theatre equipment by Borrower.

**1.88 “Mark to Market Exposure”**

“Mark to Market Exposure” in connection with Borrower’s liability under any of its Swap Agreements or other swap, hedge or similar agreement means, as at the Measurement Date, the “Early Termination Amount” that would be payable by Borrower under such Swap Agreement or other swap, hedge or similar agreement as though such day was an “Early Termination Date” and the “Transaction” was a “Terminated Transaction” in accordance with the payment measures provided for in Section 6(e)(i) of the 2002 ISDA Master Agreement as published by ISDA as amended or replaced from time to time. For the purposes of this Agreement, such liability shall be expressed in the US Dollar Amount as at the end of any such month. Furthermore, the amount of such liability shall be established by Lender or Agent party to the Swap Agreements (or Agent with respect to other swap, hedge or similar agreements) in good faith after consultation with the relevant counterparties who themselves shall determine same in accordance with the aforementioned payment measures.

**1.89 “Maturity Date”**

“Maturity Date” shall mean the earlier of:

- (a) demand for payment under Section 10.2; and
- (b) October 31, 2013.

**1.90 “Maximum Credit”**

“Maximum Credit” shall mean the amount of \$75,000,000.

**1.91 “Maximum Revolving Credit”**

“Maximum Revolving Credit” shall mean the amount of \$40,000,000.

**1.92 “Maximum Term Credit”**

“Maximum Term Credit” shall mean the amount of \$35,000,000.

**1.93 “Measurement Date”**

“Measurement Date” shall mean, as of any date, the last Business Day of the prior calendar month or such other date as the Agent may determine upon providing written notice to Borrower.

**1.94 “Multiemployer Plan”**

“Multiemployer Plan” shall mean a “multi-employer plan” as defined in Section 4001(a)(3) of ERISA which is or was at any time during the current year or the immediately preceding six (6) years contributed to by Borrower or any ERISA Affiliate or with respect to which Borrower or any ERISA Affiliate may incur any liability.

**1.95 “Net Amount of Eligible Accounts”**

“Net Amount of Eligible Accounts” shall mean the gross US Dollar Amount of Eligible Accounts less: (a) sales, excise or similar taxes included in the amount thereof; and (b) returns, charge backs, discounts, claims, credits and allowances of any nature at any time issued, owing, granted, outstanding, available or claimed with respect to such Eligible Accounts; provided, that, the amounts deducted under clause (a), shall not duplicate items for which Availability Reserves have been established by Agent.

**1.96 “Non-Funding Lender”**

“Non-Funding Lender” shall have the meaning set forth in Section 11.13(a)(iii) hereof.

**1.97 “Notice”**

“Notice” shall have the meaning set forth in Section 13.2 hereof.

### **1.98 “Obligations”**

“**Obligations**” shall mean any and all Loans, Letter of Credit Accommodations and all other obligations, liabilities and indebtedness of every kind, nature and description owing by Borrower to Agent, Lenders, their respective Affiliates and any financial institution including principal, interest, charges, indemnifications for Letter of Credit Accommodations or otherwise, fees, costs and expenses, however evidenced, whether as principal or otherwise, arising under or in connection with the Financing Agreements and Swap Agreements, as amended, supplemented, restated or superseded, in whole or in part, from time to time and/or applicable laws, whether now existing or hereafter arising, whether arising before, during or after the initial or any renewal term of this Agreement or after the commencement of any proceeding with respect to Borrower or any Obligor under the BIA, the CCAA, or any similar statute in any jurisdiction (including the payment of interest and other amounts which would accrue and become due but for the commencement of such proceeding, whether or not such amounts are allowed or allowable in whole or in part in such proceeding), whether direct or indirect, absolute or contingent, joint or several, due or not due, primary or secondary, liquidated or unliquidated, secured or unsecured. For greater certainty, the obligations, liabilities and indebtedness owing under or in connection with the BMO FEFC Term Sheet and the BMO Term Sheet are not included in “Obligations”.

### **1.99 “Obligor”**

“**Obligor**” shall mean, other than Borrower, any guarantor, endorser, acceptor, surety or other person liable on or with respect to the Obligations or who is the owner of any property which is security for the Obligations, including IMAX U.S.A. Inc., a corporation incorporated pursuant to the laws of Delaware, 1329507 Ontario Inc., a corporation incorporated pursuant to the laws of Ontario, IMAX II U.S.A. Inc., a corporation incorporated pursuant to the laws of Delaware, and David Keighley Productions 70 MM Inc., a corporation incorporated pursuant to the laws of Delaware.

### **1.100 “OFAC”**

“**OFAC**” means the U.S. Department of the Treasury’s Office of Foreign Assets Control.

### **1.101 “Operating Leases”**

“**Operating Leases**” shall mean, collectively, all of the leases listed on Schedule 1.101, as may be amended, updated and/or restated from time to time in accordance with the reporting requirements set out in Section 7.1(a) hereof, each of which are theatre system leases that do not transfer substantially all of the benefits and risks of ownership to Clients.

### **1.102 “Operating Leases Lending Formula”**

“**Operating Leases Lending Formula**” shall have the meaning set forth in Section 2.1(a)(ii) hereof.

**1.103 “Other Currency”**

“Other Currency” shall have the meaning set forth in Section 13.7 hereof.

**1.104 “Other Lender”**

“Other Lender” shall have the meaning set forth in Section 11.13(d) hereof.

**1.105 “Patriot Act”**

“Patriot Act” means the *Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act* of 2001, Pub. L. 107-56, signed into law October 26, 2001.

**1.106 “Payment Account”**

“Payment Account” shall have the meaning set forth in Section 6.3(a) hereof.

**1.107 “Pension Plans”**

“Pension Plans” shall mean each of the pension plans, *if any*, that are registered in accordance with the *Income Tax Act* (Canada) which Borrower sponsors or administers or into which Borrower makes contributions.

**1.108 “Permitted Liens”**

“Permitted Liens” shall have the meaning set forth in Section 9.8 hereof.

**1.109 “Person” or “person”**

“Person” or “person” shall mean any individual, sole proprietorship, partnership, limited partnership, corporation, limited liability company, business trust, unincorporated association, joint stock corporation, trust, joint venture or other entity or any government or any agency or instrumentality or political subdivision thereof.

**1.110 “Plan”**

“Plan” shall mean an employee benefit plan (as defined in Section 3(3) of ERISA) which Borrower sponsors, maintains, or to which it makes, is making, or is obligated to make contributions or, in the case of a Multiemployer Plan, has made contributions at any time during the immediately preceding six (6) plan years or with respect to which Borrower may incur liability. For greater certainty, “Plan” does not include a Pension Plan that is not a US Pension Plan.

**1.111 “PPSA”**

“PPSA” shall mean the *Personal Property Security Act* (Ontario), provided that, if the attachment, perfection or priority of Agent’s security in respect of any Collateral is governed by

the laws of any jurisdiction other than Ontario, PPSA shall mean those other laws for the purposes hereof relating to attachment, perfection or priority.

**1.112 “Priority Payables Reserve”**

“**Priority Payables Reserve**” shall mean, at any time, the full amount of the liabilities at such time which have a trust (including a statutory trust) imposed to provide for payment or Lien ranking or capable of ranking senior to or *pari passu* with the Liens securing the Obligations on any of the Collateral under federal, provincial, state, county, municipal, or local law including, but not limited to claims for unremitted and accelerated rents, taxes, wages, vacation pay, workers’ compensation, obligations, government royalties or pension fund obligations excluding the obligations of Borrower pursuant to the USERP together with the aggregate value, determined in accordance with GAAP of all Eligible Finished Goods Inventory which Agent considers or may be or may become subject to a right of a supplier to recover possession thereof under any federal or provincial law, where such supplier’s right may have priority over the Liens securing the Obligations (including Eligible Finished Goods Inventory subject to a right of a supplier to repossess goods pursuant to Section 81.1 of the BIA).

**1.113 “Pro Rata Share”**

“**Pro Rata Share**” shall mean with respect to a Lender (a) with respect to all Loans, the percentage obtained by dividing (i) the aggregate Commitments of such Lender by (ii) the aggregate Commitments of all Lenders and (b) with respect to all Loans on and after the Maturity Date, the percentage obtained by dividing (i) the aggregate outstanding principal balance of the Loans held by such Lender by (ii) the outstanding principal balance of the Loans held by all Lenders.

**1.114 “Real Property”**

“**Real Property**” means the property known as 2525 Speakman Drive, Mississauga, Ontario L5K 1B1 legally owned by 1329507 Ontario Inc. and beneficially owned by Borrower.

**1.115 “Real Property Lending Formula”**

“**Real Property Lending Formula**” shall have the meaning set forth in Section 2.1(a)(vi) hereof.

**1.116 “Receiver”**

“**Receiver**” shall have the meaning set forth in Section 10.2(f) hereof.

**1.117 “Records”**

“**Records**” shall mean all of Borrower’s present and future books of account of every kind or nature, purchase and sale agreements, invoices, ledger cards, bills of lading and other shipping evidence, statements, correspondence, memoranda, credit files and other data relating to the Collateral or any account debtor, including the Clients, together with the tapes, disks, diskettes and other data and software storage media and devices, file cabinets or containers in or on which

the foregoing are stored (including any rights of Borrower with respect to the foregoing maintained with or by any other person).

**1.118 “Report”**

“Report” shall have the meaning set forth in Section 11.9(a) hereof.

**1.119 “Required Lenders”**

“Required Lenders” shall mean Lenders holding at least a 66 2/3 % of the Commitments.

**1.120 “Revolving Loans”**

“Revolving Loans” shall mean US Prime Rate Loans and/or Euro Dollar Rate Loans, as the case may be, now or hereafter made by Lenders to or for the benefit of Borrower on a revolving basis (involving advances, repayments and re-advances) as set forth in Section 2.1 hereof.

**1.121 “Sanctioned Entity”**

“Sanctioned Entity” shall mean (a) an agency of the government of, (b) an organization directly or indirectly controlled by, or (c) a person resident in, in each case, a country that is subject to a sanctions program identified on the list maintained and published by OFAC and available at <http://www.treas.gov/offices/enforcement/ofac/programs>, or as otherwise published from time to time as such program may be applicable to such agency, organization or person.

**1.122 “Sanctioned Person”**

“Sanctioned Person” shall mean a person named on the list of Specially Designated Nationals or Blocked Persons maintained by OFAC available at <http://www.treas.gov/offices/enforcement/ofac/sdn/index.html>, or as otherwise published from time to time.

**1.123 “Secured Parties”**

“Secured Parties” shall mean collectively mean Agent, Lenders, their respective Affiliates, any financial institution under or in connection with a Swap Agreement and any other person to which Obligations are owed or who is the beneficiary of or under a guarantee of the Obligations (and, for greater certainty, if such person ceases to be an Agent or a Lender then for any swap transaction entered into under a Swap Agreement with that Agent or Lender or any of its Affiliates prior to the date that person ceases to be an Agent or Lender, that person or any of its affiliates shall continue to be Secured Party hereunder with respect to Borrower’s obligations relating to any such swap transaction).

**1.124 “Senior Note Indebtedness”**

“Senior Note Indebtedness” shall mean, the indebtedness for borrowed money owing by Borrower to the holders of senior notes issued by Borrower pursuant to the Trust Indenture.



**1.125 “Senior Note Indebtedness Repayment Date”**

“**Senior Note Indebtedness Repayment Date**” shall mean any Business Day on or before December 31, 2009.

**1.126 “Senior Notes”**

“**Senior Notes**” shall collectively mean Borrower’s US\$160,000,000 aggregate principal amount of 9 5/8% senior notes due December 1, 2010 issued pursuant to the Trust Indenture.

**1.127 “Settlement Date”**

“**Settlement Date**” shall have the meaning set forth in Section 11.13(a)(iii) hereof.

**1.128 “Spot Rate”**

“**Spot Rate**” shall mean, with respect to a currency, the rate quoted by US Reference Bank as the spot rate for the purchase by US Reference Bank of such currency with another currency at approximately 10:00 a.m. (EST) on the date two (2) Business Days prior to the date as of which the foreign exchange computation is made.

**1.129 “Studios”**

“**Studios**” shall collectively mean Twentieth Century Film Corporation, Sony Pictures Entertainment, Warner Bros. Distributing Inc., Paramount Pictures Corporation, Walt Disney Studios Motion Pictures, Summit Entertainment LLC, Dreamworks Animation LLC and Universal Pictures and their respective Affiliates and Subsidiaries.

**1.130 “Subsidiary”**

“**Subsidiary**” shall mean, with respect to any Person, any corporation, partnership or other entity of which at least a majority of the securities or other ownership interests having by the terms thereof ordinary voting power to elect a majority of the board of directors or other persons performing similar functions of such corporation, partnership or other entity (irrespective of whether or not at the time securities or other ownership interests of any other class or classes of such corporation, partnership or other entity shall have or might have voting power by reason of the happening of any contingency) is at the time directly or indirectly owned or controlled by such Person or one or more Subsidiaries of such Person and one or more Subsidiaries of such Person.

**1.131 “Swap Agreement”**

“**Swap Agreement**” shall mean any swap agreement (as defined in 11 U.S.C. §101), foreign exchange agreement, interest rate swap, cap or collar agreement, interest rate future or option contract, currency swap agreement, currency future or option contract and other similar hedge or swap agreement between Borrower (or, with the prior consent of Agent, in its sole discretion, Agent on behalf of Borrower) as one counterparty and Agent, Lenders or any of their respective Affiliates (even if that counterparty should subsequently cease to be Agent, a Lender or an

Affiliate thereof) and/or another financial institution as to the other counterparty (provided that, the prior written consent of Agent is obtained (such consent to be provided in the Agent's sole discretion) as to such other financial institution and the agreement entered into with such other financial institution). For greater certainty, Swap Agreements shall not include any swap, hedge or similar agreements under the BMO FEFC Term Sheet or the BMO Term Sheet.

**1.132 "Term Loan"**

"**Term Loan**" shall mean the term loan made by Lenders to Borrower as set forth in Section 2.3 hereof.

**1.133 "Term Note"**

"**Term Note**" shall have the meaning set forth in Section 2.3(b) hereof

**1.134 "Trailing Cash Collections"**

"**Trailing Cash Collections**" shall mean the aggregate amount of cash collections made by Borrower in the preceding twenty-six (26) week period, measured as at the last day of the applicable week.

**1.135 "Trust Indenture"**

"**Trust Indenture**" shall mean the trust indenture between Borrower and U.S. Bank National Association dated December 4, 2003, and, to the extent expressly permitted hereunder, means such trust indenture as may be further amended, supplemented and restated from time to time.

**1.136 "Unfunded Capital Expenditures"**

"**Unfunded Capital Expenditures**" shall mean capital expenditures that are not financed or funded by an arm's length third party.

**1.137 "UCC"**

"**UCC**" shall mean the *Uniform Commercial Code*.

**1.138 "US Dollar Amount"**

"**US Dollar Amount**" shall mean, at any time, (a) as to any amount denominated in US Dollars, the amount thereof at such time, and (b) as to any amount denominated in any other currency, the equivalent amount in US Dollars as determined by Agent at such time on the basis of the Spot Rate for the purchase of US Dollars with such currency.

**1.139 "USERP"**

"**USERP**" shall mean the unregistered supplemental executive retirement plan dated July 12, 2000, as amended and restated as of January 1, 2006, made by Borrower in favour of its former Co-Chief Executive Officer and current Chairman of the Board, Bradley J. Wechsler, and its current Chief Executive Officer, Richard L. Gelfond.

**1.140 “US First Rate”**

“US First Rate” shall have the meaning set forth in Section 3.1(c) hereof.

**1.141 “US Pension Plan”**

“US Pension Plan” shall mean a pension plan (as defined in Section 3(2) of ERISA) subject to Title IV of ERISA which Borrower sponsors, maintains, or to which Borrower or any ERISA Affiliate makes, is making, or is obligated to make contributions, other than a Multiemployer Plan.

**1.142 “US Prime Rate”**

“US Prime Rate” shall mean the rate announced publicly by US Reference Bank from time to time as its prime rate in effect for US Dollar denominated commercial loans, whether or not such announced rate is the best rate available at such bank.

**1.143 “US Prime Rate Loans”**

“US Prime Rate Loans” shall mean any Loans or portions thereof denominated in US Dollars and on which interest is payable based on the US Prime Rate in accordance with the terms hereof.

**1.144 “US Reference Bank”**

“US Reference Bank” shall mean Wachovia Bank, National Association, or any successor thereto, or such other major bank in the United States as Agent may from time to time designate, in its discretion, after consultation with Borrower

**1.145 “Wachovia”**

“Wachovia” shall mean Wachovia Capital Finance (Corporation) Canada, in its capacity as a Lender hereunder.

**SECTION 2. CREDIT FACILITIES**

**2.1 Revolving Loans**

(a) Subject to, and upon the terms and conditions contained herein, each Lender severally (and not jointly) agrees to make its Pro Rata Share of Revolving Loans by way of Euro Dollar Rate Loan and US Prime Rate Loans to Borrower from time to time in amounts requested by Borrower up to the amount equal to the sum, net of any Availability Reserves, of:

- (i) eighty-five percent (85%) of the Net Amount of Eligible Accounts (the “**Eligible Accounts Lending Formula**”); plus
- (ii) eighty-five percent (85%) of the appraised value of Eligible Operating Leases, net of estimated Liquidation Expenses, with Appraisals conducted

- on a Fair Market Value basis at the expense of Borrower by the Appraiser (the “**Operating Leases Lending Formula**”); plus
- (iii) the lesser of (the “**Capital Leases Lending Formula**”):
- (A) forty-nine percent (49%) of the aggregate net book value of Eligible Capital Leases; or
  - (B) eighty-five percent (85%) of the appraised value of such Eligible Capital Leases expressed as a percentage of net book value, net of estimated Liquidation Expenses, with Appraisals conducted on a Fair Market Value basis at the expense of Borrower by the Appraiser; plus
- (iv) the lesser of (the “**Finished Goods Inventory Lending Formula**”):
- (A) thirty-one percent (31%) of the aggregate net book value of Eligible Finished Goods Inventory; provided however that, for the purposes of this subparagraph (A), the amount of all Eligible Finished Goods Inventory attributable to joint venture arrangements in accordance with the definition of Eligible Contracts in Backlog in Section 1 herein after applying the foregoing formula shall not exceed \$3,000,000; or
  - (B) eighty-five percent (85%) of the appraised value of Eligible Contracts in Backlog expressed as a percentage of net book value, net of estimated Liquidation Expenses, with Appraisals conducted on a Fair Market Value basis at the expense of Borrower by the Appraiser; provided however that, for the purposes of this subparagraph (B), the amount of all Eligible Finished Goods Inventory attributable to joint venture arrangements in accordance with the definition of Eligible Contracts in Backlog in Section 1 herein after applying the foregoing formula shall not exceed \$3,000,000; plus
- (v) the lesser of (the “**Long Term Receivables Contract Lending Formula**”):
- (A) forty percent (40%) of the aggregate net book value of Eligible Long Term Receivables Contracts; or
  - (B) eighty-five percent (85%) of the appraised value of such Eligible Long Term Receivables Contracts expressed as a percentage of net book value, net of estimated Liquidation Expenses, with Appraisals conducted on a Fair Market Value basis at the expense of Borrower by the Appraiser; plus
- (vi) the lesser of (the “**Real Property Lending Formula**”):

(A) \$10,000,000; or

(B)  $Y - [(Y \div 120) \times N]$

For purposes of this Section 2.1(a)(vi), “Y” means FMV multiplied by 65% and “N” means the number of months (or any part thereof) elapsed since the most recent of (i) the date hereof; and (ii) the date of the most recent Appraisal and “FMV” means the Fair Market Value of the Real Property as indicated in the most recent of (X) the Appraisal of Cushman & Wakefield Limited dated October 28, 2009; and (Y) the most recent Appraisal.

An Appraisal of the Real Property will be conducted prior to the date hereof and annually thereafter unless otherwise agreed by Agent, each at the expense of Borrower.

(b) Agent may, in its discretion, from time to time reduce or otherwise revise the Lending Formulas to the extent that Agent, in good faith, determines that: (i) the general creditworthiness of the Clients has declined; or (ii) the liquidation value of any of the Eligible Contracts, Leases and Inventory or Real Property, or any category thereof, has decreased; (iii) the nature and quality of the Eligible Contracts, Leases and Inventory, the Real Property, and/or Eligible Accounts has deteriorated; or (iv) the FMV of the Real Property has decreased. In determining whether to reduce or otherwise revise the Lending Formulas, Agent may consider events, conditions, contingencies or risks which are also considered in determining Eligible Contracts, Leases and Inventory, Real Property, and/or Eligible Accounts or in establishing Availability Reserves.

(c) Except in Lenders’ discretion but subject to the terms hereof, the aggregate amount of the Revolving Loans and the Letter of Credit Accommodations outstanding at any time shall not exceed the lesser of:

(i) the Maximum Revolving Credit; and

(ii) the amount available under the Lending Formulas as determined by Agent less the Availability Reserves from time to time established by Agent

(d) In the event that the outstanding amount of the Revolving Loans, or the aggregate amount of the outstanding Revolving Loans and Letter of Credit Accommodations, exceed the amounts available under the Lending Formulas, the sub-limit for Letter of Credit Accommodations set forth in Section 2.2(d), the Maximum Revolving Credit, as applicable, or the aggregate amount of the outstanding Revolving Loans, Letter of Credit Accommodation and the Term Loan exceed the Maximum Credit, such event shall not limit, waive or otherwise affect any rights of Agent or Lenders in that circumstance or on any future occasions and Borrower shall, upon demand by Agent or Lenders, which may be made at any time or from time to time, immediately repay to Agent the entire amount of any such excess(es) for which payment is demanded.

## 2.2 Letter of Credit Accommodations

(a) Subject to, and upon the terms and conditions contained herein, at the request of Borrower, Agent agrees to provide or arrange for Letter of Credit Accommodations for the account of Borrower in US Dollars containing terms and conditions reasonably acceptable to Agent and the issuer thereof. Any payments made by Agent or Lenders to any issuer thereof and/or related parties in connection with the Letter of Credit Accommodations shall constitute additional Revolving Loans to Borrower pursuant to this Section 2. Each Lender agrees to purchase an irrevocable and unconditional participation in Letter of Credit Accommodations issued hereunder based on its Pro Rata Share.

(b) In addition to any charges, fees or expenses charged by any bank or issuer in connection with the Letter of Credit Accommodations, Borrower shall pay to Agent, for the account of Lenders based on their respective Pro Rata Shares, a letter of credit fee at a rate equal to one and one half percent (1.5%) per annum on the daily outstanding balance of the Letter of Credit Accommodations for the immediately preceding month (or part thereof), payable in arrears as of the first day of each succeeding month, except that Borrower shall pay to Agent, for the account of Lenders based on their respective Pro Rata Shares, such letter of credit fee, at Agent's option, without notice, at a rate equal to four and one half percent (4.5%) per annum on such daily outstanding balance for: (i) the period from and after the date of maturity or termination hereof until Lenders have received full and final payment of all Revolving Loans, and cash collateral has been posted in the full amount of any then outstanding Letter of Credit Accommodations (notwithstanding entry of a judgment against Borrower) and (ii) the period from and after the date of the occurrence of an Event of Default for so long as such Event of Default is continuing as determined by Agent. Such letter of credit fee shall be calculated on the basis of a three hundred sixty (360) day year and actual days elapsed and the obligation of Borrower to pay such fee shall survive the maturity or termination of this Agreement.

(c) Letter of Credit Accommodations are not available unless, on the date of the proposed issuance thereof, the Revolving Loans available to Borrower (subject to Section 2.1(c)) are equal to, or greater than one hundred (100%) percent of the face amount of the Letter of Credit Accommodation together with all other commitments and obligations made or incurred by Lenders and Agent with respect thereto, including bank fees and the Revolving Loans otherwise available shall be reduced accordingly.

(d) Except in Agent's discretion, the amount of all outstanding Letter of Credit Accommodations and all other commitments and obligations made or incurred by Agent or Lenders in connection therewith, including bank fees, shall not at any time exceed \$20,000,000. At any time an Event of Default exists or has occurred and is continuing, upon Agent's request, Borrower will either furnish cash collateral to secure the reimbursement obligations to the issuer in connection with any Letter of Credit Accommodations or furnish cash collateral to Agent for the Letter of Credit Accommodations, and in either case, the Revolving Loans otherwise available to Borrower shall not be reduced as provided in Section 2.2(c) to the extent of such cash collateral.

(e) Borrower shall indemnify and hold Agent and each Lender harmless from and against any and all losses, claims, damages, liabilities, costs and expenses which Agent and each Lender may suffer or incur in connection with any Letter of Credit Accommodations and any documents, drafts or acceptances relating thereto, including, but not limited to, any losses, claims, damages, liabilities, costs and expenses due to any action taken by any issuer or correspondent with respect to any Letter of Credit Accommodation. Borrower assumes all risks with respect to the acts or omissions of the drawer under or beneficiary of any Letter of Credit Accommodation and for such purposes the drawer or beneficiary shall be deemed Borrower's agent. Borrower assumes all risks for, and agrees to pay, all foreign, federal, provincial and local taxes, duties and levies relating to any goods subject to any Letter of Credit Accommodations or any documents, drafts or acceptances thereunder. Borrower hereby releases and holds Agent and each Lender harmless from and against any acts, waivers, errors, delays or omissions, whether caused by Borrower, by any issuer or correspondent or otherwise, other than acts, waivers, errors, delays or omissions caused by the gross negligence or wilful misconduct of Agent or a Lender, with respect to or relating to any Letter of Credit Accommodation. The provisions of this Section 2.2(e) shall survive the payment of Obligations and the termination of this Agreement.

(f) Nothing contained herein shall be deemed or construed to grant Borrower any right or authority to pledge the credit of Agent or a Lender in any manner. None of Agent or Lenders shall have any liability of any kind with respect to any Letter of Credit Accommodation provided by an issuer unless Agent or a Lender has duly executed and delivered to such issuer the application or a guarantee or indemnification in writing with respect to such Letter of Credit Accommodation. Except as a result of Agent's or a Lender's own gross negligence or wilful misconduct, Borrower shall be bound by any interpretation made by Agent or a Lender, or any other issuer or correspondent under or in connection with any Letter of Credit Accommodation or any documents, drafts or acceptances thereunder, notwithstanding that such interpretation may be inconsistent with any instructions of Borrower. At any time an Event of Default exists or has occurred and is continuing, Agent, in its own name or in Borrower's name, shall have the sole and exclusive right and authority to, and Borrower shall not: (i) approve or resolve any questions of non-compliance of documents, (ii) give any instructions as to acceptance or rejection of any documents or goods, or (iii) execute any and all applications for steamship or airway guaranties, indemnities or delivery orders. At all times other than when an Event of Default exists or has occurred and is continuing, Borrower shall be permitted, with the prior written consent of Agent to: (i) grant any extensions of the maturity of, time of payment for, or time of presentation of, any drafts, acceptances, or documents, and (ii) to agree to any amendments, renewals, extensions, modifications, changes or cancellations of any of the terms or conditions of any of the applications, Letter of Credit Accommodations, or documents, drafts or acceptances thereunder or any letters of credit included in the Collateral.

(g) Any rights, remedies, duties or obligations granted or undertaken by Borrower to any issuer or correspondent in any application for any Letter of Credit Accommodation, or any other agreement in favour of any issuer or correspondent relating to any Letter of Credit Accommodation, shall be deemed to have been granted or undertaken by Borrower to Agent and Lenders. Any duties or obligations undertaken by Agent or any Lender to any issuer or correspondent in any application for any Letter of Credit Accommodation, or any other agreement by Agent or any Lender in favour of any issuer or correspondent relating to any

Letter of Credit Accommodation, shall be deemed to have been undertaken by Agent and Lenders to Borrower.

### 2.3 Term Loan

(a) Subject to and upon the terms and conditions contained herein, each Lender severally (and not jointly) agrees to make a Term Loan in an amount equal to its Pro Rata Share of the Term Loan to Borrower in US Dollars in an aggregate amount not exceeding the Maximum Term Credit, available once only in a single advance on or about the date hereof.

(b) The Term Loan will be (a) evidenced by term promissory notes (each, a “**Term Note**”) in such original principal amount duly executed and delivered by Borrower to the specified Lender concurrently herewith; (b) to be repaid, together with interest and other amounts, in accordance with this Agreement, the Term Notes, and the other Financing Agreements and (c) secured by all of the Collateral and the other collateral described in the Financing Agreements.

(c) Borrower shall make equal monthly payments of principal on the Term Loan on the first day of each month commencing on the first day of the sixth month following advance of the Term Loan and ending on the Maturity Date in an amount sufficient to amortize the full amount of the Term Loan over a period of twenty four (24) months and otherwise in accordance with the Term Notes. On the Maturity Date the remaining unamortized balance of the Term Loan (including principal, accrued and unpaid interest and other amounts due and owing with respect thereto) shall be due and be payable.

(d) The Term Loan may be prepaid in whole or in part at any time without notice or penalty provided the funds used for any such prepayment (i) are generated from operations of Borrower, or (ii) are proceeds of an equity issue by Borrower. Prepayments of the Term Loan from any other source will be subject to the early termination fees as follows:

<u>Amount</u>	<u>Period</u>
(a) 1.5% of Term Loan being prepaid	- From the date hereof to but not including October 31, 2010.
(b) 1.0% of Term Loan being prepaid	- On and after November 1, 2010 to and including October 31, 2011
(c) 0.5% of Term Loan being prepaid	- On and after November 1, 2011 to and including October 31, 2013.

Any prepayment received will be applied against scheduled payments in reverse order of maturity. The early termination fee provided for in this [Section 2.3\(d\)](#) shall be deemed included in the Obligations.



## 2.4 Swap Agreements

(a) Except as otherwise permitted pursuant to Section 9.9(f) and (h), Borrower agrees not to enter into any Swap Agreement or other hedge or swap arrangements or agreements without the prior written consent of Agent unless such Swap Agreement is with Agent or an Affiliate of Agent.

(b) If permitted under Section 2.4(a), Borrower may enter into Swap Agreements from time to time over the telephone with representatives of Agent's or a Lender's trading unit (or that of its Affiliates), the terms of which shall be confirmed in writing in accordance with the procedures established by the trading unit of Agent, Lender or its Affiliate, as applicable.

(c) Each Swap Agreement is governed by the terms and conditions set out in the confirmation forwarded by the applicable Person to Borrower on entering into the Swap Agreement and any applicable ISDA agreement. If there is a conflict between the terms and conditions set out in the confirmation or ISDA agreement and this Agreement, the confirmation or ISDA agreement shall govern unless otherwise expressly provided herein.

(d) Swap Agreements may, at the discretion of Agent, Lender or its Affiliate, have contract periods extending beyond the Maturity Date.

(e) Agent, Lenders and their respective Affiliates may, at their respective discretion, decline to enter into any Swap Agreement with Borrower at any time.

(f) Swap Agreements may be entered into for hedging purposes only and not for speculative purposes. Swap Agreements may not be entered into at any time when the aggregate Mark to Market Exposure of all existing Swap Agreements of Borrower, in the aggregate, exceeds \$10,000,000 or such greater amount as the Agent may agree in writing. If, at any time, the Mark to Market Exposure of all Swap Agreements of Borrower, in the aggregate, exceeds \$10,000,000 or such greater amount agreed to in writing by Agent, Borrower shall take such measures as may be necessary to reduce the Mark to Market Exposure by the amount of such excess within five (5) Business Days. The notional amount of any and all Swap Agreements of Borrower shall not exceed \$50,000,000 in the aggregate.

(g) Borrower shall provide Agent with written notice forthwith upon entering into a Swap Agreement. Such notice shall specify applicable Agent or Lender (or its Affiliate or financial institution) and the aggregate Mark to Market Exposure of outstanding Swap Agreements immediately prior to entering into such Swap Agreement. Borrower shall advise Agent in writing of the aggregate Mark to Market Exposure of its outstanding Swap Agreements as at the end of each month by the next following Business Day, and such other times as Agent shall request. For greater certainty, each Agent and any Lender that makes a Swap Agreement available to Borrower covenants and agrees (and shall cause any of its applicable Affiliates) to provide within five (5) Business Days of a written request therefor by Borrower, a determination of the Mark to Market Exposure of each Swap Agreement that such Agent or Lender (or such Affiliate) has with Borrower.

## **SECTION 3. INTEREST AND FEES**

### **3.1 Interest**

(a) Borrower shall pay to Agent, for the account of Lenders based on their respective Pro Rata Shares, interest on the outstanding principal amount of the non-contingent Obligations at the applicable Interest Rate. Subject to Sections 2.3, 3.1 and 3.2 hereof, Borrower may borrow, repay and reborrow funds under the Loans by way of Euro Dollar Rate Loans and US Prime Rate Loans.

(b) Interest shall be payable by Borrower to Agent, for the account of Lenders based on their respective Pro Rata Shares, monthly in arrears not later than the first Business Day of each calendar month and shall be calculated on the basis of a three hundred and sixty (360) day year and actual days elapsed. The interest rate applicable to US Prime Rate Loans shall increase or decrease by an amount equal to each increase or decrease in the US Prime Rate after any change in such rate is announced. All interest accruing hereunder on and after an Event of Default or maturity or termination hereof shall be payable on demand. In no event shall charges constituting interest payable by Borrower to Agent, for the account of Lenders based on their respective Pro Rata Shares, exceed the maximum amount or the rate permitted under any applicable law or regulation, and if any part or provision of this Agreement is in contravention of any such law or regulation, such part or provision shall be deemed amended to conform thereto.

(c) For purposes of disclosure under the *Interest Act* (Canada), where interest is calculated pursuant hereto at a rate based upon a three hundred and sixty (360) day year (the “**US First Rate**”), it is hereby agreed that the rate or percentage of interest on a yearly basis is equivalent to such US First Rate multiplied by the actual number of days in the year divided by 360.

(d) Notwithstanding the provisions of this Section 3 or any other provision of this Agreement, in no event shall the aggregate “interest” (as that term is defined in Section 347 of the *Criminal Code* (Canada)) exceed the effective annual rate of interest on the “credit advanced” (as defined therein) lawfully permitted under Section 347 of the *Criminal Code* (Canada). The effective annual rate of interest shall be determined in accordance with generally accepted actuarial practices and principles over the term of the Loans, and in the event of a dispute, a certificate of a Fellow of the Canadian Institute of Actuaries appointed by Agent will be conclusive for the purposes of such determination.

(e) A certificate of an authorized signing officer of Agent as to each amount and/or each rate of interest payable hereunder from time to time shall be conclusive evidence of such amount and of such rate, absent manifest error.

(f) For greater certainty, whenever any amount is payable under any Financing Agreement by Borrower as interest or as a fee which requires the calculation of an amount using a percentage per annum, each party to this Agreement acknowledges and agrees that such amount shall be calculated as of the date payment is due without application of the “deemed reinvestment principle” or the “effective yield method”. As an example, when interest is

calculated and payable monthly, the rate of interest payable per month is 1/12 of the stated rate of interest per annum.

(g) Any Euro Dollar Rate Loan shall automatically, at Agent's option, either (i) convert to US Prime Rate Loans upon the last day of the applicable Interest Period or (ii) be rolled over for a further one (1) month Interest Period, unless Agent has received and approved a request to continue such Euro Dollar Rate Loan for an Interest Period chosen by Borrower at least three (3) Business Days prior to such last day in accordance with the terms hereof. Any Euro Dollar Rate Loan shall, at Agent's option, upon notice by Agent to Borrower, be subsequently converted to US Prime Rate Loans upon the occurrence of any Default or Event of Default which is continuing and otherwise upon the Maturity Date. Borrower shall pay to Agent, upon demand by Agent (or Agent may, at its option, charge any loan account of Borrower), any amounts required to compensate Agent and Lenders for any loss, costs or expense incurred by Agent and Lenders as a result of the conversion of Euro Dollar Rate Loans to US Prime Rate Loans pursuant to any of the foregoing. Upon the occurrence of a Default or an Event of Default that is continuing, or if Borrower repays or prepays a Euro Dollar Rate Loan on a day other than the last day of the applicable Interest Period, Borrower shall indemnify Agent and Lenders for any loss or expense suffered or incurred by Agent or Lenders including any loss of profit or expenses Agent or Lenders incur by reason of the liquidation or redeployment of deposits or other funds acquired by it to effect or maintain any and all Euro Dollar Rate Loans or any interest or other charges payable to lenders of funds borrowed by Agent and Lenders in order to maintain such Euro Dollar Rate Loans together with any other charges, costs or expenses incurred by Agent and Lenders relative thereto.

(h) So long as no Default or Event of Default shall have occurred and be continuing and the circumstances in Section 3.2(b) and 3.2(c) do not exist, Borrower may from time to time request in writing Euro Dollar Rate Loans or may request in writing that US Prime Rate Loans be converted to Euro Dollar Rate Loans or that any existing Euro Dollar Rate Loans continue for an additional Interest Period. Such request from Borrower shall specify the amount of the Euro Dollar Rate Loans or the amount of the US Prime Rate Loans to be converted to Euro Dollar Rate Loans or the amount of the Euro Dollar Rate Loans to be continued (subject to the limits set forth below) and the Interest Period to be applicable to such Euro Dollar Rate Loans. Subject to the terms and conditions contained herein, three (3) Business Days after receipt by Agent of such a written request from Borrower, such Euro Dollar Rate Loans shall be made or US Prime Rate Loans shall be converted to Euro Dollar Rate Loans or such Euro Dollar Rate Loans shall continue, as applicable; provided, that:

- (i) no Default or Event of Default shall exist or have occurred and be continuing;
- (ii) no party hereto shall have sent any notice of termination of this Agreement;
- (iii) Borrower shall have complied with such customary procedures as are generally established by Agent and Lenders for all customers and specified by Agent and Lenders to Borrower from time to time for requests by Borrower for Euro Dollar Rate Loans;

- (iv) no more than six (6) Interest Periods (for all outstanding Euro Dollar Rate Loans) may be in effect at any one time;
- (v) the aggregate amount of the Euro Dollar Rate Loans must be in an amount not less than Five Million US Dollars (\$5,000,000) or an integral multiple of One Million US Dollars (\$1,000,000) in excess thereof; and
- (vi) Agent and Lenders shall have determined that the Interest Period or Adjusted Euro Dollar Rate is available to Agent and Lenders and can be readily determined as of the date of the request for such Euro Dollar Rate Loan by Borrower.

Subject to the terms and conditions contained herein, any request by Borrower to Agent for Euro Dollar Rate Loans or to convert US Prime Rate Loans to Euro Dollar Rate Loans or to continue any existing Euro Dollar Rate Loans shall be in writing and shall be irrevocable. Notwithstanding anything to the contrary contained herein, Agent and Lenders shall not be required to purchase US Dollar deposits in the London interbank market to fund any Euro Dollar Rate Loans, but the provisions hereof shall be deemed to apply as if Agent or Lenders had purchased such deposits to fund the Euro Dollar Rate Loans. Subject to the terms and conditions contained herein, any request by Borrower to Agent for a US Prime Rate Loan shall be in writing, shall be irrevocable and shall be given to Agent no later than 11:00 a.m. on the Business Day upon which Borrower requires such US Prime Rate Loan to be advanced to Borrower and if such request is provided after 11:00 a.m. on a Business Day then such US Prime Rate Loan shall be advanced on the next following Business Day.

### 3.2 Increased Costs and Changes in Law

(a) If after the date hereof, either:

- (i) any change in (other than any change by way of imposition or increase of reserve requirements included in the Reserve Percentage), or in the interpretation of, any law or regulation is introduced, including with respect to reserve requirements, applicable to a Lender or any banking or financial institution from whom a Lender borrows funds or obtains credit (a "**Funding Bank**"); or
- (ii) a Funding Bank or a Lender complies with any future guideline or request from any central bank or other Governmental Authority; or
- (iii) a Funding Bank or a Lender determines that the adoption of any applicable law, rule or regulation regarding capital adequacy, or any change therein, or any change in the interpretation or administration thereof by any Governmental Authority, central bank or comparable agency charged with the interpretation or administration thereof has or would have the effect described below, or a Funding Bank or a Lender complies with any request or directive regarding capital adequacy (whether or not having the force of law where customarily complied with by responsible financial institutions) of any such authority, central bank or comparable agency, and

in the case of any event set forth in this clause (iii), such adoption, change or compliance has or would have the direct or indirect effect of reducing the rate of return on a Lender's capital as a consequence of its obligations hereunder to a level below that which Lender could have achieved but for such adoption, change or compliance (taking into consideration the Funding Bank's or Lender's policies with respect to capital adequacy) by an amount deemed by such Lender to be material,

and the result of any of the foregoing events described in clauses (i), (ii) or (iii) is or results in an increase in the cost to a Lender of funding or maintaining the Loans, or its Commitment, then Borrower shall from time to time upon demand by Agent pay to Agent additional amounts sufficient to indemnify Lenders against such increased cost on an after-tax basis (after taking into account applicable deductions and credits in respect of the amount indemnified); provided that a Lender claiming additional amounts under this Section 3.2(a) agrees to use reasonable efforts (consistent with its internal policy and legal and regulatory restrictions) to designate a different applicable lending office if the making of such a designation would avoid the need for, or reduce the amount of, such increased cost that may thereafter accrue and would not, in the reasonable judgment of such Lender, be otherwise disadvantageous to such Lender. A certificate as to the amount of such increased cost shall be submitted to Borrower by Agent and shall be conclusive, absent manifest error.

(b) If prior to the first day of any Interest Period:

- (i) Agent shall have determined (which determination shall be conclusive and binding upon Borrower) that, by reason of circumstances affecting the relevant market, adequate and reasonable means do not exist for ascertaining the Adjusted Euro Dollar Rate for such Interest Period;
- (ii) Agent has received notice from a Lender that that Adjusted Euro Dollar Rate determined or to be determined for such Interest Period will not adequately and fairly reflect the cost to such Lender of making or maintaining Euro Dollar Rate Loans during such Interest Period; or
- (iii) US Dollar deposits in the principal amounts of the Euro Dollar Rate Loans to which such Interest Period is to be applicable are not generally available in the London interbank market,

Agent shall give notice thereof to Borrower as soon as practicable thereafter (which notice shall be withdrawn whenever such circumstances no longer exist). If such notice is given (A) any Euro Dollar Rate Loans requested to be made on the first day of such Interest Period shall be made as a US Prime Rate Loan, (B) any Loans that were to have been converted on the first day of such Interest Period to or continue as Euro Dollar Rate Loans shall be converted to or continued as US Prime Rate Loans and (C) each outstanding Euro Dollar Rate Loan shall be converted, on the last day of the then-current Interest Period

thereof, to US Prime Rate Loans. Until such notice has been withdrawn by Agent, no further Euro Dollar Rate Loans shall be made or continued as such, nor shall Borrower have the right to convert U.S. Prime Rate Loans to Euro Dollar Rate Loans.

(c) Notwithstanding any other provision herein, if the adoption of or any change in any law, treaty, rule or regulation or final, non-appealable determination of an arbitrator or a court or other Governmental Authority or in the interpretation or application thereof occurring after the date hereof shall make it unlawful for Agent or any Lender to make or maintain Euro Dollar Rate Loans as contemplated by this Agreement:

- (i) Agent shall promptly give written notice of such circumstances to Borrower (which notice shall be withdrawn whenever such circumstances no longer exist); provided, however, that, before making any such demand, such Lender agrees to use reasonable efforts (consistent with its internal policy and legal and regulatory restrictions) to designate a different Euro Dollar lending office if the making of such a designation would allow such Lender or its Euro dollar lending office to continue to perform its obligations to make Euro Dollar Rate Loans or to continue to fund or maintain Euro Dollar Rate Loans and would not, in the judgment of such Lender, be otherwise disadvantageous to such Lender;
- (ii) the commitment of each Lender hereunder to make Euro Dollar Rate Loans, continue Euro Dollar Rate Loans as such and convert US Prime Rate Loans to Euro Dollar Rate Loans shall forthwith be cancelled and, until such time as it shall no longer be unlawful for such Lender to make or maintain Euro Dollar Rate Loans, such Lender shall then have a commitment only to make a US Prime Rate Loan when a Euro Dollar Rate Loan is requested; and
- (iii) such Lender's Loans then outstanding as Euro Dollar Rate Loans, if any, shall be converted automatically to US Prime Rate Loans on the respective last days of the then current Interest Periods with respect to such Loans or within such earlier period as required by law. If any such conversion of a Euro Dollar Rate Loan occurs on a day which is not the last day of the then current Interest Period with respect thereto, Borrower shall pay to such Lender such amounts, if any, as may be required pursuant to Section 3.2(d) below.

(d) Borrower shall indemnify Agent and each Lender and shall hold Agent and each Lender harmless from any loss or expense which Agent or such Lender may sustain or incur as a consequence of:

- (i) default by Borrower in making a borrowing of, conversion into or extension of an Euro Dollar Rate Loan after Borrower has given a notice requesting the same in accordance with the provisions of this Agreement; and

(ii) the making of a prepayment of Euro Dollar Rate Loans on a day which is not the last day of an Interest Period with respect thereto.

With respect to Euro Dollar Rate Loans, such indemnification may include an amount equal to the greater of (i) the excess, if any, of (1) the amount of interest which would have accrued on the amount so prepaid, or not so borrowed, converted or extended, for the period from the date of such prepayment or of such failure to borrow, convert or extend to the last day of the applicable Interest Period (or, in the case of a failure to borrow, convert or extend, the Interest Period that would have commenced on the date of such failure) in each case at the applicable rate of interest for such Euro Dollar Rate Loans provided for herein over (2) the amount of interest (as determined by such Agent or such Lender) which would have accrued to Agent or such Lender on such amount by placing such amount on deposit for a comparable period with leading banks in the interbank Euro Dollar market; and (ii) an amount equal to the interest that would have been payable if the Euro Dollar Rate Loan had been a US Prime Rate Loan. This covenant shall survive the termination or non-renewal of this Agreement and the payment of the Obligations.

(e) In the event that Borrower has hedged a Euro Dollar Rate Loan with an interest rate swap with Agent, a Lender or any of its Affiliates under which Borrower is to make its payments based on a fixed rate and Agent, such Lender or any of its Affiliates is to make its payments based on a rate equal to the Adjusted Euro Dollar Rate, then the fallback rate (being the US Prime Rate in the circumstances described in this Section 3.2) on any given day while the swap with Agent, such Lender or any of its Affiliates is in effect will be the sum of (i) the fallback floating rate payable by Agent, such Lender or any of its Affiliates that is in effect under the interest rate swap for that day (without regard to any interest rate spread added thereto under the terms of the interest rate swap) plus (ii) the percentage spread in the definition of Interest Rate applicable to Euro Dollar Rate Loans.

(f) In the event any Lender demands payment of costs or additional amounts pursuant to this Section 3.2 or Section 9.4 or asserts, pursuant to Section 3.2(c), that it is unlawful for such Lender to make Euro Dollar Rate Loans or becomes a Non-Funding Lender then (subject to such Lender's right to rescind such demand or assertion within ten (10) Business Days after the notice from the Borrower referred to below) Borrower may, upon twenty (20) Business Days' prior written notice to such Lender and Agent, elect to cause such Lender to assign its Loans and Commitments in full to one or more Persons selected by Borrower so long as (i) each such Person satisfies the criteria of an Eligible Transferee and is satisfactory to Agent, (ii) such Lender receives payment in full in cash of the outstanding principal amount of all Loans made by it and all accrued and unpaid interest thereon and all other amounts due and payable to such Lender as of the date of such assignment and (iii) each such assignee agrees to accept such assignment and to assume all obligations of such Lender hereunder in accordance with Section 11.1.

### **3.3 Servicing Fee**

Borrower shall pay to Agent monthly a servicing fee in an amount equal to \$5,000 in respect of Agent's services for each month (or part thereof) while this Agreement remains in effect and for so long thereafter as any of the non-contingent Obligations (other than Letter of Credit Accommodations) are outstanding, which fee shall be fully earned as of and payable in advance on the date hereof and on the first day of each month hereafter.

### **3.4 Unused Line Fee**

Borrower shall pay to Agent, for the account of Lenders based on their respective Pro Rata Shares, monthly an unused line fee at a rate equal to one quarter of one percent (0.25%) per annum calculated upon the amount by which the then applicable Maximum Revolving Credit exceeds the average daily principal balance of the outstanding Revolving Loans and Letter of Credit Accommodations during the immediately preceding month (or part thereof) while this Agreement is in effect and for so long thereafter as any of the Obligations are outstanding, which fee shall be payable on the first day of each month in arrears. For further clarity, no Obligations will be outstanding once this Agreement has been terminated and all Obligations have been fully and indefeasibly satisfied and cash collateral has been posted in the full amount then outstanding of any Letter of Credit Accommodations, if any.

### **3.5 Closing Fee**

Borrower shall pay to Agent, for the account of Lenders based on their respective Pro Rata Shares, a closing fee in the amount of \$400,000, which closing fee shall be fully earned by each Lender and paid by Borrower on the date of the execution of this Agreement.

### **3.6 Arrangement Fee**

Borrower shall pay to Arranger, an arrangement fee in the amount of \$250,000 which arrangement fee shall be fully earned by Arranger and paid by Borrower on the date of execution of this Agreement.

## **SECTION 4. CONDITIONS PRECEDENT**

### **4.1 Conditions Precedent to the Availability of Loans and Letter of Credit Accommodations**

Each of the following is a condition precedent to Lenders making available the Loans and making available the Letter of Credit Accommodations hereunder:

(a) Agent shall have received evidence (including any Financing Agreements, inter-creditor arrangements, subordinations or releases or terminations of any other liens or security interests in the Collateral required by Agent), in form and substance reasonably satisfactory to Agent, that Agent has for the benefit of Secured Parties valid perfected and first priority Liens upon the Collateral and any other property which is intended to be security for the Obligations or the liability of any Obligor in respect thereof, subject only to the Permitted Liens;



(b) all requisite corporate action and proceedings in connection with the Financing Agreements shall be satisfactory in form and substance to Agent, and Agent shall have received all information and copies of all documents, including records of requisite corporate action and proceedings which Agent may have requested in connection therewith, such documents where requested by Agent or its counsel to be certified by appropriate corporate officers or governmental authorities;

(c) no event or circumstance shall have occurred which has had or could be reasonably expected to have a material adverse change in the assets or business of Borrower and Obligors since the date of the most recent audited financial statements of Borrower and Obligors received by Agent and no change or event shall have occurred which would impair the ability of Borrower or any Obligor to perform its obligations under any of the Financing Agreements to which it is a party or of Agent to enforce the Obligations or realize upon the Collateral;

(d) other than what Borrower and Obligors have disclosed in the Information Certificate, and the information certificates executed and delivered by such Obligors, there shall exist no material pending or threatened litigation, proceeding, bankruptcy or insolvency, injunction, order or claims with respect to Borrower and Obligors or this Agreement and no defaults or events of default under or with respect to any other indebtedness or material contract of Borrower and Obligors;

(e) Agent and its legal counsel shall have completed its business (including field examinations) and legal due diligence with results satisfactory to Agent including:

- (i) receipt and review of third party Appraisals, including an Appraisal with respect to the Real Property;
- (ii) a field review of the business and collateral (including Accounts and Eligible Accounts) of Borrower and Obligors (in accordance with Agent's customary procedures and practices and as otherwise required by the nature and circumstances of the businesses of Borrower and Obligors) including the Records and such other information as Agent may require to determine the amount of Revolving Loans available to Borrower, the results of which shall be satisfactory to Agent, not more than three (3) Business Days prior to the date hereof;
- (iii) satisfactory review by Agent of corporate, capital structure and management of Borrower and Obligors and legal, tax, accounting and other matters relating to Borrower and Obligors;
- (iv) satisfactory review by Agent of an environmental report with respect to the Real Property; and
- (v) satisfactory review of the Collateral by Agent;

(f) Agent shall have received, in form and substance satisfactory to Agent, all consents, waivers, acknowledgments and other agreements from third persons which Agent may deem

necessary or desirable in order to permit, protect and perfect its Liens upon the Collateral or to effectuate the provisions or purposes of the Financing Agreements, including:

- (i) acknowledgements by lessors, mortgagees and warehousemen of Agent's Liens in the Collateral, waivers by such persons of any Liens or other claims by such persons to the Collateral and agreements permitting Agent access to, and the right to remain on, the premises to exercise its rights and remedies and otherwise deal with the Collateral; and
- (ii) full subordination agreements of any indebtedness for borrowed money owing by Borrower, including the subordination of shareholder and inter-company loans;

(g) Agent shall have received evidence of insurance and loss payee endorsements required under the Financing Agreements, in form and substance satisfactory to Agent, and certificates of insurance policies and/or endorsements naming Agent as first loss payee, as its interests may appear, or an additional insured, as applicable;

(h) Agent shall have received, in form and substance satisfactory to Agent, such opinion letters of counsel to Borrower and the Obligors with respect to the Financing Agreements and such other matters as Agent may reasonably request;

(i) the Financing Agreements and all instruments and documents thereunder shall have been duly executed and delivered to Agent, in form and substance reasonably satisfactory to Agent;

(j) the Cash and Excess Availability as determined by Agent shall be greater than \$25,000,000 after giving effect to the application of the proceeds of the initial Loans, payment of all fees and expenses of the closing of the transactions contemplated hereby and required to be paid hereunder or the fee letter and the redemption of all remaining outstanding Senior Note Indebtedness;

(k) Borrower shall have delivered to Agent, in form and substance reasonably satisfactory to Agent, a legal opinion from Shearman & Sterling LLP, opining that the execution, delivery and performance of the facility contemplated herein by Borrower will not result in a breach of the provisions of, or a default under, the Trust Indenture;

(l) Borrower shall have obtained and delivered to Agent, in form and substance reasonably satisfactory to Agent, any consents which are required in order to permit Borrower to enter into the Financing Agreements, including consents required pursuant to the Senior Note Indebtedness and any shareholders' agreement existing among the shareholders of Borrower;

(m) Agent and its counsel, acting reasonably, must be satisfied with the form and content of Borrower's material agreements, including financial guarantees, indemnification agreements, licensing agreements, customer and supplier agreements and lawsuits and without limiting the foregoing, Agent and its counsel, acting reasonably, must also be satisfied with the form and content of all of the Operating Leases and Capital Leases of Borrower and must be reasonably

satisfied that the benefits received by Borrower under each of the Operating Leases and Capital Leases are assignable to Agent and any future assignees without the consent of any of the Clients;

(n) Agent shall have received, in form and substance satisfactory to Agent, all financial information, projections, budgets, cash flows and such other information as Agent shall request (to the extent prepared by Borrower in the ordinary course of business) including:

- (i) projected quarterly and annual balance sheets, income statements, statements of cash flows including detail on a quarterly basis reflecting capital expenditures, repayment to long term debt, acquisitions and financing required therefor and Excess Availability of Borrower and Obligors for the period through to the end of fiscal year 2010, with the results and assumptions set forth in all of such projections and such projections in form and substance satisfactory to Agent;
- (ii) opening pro forma balance sheet for fiscal year 2010 for Borrower and Obligors in form and substance satisfactory to Agent;
- (iii) any updates or modifications to the projected financial statements of Borrower and Obligors previously received by Agent, in each case in form and substance satisfactory to Agent; and
- (iv) copies of satisfactory audited consolidated financial statements for Borrower and Obligors, with an unqualified opinion from an accounting firm acceptable to Agent, for the fiscal year most recently ended for which financial statements are available and interim unaudited financial statements for each Fiscal Quarter ended since the last audited financial statements for which financial statements are available;

(o) Agent shall have received evidence, in form and substance reasonably satisfactory to Agent, or be satisfied that there exists no material misstatements in or omissions from the financial and other materials furnished to Agent by Borrower and Obligors;

(p) Agent shall have received, in form and substance satisfactory to Agent, a completed and executed Borrowing Base Certificate dated as of the date hereof;

(q) Borrower and Obligors shall have established a cash management system including blocked accounts for collections and the transfer thereof to Agent, and subject to control agreements by the banks at which such accounts are maintained, all in form and substance satisfactory to Agent and in accordance with Section 6.3 hereof; and

(r) EDC and Wachovia shall have entered into a letter agreement with respect to third party purchase offers in favour of Wachovia.

#### **4.2 Conditions Precedent to the Availability of All Loans and Letter of Credit Accommodations**

Each of the following is an additional condition precedent to Lenders making available the Loans and/or making available Letter of Credit Accommodations to Borrower, including the initial Loans and Letter of Credit Accommodations and any future Revolving Loans and Letter of Credit Accommodations:

(a) all steps required with respect to notice and request for the making available of the Loans and/or making available Letter of Credit Accommodations to Borrower set out or contemplated herein have been completed;

(b) all representations and warranties contained in the Financing Agreements shall be true and correct in all material respects (except where qualified by materiality, then in all respects) with the same effect as though such representations and warranties had been made on and as of the date of the making of each such Loan or providing each such Letter of Credit Accommodation and after giving effect thereto; and

(c) no Event of Default or Default shall exist or have occurred and be continuing on and as of the date of the making of such Loan or providing, amending or extending each such Letter of Credit Accommodation and after giving effect thereto.

#### **SECTION 5. INTENTIONALLY DELETED**

#### **SECTION 6. COLLECTION AND ADMINISTRATION**

##### **6.1 Borrower's Loan Account**

Agent shall maintain one or more loan account(s) on its books in which shall be recorded: (a) all Loans, Letter of Credit Accommodations and other Obligations and the Collateral; (b) all payments made by or on behalf of Borrower; and (c) all other appropriate debits and credits as provided in this Agreement, including fees, charges, costs, expenses and interest. All entries in the loan account(s) shall be made in accordance with Agent's customary practices as in effect from time to time.

##### **6.2 Statements**

Agent shall render to Borrower each month a statement setting forth the balance in Borrower's loan account(s) maintained by Agent for Borrower pursuant to the provisions of this Agreement, including principal, interest, fees, costs and expenses. Each such statement shall be subject to subsequent adjustment by Agent but shall, absent manifest errors or omissions, be considered correct and deemed accepted by Borrower and conclusively binding upon Borrower as an account stated except to the extent that Agent receives a written notice from Borrower of any specific exceptions of Borrower thereto within thirty (30) days after the date such statement has been mailed by Agent. Until such time as Agent shall have rendered to Borrower a written

statement as provided above, the balance in Borrower's loan account(s) shall be presumptive evidence of the amounts due and owing to Agent and Lenders by Borrower.

### 6.3 Collection of Accounts

(a) Borrower shall establish and maintain, at its expense, blocked accounts (the "**Blocked Accounts**"), as Agent may specify, and Agent may establish and maintain bank accounts of Agent ("**Payment Accounts**") in each case with such banks as are acceptable to Agent into which Borrower shall, in accordance with Agent's instructions, promptly deposit and direct its account debtors that remit payments by electronic funds transfers to directly remit, all payments on Accounts and all payments constituting proceeds of Inventory or other Collateral, with the exception of payments received in connection with Excluded Accounts, in the identical form in which such payments are made, whether by cash, cheque or other manner. The banks at which the Blocked Accounts are established shall enter into an agreement, in form and substance satisfactory to Agent, providing that all items received or deposited in the Blocked Accounts are subject to the first priority Lien of Agent, that the depository bank has no Lien upon, or right to set-off against the Blocked Accounts, the items received for deposit therein, or the funds from time to time on deposit therein and that upon receipt of Agent's notice that a Cash Dominion Event has occurred and is continuing, the depository bank will, without further inquiry, wire, or otherwise transfer, in immediately available funds, on a daily basis, all funds received or deposited into the Blocked Accounts to the Payment Accounts or such other bank account of Agent as Agent may from time to time designate for such purpose. Borrower agrees that all payments made to such Blocked Accounts shall be subject to the first priority security interest of Agent for the benefit of Secured Parties and that all payments made, in accordance with this Section, to such Payment Accounts or other funds received and collected by Agent, whether on the Accounts or as proceeds of Inventory or other Collateral or otherwise shall be the property of Agent on behalf of Secured Parties to the extent of any outstanding Obligations.

(b) Such payments made to the Payment Account (conditional upon final collection which may be subject to fees, expenses and charges resulting from things such as the dishonour of cheques), will be applied, for all purposes, including for purposes of calculating the amount of the Revolving Loans available to Borrower and of calculating interest on the Obligations, to the Obligations on the same Business Day of receipt by Agent of immediately available funds in the Payment Account provided such payments and notice thereof are received in accordance with Agent's usual and customary practices as in effect from time to time and within sufficient time to credit Borrower's loan account on such day, and if not, then on the next Business Day. If Agent receives funds in a Payment Account at any time at which no Obligations are outstanding or in excess of then outstanding Obligations, Agent shall hold such funds in trust for Borrower and shall, by no later than the Business Day following receipt by Agent of: (i) immediately available funds in the Payment Account, provided such payments and notice thereof are received in accordance with Agent's usual and customary practices as in effect from time to time; and (ii) a direction from Borrower to advance such funds, advance such excess funds to the Blocked Account. Agent shall no later than the Business Day following the day on which there ceases to be a Cash Dominion Event, deliver to the bank at which the Blocked Account is maintained an executed "Unblocked Notice" in the form attached to the Blocked Account Agreement.

(c) Borrower and all of its affiliates, Subsidiaries, shareholders, directors, employees or agents shall receive, subject to the first priority security interest of Agent, for the benefit of Secured Parties, any monies, cheques, notes, drafts or any other payment relating to and/or proceeds of Accounts or other Collateral, with the exception of Excluded Accounts, which come into their possession or under their control and immediately upon receipt thereof, shall deposit or cause the same to be deposited in the Blocked Accounts, or remit the same or cause the same to be remitted, in kind, to Agent. Borrower agrees to reimburse Agent on demand for any amounts owed or paid by Agent to any bank at which a Blocked Account or Payment Account is established or any other bank or person involved in the transfer of funds to or from the Blocked Accounts or the Payment Accounts arising out of Agent's required payments to or indemnification of such bank or person. The obligation of Borrower to reimburse Agent for such amounts pursuant to this Section 6.3 shall survive the termination of this Agreement.

#### **6.4 Payments**

(a) All Obligations shall be payable to the Payment Account as provided in Section 6.3 or such other place in Canada as Agent may designate from time to time. Agent shall apply payments received or collected from Borrower or for the account of Borrower (including the monetary proceeds of collections or of realization upon any Collateral) as follows:

- (i) first, to pay any fees, indemnities or expenses reimbursements then due to Agent or Lenders from Borrower;
- (ii) second, to pay interest then due in respect of any Loans;
- (iii) third, to pay principal then due in respect of the Loans and outstanding obligations due under Swap Agreements;
- (iv) fourth, to pay the outstanding Revolving Loans, and after the occurrence of and during the continuance of an Event of Default, to pay or pre-pay such of the Term Loans, whether or not then due, in such order and manner as Agent determines.

(b) Payments and collections received in any currency other than Canadian Dollars or US Dollars will be accepted and/or applied at the sole discretion of Agent. At Agent's option, all principal, interest, fees, costs, expenses and other charges provided for in the Financing Agreements may be charged directly to the loan account(s) of Borrower. Borrower shall make all payments to Agent on the Obligations free and clear of, and without deduction or withholding for or on account of, any set-off, counterclaim, defence, duties, taxes, levies, imposts, fees, deductions, withholding, restrictions or conditions of any kind. If after receipt of any payment of, or proceeds of Collateral applied to the payment of, any of the Obligations, Agent is required to surrender or return such payment or proceeds to any Person for any reason, then the Obligations intended to be satisfied by such payment or proceeds shall be reinstated and continue and this Agreement shall continue in full force and effect as if such payment or proceeds had not been received by Agent. Borrower shall be liable to pay to Agent, and does hereby indemnify and hold Agent harmless for the amount of any payments or proceeds surrendered or returned. Section 6.4 shall remain effective notwithstanding any contrary action

which may be taken by Agent in reliance upon such payment or proceeds. The indemnification in the second preceding sentence shall survive the payment of the Obligations and the termination of this Agreement.

#### **6.5 Authorization to Make Loans and Letter of Credit Accommodations**

Each Lender is authorized to make the Loans and provide the Letter of Credit Accommodations based upon written instructions received by Agent from the persons authorized by Borrower as notified in writing by Borrower to Agent from time to time or, at the discretion of Lenders, if such Loans are necessary to satisfy any Obligations. All requests for Loans or Letter of Credit Accommodations hereunder shall specify the date on which the requested advance is to be made or Letter of Credit Accommodations established (which day shall be a Business Day) and the amount of the requested Loan. Requests received after 11:00 a.m. Toronto time on any day shall be deemed to have been made as of the opening of business on the immediately following Business Day. All Loans and Letter of Credit Accommodations under this Agreement shall be conclusively presumed to have been made to, and at the request of and for the benefit of, Borrower when deposited to the credit of Borrower or otherwise disbursed or established in accordance with the instructions of Borrower or in accordance with the terms and conditions of this Agreement.

#### **6.6 Use of Proceeds**

Borrower shall use the proceeds of the Loans provided by Lenders to Borrower hereunder for (a) costs, expenses and fees in connection with the preparation, negotiation, execution and delivery of the Financing Agreements and (b) any remaining proceeds and all other Loans made or Letter of Credit Accommodations provided by Lenders to Borrower pursuant to the provisions hereof shall be used by Borrower only for general operating, working capital and other proper corporate purposes of Borrower not otherwise prohibited by the terms hereof

#### **6.7 Pro Rata Treatment**

Except to the extent otherwise provided in this Agreement, (a) the making and conversion of Loans shall be made by Lenders based on their respective Pro Rata Shares as to the Loans and (b) each payment on account of any Obligations to or for the account of one or more of Lenders in respect of any Obligations due on a particular day shall be allocated among the Lenders entitled to such payments based on their respective Pro Rata Shares and shall be distributed accordingly.

#### **6.8 Obligations Several; Independent Nature of Lenders' Rights**

The obligations of each Lender hereunder are several, and no Lender shall be responsible for the obligations or commitment of any other Lender hereunder. Nothing contained in this Agreement or any of the other Financing Agreements and no action taken by the Lenders pursuant hereto or thereto shall be deemed to constitute the Lenders to be a partnership, as association, a joint venture or any other kind of entity. The amounts payable at any time hereunder to each Lender shall be a separate and independent debt, and subject to Section 11.13(f) hereof, each Lender shall be entitled to protect and enforce its rights arising out of this Agreement and it shall not be

necessary for any other Lender to be joined as an additional party in any proceeding for such purpose.

## **SECTION 7. COLLATERAL REPORTING AND COVENANTS**

### **7.1 Collateral Reporting**

(a) Borrower shall provide Agent with the following documents in a form satisfactory to Agent:

- (i) on a periodic basis as required by Lender, a schedule of Accounts, sales made, credits issued and cash received;
- (ii) on a monthly basis within twenty (20) days after each month end or more frequently as Agent may request:
  - (A) agings of accounts payable; and
  - (B) copies of bank statements and trial balances;
- (iii) within twenty (20) days after each month end or more frequently as Agent may request, a duly completed and executed Borrowing Base Certificate together with any information which Agent reasonably requests in connection therewith which Borrowing Base Certificate shall, in no event, be deemed to limit, impair or otherwise affect Agent and Lenders and their respective rights contained in this Agreement and in the event of any conflict or inconsistency between the calculations made in the Borrowing Base Certificate and those made by Agent, those made by Agent shall be binding and conclusive on Borrower absent manifest error;
- (iv) on a weekly basis, on the Monday of each week, and if such Monday does not fall on a Business Day then on the next Business Day:
  - (A) details of cash receipts;
  - (B) a schedule, in the form attached herewith as Schedule 7.1(a)(iv)(B), of the aggregate amount of cash collections made by Borrower in the preceding week together with evidence, in form and substance satisfactory to Agent, of the deposit of such collections into the Blocked Accounts;
  - (C) a schedule, in the form attached herewith as Schedule 7.1(a)(iv)(C), of the Trailing Cash Collections; and
  - (D) such other reports as to the Collateral as Agent shall request from time to time;



- (v) upon Agent's request:
  - (A) copies of customer statements and credit memos, remittance advices and reports, and copies of deposit slips and bank statements;
  - (B) copies of shipping and delivery documents;
  - (C) copies of purchase orders, invoices and delivery documents for Inventory and Equipment acquired by Borrower;
  - (D) agings of accounts receivable on a monthly basis within twenty (20) days after the end of each month or more frequently as Agent may request; and
  - (E) such other reports as to the Collateral as Agent shall request from time to time.

If any of Borrower's records or reports of the Collateral are prepared or maintained by an accounting service, contractor, shipper or other agent, Borrower hereby irrevocably authorizes, at any time that an Event of Default exists or has occurred and is continuing, such service, contractor, shipper or agent to deliver such records, reports, and related documents to Agent and to follow Agent's instructions with respect to further services.

(b) Borrower shall, at its expense: (i) once in any twelve (12) month period, but at any time or times as Agent may request on or after an Event of Default that is continuing, deliver or cause to be delivered to Agent written Appraisals as to all of the Collateral; and (ii) twice in any twelve (12) month period, but at any time or times as Agent may request on or after an Event of Default that is continuing, deliver or cause to be delivered to Agent written desktop Appraisals as to all of the Collateral.

## **7.2 Accounts Covenants**

(a) Borrower shall promptly upon becoming aware thereof, notify Agent of: (i) any material delay in Borrower's performance of any of its obligations to any Account debtor or the assertion of any claims, offsets, defences or counterclaims by any Account debtor, or any material disputes with Account debtors, or any material settlement, adjustment or compromise thereof; and (ii) all material adverse information relating to the financial condition of any Account debtor; and (iii) any event or circumstance which, to Borrower's knowledge, would cause Agent to consider any then existing Accounts as no longer constituting Eligible Accounts. No credit, discount, allowance or extension or agreement for any of the foregoing shall be granted to any account debtor without Agent's consent, except in the ordinary course of Borrower's business in accordance with good commercial practice. So long as no Event of Default exists or has occurred and is continuing, Borrower shall settle, adjust or compromise any claim, offset, counterclaim or dispute with any account debtor. At any time that an Event of Default exists or has occurred and is continuing, Agent shall, at its option, have the exclusive right to settle, adjust or compromise any claim, offset, counterclaim or dispute with account debtors or grant any credits, discounts or allowances.

(b) With respect to each Account: (i) the amounts shown on any invoice delivered to Agent or schedule thereof delivered to Agent shall be true and complete; (ii) no payments shall be made thereon except payments immediately deposited into the Blocked Accounts pursuant to the terms of this Agreement; (iii) no credit, discount, allowance or extension or agreement for any of the foregoing shall be granted to any account debtor except as permitted in this Agreement and except for credits, discounts, allowances or extensions made or given in the ordinary course of Borrower's business in accordance with good commercial practice; (iv) there shall be no set-offs, deductions, contra, defences, counterclaims or material disputes existing or asserted with respect thereto except as reported to Agent in accordance with the terms of this Agreement; and (v) none of the transactions giving rise thereto will violate any applicable federal or provincial laws or regulations, all documentation relating thereto will be legally sufficient under such laws and regulations and all such documentation will be legally enforceable in accordance with its terms.

(c) At any time that an Event of Default exists or has occurred and is continuing, Agent shall have the right, acting in good faith, in Agent's name or in the name of a nominee of Agent, to verify the validity, amount or any other matter relating to any Account or other Collateral, by mail, telephone, facsimile transmission or otherwise.

(d) Borrower shall deliver or cause to be delivered to Agent, with appropriate endorsement and assignment, with full recourse to Borrower, all chattel paper and instruments which Borrower now owns or may at any time acquire immediately upon Borrower's receipt thereof, except as Agent may otherwise agree.

(e) Agent may, at any time or times that an Event of Default exists or has occurred and is continuing: (i) notify any or all account debtors that the Accounts have been assigned to Agent and that Agent has a security interest therein and Agent may direct any or all accounts debtors to make payment of Accounts directly to Agent; (ii) extend the time of payment of, compromise, settle or adjust for cash, credit, return of merchandise or otherwise, and upon any terms or conditions, any and all Accounts or other obligations included in the Collateral and thereby discharge or release the account debtor or any other party or parties in any way liable for payment thereof without affecting any of the Obligations; (iii) demand, collect or enforce payment of any Accounts or such other obligations, but without any duty to do so, and Agent shall not be liable for its failure to collect or enforce the payment thereof nor for the negligence of its agents or attorneys with respect thereto; and (iv) take whatever other action Agent may deem necessary or desirable for the protection of its interests. At any time that an Event of Default exists or has occurred and is continuing, at Agent's request, all invoices and statements sent to any account debtor shall state that the Accounts and such other obligations have been assigned to Agent and are payable directly and only to Agent and Borrower shall deliver to Agent such originals of documents evidencing the sale and delivery of goods or the performance of services giving rise to any Accounts as Agent may require.

### **7.3 Inventory Covenants**

With respect to the Inventory: (a) Borrower shall at all times maintain inventory records satisfactory to Agent, keeping correct and accurate records itemizing and describing the kind, type, quality and quantity of Inventory, Borrower's cost therefor and monthly withdrawals

therefrom and additions thereto; (b) Borrower shall conduct a physical count of the Inventory at least once each year, but at any time or times as Agent may request on or after an Event of Default that is continuing, and promptly following such physical inventory shall supply Agent with a report in the form and with such specificity as may be satisfactory to Agent concerning such physical count; (c) Borrower shall not, other than as permitted herein, including pursuant to Section 9.7(b), remove any Inventory from the locations set forth or permitted herein, without the prior written consent of Agent, except for sales and movement of Inventory in the ordinary course of Borrower's business and except to move Inventory directly from one location set forth or permitted herein to another such location; (d) Borrower shall produce, use, store and maintain the Inventory, with all reasonable care and caution and in accordance with applicable standards of any insurance and in conformity with applicable laws; (e) Borrower assumes all responsibility and liability arising from or relating to the production, use, sale or other disposition of the Inventory; (f) Borrower shall not sell Inventory to any customer on approval, or any other basis which entitles the customer to return or may obligate Borrower to repurchase such Inventory; (g) Borrower shall keep the Inventory in good and marketable condition; and (h) Borrower shall not, without prior written notice to Agent, acquire or accept any Inventory on consignment or approval.

#### **7.4 Equipment Covenants**

With respect to the Equipment: (a) Borrower shall keep the Equipment in good order, repair, running and marketable condition (ordinary wear and tear excepted); (b) Borrower shall use the Equipment with all reasonable care and caution and in accordance with applicable standards of any insurance and in conformity with all applicable laws; (c) the Equipment is and shall be used in Borrower's business and not for personal, family or household use; (d) Borrower shall not, other than as permitted herein, including pursuant to Section 9.7(b), remove any Equipment from the locations set forth or permitted herein, without the prior written consent of Agent, except for sales (as permitted in Section 9.7(b) hereof) and movement of Equipment in the ordinary course of Borrower's business and except to move Equipment directly from one location set forth or permitted herein to another such location; (e) the Equipment is now and shall remain personal property and Borrower shall not permit any of the Equipment to be or become a part of or affixed to real property; and (f) Borrower assumes all responsibility and liability arising from the use of the Equipment.

#### **7.5 IP Collateral Covenants**

With respect to the IP Collateral:

(a) Borrower shall notify Agent forthwith in writing:

- (i) of the failure of any licensee, if any, to pay or perform any material obligations due to Borrower in respect of the License Agreements;
- (ii) of any reason any patent, patent application, patent registration, trademark, trademark application, trademark registration, copyright, copyright application, copyright registration, industrial design application or industrial design registration forming part of the material IP Collateral or

any other application, registration or proceeding relating to any of the material IP Collateral may become barred, abandoned, refused, rejected, forfeited, withdrawn, expired, lapsed, cancelled, expunged, opposed or dedicated or of any adverse determination or development (including the institution of any proceeding in any Intellectual Property Office or any court or tribunal) regarding Borrower's ownership of or rights in any of the material IP Collateral, its right to register or otherwise protect the same, or to keep and maintain the exclusive rights in same, or the validity of same; or

(iii) of any action, proceeding, or allegation that the IP Collateral infringes upon, misappropriates, violates, or otherwise interferes with the rights of any Person.

(b) Borrower shall do everything commercially necessary or desirable to preserve and maintain the IP Collateral. Particularly, and without limiting the foregoing, unless Borrower receives the prior written consent of Agent to the contrary, Borrower shall do each of the following:

(i) perform all obligations pursuant to the License Agreements;

(ii) commence and prosecute such suits, proceedings or other actions for infringement, passing off, unfair competition, dilution or other damage as are in its reasonable business judgment necessary to protect the IP Collateral;

(iii) enforce its rights under any agreements (including the License Agreements) which enhance the value of and/or protect the IP Collateral;

(iv) make all necessary filings and recordings in the Intellectual Property Offices and elsewhere necessary to protect its interest in the Collateral, including protection of any new IP Collateral arising in the Collateral, including making, maintaining and pursuing (including proceedings before Intellectual Property Offices) each application and registration with respect thereto; and

(v) promptly notify Agent in writing when it commences any steps referred to in Subsections 7.5(b)(ii) and 7.5(b)(iii) hereof and provide Agent with such information with respect thereto as Agent may request.

(c) Borrower shall not, other than in the ordinary course of its business prior to an Event of Default that is continuing, without the prior written consent of Agent, terminate, amend, enter into or renew any agreement, oral or written, or any indenture, instrument or undertaking relating to the IP Collateral, including the License Agreements or any other license agreements and/or sub-license agreements; provided however that Borrower may, at any time prior to an Event of Default, terminate, amend, enter into or renew any agreement, oral or written, or any indenture, instrument, undertaking or license (other than exclusive licenses) relating to the IP Collateral, in the ordinary course of its business; it being understood and agreed hereunder that

for the purposes of this Section 7.5(c) the “ordinary course of business” shall be deemed to include the entry into license arrangements in connection with new business opportunities by Borrower which would not reasonably be expected to have a material adverse effect on (a) the business, condition (financial or otherwise), operations, performance, properties or prospects of Borrower, (b) the rights and remedies of any Agent or any Lender under any Financing Agreement or (c) the ability of Borrower or any Obligor to perform its obligations under any Financing Agreement to which it is a party.

(d) Borrower shall at Borrower’s sole cost and expense perform all acts and execute all documents, including grants of security interests or assignments in forms suitable for filing with the Intellectual Property Offices in Canada and the United States, as may be requested by Agent at any time and from time to time to evidence, perfect, maintain, record and enforce Agent’s interest in the IP Collateral, or otherwise in furtherance of the provisions of this Agreement.

(e) Borrower shall:

- (i) unless Agent consents in writing otherwise, not do any act or omit to do any act, other than in the ordinary course of its business, whereby any of the IP Collateral, may lapse, become abandoned or dedicated to the public, enter the public domain, lose its quality of confidence, become indistinct, or become unenforceable;
- (ii) unless Agent consents in writing otherwise, or unless the failure to so act would not reasonably be expected to have a material adverse effect on the business of Borrower, with respect to any Trade-mark forming part of the Collateral:
  - (A) continue the use of any such Trade-marks in order to maintain all of the Trade-marks in full force free from any claim of abandonment;
  - (B) maintain as in the past the character and quality of the wares and services offered in association with such Trade-marks, and use its reasonable best efforts to require its licensees to maintain as in the past the character and quality of the wares and services offered in association with such Trade-marks; and
  - (C) require that all use by any Person of any such Trade-marks shall be pursuant to a license that provides Borrower with the requisite control and other provisions to maintain the distinctiveness of such Trade-marks.

#### **7.6 Real Property Covenants**

With respect to the Real Property: (a) Borrower shall, at its expense, at any time or times as Agent may request on or after an Event of Default has occurred and is continuing, deliver or cause to be delivered to Agent written reports or Appraisals as to the Real Property; (b) Borrower

shall keep the Real Property in good order, repair and marketable condition (ordinary wear and tear excepted); (c) Borrower shall use the Real Property in accordance with applicable requirements of any insurance and in conformity with all applicable laws, unless the failure to conform would not reasonably be expected singly or when aggregated with any other nonconformity to have a materially adverse effect on its business or undertaking or its ability to fulfil its obligations hereunder; (d) the Real Property is and shall be used in Borrower's business and not for personal, family, household or farming use; (e) Borrower shall defend its title to the Real Property against any adverse claims unless the failure to defend would not reasonably be expected, singly or when aggregated with any other failure to defend, to have a materially adverse effect on its business or undertaking or its ability to fulfil its obligations hereunder; (f) Borrower shall not surrender, quit claim or grant any easement, right-of-way or other right or servitude benefiting or burdening the Real Property without the prior consent of Agent, such consent not to be unreasonably withheld; and (g) Borrower assumes all responsibility and liability arising from the use and occupation of the Real Property.

#### **7.7 Power of Attorney**

Borrower hereby irrevocably designates and appoints Agent (and all persons designated by Agent) as Borrower's true and lawful attorney-in-fact, and authorizes Agent, in Borrower's or Agent's name, to: (a) at any time an Event of Default exists or has occurred and is continuing: (i) demand payment on Accounts or other proceeds of the Contracts and Leases or other Collateral, (ii) enforce payment of Accounts by legal proceedings or otherwise, (iii) exercise all of Borrower's rights and remedies to collect any Account or other Collateral, (iv) sell or assign any Account upon such terms, for such amount and at such time or times as Agent deems advisable, (v) settle, adjust, compromise, extend or renew an Account, (vi) discharge and release any Account, (vii) prepare, file and sign Borrower's name on any proof of claim in bankruptcy or other similar document against an account debtor, (viii) notify the post office authorities to change the address for delivery of Borrower's mail to an address designated by Agent, and open and dispose of all mail addressed to Borrower, (ix) do all acts and things which are necessary, in Agent's determination, to fulfil Borrower's obligations under the Financing Agreements, (x) have access to any lockbox or postal box into which Borrower's mail is deposited, (xi) endorse Borrower's name upon any chattel paper, document, instrument, invoice, or similar document or agreement relating to any Account or any goods pertaining thereto or any other Collateral, and (xii) sign Borrower's name on any verification of Accounts and notices thereof to account debtors, (b) at any time an Event of Default and/or a Cash Dominion Event exists or has occurred and is continuing to: (i) endorse Borrower's name upon any items of payment or proceeds thereof and deposit the same in Agent's account for application to the Obligations; and (ii) take control in any manner of any item of payment or proceeds thereof (to the extent that the Blocked Account instructions are not otherwise respected); and (c) at any time, to execute in Borrower's name and file any PPSA, UCC or other financing statements or amendments thereto in respect of the security interests granted to Agent pursuant to any of the Financing Agreements if Borrower has not done so within two (2) days from Agent's request. Borrower hereby releases Agent and its officers, employees and designees from any liabilities arising from any act or acts under this power of attorney and in furtherance thereof, whether of omission or commission, except as a result of Agent's own gross negligence or wilful misconduct as determined pursuant to a final non-appealable order of a court of competent jurisdiction.

### **7.8 Right to Cure**

Agent may, at any time or times that an Event of Default exists or has occurred and is continuing, at its option: (a) cure any default by Borrower under any agreement with a third party or pay or bond on appeal any judgment entered against Borrower; (b) discharge taxes, Liens at any time levied on or existing with respect to the Collateral; and (c) pay any amount, incur any expense or perform any act which, in Agent's good faith judgment, is necessary or appropriate to preserve, protect, insure or maintain the Collateral and the rights of Agent with respect thereto. Agent may add any amounts so expended to the Obligations and charge Borrower's account therefor, such amounts to be repayable by Borrower on demand. Agent shall be under no obligation to effect such cure, payment or bonding and shall not, by doing so, be deemed to have assumed any obligation or liability of Borrower. Any payment made or other action taken by Agent under this Section shall be without prejudice to any right to assert an Event of Default hereunder and to proceed accordingly.

### **7.9 Access to Premises**

(a) From time to time as requested by Agent, at the cost and expense of Borrower: (i) Agent or its designee shall have complete access to all of Borrower's premises during normal business hours and after reasonable notice to Borrower, or at any time and without notice to Borrower if an Event of Default exists or has occurred and is continuing, for the purposes of inspecting, verifying and auditing the Collateral and all of Borrower's books and records, including the Records; and (ii) Borrower shall promptly furnish to Agent such copies of such books and records or extracts therefrom as Agent may request, and (iii) Agent or its designee may use during normal business hours such of Borrower's personnel, equipment, supplies and premises as may be reasonably necessary for the foregoing and if an Event of Default exists or has occurred and is continuing for the collection of Accounts and realization of other Collateral.

(b) Provided that an Event of Default has not occurred and is continuing, Agent shall use all reasonable efforts to keep confidential, in accordance with its customary procedures for handling confidential information and safe and sound lending practices, any non-public information made available by Borrower to Agent pursuant to Section 7.9(a), and all copies thereof, provided that, nothing in this Section 7.9(b) shall limit the disclosure of any such information: (i) to the extent required by statute, rule, regulation, subpoena or court order; (ii) to bank examiners and other regulators, auditors and/or accountants; (iii) in connection with any litigation to which Agent or a Lender is a party; (iv) to any assignee or participant (or prospective assignee or participant) so long as such assignee or participant (or prospective assignee or participant), as applicable, shall have first agreed in writing to treat such information as confidential in accordance with this Section 7.9(b); and (v) to counsel for Agent or any Lender or any participant or assignee (or prospective participant or assignee). In no event shall this Section 7.9(b), or any other provision of this Agreement or any applicable law be deemed to: (i) apply to or restrict disclosure of information that has been or is made public by Borrower or any third party without breach by Agent of this Section 7.9(b) or otherwise become generally available to the public other than as a result of a disclosure in violation hereof; (ii) apply to or restrict disclosure of information that was or becomes available to Agent on a non-confidential basis from a person other than Borrower; (iii) require Agent to return any

materials furnished by Borrower to Agent; or (iv) prevent Agent from responding to routine informational requests in accordance with applicable industry standards relating to the exchange of credit information.

## **SECTION 8. REPRESENTATIONS AND WARRANTIES**

Borrower hereby represents and warrants to Agent and each Lender the following (which shall survive the execution and delivery of this Agreement), the truth and accuracy of which are a continuing condition of the making of Revolving Loans and providing Letter of Credit Accommodations by Lenders to Borrower:

### **8.1 Corporate Existence, Power and Authority; Subsidiaries; Solvency**

Borrower is a corporation duly incorporated, validly existing and duly organized under the laws of its jurisdiction of incorporation and is duly qualified or registered as a foreign or extra-provincial corporation in all provinces, states or other jurisdictions where the nature and extent of the business transacted by it or the ownership of assets makes such qualification necessary, except for those jurisdictions in which the failure to so qualify would not have a material adverse effect on Borrower's financial condition, results of operation or business or the rights of Agent in or to any of the Collateral. The execution, delivery and performance of the Financing Agreements and the transactions contemplated thereunder are all within Borrower's corporate powers, have been duly authorized and are not in contravention of law or the terms of Borrower's certificate of incorporation, by-laws, or other organizational documentation, or any indenture, agreement or undertaking to which Borrower is a party or by which Borrower or its property are bound. The Financing Agreements constitute legal, valid and binding obligations of Borrower enforceable in accordance with their respective terms. Borrower does not have any Subsidiaries except as set forth on the Information Certificate. Borrower is not insolvent.

### **8.2 Financial Statements; No Material Adverse Change**

All financial statements relating to Borrower which have been or may hereafter be delivered by Borrower to Agent have been prepared in accordance with GAAP and fairly present the financial condition and the results of operation of Borrower as at the dates and for the periods set forth therein. Except as disclosed in any interim financial statements furnished by Borrower to Agent prior to the date of this Agreement, there has been no material adverse change in the assets, liabilities, properties and condition, financial or otherwise, of Borrower, since the date of the most recent audited financial statements furnished by Borrower to Agent prior to the date of this Agreement.

### **8.3 Chief Executive Office; Collateral Locations**

The chief executive office of Borrower and Borrower's Records concerning Accounts are located only at the address set forth on the Borrower's signature page below and its only other places of business and the only other locations of Collateral, if any, are the addresses set forth in the Information Certificate, subject to the right of Borrower to establish new locations in accordance with Section 9.2 below and to move Inventory and Equipment as permitted in Sections 7.3 and 7.4, respectively. The Information Certificate correctly identifies any of such locations which



are not owned by Borrower and sets forth the owners and/or operators thereof and to the best of Borrower's knowledge, the holders of any mortgages on such locations.

#### **8.4 Priority of Liens; Title to Properties**

The Liens granted to Agent and Original Lender under the Financing Agreements constitute valid and perfected first priority Liens in and upon the Collateral subject only to Permitted Liens. Borrower has good and marketable title to all of its properties and assets subject to no Liens, except Permitted Liens.

#### **8.5 Tax Returns**

Borrower has filed, or caused to be filed, in a timely manner (with extensions) all tax returns, reports and declarations which are required to be filed by it (except those in respect of taxes the calculation or payment of which are being contested in good faith by appropriate proceedings diligently pursued and available to Borrower and except for those returns for those jurisdictions in which failure to do so would not have a material adverse effect on the financial condition of Borrower). All information in such tax returns, reports and declarations is complete and accurate in all material respects. Borrower has paid or caused to be paid all taxes due and payable or claimed due and payable in any assessment received by it, except taxes the validity of which are being contested in good faith by appropriate proceedings diligently pursued and available to Borrower and with respect to which adequate reserves have been set aside on its books. Adequate provision has been made for the payment of all accrued and unpaid federal, provincial, municipal, local, foreign and other taxes whether or not yet due and payable and whether or not disputed.

#### **8.6 Litigation**

Except as set forth on the Information Certificate, there is no present investigation by any Governmental Authority pending, or to the best of Borrower's knowledge threatened, against or affecting Borrower, its assets or business and there is no action, suit, proceeding or claim by any Person pending, or to the best of Borrower's knowledge threatened, against Borrower or its assets or business, or against or affecting any transactions contemplated by this Agreement, which in each of the foregoing cases, can reasonably be expected to result in any material adverse change in the assets or business of Borrower or would impair the ability of Borrower to perform its obligations under any of the Financing Agreements to which it is a party or of Agent to enforce any Obligations or realize upon any Collateral.

#### **8.7 Compliance with Other Agreements and Applicable Laws**

Borrower is not in default in any respect under, or in violation in any respect of any of the terms of, any agreement, contract, instrument, lease or other commitment to which it is a party or by which it or any of its assets are bound, including the Contracts and Leases, and Borrower is in compliance in all respects with all applicable provisions of laws, rules, regulations, licenses, permits, approvals and orders of any foreign, federal, provincial or local governmental authority except for any default or lack of compliance that would not reasonably be expected to have a material adverse effect on (a) the business, condition (financial or otherwise), operations, performance, properties or prospects of Borrower, (b) the rights and remedies of any Agent or

any Lender under any Financing Agreement or (c) the ability of Borrower or any Obligor to perform its obligations under any Financing Agreement to which it is a party.

#### **8.8 Bank Accounts**

All of the deposit accounts, investment accounts or other accounts in the name of or used by Borrower maintained at any bank or other financial institution are set forth on Schedule 8.8 hereto, subject to the right of Borrower to establish new accounts in accordance with Section 9.17 below.

#### **8.9 Accuracy and Completeness of Information**

All information furnished by or on behalf of Borrower in writing to Agent or a Lender in connection with any of the Financing Agreements or any transaction contemplated hereby or thereby, including all information on the Information Certificate, is true and correct in all material respects on the date as of which such information is dated or certified and does not omit any material fact necessary in order to make such information not misleading, in addition, the Information Certificate attaches the form(s) of the agreements generally used for the Capital Leases and Operating Leases, together with a breakdown of which agreements constitute Capital Leases and which agreements constitute Operating Leases, together with any and all exceptions thereto, and have been delivered to Agent for review. Borrower represents and warrants that none of the Contracts and Leases include contractual provisions restricting the assignability thereof to any Lender or Agent or to an assignee thereof upon exercise of the Financing Agreements, with the exception of those restrictive provisions set out on Schedule 8.9 hereof. No event or circumstance has occurred which has had or could reasonably be expected to have a material adverse effect on the business or assets of Borrower, which has not been fully and accurately disclosed to Agent in writing.

#### **8.10 Status of Pension Plans**

To the best knowledge of Borrower:

(a) The Pension Plans are duly registered under all applicable provincial pension benefits legislation and there are no other Canadian pension plans of Borrower other than the Pension Plans.

(b) All obligations of Borrower (including fiduciary, funding, investment and administration obligations) required to be performed in connection with the Pension Plans or the funding agreements therefor have been performed in a timely fashion. There are no outstanding disputes concerning the assets held pursuant to any such funding agreement.

(c) All contributions or premiums required to be made by Borrower to the Pension Plans have been made in a timely fashion in accordance with the terms of the Pension Plans and applicable laws and regulations.

(d) All employee contributions to the Pension Plans required to be made by way of authorized payroll deduction have been properly withheld by Borrower and fully paid into the Pension Plans in a timely fashion.

(e) All reports and disclosures relating to the Pension Plans required by any applicable laws or regulations have been filed or distributed in a timely fashion.

(f) There have been no improper withdrawals, or applications of, the assets of any of the Pension Plans.

(g) No amount is owing by any of the Pension Plans under the *Income Tax Act* (Canada) or any provincial taxation statute.

(h) None of the Pension Plans is a defined benefit registered pension plan or contains any defined benefit provision.

(i) Borrower, after diligent enquiry, has neither any knowledge, nor any grounds for believing, that any of the Pension Plans is the subject of an investigation or any other proceeding, action or claim. There exists no state of facts which after notice or lapse of time or both could reasonably be expected to give rise to any such proceeding, action or claim.

(j) Each Plan is in compliance in all material respects with the applicable provisions of ERISA, the Code and other Federal or State law. Each Plan which is intended to qualify under Section 401(a) of the Code has received a favorable determination letter from the Internal Revenue Service and to the best of Borrower's knowledge, nothing has occurred which would cause the loss of such qualification where such loss, when combined with other such occurrences or failures to comply, has or could reasonably be expected to have a material adverse effect on (i) the business, condition (financial or otherwise), operations, performance, properties or prospects of Borrower, (ii) the rights and remedies of any Agent or any Lender under any Financing Agreement or (iii) the ability of Borrower or any Obligor to perform its obligation under any Financing Agreements to which it is party. Each Borrower and its ERISA Affiliates have made all required contributions to any Plan subject to Section 412 of the Code, and no application for a funding waiver has been made with respect to any Plan.

(k) Except as set forth in the Information Certificate, there are no pending, or to the best of Borrower's knowledge, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan. Except as set forth in the Information Certificate, there has been no prohibited transaction or violation of the fiduciary responsibility rules that would reasonably be expected to result in a material liability to the Plan.

(l) Except as set forth in the Information Certificate, (i) no ERISA Event has occurred or is reasonably expected to occur that would reasonably be expected to result in a material liability to the Plan; (ii) Borrower and its ERISA Affiliates have not incurred and do not reasonably expect to incur, any liability under Title IV of ERISA with respect to any Plan (other than premiums due and not delinquent under Section 4007 of ERISA); (iii) Borrower and its ERISA Affiliates have not incurred and do not reasonably expect to incur any liability (and no event has occurred which, with the giving of notice under Section 4219 of ERISA, would result in such liability) under Section 4201 or 4243 of ERISA with respect to a Multiemployer Plan; and (iv) Borrower and its ERISA Affiliates have not engaged in a transaction that would be subject to Section 4069 or 4212(c) of ERISA.

### **8.11 Environmental Compliance**

(a) Borrower has not generated, used, stored, treated, transported, manufactured, handled, produced or disposed of any Hazardous Materials, on or off its premises (whether or not owned by it) in any manner which at any time violates any applicable Environmental Law or any license, permit, certificate, approval or similar authorization thereunder which may be expected to have a material adverse effect on Borrower and the operations of Borrower comply in all material respects with all Environmental Laws and all licenses, permits, certificates, approvals and similar authorizations thereunder.

(b) There is no investigation, proceeding, complaint, order, directive, claim, citation or notice by any Governmental Authority or any other person nor is any pending or to the best of Borrower's knowledge threatened, with respect to any non-compliance with or violation of the requirements of any Environmental Law by Borrower or the release, spill or discharge, threatened or actual, of any Hazardous Material or the generation, use, storage, treatment, transportation, manufacture, handling, production or disposal of any Hazardous Materials or any other environmental, health or safety matter, which affects Borrower or its business, operations or assets or any properties at which Borrower has transported, stored or disposed of any Hazardous Materials.

(c) Borrower has no material liability (contingent or otherwise) in connection with a release, spill or discharge, threatened or actual, of any Hazardous Materials or the generation, use, storage, treatment, transportation, manufacture, handling, production or disposal of any Hazardous Materials.

(d) Borrower has all licenses, permits, certificates, approvals or similar authorizations required to be obtained or filed in connection with the operations of Borrower under any Environmental Law and all of such licenses, permits, certificates, approvals or similar authorizations are valid and in full force and effect.

(e) Borrower does not maintain and is not required by applicable law or otherwise to establish and maintain a system to assure and monitor its continued compliance with all Environmental Laws in all of its operations. In the event Borrower establishes such a system it shall include annual reviews of such compliance by employees or agents of Borrower who are familiar with the requirements of the Environmental Laws and copies of all environmental surveys, audits, assessments, feasibility studies and results of remedial investigations shall be promptly furnished, or caused to be furnished, by Borrower to Agent all at Borrower's expense.

### **8.12 Inter-Creditor and Subordination Agreements**

There are no intercreditor agreements and/or subordination agreements to which Borrower and/or any Obligor is a party.

### **8.13 Survival of Warranties; Cumulative**

All representations and warranties contained in any of the Financing Agreements shall survive the execution and delivery of this Agreement and shall be deemed to have been made again to Agent and each Lender on the date of each additional borrowing or other credit accommodation

hereunder and shall be conclusively presumed to have been relied on by Agent and each Lender regardless of any investigation made or information possessed by Agent or any Lender. The representations and warranties set forth herein shall be cumulative and in addition to any other representations or warranties which Borrower shall now or hereafter give, or cause to be given, to Agent or any Lender.

#### **8.14 U.S. Legislation**

(a) Neither Borrower nor any of its Subsidiaries or Affiliates (i) is a Sanctioned Person, (ii) has any of its assets in Sanctioned Entities, or (iii) derives any of its operating income from investments in, or transactions with, Sanctioned Persons or Sanctioned Entities. The proceeds of the Loans will not be used and have not been used to fund any operations in, finance any investments or activities in, or make any payments to, a Sanctioned Person or a Sanctioned Entity.

(b) None of the requesting or borrowing of the Loans or the requesting or issuance, extension or renewal of any Letter of Credit Accommodations or the use of the proceeds of any thereof will violate the *Trading With the Enemy Act* (50 USC §1 et seq., as amended) (the “**Trading With the Enemy Act**”) or any of the foreign assets control regulations of the United States Treasury Department (31 C.F.R., Subtitle B, Chapter V, as amended) (the “**Foreign Assets Control Regulations**”) or any enabling legislation or executive order relating thereto (including, but not limited to, (i) Executive order 13224 of September 21, 2001 Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (66 Fed. Reg. 49079 (2001)) (the “**Executive Order**”) and (ii) the Patriot Act. Neither Borrower nor any of its Subsidiaries or Affiliates is or will become a “blocked person” as described in the Executive Order, the Trading with the Enemy Act or the Foreign Assets Control Regulations or engages or will engage in any dealings or transactions, or be otherwise associated, with any such “blocked person”.

(c) No part of the proceeds of the Loans will be used for any purpose that violates the provisions of any of Regulation T, U or X of the Board of Governors of the Federal Reserve System of the United States of America or any other regulation of such Board of Governors, Borrower is not engaged in the business of extending credit for the purpose of purchasing or carrying margin stock within the meaning of Regulation U of the Board of Governors of the Federal Reserve System and Borrower does not own any such “margin stock”.

#### **8.15 Material Operating Subsidiaries**

The Obligors are the only material operating subsidiaries of Borrower other than IMAX Japan.

### **SECTION 9. AFFIRMATIVE AND NEGATIVE COVENANTS**

#### **9.1 Maintenance of Existence**

Except to the extent otherwise permitted herein, Borrower shall at all times preserve, renew and keep in full, force and effect its corporate existence and rights and franchises with respect thereto and maintain in full force and effect all permits, licenses, trademarks, tradenames, approvals,

authorizations, leases and contracts necessary to carry on the business as presently or proposed to be conducted. Borrower shall give Agent fifteen (15) days prior written notice of any proposed change in its corporate name, which notice shall set forth the new name and Borrower shall deliver to Agent a certified copy of the Articles of Amendment of Borrower providing for the name change immediately following its filing.

## **9.2 New Collateral Locations**

Borrower may open any new location within Canada, the United States of America or any other jurisdiction provided Borrower: (a) gives Agent thirty (30) days prior written notice of the intended opening of any such new location; and (b) executes and delivers, or causes to be executed and delivered, to Agent such agreements, documents, and instruments as Agent may deem necessary or desirable to protect its interests in the Collateral at such location, including PPSA, UCC and other financing statements and such other evidence as Agent may require of the perfection of Agent's first priority Liens where required by Agent.

## **9.3 Compliance with Laws, Regulations, Etc.**

(a) Borrower shall, at all times, comply in all respects with all laws, rules, regulations, licenses, permits, approvals and orders applicable to it and duly observe all requirements of any Federal, Provincial or local governmental authority, including all statutes, rules, regulations, orders, permits and stipulations relating to environmental pollution and employee health and safety, including all of the Environmental Laws except for any matter that Borrower is contesting in good faith by appropriate proceedings diligently pursued and which is not reasonably expected to have a material adverse effect on Borrower or its property, operations, business, prospects or conditions (financial or otherwise).

(b) Borrower shall take prompt and appropriate action to respond to any non-compliance with any of the Environmental Laws and shall regularly report to Agent on such response.

(c) Borrower shall give both oral and written notice to Agent immediately upon Borrower's receipt of any notice of, or Borrower's otherwise obtaining knowledge of: (i) the occurrence of any event involving the actual release, spill or discharge of any Hazardous Material that would be in violation of Environmental Laws; or (ii) any investigation, proceeding, complaint, order, directive, claims, citation or notice with respect to: (A) any non-compliance with or violation of any Environmental Law by Borrower, or (B) the release, spill or discharge, threatened or actual, of any Hazardous Material, or (C) the generation, use, storage, treatment, transportation, manufacture, handling, production or disposal of any Hazardous Materials, or (D) any other environmental, health or safety matter, which affects any Borrower or its business, operations or assets or any properties at which Borrower transported, stored or disposed of any Hazardous Materials.

(d) Without limiting the generality of the foregoing, whenever Agent determines that there is non-compliance, or any condition which requires any action by or on behalf of Borrower in order to avoid any material non-compliance, with any Environmental Law, Borrower shall, at Agent's request and Borrower's expense: (i) cause an independent environmental engineer acceptable to Agent to conduct such tests of the site where Borrower's

non-compliance or alleged non-compliance with such Environmental Laws has occurred as to such non-compliance and prepare and deliver to Agent a report as to such non-compliance setting forth the results of such tests, a proposed plan for responding to any environmental problems described therein, and an estimate of the costs thereof; and (ii) provide to Agent a supplemental report of such engineer whenever the scope of such non-compliance, or Borrower's response thereto or the estimated costs thereof, shall change in any material respect.

(e) Borrower shall indemnify and hold harmless Agent and each Lender and their respective directors, officers, employees, agents, invitees, representatives, successors and assigns, from and against any and all losses, claims, damages, liabilities, costs, and expenses (including reasonable legal fees and expenses) directly or indirectly arising out of or attributable to the use, generation, manufacture, reproduction, storage, release, threatened release, spill, discharge, disposal or presence of a Hazardous Material, including the costs of any required or necessary repair, cleanup or other remedial work with respect to any property of Borrower and the preparation and implementation of any closure, remedial or other required plans. All representations, warranties, covenants and indemnifications in this Section 9.3 shall survive the payment of the Obligations and the termination of this Agreement.

#### **9.4 Payment of Taxes and Claims**

Borrower shall duly pay and discharge all taxes, assessments, contributions and governmental charges upon or against it or its properties or assets, except for taxes the validity of which are being contested in good faith by appropriate proceedings diligently pursued and available to Borrower and with respect to which adequate reserves have been set aside on its books. Borrower shall be liable for any tax or penalties imposed on Agent or a Lender as a result of the financing arrangements provided for herein and Borrower agrees to indemnify and hold Agent and each Lender harmless with respect to the foregoing, and to repay to Agent and/or a Lender, as the case may be, on demand the amount thereof, and until paid by Borrower such amount shall be added and deemed part of the Revolving Loans, provided, that, nothing contained herein shall be construed to require Borrower to pay any income, capital, financial institution or franchise taxes attributable to the income of Agent or Lenders from any amounts charged or paid hereunder to Agent or Lenders, and provided, further that any Lender claiming any additional amounts hereunder agrees to use reasonable efforts (consistent with the internal policy and legal and regulatory restrictions) to change its applicable lending office if the making of such a change would avoid the need for, or reduce the amount of any such additional amount that may thereafter accrue and would not, in the reasonable judgment of such Lender, be otherwise disadvantageous to such Lender. The foregoing indemnity shall survive the payment of the Obligations and the termination of this Agreement.

#### **9.5 Insurance**

(a) Borrower shall, at all times, maintain with financially sound and reputable insurers insurance with respect to the Collateral against loss or damage and all other insurance of the kinds and in the amounts customarily insured against or carried by corporations of established reputation engaged in the same or similar businesses and similarly situated. Said policies of insurance shall be satisfactory to Agent, acting in good faith, as to form, amount and insurer. Borrower shall furnish certificates, policies or endorsements to Agent as Agent shall require as

proof of such insurance, and, if Borrower fails to do so Agent is authorized, but not required, to obtain such insurance at the expense of Borrower. All policies shall provide for at least thirty (30) days prior written notice to Agent of any cancellation or reduction of coverage and that Agent may act as attorney for Borrower in obtaining, and at any time an Event of Default exists or has occurred and is continuing, adjusting, settling, amending and cancelling such insurance.

(b) Borrower shall cause Agent to be named as a loss payee and/or an additional insured, as applicable (but without any liability for any premiums) under such insurance policies and Borrower shall obtain non-contributory lender's loss payable endorsements to all insurance policies (other than third party liability policies) in form and substance satisfactory to Agent. Such lender's loss payable endorsements shall specify that at any time an Event of Default exists or has occurred and is continuing, the proceeds of such insurance shall all be payable to Agent as its interests may appear and at all other times in accordance with Section 9.5(c).

(c) Subject to Section 9.5(b) hereof, the proceeds of insurance:

- (i) which are equal to or less than \$2,000,000 per occurrence shall be payable to Borrower;
  - (ii) which are greater than \$2,000,000 and less than \$10,000,000 per occurrence, shall be payable to Borrower and Borrower shall provide Agent with evidence, satisfactory to Agent in its discretion, that such Collateral can be repaired and/or replaced within one hundred and eighty (180) days from the date Borrower receives such proceeds. Borrower shall forthwith apply such proceeds to the costs of repairing and/or replacing the Collateral within such one hundred and eighty (180) day period otherwise Borrower shall remit all such proceeds directly into the Payment Account and to be dealt with in accordance with Section 6.3 hereof; or
  - (iii) which are greater than \$10,000,000 per occurrence, shall be payable directly to Agent and in the event that such Collateral can be repaired and/or replaced within one hundred and eighty (180) days from the date Agent receives such proceeds, Borrower shall provide evidence, within five (5) days from the date Agent receives such proceeds, to Agent that such Collateral can be repaired and/or replaced within such one hundred and eighty (180) days and if such evidence is satisfactory Agent, in its discretion, Agent shall release such insurance proceeds to Borrower. Borrower shall forthwith apply such proceeds to the costs of repairing and/or replacing the Collateral within such one hundred and eighty (180) days, in the event Borrower does not provide Agent with the evidence required within five (5) days from the date Agent receives such proceeds, Agent shall forthwith remit such proceeds to the Payment Account to be dealt with in accordance with Section 6.3 hereof.
- (d) notwithstanding anything to the contrary contained in Section 9.5(c) hereof, insurance proceeds received in respect of:



- (i) Collateral comprised of real property shall be payable directly into the Payment Account and dealt with in accordance with Section 6.3 hereof;
- (ii) proceeds of any keyman insurance policies, or cash surrender value thereof, assigned to Agent, shall be payable to the Payment Account and dealt with in accordance with Section 6.3 hereof; and
- (iii) proceeds of business interruption insurance assigned to Agent, shall be payable to the Payment Account and dealt with in accordance with Section 6.3 hereof.

#### **9.6 Financial Statements and Other Information**

(a) Borrower shall keep proper books and records in which true and complete entries shall be made of all dealings or transactions of or in relation to the Collateral and the business of Borrower and its Subsidiaries (if any) in accordance with GAAP and Borrower shall furnish or cause to be furnished to Agent, all to be in form, scope and substance satisfactory to Agent:

- (i) within thirty (30) days after the end of each fiscal month, monthly unaudited consolidated financial statements (including in each case balance sheets, statements of income and loss, statements of cash flow and statements of shareholders' equity), all in reasonable detail, fairly presenting the financial position and the results of the operations of Borrower and its Subsidiaries as of the end of and through such fiscal month;
- (ii) within one hundred and twenty (120) days after the end of each fiscal year, audited consolidated financial statements of Borrower and its Subsidiaries (including in each case balance sheets, statements of income and loss, statements of changes in financial position and statements of shareholders' equity), and the accompanying notes thereto, including any consolidating worksheets prepared on a quarterly basis in connection therewith, all in reasonable detail, fairly presenting the financial position and the results of the operations of Borrower and its Subsidiaries as of the end of and for such fiscal year, together with the unqualified opinion of independent chartered accountants, which accountants shall be an independent accounting firm selected by Borrower and acceptable to Agent, that such financial statements have been prepared in accordance with GAAP, and present fairly the results of operations and financial condition of Borrower and its Subsidiaries as of the end of and for the fiscal year then ended;
- (iii) by February 28 of each fiscal year or earlier if and when available (including in draft form), projections for such fiscal year; and
- (iv) as Agent may from time to time reasonably request, and provided that Borrower prepares such information in the ordinary course of business, budgets, management letters, forecasts, business plans, cash flows and other information respecting the Collateral and the business of Borrower.

(b) Borrower shall promptly notify Agent in writing of the details of (i) any loss, damage, investigation, action, suit, proceeding or claim relating to the Collateral or any other property which is security for the Obligations and which would result in any material adverse change in Borrower's business, properties, assets, goodwill or condition, financial or otherwise and (ii) the occurrence of any Event of Default or Default.

(c) Borrower shall promptly after the sending or filing thereof furnish or cause to be furnished to Agent copies of all reports which Borrower sends to its shareholders generally and copies of all reports and registration statements which Borrower files with any provincial securities commission or securities exchange.

(d) Agent is hereby authorized to deliver a copy of any financial statement or any other information relating to the business of Borrower to any court or other government agency, if legally required to do so, or to any participant or assignee or prospective participant or assignee. Borrower hereby irrevocably authorizes and directs, at any time an Event of Default exists or has occurred and is continuing, all accountants or auditors to deliver to Agent, at Borrower's expense, copies of the financial statements of Borrower and any reports or management letters prepared by such accountants or auditors on behalf of Borrower and to disclose to Agent such information as they may have regarding the business of Borrower. Any documents, schedules, invoices or other papers delivered to Agent may be destroyed or otherwise disposed of by Agent one (1) year after the same are delivered to Agent, except as otherwise designated by Borrower to Agent in writing.

(e) Borrower shall within ten (10) days after the end of each month provide a certificate of a senior officer of Borrower, in form and content satisfactory to Agent, certifying that Borrower has paid or caused to be paid (or the obligors listed in Schedule 9.10A hereto have paid) in full: (i) all rent and other amounts due and payable with respect to any premises, with the exception of theatres owned and operated by Borrower, leased by Borrower or any Obligor (or the obligors listed in Schedule 9.10A hereto) during such month; and (ii) all payments and other amounts due and payable from it with respect to any Pension Plan during such month.

(f) Borrower shall within thirty (30) days after the end of each month provide a Compliance Certificate, in form and content satisfactory to Agent, providing details of guarantees entered into by Borrower and such other matters relating to Borrower as Agent may from time to time request.

#### **9.7 Sale of Assets, Consolidation, Amalgamation, Dissolution, Etc.**

(a) Borrower shall not, directly or indirectly, without the prior written consent of Agent which is not to be unreasonably withheld or unless otherwise permitted herein: (i) amalgamate with any other Person or permit any other Person to amalgamate with it, or (ii) sell, assign, lease, transfer, abandon or otherwise dispose of any Collateral to any other Person, or (iii) form or acquire any Subsidiaries, or (d) wind up, liquidate or dissolve or (iv) agree to do any of the foregoing.

(b) Notwithstanding Section 9.7(a) hereof and provided that an Event of Default does not then exist, Borrower shall be permitted to: (i) sell Inventory in the ordinary course of business;

(ii) sell Equipment at fair market value in the ordinary course of business; (iii) dispose of worn-out or obsolete Equipment or Equipment no longer used in the business of Borrower; (iv) except as permitted in this [Section 9.7\(b\)](#), sell assets at fair market value provided that such assets are not the Real Property or IP Collateral; (v) sell assets which include intellectual property as an incidental component of such asset, provided such sale does not materially diminish or impair the IP Collateral to be retained by Borrower hereunder; (vi) amalgamate with an Affiliate or permit an Affiliate to amalgamate with it provided that prior to the completion of such amalgamation Agent shall be entitled to obtain and perfect a Lien from such Affiliate and/or amalgamated entity, in form and substance substantially similar to that obtained from the Obligors existing as at the date hereof, or that obtained from Borrower, if applicable; (vii) form or acquire any Subsidiaries provided that Agent shall be provided with thirty (30) days prior written notice of same and further provided that Agent shall be entitled to obtain and perfect a Lien from such Subsidiary, in form and substance substantially similar to that obtained from Obligors existing as at the date hereof; and (viii) form or acquire any single purpose Subsidiaries for the purpose of entering into the joint ventures and the third party productions permitted pursuant to [Section 9.10](#) hereof.

### **9.8 Liens**

Borrower shall not create, incur, assume or suffer to exist any Lien on any of its assets or properties, including the Collateral, except: (a) liens and security interests of Agent; (b) liens securing the payment of taxes, either not yet overdue or the validity of which are being contested in good faith by appropriate proceedings diligently pursued and available to Borrower and with respect to which adequate reserves have been set aside on its books; (c) non-consensual statutory liens (other than liens securing the payment of taxes) arising in the ordinary course of Borrower's business to the extent: (i) such liens secure indebtedness which is not overdue or (ii) such liens secure indebtedness relating to claims or liabilities which are fully insured and being defended at the sole cost and expense and at the sole risk of the insurer or being contested in good faith by appropriate proceedings diligently pursued and available to Borrower, in each case prior to the commencement of foreclosure or other similar proceedings and with respect to which adequate reserves have been set aside on its books; (d) zoning restrictions, rights-of-way, easements, licenses, covenants and other restrictions affecting the use of real property which do not interfere in any material respect with the use of such real property or ordinary conduct of the business of Borrower as presently conducted thereon or materially impair the appraised value of the real property which may be subject thereto and the Liens permitted in the Mortgage/Charge registered in favour of Agent in respect of the Real Property; (e) purchase money security interests in Equipment (including capital leases) and purchase money mortgages on real estate not to exceed, in the case of such purchase money security interests and purchase money mortgages, \$500,000 in the aggregate at any time outstanding so long as such security interests and mortgages do not apply to any property of Borrower other than the Equipment or real estate so acquired, and the indebtedness secured thereby does not exceed the cost of the Equipment or real estate so acquired, as the case may be; (f) Liens set forth on [Schedule 8.4](#) hereto; (g) liens securing performance of bids, contracts, statutory obligations, surety, performance and appeal bonds and other like obligations incurred in the ordinary course of business; (h) pledges or deposits made in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security legislation; (i) liens securing indebtedness of a person acquired by or amalgamated with Borrower or liens securing

indebtedness incurred in connection with an acquisition, provided in all such cases that such acquisition or amalgamation, as the case may be, is not prohibited hereunder and provided further that such liens were in existence prior to the date of such acquisition, and were not incurred in anticipation thereof and do not extend to assets other than those acquired; and (j) liens in favour of EDC over deposits of collateral given by Borrower in favour of EDC pursuant to the terms of Section 5(l)(2) of the EDC Indemnity Agreement; provided however that (i) the Liens and interest of EDC in such collateral shall at all times be subject to and subordinate to any and all interests and Liens of Agent in such collateral and (ii) Agent shall have provided its prior written consent to Borrower to make such deposit of collateral with EDC (all of the foregoing being sometimes collectively referred to herein as “**Permitted Liens**”).

### **9.9 Indebtedness**

Borrower shall not incur, create, assume, become or be liable in any manner with respect to, or permit to exist, any obligations, liabilities or indebtedness (including under or in connection with capital leases), except: (a) the Obligations including obligations, liabilities and indebtedness under or in connection with Swap Agreements; (b) trade obligations and normal accruals in the ordinary course of business not yet due and payable, or with respect to which Borrower is contesting in good faith the amount or validity thereof by appropriate proceedings diligently pursued and available to Borrower, and with respect to which adequate reserves have been set aside on its books; (c) purchase money indebtedness (including capital leases) to the extent not incurred or secured by Liens (including capital leases) in violation of any other provision of this Agreement; (d) the indebtedness set forth on Schedule 9.9 hereto; (e) subject to Section 9.26, the Senior Note Indebtedness; (f) the indebtedness incurred pursuant to the BMO Term Sheet; provided however that the indebtedness of Borrower under (i) the BMO LC Facility shall not exceed \$10,000,000, (ii) the Mastercard Facility shall not exceed CDN\$25,000 and (iii) the FX Facility shall not exceed \$300,000; (g) the indebtedness and indemnity obligations incurred pursuant to the EDC Indemnity Agreement; provided that such indebtedness and indemnity obligations shall relate solely to CIB Products (as defined in the EDC Indemnity Agreement) issued by EDC in support of the BMO LC Facility and not to exceed \$10,000,000 in the aggregate; (h) the indebtedness incurred pursuant to the BMO FEFC Term Sheet and the Application; provided however that: (i) the foreign exchange forward contracts to be entered into with respect to the BMO FEFC Term Sheet shall be entered into for hedging purposes only and not for speculative purposes; (ii) the mark to market exposure of all such existing foreign exchange forward contracts in the aggregate shall not exceed US\$10,000,000; (iii) the notional amount of all such existing foreign exchange forward contracts in the aggregate shall not exceed US\$33,333,333; (iv) if Borrower fails to settle a foreign exchange forward contract entered into with respect to the BMO FEFC Term Sheet on its settlement date and/or fails to pay any part of the Guaranteed Amount (as defined in the FX Guarantee) to BMO within ten (10) Business Days of BMO’s demand to Borrower to pay the Guaranteed Amount (as defined in the FX Guarantee), BMO may submit a payment request to EDC under the FX Guarantee and BMO is required to demand payment from Borrower before submitting a payment request under the FX Guarantee to EDC unless BMO is prevented from making a demand by reason of an Insolvency Event Stay (as defined in the FX Guarantee) or by reason of an Injunction (as defined in the FX Guarantee); and (v) EDC’s sole recourse against Borrower with respect to amounts paid by EDC pursuant to the FX Guarantee shall be against Borrower pursuant to the unsecured indemnity in the Application not to exceed US\$5,000,000 in aggregate plus applicable costs, expenses, and interest as set out

therein; and (i) any subordinated indebtedness in the aggregate principal amount not to exceed \$25,000,000; provided that:

- (A) both before and after giving effect to the incurrence of such indebtedness, Borrower is in compliance with all the terms of the Financing Agreements including the financial covenants set forth in Sections 9.13, 9.14, 9.23 and 9.24 hereof and no Default or Event of Default exists and is continuing or would occur as a result thereof;
- (B) prior to the indefeasible payment in full in cash of the Term Loan, such indebtedness incurred under this Section 9.9(i) must be subject to an intercreditor or subordination agreement between Agent, Borrower and subordinated lender, in form, content and substance satisfactory to Agent, in its sole and absolute discretion; and
- (C) after the indefeasible payment in full in cash of the Term Loan, such indebtedness incurred under this Section 9.9(i) must be subject to an intercreditor or subordination agreement (which shall contain standard market terms for intercreditor or subordination agreements between a senior first secured lender and a subordinate junior lender) between Agent, Borrower and subordinated lender, in form, content and substance satisfactory to Agent, acting reasonably.

For greater certainty and without limiting the foregoing Borrower shall not, directly or indirectly, (a) amend, modify, alter or change the terms of such indebtedness or any agreement, document or instrument related thereto as in effect on the date hereof except that Borrower may amend, modify, alter or change the terms of the Senior Note Indebtedness only with the prior written consent of Agent, in its discretion or (b) prepay, redeem, retire, defease, purchase or otherwise acquire such indebtedness, or set aside or otherwise deposit or invest any sums for such purpose except that Borrower may prepay, redeem, retire, defease, purchase or otherwise acquire the Senior Note Indebtedness (including, necessary amendments to the Senior Notes and Trust Indenture in respect thereof) in accordance with the terms of Section 9.26 hereof. Borrower shall furnish to Agent all notices or demands in connection with such indebtedness either received by Borrower or on its behalf, promptly after the receipt thereof, or sent by Borrower or on its behalf, concurrently with the sending thereof, as the case may be.

#### **9.10 Loans, Investments, Guarantees, Etc.**

Borrower shall not, directly or indirectly, without the prior written consent of Agent which is not to be unreasonably withheld, make any loans or advance money or property to any person, or invest in (by capital contribution, dividend or otherwise) or purchase or repurchase the shares or indebtedness or all or a substantial part of the assets or property of any person, or guarantee, assume, endorse, or otherwise become responsible for (directly or indirectly) the indebtedness, performance, obligations or dividends of any Person or agree to do any of the foregoing, except:

(a) the endorsement of instruments for collection or deposit in the ordinary course of business; (b) investments in: (i) short-term direct obligations of the Canadian Government and the U.S. Government, (ii) negotiable certificates of deposit issued by any bank satisfactory to Agent, payable to the order of Borrower or to bearer and delivered to Agent, (iii) commercial paper rated A1 or P1, and (iv) term deposits with the Bank of Montreal and The Toronto-Dominion Bank existing as of the date hereof provided, that, as to any of the foregoing, unless waived in writing by Agent, Borrower shall take such actions as are deemed necessary by Agent to perfect the first-ranking Lien of Agent in such investments; (c) financial guarantees in an amount less than \$10,000,000; (d) regularly scheduled payments of interest and scheduled payment of principal on maturity each in respect of the Senior Note Indebtedness and each in accordance with the terms of the Trust Indenture; (e) the redemption of the Senior Note Indebtedness by Borrower in exchange for equity in value equal to or less than the Senior Note Indebtedness; (f) the guarantees by Borrower of the real property lease obligations of the obligors and in the amounts set forth on Schedule 9.10A hereto (and any renewals or replacements thereof not to exceed in the aggregate the amounts set forth on Schedule 9.10A hereto) and the loans, advances and guarantees set forth on Schedule 9.10B hereto; provided, that, as to such loans, advances and guarantees set forth on Schedule 9.10B hereto, (i) Borrower shall not, directly or indirectly, (A) amend, modify, alter or change the terms of such loans, advances or guarantees or any agreement, document or instrument related thereto, or (B) as to such guarantees, redeem, retire, defease, purchase or otherwise acquire the obligations arising pursuant to such guarantees, or set aside or otherwise deposit or invest any sums for such purpose, and (ii) Borrower shall furnish to Agent all notices or demands in connection with such loans, advances or guarantees or other indebtedness subject to such guarantees either received by Borrower or on its behalf, promptly after the receipt thereof, or sent by Borrower or on its behalf, concurrently with the sending thereof, as the case may be; (g) purchase or repurchase any and all shares, interest, participations or other equivalents in Borrower's capital stock or other equity interests at any time outstanding, and any and all rights, warrants or options exchangeable for or convertible into such capital stock or other interests (excluding any debt security that is exchangeable for or convertible into such capital stock); (h) enter into joint ventures, acting as a prudent investor, with strategic partners for the purpose of advancing Borrower's business provided that Borrower's investment in such joint ventures, whether direct or indirect, shall not, at any time and in the aggregate, exceed \$10,000,000 and shall not result in a derogation of the value of the Collateral or Agent's, subject to Permitted Liens, first priority Liens therein; (i) make loans or advance money to Affiliates in the ordinary course of Borrower's business with the proceeds of issuance of shares in the capital of Borrower, provided such proceeds are used in the ordinary course of business and shall not, for further clarity, be subject to any other restrictions on use contained herein; (j) make payments to employees in connection with the repurchase of phantom stock (including stock appreciation rights) in the ordinary course of business; (k) payments to counterparties under or in connection with Swap Agreements; and (l) loans, investments, purchases of shares, indebtedness, assets or properties of an arm's length third party and guarantees; provided that (i) such loans, investments, purchases and guarantees shall not exceed an aggregate amount (when combined with the amount of dividend payments made under Section 9.11(b)) of \$25,000,000, (ii) such loans, investments and purchases (and the assets resulting therefrom) shall be subject to the first priority Liens of Agent, (iii) such loans shall only be made to Obligors whose assets and properties are subject to the first priority Liens of Agent, (iv) such guarantees shall not be secured by any Liens on the assets or properties of Borrower and (v) both before and after giving

effect thereto, Borrower is in compliance with all terms of the Financing Agreements including the financial covenants set forth in Sections 9.13, 9.14, 9.23 and 9.24 hereof and no Default or Event of Default exists and is continuing or would occur as a result thereof. Borrower shall pay, or shall cause the obligors listed in Schedule 9.10A hereto to pay, all amounts due and owing under the leases that Borrower has guaranteed as set out in Schedule 9.10A hereto.

#### **9.11 Dividends and Redemptions**

Subject to Section 9.10 hereof, Borrower shall not, directly or indirectly, declare or pay any dividends on account of any shares of Borrower now or hereafter outstanding, or set aside or otherwise deposit or invest any sums for such purpose, or redeem, retire, defease, purchase or otherwise acquire any shares of any class (or set aside or otherwise deposit or invest any sums for such purpose) for any consideration other than common shares or apply or set apart any sum, or make any other distribution (by reduction of capital or otherwise) in respect of any such shares or agree to do any of the foregoing with the exception of (a) redemptions of any securities, shares and/or options of Borrower which are held by employees and/or insiders thereof and (b) dividends not to exceed an aggregate amount (when combined with the aggregate amount of loans, investments, purchases and guarantees made under Section 9.10(I)) of \$25,000,000 provided that (i) the Term Loan has been indefeasibly repaid in full in cash and (ii) both before and after giving effect thereto, Borrower is in compliance with all terms of the Financing Agreements including the financial covenants set forth in Sections 9.13, 9.14, 9.23 and 9.24 hereof and no Default or Event of Default exists and is continuing or would occur as a result thereof.

#### **9.12 Transactions with Affiliates**

Borrower shall not, directly or indirectly, (a) purchase, acquire or lease any property from, or sell, transfer or lease any property to, any officer, director, agent or other person affiliated with Borrower, except in the ordinary course of and pursuant to the reasonable requirements of Borrower's business and upon fair and reasonable terms no less favorable to Borrower than Borrower would obtain in a comparable arm's length transaction with an unaffiliated person or (b) make any payments of management, consulting or other fees for management or similar services, or of any indebtedness (including under the USERP) owing to any officer, employee, shareholder, director or other person affiliated with Borrower except (i) reasonable compensation to officers, employees and directors for services rendered to Borrower in the ordinary course of business and (ii) payments to Bradley J. Wechsler and Richard L. Gelfond in accordance with the USERP so long as such payments are set out in Borrower's budget or forecast and then only in accordance with such budget or forecast.

#### **9.13 Fixed Charge Coverage Ratio**

(a) Borrower shall maintain a Fixed Charge Coverage Ratio of not less than 1.1:1.0 calculated at the end of each Fiscal Quarter (commencing with the December 31, 2009 Fiscal Quarter) on a quarterly cumulative basis until the December 31, 2010 Fiscal Quarter and thereafter on a rolling four (4) Fiscal Quarter basis.

(b) Upon indefeasible payment in full of the Term Loan, Borrower shall only be required to comply with Section 9.13(a) above if, at any time, (i) Excess Availability is less than \$10,000,000 or (ii) Cash and Excess Availability is less than \$15,000,000.

#### **9.14 Excess Availability**

Borrower shall maintain a minimum Excess Availability of \$5,000,000 at all times.

#### **9.15 Aggregate Borrowings**

At all times prior to the occurrence of an Event of Default or Default and subject to Excess Availability, Borrower shall maintain a minimum average daily principal balance of outstanding Revolving Loans of \$2,500,000 and if, and only if, Borrower does not maintain such average daily principal balance, the applicable Interest Rate will not be charged on the difference between the outstanding Revolving Loans and \$2,500,000 however, the unused line fee described in Section 3.4 hereof will be applied to the difference. If Agent applies funds to reduce Obligations which results in the minimum average daily principal balance of outstanding Revolving Loans being less than \$2,500,000 following a Cash Dominion Event or application of insurance proceeds, an Event of Default will not occur provided that Borrower increases the minimum average daily principal balance of outstanding Revolving Loans to \$2,500,000 within three (3) days.

#### **9.16 Intellectual Property**

In the event Borrower obtains or applies for any material intellectual property rights or obtains any material licenses with respect thereto, Borrower shall immediately notify Agent thereof and shall provide to Agent copies of all written materials including, but not limited to, applications and licenses with respect to such intellectual property rights. At Agent's request, Borrower shall promptly execute and deliver to Agent an intellectual property security agreement granting to Agent a perfected security interest in such intellectual property rights in form and substance satisfactory to Agent.

#### **9.17 Additional Bank Accounts**

Borrower shall not, without the prior consent of Agent, directly or indirectly, open, establish or maintain any deposit account, investment account or any other account with any bank or other financial institution, other than the Blocked Accounts and the accounts set forth in Schedule 8.8 hereto, except: (a) as to any new or additional Blocked Accounts and other such new or additional accounts which contain any Collateral or proceeds thereof, with the prior written consent of Agent and subject to such conditions thereto as Agent may establish; (b) as to any accounts used by Borrower to make payments of payroll, taxes or other obligations to third parties, after prior written notice to Agent; and (c) as to any new Excluded Accounts.

#### **9.18 Applications under the Companies' Creditors Arrangement Act**

Borrower acknowledges that its business and financial relationships with Agent and each Lender are unique from its relationship with any other of its creditors. Borrower agrees that it shall not file any plan of arrangement under the CCAA ("**CCAA Plan**") which provides for, or would



permit directly or indirectly, Agent or any Lender to be classified with any other creditor of Borrower for purposes of such CCAA Plan or otherwise.

#### **9.19 Supplemental Executive Retirement Plan**

Borrower shall not, directly or indirectly, in respect of the USERP: (i) pay or declare any payments thereunder other than those required to be paid and due pursuant to the terms thereof; (ii) commence payment of contributions which Borrower had not previously been contributing; (iii) amend, modify, alter or otherwise change the terms thereof except for the purpose of reducing the pension benefit to the applicable Borrower executive; or (iv) register the USERP or otherwise establish a new similar registered plan.

#### **9.20 Operation of Pension Plans**

(a) Borrower shall administer the Pension Plans in accordance with the requirements of the applicable pension plan texts, funding agreements, the *Income Tax Act* (Canada) and applicable provincial pension benefits legislation.

(b) Borrower shall use commercially reasonable efforts to obtain and to deliver to Agent, upon Agent's request, an undertaking of the funding agent for each of the Pension Plans stating that the funding agent will notify Agent within thirty (30) days of Borrower's failure to make any required contribution to the applicable Pension Plan.

(c) Borrower shall not accept payment of any amount from any of the Pension Plans without the prior written consent of Agent other than payments for forfeitures in connection with terminated employees to be set-off against future contribution obligations.

(d) Without the prior written consent of Agent, Borrower shall not terminate, or cause to be terminated, any of the Pension Plans, if such plan would have a solvency deficiency on termination.

(e) Borrower shall promptly provide Agent with any documentation relating to any of the Pension Plans as Agent may request. Borrower shall notify Agent within 30 days of: (i) a material increase in the liabilities of any of the Pension Plans; (ii) the establishment of a new registered pension plan; (iii) commencing payment of contributions to a Pension Plan to which Borrower had not previously been contributing; and (iv) any failure to make any required contribution to a Pension Plan when due.

(f) Borrower shall, and shall cause each of its ERISA Affiliates to (i) maintain each Plan in compliance in all material respects with the applicable provisions of ERISA, the Code and other Federal and State law, (ii) cause each Plan which is qualified under Section 401(a) of the Code to maintain such qualification, (iii) not terminate any US Pension Plan so as to incur any liability to the Pension Benefit Guaranty Corporation, (iv) not allow or suffer to exist any prohibited transaction involving any Plan or any trust created thereunder which would subject Borrower or such ERISA Affiliate to a tax or other liability on prohibited transactions imposed under Section 4975 of the Code or ERISA in an aggregate amount in excess of \$500,000, (v) make all required contributions to any Plan which it is obligated to pay under Section 302 of ERISA, Section 412 of the Code or the terms of such Plan, (vi) not allow or suffer to exist any

accumulated funding deficiency, whether or not waived, with respect to any such US Pension Plan, (vii) not engage in a transaction that could be subject to Section 4069 or 4212(c) of ERISA, or (viii) not allow or suffer to exist any occurrence of a reportable event or any other event or condition which presents a risk of termination by the Pension Benefit Guaranty Corporation of any Plan that is a single employer plan, which termination could result in any liability to the Pension Benefit Guaranty Corporation.

#### **9.21 Costs and Expenses**

Upon demand by Agent, Borrower shall pay to Arranger, Agent and Lenders all reasonable costs, expenses, filing fees and taxes paid or payable in connection with the structuring, arrangement, syndication, preparation, negotiation, execution, delivery, recording, administration, collection, liquidation, restructuring, enforcement and defense of the Obligations, Agent and each Lender's rights in the Collateral, the Financing Agreements and all other documents related hereto or thereto, including any amendments, supplements or consents which may hereafter be contemplated (whether or not executed) or entered into in respect hereof and thereof, including: (a) all costs and expenses of filing or recording or searching (including PPSA and UCC financing statement and other similar filing and recording fees and taxes, documentary taxes, intangibles taxes and mortgage recording taxes and fees, if applicable); (b) all insurance premiums, appraisal fees and search fees; (c) reasonable costs and expenses of remitting loan proceeds, collecting cheques and other items of payment, and establishing and maintaining the Blocked Accounts, if any, and the Payment Accounts, together with Agent's customary charges and fees with respect thereto; (d) charges, fees or expenses charged by any bank or issuer in connection with the Letter of Credit Accommodations; (e) costs and expenses of preserving and protecting the Collateral; (f) reasonable costs and expenses paid or incurred in connection with obtaining payment of the Obligations, enforcing the security interests and liens of each Agent, selling or otherwise realizing upon the Collateral, and otherwise enforcing the provisions of the Financing Agreements or defending any claims made or threatened against Agent and Lenders arising out of the transactions contemplated hereby and thereby (including preparations for and consultations concerning any such matters); (g) all reasonable out-of-pocket expenses and costs heretofore and from time to time hereafter incurred by Agent during the course of periodic field examinations of the Collateral and Borrower's operations, plus a *per diem* charge at the rate of \$1,200 per person per day for Agent's examiners in the field and office; provided that with respect to such periodic field examinations: (i) Borrower shall permit same at the request of Agent; and (ii) Borrower shall only be responsible for paying such expenses, costs and *per diem* for three (3) such periodic field examinations in any twelve (12) month period with no such restrictions applicable after the occurrence and continuation of an Event of Default; (h) all reasonable out-of-pocket expenses including due diligence, audit and appraisal expenses and legal fees incurred in the structuring, negotiation, arrangement, syndication, restructuring, administration and amending of this Agreement and the Original Loan Agreement; and (i) the reasonable fees and disbursements of counsel (including legal assistants) to Arranger, Agent and Lenders in connection with any of the foregoing.

#### **9.22 Further Assurances**

At the request of Agent at any time and from time to time, Borrower shall, at its expense, duly execute and deliver, or cause to be duly executed and delivered, such further agreements,

documents and instruments, and do or cause to be done such further acts as may be necessary to evidence, perfect, maintain and enforce the Liens and the priority thereof in the Collateral and to otherwise effectuate the provisions or purposes of any of the Financing Agreements. Agent may at any time and from time to time request a certificate from an officer of Borrower representing that all conditions precedent to the making of Revolving Loans and providing Letter of Credit Accommodations contained herein are satisfied. In the event of such request by Agent, Agent and each Lender may, at its option, cease to make any further Revolving Loans or provide any further Letter of Credit Accommodations until Agent has received such certificate and, in addition, Agent has determined that such conditions are satisfied. Where permitted by law, Borrower hereby authorizes Agent to execute and file one or more PPSA, UCC or other financing statements or notices signed only by Agent or Agent's representative.

#### **9.23 Cash and Excess Availability Covenant**

Borrower shall, at all times, maintain minimum Cash and Excess Availability, calculated monthly by Agent on the first day of each month, of not less than \$15,000,000.

#### **9.24 Funded Debt**

(a) Borrower shall ensure that the ratio of Funded Debt to trailing twelve (12) month EBITDA shall not be more than 2.0:1.0 calculated on a consolidated basis at the end of each Fiscal Quarter until December 31, 2010 and not more than 1.75:1.0 calculated on a consolidated basis at the end of each Fiscal Quarter thereafter.

(b) Upon indefeasible payment in full of the Term Loan, Borrower shall only be required to comply with Section 9.24(a) above if, at any time, (i) Excess Availability is less than \$10,000,000 or (ii) Cash and Excess Availability is less than \$15,000,000.

#### **9.25 No Material Changes**

Borrower shall not, without the prior written consent of Agent (a) change its Fiscal Quarters or its fiscal year (currently January 1 to December 31), (b) make any material change to its business or the conduct thereof from that existing or being conducted as of the date hereof, other than changes that would not be reasonably expected to have a material adverse effect on (i) the business, condition (financial or otherwise), operations, performance, properties or prospects of Borrower and its Subsidiaries, taken as a whole, (ii) the rights and remedies of any Agent or any Lender under any Financing Agreement or (iii) the ability of Borrower or any Obligor to perform its obligations under any Financing Agreement to which it is or is to be a party (c) make any material changes to its accounting policies in effect as of the date hereof, except as required or permitted by GAAP or (d) make any material amendments to its organizational documents or material contracts other than amendments that would not be reasonably expected to have a material adverse effect on (i) the business, condition (financial or otherwise), operations, performance, properties or prospects of Borrower and its Subsidiaries, taken as a whole, (ii) the rights and remedies of any Agent or any Lender under any Financing Agreement or (iii) the ability of Borrower or any Obligor to perform its Obligations under any Financing Agreement to which it is or is to be a party.

### 9.26 Repayment of Senior Note Indebtedness

(a) Borrower represents that the Senior Note Indebtedness as of the date hereof is \$104,437,000.

(b) Borrower agrees to repay in full in cash the Senior Note Indebtedness by no later than the Senior Note Indebtedness Repayment Date, all in accordance with the terms of the Senior Notes and the Trust Indenture and Agent and Lenders hereby consent to such repayment provided that the amount of the Senior Note Indebtedness does exceed the amount set forth in Section 9.26(a) above. Upon such repayment, Borrower shall promptly provide Agent with evidence of the cancellation and termination of the Senior Note Indebtedness, the Senior Notes and the Trust Indenture, all in form and substance satisfactory to Agent.

## SECTION 10. EVENTS OF DEFAULT AND REMEDIES

### 10.1 Events of Default

The occurrence or existence of any one or more of the following events are referred to herein individually as an “**Event of Default**”, and collectively as “**Events of Default**”:

(a) Borrower fails to:

- (i) pay when due any principal due and payable hereunder, or subject to Section 10.1(a)(ii) hereof, fails to perform any of the covenants contained in Sections 9.14 and 9.23 of this Agreement or fails to perform any of the covenants contained in Sections 9.13, 9.18 and 9.24 of this Agreement;
  - (ii) perform any of the covenants contained in Sections 9.14 and 9.23 of this Agreement, where such failure to perform is caused solely by the exercise of discretion on the part of Agent pursuant to Section 2.1(b) hereof and where such failure to perform is not remedied to the satisfaction of Agent, in its sole discretion, within three (3) days of the date on which such term covenant, condition or provision was to be performed;
  - (iii) fails to perform any of the covenants contained in Section 6.3 of this Agreement, where such failure to perform is not remedied to the satisfaction of Agent, in its sole discretion, within one (1) day of the original date on which such term, covenant, condition or provision was to be performed;
  - (iv) pay when due any Obligations (other than principal) or fails to perform any of the covenants contained in Sections 6.6, 7.1, 7.2, 9.1, 9.2, 9.3, 9.5, 9.7, 9.8, 9.9, 9.10, 9.12, 9.15 or 9.19 of this Agreement, where such failure to pay or perform, as applicable, is not remedied to the satisfaction of Agent, in its sole discretion, within three (3) days of the original date on which such term, covenant, condition or provision was to be performed;
- or

(v) fails to perform any other terms, covenants, conditions or provisions, or if any representations and warranties hereunder proves to be false or inaccurate when made, contained in this Agreement or any of the other Financing Agreements, where such failure to perform or to revise such representation or warranty is not remedied to the satisfaction of Agent, in its sole discretion, within fifteen (15) days from notice by Agent;

(b) any Obligor:

(i) revokes or terminates any of the terms, covenants, conditions or provisions of any Financing Agreement;

(ii) fails to pay principal required pursuant to the terms, covenants, conditions or provisions of any Financing Agreement;

(iii) fails to pay Obligations (other than principal) required pursuant to the terms covenants, conditions or provisions of any Financing Agreement where such failure to pay is not remedied to the satisfaction of Agent, in its sole discretion, within three (3) days of the original date on which such payment was to be made; or

(iv) fails to perform any other terms covenants, conditions or provisions of any Financing Agreement, where such failure to perform is not remedied to the satisfaction of Agent, in its sole discretion, within fifteen (15) days from notice by Agent;

(c) any judgment for the payment of money is rendered against Borrower or any Obligor in excess of \$1,000,000 in any one case or in excess of \$2,000,000 in the aggregate and shall remain undischarged or unvacated for a period in excess of sixty (60) days or execution shall at any time not be effectively stayed, or any judgment other than for the payment of money, or injunction, attachment, garnishment or execution is rendered against Borrower or any Obligor or any of their assets;

(d) Borrower dissolves, suspends or discontinues doing business, any Obligor (which is a partnership, limited liability company, limited partnership, limited liability partnership or a corporation) or any general partner of an Obligor that is a general partnership dissolves, suspends or discontinues doing business or any Obligor (who is a natural person) dies;

(e) Borrower or any Obligor becomes insolvent, makes an assignment for the benefit of creditors, proposes to make, makes or sends notice of a bulk sale or calls a meeting of its creditors or principal creditors;

(f) a petition, case or proceeding under the bankruptcy laws of Canada or similar laws of any foreign jurisdiction now or hereafter in effect or under any insolvency, arrangement, reorganization, moratorium, receivership, readjustment of debt, dissolution or liquidation law or statute of any jurisdiction now or hereafter in effect (whether at law or in equity) is filed or commenced against Borrower or any Obligor or all or any part of its properties and such petition or application is not dismissed within thirty (30) days after the date of its filing or

Borrower or any Obligor shall file any answer admitting or not contesting such petition or application or indicates its consent to, acquiescence in or approval of, any such action or proceeding or the relief requested is granted sooner;

(g) a petition, case or proceeding under the bankruptcy laws of Canada or similar laws of any foreign jurisdiction now or hereafter in effect or under any insolvency, arrangement, reorganization, moratorium, receivership, readjustment of debt, dissolution or liquidation law or statute of any jurisdiction now or hereafter in effect (whether at a law or equity) is filed or commenced by Borrower or any Obligor for all or any part of its property including if Borrower or any Obligor shall:

- (i) apply for or consent to the appointment of a receiver, trustee or liquidator of it or of all or a substantial part of its property and assets;
- (ii) be unable, or admit in writing its inability, to pay its debts as they mature, or commit any other act of bankruptcy;
- (iii) make a general assignment for the benefit of creditors;
- (iv) file a voluntary petition or assignment in bankruptcy or a proposal seeking a reorganization, compromise, moratorium or arrangement with its creditors;
- (v) take advantage of any insolvency or other similar law pertaining to arrangements, moratoriums, compromises or reorganizations, or admit the material allegations of a petition or application filed in respect of it in any bankruptcy, reorganization or insolvency proceeding; or
- (vi) take any corporate action for the purpose of effecting any of the foregoing;

(h) any default by Borrower or any Obligor under any agreement, document or instrument relating to any indebtedness for borrowed money owing to any person other than Lenders, contingent indebtedness in connection with any guarantee, letter of credit, indemnity or similar type of instrument in favour of any person other than Agent or Lenders, in any case in an amount in excess of \$500,000, which default continues for more than the applicable cure period, if any, with respect thereto, or any default by Borrower or any Obligor under any material contract, lease, license or other obligation to any person other than Agent or Lenders, in any case in an amount in excess of \$500,000, which default continues for more than the applicable cure period, if any, with respect thereto;

(i) any acquisition of control or change in the controlling ownership of Borrower, if any, which may reasonably be expected to have a material adverse effect on Borrower's financial condition;

(j) there shall be a change in the business or assets of Borrower or any Obligor after the date hereof which is reasonably expected to have a material adverse effect on Borrower or any Obligor;

(k) a requirement from the Minister of National Revenue for payment pursuant to Section 224 or any successor section of the *Income Tax Act* (Canada) or Section 317, or any successor section or any other Person in respect of Borrower of the *Excise Tax Act* (Canada) or any comparable provision of similar legislation shall have been received by Agent or any other Person in respect of Borrower or otherwise issued in respect of Borrower;

(l) the occurrence and continuance of an Event of Default (as such term is defined in the Trust Indenture) which default has not been cured within the applicable grace period provided in respect thereof or has not been waived by the party so entitled to waive same;

(m) there shall be a default under any Swap Agreement and such default continues for more than the applicable cure period, if any, with respect thereto;

(n) any material loss, damage or destruction of the collateral purported to be covered by the Financing Agreements (including the Collateral) that is not covered in full by insurance proceeds payable to Agent thereunder or under the other Financing Agreements;

(o) any Lien created by a Financing Agreement shall cease to be a valid and perfected first priority Lien (except as permitted herein or therein) in any material amount of the collateral purported to be covered thereby (including the Collateral); or

(p) an ERISA Event shall occur which results in or could reasonably be expected to result in liability of Borrower in an aggregated amount in excess of \$500,000.

## **10.2 Remedies**

(a) At any time an Event of Default exists or has occurred and is continuing, Agent shall have all rights and remedies provided in the Financing Agreements, the PPSA, UCC and other applicable law, all of which rights and remedies may be exercised without notice to or consent by Borrower or any Obligor (and shall be exercised if directed by Required Lenders), except as such notice or consent is expressly provided for hereunder or required by applicable law. All rights, remedies and powers granted to Agent and Lenders, under any of the Financing Agreements, the PPSA, UCC or other applicable law, are cumulative, not exclusive and enforceable, in Agent's or Lenders' discretion, alternatively, successively, or concurrently on any one or more occasions, and shall include the right to apply to a court of equity for an injunction to restrain a breach or threatened breach by Borrower of any of the Financing Agreements. Agent may, (and shall upon the instruction of Required Lenders) at any time or times, proceed directly against Borrower or any Obligor to collect the Obligations (except under or in connection with Swap Agreements) without prior recourse to the Collateral.

(b) Without limiting the foregoing and subject to Section 10.2(c) hereof, at any time an Event of Default exists or has occurred and is continuing, Agent may (and shall upon the instruction of Required Lenders), in its discretion: (i) accelerate the payment of all outstanding Obligations (except under or in connection with Swap Agreements) and demand immediate payment thereof to Agent (provided, that, upon the occurrence of any Event of Default described in Sections 10.1(f) and 10.1(g), all outstanding Obligations (except under or in connection with Swap Agreements) shall automatically become immediately due and payable); (ii) with or without judicial process or the aid or assistance of others, enter upon any premises

on or in which any of the Collateral may be located and take possession of the Collateral or complete processing, manufacturing and repair of all or any portion of the Collateral and carry on the business of Borrower; (iii) require Borrower, at Borrower's expense, to assemble and make available to Agent any part or all of the Collateral at any place and time designated by Agent; (iv) collect, foreclose, receive, appropriate, set-off and realize upon any and all Collateral; (v) remove any or all of the Collateral from any premises on or in which the same may be located for the purpose of effecting the sale, foreclosure or other disposition thereof or for any other purpose; (vi) sell, lease, transfer, assign, deliver or otherwise dispose of any and all Collateral (including entering into contracts with respect thereto, public or private sales at any exchange, broker's board, at any office of Agent or elsewhere) at such prices or terms as Agent may deem reasonable, for cash, upon credit or for future delivery, with Agent having the right to purchase the whole or any part of the Collateral at any such public sale, all of the foregoing being free from any right or equity of redemption of Borrower, which right or equity of redemption is hereby expressly waived and released by Borrower; (vii) without limiting clause (vi), grant a general, special or other license in respect of any aspect of the Collateral on an exclusive or non-exclusive basis to any person throughout the world or any part of it and on such terms and on such conditions as Agent may consider appropriate; (viii) enforce against any licensee or other person all rights and remedies of Borrower with respect to all or any part of the Collateral, and take or refrain from taking any action that Borrower might take with respect to any of those rights and remedies, and for this purpose Agent shall have the exclusive right to enforce or refrain from enforcing those rights and remedies, and may in the name of Borrower and at its expense retain and instruct counsel and initiate any court or other proceeding that Agent considers necessary or expedient; (ix) take any step necessary to preserve, maintain or insure the whole or any part of the Collateral or to realize upon any of it put it in vendable condition, and any amount paid as a result of any taking any such steps shall be a cost the payment of which is secured by this Agreement; (x) borrow money and use the Collateral directly or indirectly in carrying on Borrower's business or as security for loans or advances for any such purposes; (xi) require Borrower to immediately begin using commercially reasonable efforts to obtain all consents and to provide all notices to any Client, as applicable, which may be required to permit Agent to assign the Eligible Contracts and Leases; (xii) grant extensions of time and other indulgences, take and give up security, accept compositions, grant releases and discharges, and otherwise deal with Borrower, debtors of Borrower, sureties and others as Agent may see fit without prejudice to the liability of Borrower or Agent's right to hold and realize the security interest created under any Financing Agreement; and/or (xiii) terminate this Agreement. If any of the Collateral is sold or leased by Agent upon credit terms or for future delivery, the Obligations shall not be reduced as a result thereof until payment therefor is finally collected by Agent. If notice of disposition of Collateral is required by law, five (5) days prior notice by Agent to Borrower designating the time and place of any public sale or the time after which any private sale or other intended disposition of Collateral is to be made, shall be deemed to be reasonable notice thereof and Borrower waives any other notice. In the event Agent institutes an action to recover any Collateral or seeks recovery of any Collateral by way of prejudgment remedy, Borrower waives the posting of any bond which might otherwise be required.

(c) Notwithstanding anything to the contrary contained in this Section 10.2:



- (i) for the duration of the IP Grace Period, Agent shall not be permitted to enforce its security interest against the IP Collateral, or to exercise its rights under Section 10.2(b)(vii) hereof except as permitted pursuant to the IP Collateral License Agreement;
- (ii) for the duration of the IP Grace Period, Borrower shall be permitted to use the IMAX name to carry on business;
- (iii) upon the commencement of the IP Grace Period, Agent shall have, pursuant to the IP Collateral License Agreement, a royalty-free, freely assignable perpetual license to use the IP Collateral required to enable Agent to perform the obligations of Borrower under the Contracts and Leases;
- (iv) upon the commencement of the IP Grace Period, Agent may sell, transfer, assign and/or otherwise dispose of the Collateral, other than the IP Collateral, to any transferee or assignee, and
- (v) subsequent to the expiry of the IP Grace Period, provided that an Event of Default is then continuing, Agent may sell, transfer, assign and/or otherwise dispose of any of the IP Collateral up to a maximum amount equal to the outstanding Obligations together with all costs, charges and expenses incurred by Agent as a result of enforcing against the IP Collateral and Borrower hereby irrevocably designates and appoints Agent (and all persons designated by Agent) as Borrower's true and lawful attorney-in-fact and authorizes Agent (and all persons designated by Agent) to effect the foregoing.

(d) Agent may apply the cash proceeds of Collateral actually received by Agent from any sale, lease, foreclosure or other disposition of the Collateral to payment of the Obligations in the order set forth in Section 6.4(a).

Borrower shall remain liable to Agent for the payment of any deficiency with interest at the highest rate provided for herein and all costs and expenses of enforcement including legal costs and expenses.

(e) Without limiting the foregoing, upon the occurrence of an Event of Default that is continuing, Agent or Lenders may, at their option, without notice, (i) cease making Revolving Loans or arranging Letter of Credit Accommodations or reduce the Lending Formulas or amounts of Revolving Loans and Letter of Credit Accommodations available to Borrower and/or (ii) terminate any provision of this Agreement providing for any future Revolving Loans or Letter of Credit Accommodations to be made by Lenders to Borrower.

(f) Agent may appoint, remove and reappoint any person or persons, including an employee or agent of Agent or a Lender to be a receiver (the "**Receiver**") which term shall include a receiver and manager of, or agent for, all or any part of the Collateral. Any such Receiver shall, as far as concerns responsibility for his acts, be deemed to be the agent of Borrower and not of Agent or Lenders, and Agent and Lenders shall not in any way be

responsible for any misconduct, negligence or non-feasance of such Receiver, his employees or agents. Except as otherwise directed by Agent, all money received by such Receiver shall be received in trust for and paid to Agent. Such Receiver shall have all of the powers and rights of Agent described in this Section 10.2. Agent may, either directly or through its agents or nominees, exercise any or all powers and rights of a Receiver.

(g) Where Agent realizes upon any of the Collateral, and in particular upon any of the IP Collateral, Borrower shall provide without charge its know-how and expertise relating to the use and application of the Collateral, and in particular shall instruct Agent, and any purchaser of the Collateral designated by Agent, concerning any IP Collateral including any confidential information or trade secrets of Borrower. For greater certainty, the parties agree that unless such confidential information or trade secrets form part of the Collateral being realized upon, such confidential information or trade secrets shall be provided for use only subject to any agreement regarding the confidentiality thereof or for the protection thereof as may be reasonably requested by Borrower.

(h) Borrower shall pay all reasonable costs, charges and expenses incurred by Agent or Lenders or any Receiver or any nominee or agent of Agent or Lenders, whether directly or for services rendered (including solicitor's costs on a solicitor and his own client basis, auditor's costs, other legal expenses and Receiver remuneration) in enforcing any Financing Agreement and in enforcing or collecting Obligations and all such expenses together with any money owing as a result of any borrowing permitted hereby shall be a charge on the proceeds of realization and shall be secured hereby.

## **SECTION 11. ASSIGNMENT AND PARTICIPATIONS; APPOINTMENT OF AGENT**

### **11.1 Assignment and Participations**

(a) Subject to the terms of this Section 11.1, any Lender may make an assignment or sale of participations in, at any time or times, the Financing Agreements, Loans and any Commitment or any portion thereof or interest therein, including any Lender's rights, title, interests, remedies, powers or duties thereunder. Any assignment by a Lender shall:

- (i) be in a minimum amount of \$5,000,000;
- (ii) require the consent of Agent and Borrower provided that:
  - (A) such consent is not to be unreasonably withheld, conditioned or delayed; and
  - (B) the consent of Borrower shall not be required if:
    - (I) an Event of Default or Default shall have occurred and be continuing; or
    - (II) such assignment is to an Eligible Transferee;
- (iii) not be to a Prohibited Transferee;

- (iv) be effected by the execution of an assignment Agreement (an “**Assignment Agreement**”) substantially in the form attached hereto as Schedule 11.1(a)(iv) and otherwise in form and substance reasonably satisfactory to, and acknowledged by, Agent;
- (v) be conditioned on such assignee Lender representing to the assigning Lender and Agent that it is purchasing the applicable Loans to be assigned to it for its own account, for investment purposes and not with a view to the distribution thereof; and
- (vi) include a payment to Agent of an assignment fee of Three Thousand Five Hundred US Dollars (\$3,500).

In the case of an assignment by a Lender under this Section 11.1, the assignee shall have, to the extent of such assignment, the same rights, benefits and obligations as all other Lenders hereunder. The assigning Lender shall be relieved of its obligations hereunder with respect to its Commitments or assigned portion thereof from and after the date of such assignment. Borrower hereby acknowledges and agrees that any assignment shall give rise to a direct obligation of Borrower to the assignee and that the assignee shall be considered to be a “**Lender**”. In all instances, each Lender’s liability to make Loans hereunder shall be several and not joint and shall be limited to such Lender’s Pro Rata Share of the applicable Commitment. In the event any Lender assigns or otherwise transfers all or any part of the Obligations, such Lender shall so notify Borrower and Borrower shall, upon the request of Agent or such Lender, execute new Term Notes in exchange for the Term Notes, if any, being assigned. Notwithstanding the foregoing provisions of this Section 11.1(a), any Lender may at any time pledge the Obligations held by it and such Lender’s rights under this Agreement and the other Financing Agreements to the Bank of Canada or the Canada Deposit Insurance Corporation; provided, that no such pledge to the Bank of Canada or the Canada Deposit Insurance Corporation shall release such Lender from such Lender’s obligations hereunder or under any other Financing Agreement.

(b) Any sale of a participation by a Lender of all or any part of its Commitments shall be made with the understanding that all amounts payable by Borrower hereunder shall be determined as if that Lender had not sold such participation, and that the holder of any such participation shall not be entitled to require such Lender to take or omit to take any action hereunder except actions directly affecting (i) any reduction in the principal amount of, or interest rate or fees payable with respect to any Loan in which such holder participates, (ii) any extension of the scheduled amortization of the principal amount of any Loan in which such holder participates or the final maturity date thereof, and (iii) any release of all or substantially all of the Collateral (other than in accordance with the terms of this Agreement or the other Financing Agreements). Neither Agent nor any Lender (other than a Lender selling a participation) shall have any duty to any participant and may continue to deal solely with Lenders selling a participation as if no such sale had occurred. No consent of Borrower is required with respect to the sale of a participation by a Lender of all or any part of its Commitment. No sale of a participation by a Lender of all or any part of its Commitment shall be made to a Prohibited Transferee.

(c) Except as expressly provided in this Section 11.1, no Lender shall, as between Borrower and that Lender, or Agent and that Lender, be relieved of any of its obligations hereunder as a result of any sale, assignment, transfer or negotiation of, or granting of participation in, all or any part of the Loans, the Term Notes or other Obligations owed to such Lender.

(d) Borrower shall assist any Lender permitted to sell assignments or participations under this Section 11.1 as reasonably required to enable the assigning or selling Lender to effect any such assignment or participation, including the execution and delivery of any and all agreements, notes and other documents and instruments as shall be requested, the preparation of informational materials for, and the participation of management in meetings with, potential assignees or participants. Borrower shall certify the correctness, completeness and accuracy of all descriptions of Borrower and its respective affairs contained in any selling materials provided by it and all other information provided by it and included in such materials.

(e) A Lender may furnish any information concerning Borrower in the possession of such Lender from time to time to assignees and participants (including prospective assignees and participants) provided such Persons agree to maintain the confidentiality of such information.

(f) Borrower may not assign its rights under the Financing Agreements and any other document referred to herein or therein without the prior written consent of Agent and all Lenders.

#### **11.2 Appointment of Agent**

(a) Agent is hereby appointed to act on behalf of Lenders as Agent under this Agreement and the other Financing Agreements. The provisions of this Section 11.2 are solely for the benefit of Agent and Lenders and neither Borrower nor any other Person shall have any rights as a third party beneficiary of any of the provisions hereof. In performing its functions and duties under this Agreement and the other Financing Agreements, Agent shall act solely as an agent and mandatory of Lenders and does not assume and shall not be deemed to have assumed any obligation toward or relationship of agency, mandatory or trust with or for Borrower or any Person other than Lenders. Agent shall have no duties or responsibilities except for those expressly set forth in this Agreement and the other Financing Agreements. The duties of Agent shall be mechanical and administrative in nature and Agent shall not have, or be deemed to have, by reason of this Agreement, any other Financing Agreement or otherwise a fiduciary relationship in respect of any Lender. Except as expressly set forth in this Agreement and the other Financing Agreements, Agent shall not have any duty to disclose, and shall not be liable for failure to disclose, any information relating to Borrower, Obligors or any of their respective Subsidiaries or any account debtor that is communicated to or obtained by Agent or any of its affiliates in any capacity. Neither Agent nor any of its Affiliates nor any of their respective officers, directors, employees, agents or representatives shall be liable to any Lender for any action taken or omitted to be taken by it hereunder or under any other Financing Agreement, or in connection herewith or therewith, except for damages caused by its or their own gross negligence or wilful misconduct as determined by a final and non-appealable judgment or court order binding on them.

(b) If Agent shall request instructions from all Lenders, all affected Lenders or Required Lenders, as the case may be, with respect to any act or action (including failure to act) in connection with this Agreement or any other Financing Agreement, then Agent shall be entitled to refrain from such act or taking such action unless and until Agent shall have received instructions from all Lenders, all affected Lenders or Required Lenders, as the case may be, and Agent shall not incur liability to any Person by reason of so refraining. Agent shall be fully justified in failing or refusing to take any action hereunder or under any other Financing Agreement (i) if such action would, in the opinion of Agent, be contrary to law or the terms of this Agreement or any other Financing Agreement; (ii) if such action would, in the opinion of Agent, expose Agent to liabilities under Environmental Laws; or (iii) if Agent shall not first be indemnified to its satisfaction against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action. Without limiting the foregoing, no Lender shall have any right of action whatsoever against Agent as a result of Agent acting or refraining from acting hereunder or under any other Financing Agreement in accordance with the instructions of all Lenders, all affected Lenders or Required Lenders, as the case may be.

### **11.3 Agent's Reliance, Etc.**

Neither Agent nor any of its Affiliates nor any of their respective directors, officers, agents or employees shall be liable for any action taken or omitted to be taken by it or them under or in connection with this Agreement or the other Financing Agreements, except for damages caused by its or their own negligence or wilful misconduct as determined by a final and non-appealable judgment or court order binding on them. Without limiting the generality of the foregoing, Agent: (i) may treat the payee of any Term Note as the holder thereof until Agent receives written notice of the assignment or transfer thereof signed by such payee and in form reasonably satisfactory to Agent; (ii) may consult with legal counsel, independent public accountants and other experts selected by it and shall not be liable for any action taken or omitted to be taken by it in good faith in accordance with the advice of such counsel, accountants or experts; (iii) makes no warranty or representation to any Lender and shall not be responsible to any Lender for any statements, warranties or representations made in or in connection with this Agreement or the other Financing Agreements; (iv) shall not have any duty to ascertain or to inquire as to the performance or observance of any of the terms, covenants or conditions of this Agreement or the other Financing Agreements on the part of Borrower or to inspect the Collateral (including the books and records) of Borrower; (v) shall not be responsible to any Lender for the due execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement or the other Financing Agreements or any other instrument or document furnished pursuant hereto or thereto; and (vi) shall incur no liability under or in respect of this Agreement or the other Financing Agreements by acting upon any notice, consent, certificate or other instrument or writing (which may be by telecopy, telegram, cable or telex) believed by it to be genuine and signed or sent by the proper party or parties.

### **11.4 Agent and Affiliates**

With respect to any of its Commitments hereunder, Agent shall have the same rights and powers under this Agreement and the other Financing Agreements as any other Lender and may exercise the same as though it were not Agent; and the term "**Lender**" or "**Lenders**" shall, unless otherwise expressly indicated, include Agent in its individual capacity. Agent and its Affiliates

may lend money to, invest in, and generally engage in any kind of business with Borrower, any of its Affiliates and any Person who may do business with or own securities of Borrower or any such Affiliate, all as if Agent were not Agent and without any duty to account therefor to Lenders. Agent and its Affiliates may accept fees and other consideration from Borrower for services in connection with this Agreement or otherwise without having to account for the same to Lenders. Each Lender acknowledges the potential conflict of interest between Agent as a Lender and Agent as agent hereunder.

#### **11.5 Lender Credit Decision**

Each Lender acknowledges that it has, independently and without reliance upon Agent or any other Lender and based on the Information Certificate and such other documents and information as it has deemed appropriate, made its own credit and financial analysis of Borrower and its own decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon Agent or any other Lender and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement. Each Lender acknowledges the potential conflict of interest of each other Lender as a result of Lenders holding disproportionate interests in the Loans, and expressly consents to, and waives any claim based upon, such conflict of interest.

#### **11.6 Indemnification**

Lenders agree to indemnify Agent (to the extent not reimbursed by Borrower and without limiting the obligations of Borrower hereunder), rateably according to their respective Pro Rata Shares, from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever that may be imposed on, incurred by, or asserted against Agent in any way relating to or arising out of this Agreement or any other Financing Agreement or any action taken or omitted to be taken by Agent in connection therewith; provided, that no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from Agent's gross negligence or wilful misconduct as determined by a final and non-appealable judgment or court order binding on Agent. Without limiting the foregoing, each Lender agrees to reimburse Agent promptly upon demand for its rateable share according to its Pro Rata Share of any out-of-pocket expenses (including reasonable fees of counsel) incurred by Agent in connection with the preparation, execution, delivery, administration, modification, amendment or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under, this Agreement and each other Financing Agreement, to the extent that Agent is not reimbursed for such expenses by Borrower.

#### **11.7 Failure to Act**

Except for action expressly required of Agent hereunder and under the other Financing Agreements, Agent shall in all cases be fully justified in failing or refusing to act hereunder and thereunder unless it shall receive further assurances to its satisfaction from Lenders of their

indemnification obligations under Section 11.6 hereof against any and all liability and expense that may be incurred by it by reason of taking or continuing to take any such action.

#### **11.8 Concerning the Collateral and the Related Financing Agreements**

Each Lender authorizes and directs Agent to enter into this Agreement and the other Financing Agreements. Each Lender agrees that any action taken by Agent in accordance with the terms of this Agreement or the other Financing Agreements and the exercise by Agent of its powers set forth therein or herein, together with such other powers that are reasonably incidental thereto, shall be binding upon Lenders.

#### **11.9 Field Audit, Examination Reports and other Information; Disclaimer by Lenders.**

By signing this Agreement, each Lender:

(a) is deemed to have requested that Agent furnish such Lender, within a reasonable time after it becomes available to Agent, a copy of each field audit, examination report, Compliance Certificate, Borrowing Base Certificate and/or other documentation (each such audit, report, certificate or documentation being referred to herein as a “**Report**” and collectively, “**Reports**”);

(b) expressly agrees and acknowledges that Agent (i) does not make any representation or warranty as to the accuracy of any Report, or (ii) shall not be liable for any information contained in any Report;

(c) expressly agrees and acknowledges that the Reports are not comprehensive audits or examinations, that Agent or any other party performing any audit or examination will inspect only specific information regarding Borrower and will rely significantly upon Borrower’s books and records, as well as on representations of Borrower’s personnel; and

(d) agrees to keep all Reports confidential and strictly for its internal use and not to distribute or use any Report in any other manner.

#### **11.10 Collateral Matters**

(a) Lenders hereby irrevocably authorize Agent at its option and in its discretion to release any Lien upon any of the Collateral (i) upon termination of the Commitments and payment and satisfaction of all of the Obligations and delivery of cash collateral to the extent required under Section 13.1 below; or (ii) constituting property being sold or disposed of if Borrower certifies to Agent that the sale or disposition is made in compliance with Section 9.7 hereof (and Agent may rely conclusively on any such certificate, without further enquiry); or (iii) constituting property in which Borrower did not own an interest at the time the Lien was granted or at any time thereafter; or (iv) if required under the terms of any of the other Financing Agreements, including any intercreditor agreement; or (v) approved, authorized or ratified in writing in accordance with Section 11.15 hereof. Except as provided above, Agent will not release any Lien upon any of the Collateral without the prior written authorization required in accordance with Section 11.15 hereof.

(b) Without any manner limiting Agent's authority to act without any specific or further authorization or consent by applicable Lenders, each Lender, as applicable, agrees to confirm in writing, upon request by Agent, the authority to release Collateral conferred upon Agent under this Section. Agent shall (and is hereby irrevocably authorized by Lenders to) execute such documents as may be necessary to evidence the release of the Liens granted to Agent upon any Collateral to the extent set forth above; provided, that, (i) Agent shall not be required to execute any such document on terms which, in Agent's opinion, would expose Agent to liability or create any obligations or entail any consequence other than the release of such Lien without recourse or warranty and (ii) such release shall not in any manner discharge, affect or impair the Obligations or any Lien upon (or obligations of any Borrower in respect of) the Collateral retained by Borrower.

(c) Agent shall have no obligation whatsoever to any Lender or any other Person to investigate, confirm or assure that the Collateral exists or is owned by Borrower or is cared for, protected or insured or has been encumbered, or that any particular items of Collateral meet the eligibility criteria applicable in respect of the Loans hereunder, or whether any particular reserves are appropriate, or that the Liens granted to Agent pursuant hereto or any of the Financing Agreements or otherwise have been properly or sufficiently or lawfully created, perfected, protected or enforced or are entitled to any particular priority, or to exercise at all or in any particular manner or under any duty of care, disclosure or fidelity, or to continue exercising, any of the rights, authorities and powers granted or available to Agent in this Agreement or in any of the other Financing Agreements, it being understood and agreed that in respect of Collateral, or any act, omission or event related thereto, Agent may act in any manner it may deem appropriate, in its discretion, given Agent's own interest in the Collateral as a Lender and that Agent shall have no duty or liability whatsoever to any other Lender.

#### **11.11 Successor Agent**

Agent may resign at any time by giving not less than thirty (30) days' prior written notice thereof to Lenders and Borrower. Upon any such resignation, Required Lenders shall have the right to appoint a successor Agent. If no successor Agent shall have been so appointed by Required Lenders and shall have accepted such appointment within thirty (30) days after the resigning Agent's giving notice of resignation, then the resigning Agent may, on behalf of Lenders, appoint a successor Agent, which shall be a Lender, if a Lender is willing to accept such appointment, or otherwise shall be a commercial bank or financial institution or a subsidiary of a commercial bank or financial institution if such commercial bank or financial institution or other entity whose business includes making commercial loans, in each case, is organized under the laws of Canada or of any province thereof. If no successor Agent has been appointed pursuant to the foregoing, within thirty (30) days after the date such notice of resignation was given by the resigning Agent, such resignation shall become effective and Required Lenders shall thereafter perform all the duties of Agent hereunder until such time, if any, as Required Lenders appoint a successor Agent as provided above. Any successor Agent appointed by Required Lenders hereunder shall be subject to the approval of Borrower, such approval not to be unreasonably withheld or delayed; provided, that such approval shall not be required if an Event of Default has occurred and is continuing. Upon the acceptance of any appointment as Agent hereunder by a successor Agent, such successor Agent shall succeed to and become vested with all the rights, powers, privileges and duties of the resigning Agent. Upon the earlier of the acceptance of any



appointment as Agent hereunder by a successor Agent or the effective date of the resigning Agent's resignation, the resigning Agent shall be discharged from its duties and obligations under this Agreement and the other Financing Agreements, except that any indemnity rights or other rights in favour of such resigning Agent shall continue. After any resigning Agent's resignation hereunder, the provisions of this Section 11 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was acting as Agent under this Agreement and the other Financing Agreements.

#### **11.12 Setoff and Sharing of Payments**

In addition to any rights now or hereafter granted under applicable law and not by way of limitation of any such rights, upon the occurrence and during the continuance of any Event of Default and subject to Section 11.13(f), each Lender is hereby authorized at any time or from time to time, without notice to Borrower or to any other Person other than Agent, any such notice being hereby expressly waived, to setoff and to appropriate and to apply any and all balances held by it at any of its offices for the account of Borrower (regardless of whether such balances are then due to Borrower) and any other properties or assets at any time held or owing by that Lender to or for the credit or for the account of Borrower against and on account of any of the Obligations that are not paid when due; provided, that Lenders exercising such setoff rights shall give notice thereof to Borrower promptly after exercising such rights. Any Lender exercising a right of setoff or otherwise receiving any payment on account of the Obligations in excess of its Pro Rata Share thereof shall purchase for cash (and the other Lender shall sell) such participations in each such other Lender's Pro Rata Share of the Obligations as would be necessary to cause such Lender to share the amount so setoff or otherwise received with the other Lender in accordance with their respective Pro Rata Shares. Borrower agrees, to the fullest extent permitted by law that (a) any Lender may exercise its right to setoff with respect to amounts in excess of its Pro Rata Share of the Obligations and may sell participations in such amounts so setoff to the other Lenders; and (b) any Lender so purchasing a participation in a Loan made or other Obligations held by the other Lenders may exercise all rights of setoff, bankers' lien, counterclaim or similar rights with respect to such participation as fully as if such Lender were a direct holder of the Loan and the other Obligations in the amount of such participation. Notwithstanding the foregoing, if all or any portion of the setoff amount or payment otherwise received is thereafter recovered from a Lender that has exercised the right of setoff, the purchase of participations by that Lender shall be rescinded and the purchase price restored without interest.

#### **11.13 Advances; Payments; Non-Funding Lenders; Information; Actions in Concert**

##### **(a) Advances; Payments**

- (i) In each funding notice provided by Agent to a Lender hereunder, Agent shall provide such Lender with written confirmation (by telephone, telecopy or email (if such Lender has provided email notice coordinates to Agent)) that all conditions precedent hereunder to such funding have been satisfied or waived in accordance with the terms hereof.

- (ii) Each Lender shall make the amount of such Lender's Pro Rata Share of such Loan available to Agent in same day funds by wire transfer to Agent's account not later than 11:00 a.m. (Toronto time) on the requested funding date (which must be a Business Day). After receipt of such wire transfers (or, in Agent's sole discretion, before receipt of such wire transfers), subject to the terms hereof, Agent shall make the requested Loan to Borrower. All payments by each Lender shall be made without setoff, counterclaim or deduction of any kind.
- (iii) On the 2nd Business Day of each calendar month or more frequently at Agent's election (each, a "**Settlement Date**"), Agent shall advise each Lender by telephone, telecopy or email (if such Lender has provided email notice coordinates to Agent) of the amount of such Lender's Pro Rata Share of principal, interest and fees paid for the benefit of Lenders with respect to each applicable Loan. Provided that each Lender has funded all payments and Loans required to be made by it and purchased all participations required to be purchased by it under this Agreement and the other Financing Agreements as of such Settlement Date, Agent shall pay to each Lender such Lender's Pro Rata Share of principal, interest and fees paid by Borrower since the previous Settlement Date for the benefit of such Lender on the portion of the Loans held by it. To the extent that any Lender (a "**Non-Funding Lender**") has failed to fund all such payments and Loans or failed to fund the purchase of all such participations, Agent shall be entitled to set off the funding short-fall against that Non-Funding Lender's Pro Rata Share of all payments received from Borrower. Such payments shall be made by wire transfer to such Lender's account not later than 2:00 p.m. (Toronto time) on the next Business Day following each Settlement Date.

(b) Availability of Lender's Pro Rata Share. Agent may assume that each Lender will make its Pro Rata Share of each Loan available to Agent on each funding date (which must be a Business Day). If such Pro Rata Share is not, in fact, paid to Agent by such Lender when due, Agent will be entitled to recover such amount on demand from such Lender without setoff, counterclaim or deduction of any kind. If any Lender fails to pay the amount of its Pro Rata Share forthwith upon Agent's demand, Agent shall promptly notify Borrower and Borrower shall immediately repay such amount to Agent. Nothing in this Section 11.13(b) or elsewhere in this Agreement or the other Financing Agreements shall be deemed to require Agent to advance funds on behalf of any Lender or to relieve any Lender from its obligation to fulfil its Commitment hereunder or to prejudice any rights that a Borrower may have against any Lender as a result of any default by such Lender hereunder. To the extent that Agent advances funds to Borrower on behalf of any Lender and is not reimbursed therefor on the same Business Day as such Loan is made, Agent shall be entitled to retain for its account all interest accrued on such advance until reimbursed by the applicable Lender.

(c) Return of Payments.

- (i) If Agent pays an amount to a Lender under this Agreement in the belief or expectation that a related payment has been or will be received by Agent from Borrower and such related payment is not received by Agent, then Agent will be entitled to recover such amount from such Lender on demand without setoff, counterclaim or deduction of any kind.
- (ii) If Agent determines at any time that any amount received by Agent under this Agreement must be returned to Borrower or paid to any other Person pursuant to any bankruptcy or insolvency law or otherwise, then, notwithstanding any other term or condition of this Agreement or any other Financing Agreement, Agent will not be required to distribute any portion thereof to any Lender. In addition, each Lender will repay to Agent on demand any portion of such amount that Agent has distributed to such Lender, together with interest at such rate, if any, as Agent is required to pay to Borrower or such other Person, without setoff, counterclaim or deduction of any kind.

(d) Non-Funding Lenders. The failure of any Non-Funding Lender to make any Loan or any payment required by it hereunder on the date specified thereof, shall not relieve the other Lenders (each such other Lender, an “**Other Lender**”) of its obligations to make such Loan or purchase such participation on such date, but neither any Other Lender nor Agent shall be responsible for the failure of any Non-Funding Lender to make a Loan, purchase a participation or make any other payment required hereunder. Notwithstanding anything set forth herein to the contrary, a Non-Funding Lender shall not have any voting or consent rights under or with respect to any Financing Agreement or constitute a “**Lender**” for any voting or consent rights under or with respect to any Financing Agreement. At Borrower’s request, Agent or a Person acceptable to Agent shall have the right with Agent’s consent and in Agent’s sole discretion (but shall have no obligation) to purchase from any Non-Funding Lender, and each Non-Funding Lender agrees that it shall, at Agent’s request, sell and assign to Agent or such Person, all of the Commitments of that Non-Funding Lender for an amount equal to the principal balance of all Loans held by such Non-Funding Lender and all accrued interest and fees with respect thereto through the date of sale, such purchase and sale to be consummated pursuant to an executed Assignment Agreement.

(e) Dissemination of Information. Agent shall use reasonable efforts to provide Lenders with any notice of any Event of Default received by Agent from, or delivered by Agent to Borrower, with notice of any Event of Default of which Agent has actually become aware and with notice of any action taken by Agent following any Event of Default and with any notice received from Borrower pursuant to Section 9.7(b)(vii); provided, that Agent shall not be liable to any Lender for any failure to do so, except to the extent that such failure is attributable to Agent’s gross negligence or wilful misconduct as determined by a final and non-appealable judgment or court order binding on Agent.

(f) Actions in Concert. Anything in this Agreement to the contrary notwithstanding, each Lender hereby agrees with Agent and each other Lender that no Lender shall take any action to protect or enforce its rights arising out of this Agreement or the other Financing Agreements (including exercising any rights of setoff) without first obtaining the prior written

consent of Agent and all other Lenders, it being the intent of Lenders that any such action to protect or enforce rights under this Agreement and the other Financing Agreements shall be taken in concert and at the direction or with the consent of Agent, all Lenders, affected Lenders or Required Lenders, as the case may be.

#### **11.14 Meetings of Lenders**

Any Lender is entitled to call a meeting of all Lenders on not less than ten (10) Business Days prior written notice to all other Lenders for the purposes of considering any matters relevant to this Agreement, the other Financing Agreements and/or in respect of the Obligations

#### **11.15 Approval of Lenders and Agent**

(a) Notwithstanding any other provision of this Agreement but subject to Section 11.15(b), no amendment or waiver of any provision of this Agreement, nor consent to any departure by Borrower therefrom, shall in any event be effective unless the same shall be in writing and signed by the Required Lenders, and then such amendment, waiver or consent shall be effective only in the specific instance and for the specific purpose for which given;

- (i) provided that no amendment, waiver or consent shall, unless in writing and signed by all affected Lenders (other than a Non-Funding Lender) do any of the following at any time:
  - (A) reduce the rate or amount of any principal, interest or fees payable by Borrower or alter the currency or mode of calculation or computation thereof;
  - (B) extend the time for payments required to be made by Borrower or the Maturity Date;
  - (C) increase any Lender's Commitment;
  - (D) change the definition of Required Lenders, any provision of this Section 11.15 or reduce the voting percentages hereunder, or
  - (E) change the payment waterfall in Section 6.4(a) hereof,
- (ii) provided further that no amendment, waiver or consent shall, unless in writing and signed by all Lenders (other than a Non-Funding Lender) do any of the following at any time:
  - (A) release all or substantially all of the value of the collateral under any Financing Agreement or any guarantee of the Obligations;
  - (B) permit Borrower or any Obligor to assign its rights under the Financing Agreements;
  - (C) amend the Pro Rata sharing provisions hereunder; or

(D) amend the voting percentages hereunder.

(b) Notwithstanding Section 11.15(a), Agent may, without the consent of Lenders, make amendments to the Financing Agreements that are for the sole purpose of curing any immaterial or administrative ambiguity, defect or inconsistency. Agent shall, within a reasonable time, notify Lenders or any such action. Notwithstanding Section 11.15(a), no amendment, waiver or consent shall, unless in writing and signed by Agent in addition to Lenders required above to take such action, affect the rights or duties of Agent under this Agreement or any of the other Financing Agreements. Notwithstanding Section 11.15(a), no amendment, waiver or consent shall, unless in writing and signed by the applicable counterparty to a Swap Agreement (other than Borrower), in addition to Lenders required above to take such action, release all or substantially all of the value of the collateral under any Financing Agreement or any guarantee of the Obligations or amend Section 6.4(a) or Section 11.15(b).

## **SECTION 12. JURY TRIAL WAIVER; OTHER WAIVERS AND CONSENTS; GOVERNING LAW**

### **12.1 Governing Law; Choice of Forum; Service of Process; Jury Trial Waiver**

(a) The validity, interpretation and enforcement of the Financing Agreements and any dispute arising out of the relationship between the parties hereto, whether in contract, tort, equity or otherwise, shall be governed by the laws of the Province of Ontario and the federal laws of Canada applicable therein.

(b) Borrower, Lenders and Agent irrevocably consent and submit to the non-exclusive jurisdiction of the Superior Court of Justice (Ontario) and waive any objection based on venue or *forum non conveniens* with respect to any action instituted therein arising under any of the Financing Agreements or in any way connected with or related or incidental to the dealings of the parties hereto in respect of any of the Financing Agreements or the transactions related hereto or thereto, in each case whether now existing or hereafter arising, and whether in contract, tort, equity or otherwise, and agree that any dispute with respect to any such matters shall be heard only in the courts described above (except that Agent and Lenders shall have the right to bring any action or proceeding against Borrower or its property in the courts of any other jurisdiction which Agent or Lenders deem necessary or appropriate in order to realize on the Collateral or to otherwise enforce their respective rights against Borrower or its property).

(c) To the extent permitted by law, Borrower hereby waives personal service of any and all process upon it and consents that all such service of process may be made by registered mail (return receipt requested) directed to its address set forth on the signature pages hereof and service so made shall be deemed to be completed five (5) days after the same shall have been so deposited in the Canadian mails, or, at Agent's option, by service upon Borrower in any other manner provided under the rules of any such courts. Within thirty (30) days after such service, Borrower shall appear in answer to such process, failing which Borrower shall be deemed in default and judgment may be entered by Agent or Lenders against Borrower for the amount of the claim and other relief requested.

(d) TO THE EXTENT PERMITTED BY APPLICABLE LAW BORROWER, LENDERS AND AGENT EACH HEREBY WAIVE ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (i) ARISING UNDER ANY OF THE FINANCING AGREEMENTS OR (ii) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO IN RESPECT OF ANY OF THE FINANCING AGREEMENTS OR THE TRANSACTIONS RELATED HERETO OR THERETO IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER IN CONTRACT, TORT, EQUITY OR OTHERWISE. TO THE EXTENT PERMITTED BY APPLICABLE LAW, BORROWER, LENDERS AND AGENT EACH HEREBY AGREE AND CONSENT THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY AND THAT BORROWER, AGENT OR LENDER MAY FILE AN ORIGINAL COUNTERPART OF A COPY OF THIS AGREEMENT WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

(e) Lenders and Agent shall not have any liability to Borrower (whether in tort, contract, equity or otherwise) for losses suffered by Borrower in connection with, arising out of, or in any way related to the transactions or relationships contemplated by any Financing Agreement, or any act, omission or event occurring in connection herewith, unless it is determined by a final and non-appealable judgment or court order binding on Agent or a Lender, that the losses were the result of acts or omissions constituting gross negligence or wilful misconduct and Borrower hereby waives any claims for special, punitive, exemplary, indirect or consequential damages in respect of any breach or alleged breach by Agent or any Lender of any of the terms of this Agreement or the other Financing Agreements except in the case of gross negligence or wilful misconduct of Agent or any Lender as determined by a final and non-appealable judgment or court order binding on Agent or Lender.

(f) Borrower hereby expressly waives all rights of notice and hearing of any kind prior to the exercise of rights by Agent from and after the occurrence of an Event of Default that is continuing to repossess the Collateral with judicial process or to replevy, attach or levy upon the Collateral or other security for the Obligations. Borrower waives the posting of any bond otherwise required of Agent in connection with any judicial process or proceeding to obtain possession of, replevy, attach or levy upon the Collateral or other security for the Obligations, to enforce any judgment or other court order entered in favour of Agent, or to enforce by specific performance, temporary restraining order, preliminary or permanent injunction or any other Financing Agreement.

#### **12.2 Waiver of Notices**

Borrower hereby expressly waives demand, presentment, protest and notice of protest and notice of dishonour with respect to any and all instruments and commercial paper, included in or evidencing any of the Obligations or the Collateral, and any and all other demands and notices of any kind or nature whatsoever with respect to the Obligations, the Collateral and this Agreement, except such as are expressly provided for herein. No notice to or demand on Borrower which Agent may elect to give shall entitle Borrower to any other or further notice or demand in the same, similar or other circumstances.

### **12.3 Amendments and Waivers**

Subject to Section 11.15, neither this Agreement nor any provision hereof shall be amended or waived, nor consent to any departure by Borrower therefrom permitted, orally or by course of conduct, but only by a written agreement signed by an authorized officer of each Lender and Agent, and as to amendments, as also signed by an authorized officer of Borrower. Agent shall not, by any act, delay, omission or otherwise be deemed to have expressly or impliedly waived any of its rights, powers and/or remedies unless such waiver shall be in writing and signed by an authorized officer of Agent. Any such waiver shall be enforceable only to the extent specifically set forth therein. A waiver by Agent of any right, power and/or remedy on any one occasion shall not be construed as a bar to or waiver of any such right, power and/or remedy which Agent would otherwise have on any future occasion, whether similar in kind or otherwise.

### **12.4 Waiver of Counterclaim**

Borrower waives all rights to interpose any claims, deductions, setoffs or counterclaims of any nature (other than compulsory counterclaims) in any action or proceeding with respect to this Agreement, the Obligations, the Collateral or any matter arising therefrom or relating hereto or thereto.

### **12.5 Indemnification**

Borrower shall indemnify and hold Arranger, Agent and each Lender, and their respective directors, officers, agents, representatives, employees and counsel, harmless from and against any and all losses, claims, damages, liabilities, costs or expenses imposed on, incurred by or asserted against any of them in connection with any litigation, investigation, claim or proceeding commenced or threatened related to the negotiation, preparation, execution, delivery, enforcement, performance or administration of any Financing Agreements, or any undertaking or proceeding related to any of the transactions contemplated hereby or any act, omission, event or transaction related or attendant thereto or the relationship between any of Borrower and Obligor, on the other hand, and Arranger, Agent, each Lender and their respective directors, officers, agents, representatives, employees and counsel, on the other hand, including amounts paid in settlement, court costs, and the fees and expenses of counsel and others incurred in connection with investigating, preparing to defend or defending any such litigation, investigation, claim or proceeding. Such indemnification shall not apply to losses, claims, damages, liabilities, costs or expenses resulting from the gross negligence or wilful misconduct of Arranger, Agent, any Lender and/or their respective directors, officers, agents, representatives, employees and counsel as determined pursuant to a final non-appealable order of a court of competent jurisdiction or to losses, claims, damages, liabilities, costs or expenses to the extent relating to disputes among such indemnified parties or to a breach of their obligations to Borrower hereunder as determined pursuant to a final non-appealable order of a court of competent jurisdiction. To the extent that the undertaking to indemnify, pay and hold harmless set forth in this Section 12.5 may be unenforceable because it violates any law or public policy, Borrower shall pay the maximum portion which it is permitted to pay under applicable law to Arranger, Agent, each Lender and their respective directors, officers, agents, representatives, employees and counsel in satisfaction of indemnified matters under this Section 12.5. The foregoing indemnity shall survive the payment of the Obligations and the termination of this Agreement.

## **SECTION 13. TERM OF AGREEMENT; MISCELLANEOUS**

### **13.1 Term**

(a) The Financing Agreements shall continue in full force and effect for a term ending on the Maturity Date unless sooner terminated pursuant to the terms hereof. Upon the Maturity Date or effective date of termination of the Financing Agreements, Borrower shall pay to Agent, in full, all outstanding and unpaid Obligations (except under or in connection with any Swap Agreement) and shall furnish cash collateral to Agent in such amounts as Agent determines are reasonably necessary to secure Agent, Lenders and Secured Parties from loss, cost, damage or expense, including legal fees and expenses, issued and outstanding Letter of Credit Accommodations, outstanding Swap Agreements and cheques or other payments provisionally credited to the Obligations and/or as to which Agent and Lenders have not yet received final and indefeasible payment. Such payments in respect of the Obligations and cash collateral shall be remitted by wire transfer in US Dollars to such bank account of Agent, as Agent may, in its discretion, designate in writing to Borrower for such purpose. Interest shall be due until and including the next Business Day, if the amounts so paid by Borrower to the bank account designated by Agent are received in such bank account later than 12:00 noon, Toronto time.

(b) No termination of any of the Financing Agreements shall relieve or discharge Borrower of its respective duties, obligations and covenants under the Financing Agreements until all Obligations have been fully and finally discharged and paid, and Agent's continuing security interest in the Collateral and the rights and remedies of Agent and Lenders, under the Financing Agreements and applicable law, shall remain in effect until all such Obligations have been fully and finally discharged and paid.

(c) If this Agreement is terminated by Borrower prior to October 31, 2013 or by Agent pursuant to its right to terminate pursuant to Section 10.2, in view of the impracticality and extreme difficulty of ascertaining actual damages and by mutual agreement of the parties as to a reasonable calculation of Lenders' lost profits as a result thereof, Borrower agrees to pay to Agent, for the account of Lenders based on their respective Pro Rata Share, upon the effective date of such termination, an early termination fee in the amount set forth below if such termination is effective in the period indicated:

<u>Amount</u>	<u>Period</u>
(i) 1.5% of Maximum Revolving Credit and outstanding balance of Term Loan	- From the date hereof to but not including October 31, 2010.
(ii) 1.0% of Maximum Revolving Credit and outstanding balance of Term Loan	- On and after November 1, 2010 to and including October 31, 2011
(iii) 0.5% of Maximum Revolving Credit and outstanding balance of Term Loan	- On and after November 1, 2011 to and including October 31, 2013.



## Term Loan

Such early termination fee shall be presumed to be the amount of damages sustained by Lenders as a result of such early termination and Borrower agrees that it is reasonable under the circumstances currently existing. In addition, Agent, on behalf of Lenders, shall be entitled to such early termination fee upon the occurrence of any Event of Default described in Sections 10.1(f) and 10.1(g) hereof, even if Agent does not exercise its right to terminate this Agreement, or a Lender elects, at its option, to provide financing to Borrower or permit the use of cash collateral under any applicable reorganization or insolvency legislation. The early termination fee provided for in this Section 13.1 shall be deemed included in the Obligations.

### **13.2 Notice**

All notices, requests and demands hereunder shall be in writing and (a) made to Agent and Lenders at their respective addresses set forth below and to Borrower at its chief executive office set forth below, or to such other address as any party may designate by written notice to the other in accordance with this provision, and (b) deemed to have been given or made: if delivered in person, immediately upon delivery; if by facsimile transmission, immediately upon sending and upon confirmation of receipt; if by nationally recognized overnight courier service with instructions to deliver the next Business Day, one (1) Business Day after sending; and if by registered mail, return receipt requested, five (5) days after mailing.

### **13.3 Partial Invalidity**

If any provision of this Agreement is held to be invalid or unenforceable, such invalidity or unenforceability shall not invalidate this Agreement as a whole, but this Agreement shall be construed as though it did not contain the particular provision held to be invalid or unenforceable and the rights and obligations of the parties shall be construed and enforced only to such extent as shall be permitted by applicable law.

### **13.4 Successors**

The Financing Agreements and any other document referred to herein or therein shall be binding upon and inure to the benefit of and be enforceable by Agent, Lenders and Borrower and their respective successors and permitted assigns.

### **13.5 Entire Agreement**

The Financing Agreements, any supplements hereto or thereto, and any instruments or documents delivered or to be delivered in connection herewith or therewith represents the entire agreement and understanding concerning the subject matter hereof and thereof between the parties hereto, and supersede all other prior agreements, understandings, negotiations and discussions, representations, warranties, commitments, proposals, offers and contracts concerning the subject matter hereof, whether oral or written. In the event of any inconsistency between the terms of this Agreement and any schedule or exhibit hereto, the terms of this Agreement shall govern.

### **13.6 Headings**

The division of this Agreement into sections and the insertion of headings and a table of contents are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

### **13.7 Judgment Currency**

To the extent permitted by applicable law, the obligations of Borrower in respect of any amount due under this Agreement shall, notwithstanding any payment in any other currency (the “**Other Currency**”) (whether pursuant to a judgment or otherwise), be discharged only to the extent of the amount in the currency in which it is due (the “**Agreed Currency**”) that Lender may, in accordance with normal banking procedures, purchase with the sum paid in the Other Currency (after any premium and costs of exchange) on the Business Day immediately after the day on which Agent receives the payment. If the amount in the Agreed Currency that may be so purchased for any reason falls short of the amount originally due, Borrower shall pay all additional amounts, in the Agreed Currency, as may be necessary to compensate for the shortfall. Any obligation of Borrower not discharged by that payment shall, to the extent permitted by applicable law, be due as a separate and independent obligation and, until discharged as provided in this section, continue in full force and effect.

### **13.8 Counterparts and Facsimile**

This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, and such counterparts together shall constitute one and the same agreement. The delivery of a facsimile or pdf copy of an executed counterpart of this Agreement shall be deemed to be valid execution and delivery of this Agreement, but the party delivering a facsimile or pdf copy shall deliver to the other party an original copy of this Agreement as soon as possible after delivering the facsimile or pdf copy.

### **13.9 Patriot Act Notice**

Agent and each Lender which is subject to the *Patriot Act* hereby notifies Borrower that pursuant to the requirements of the *Patriot Act*, it is required to obtain, verify and record information that identifies each person or corporation who opens an account and/or enters into a business relationship with it, which information includes the name and address of Borrower and its Subsidiaries and other information that will allow Agent and such Lender to identify such person in accordance with the *Patriot Act* and any other applicable law. Borrower is hereby advised that any Loans or Letter of Credit Accommodations hereunder are subject to satisfactory results of such verification.

## **SECTION 14. ACKNOWLEDGMENT AND RESTATEMENT**

### **14.1 Existing Obligations**

Borrower hereby acknowledges, confirms and agrees that Borrower is indebted to Original Lender for outstanding loans, advances and letter of credit accommodations to Borrower under

the Original Loan Agreement together with all interest accrued and accruing thereon (to the extent applicable), and all fees, costs, expenses and other charges relating thereto, all of which are unconditionally owing by Borrower to Original Lender to the extent set forth in the Original Loan Agreement, without setoff, defense or counterclaim of any kind, nature or description whatsoever. The Revolving Loans provided for in this Agreement are an extension of the Revolving Loans provided for under the Original Loan Agreement and shall continue without novation.

#### **14.2 Acknowledgment of Security Interests**

(a) Borrower hereby acknowledges, confirms and agrees that Agent on behalf of itself and Secured Parties shall continue to have a security interest in and lien upon the collateral heretofore granted to Original Lender pursuant to and in connection with the Original Loan Agreement to secure the Obligations, as well as any collateral granted under or in connection with this Agreement or under any of the other Financing Agreements or otherwise granted to or held by Agent, any Lender or Original Lender.

(b) The Liens of Agent in the Collateral shall be deemed to be continuously granted and perfected from the earliest date of the granting and perfection of such Liens to Original Lender under the Financing Agreements.

#### **14.3 Original Loan Agreement**

Borrower hereby acknowledges, confirms and agrees that: (a) the Original Loan Agreement has been duly executed and delivered by Borrower is in full force and effect as of the date hereof; (b) the agreements and obligations of Borrower contained in the Original Loan Agreement constitutes the legal, valid and binding obligations of Borrower enforceable against Borrower in accordance with its terms and Borrower has no valid defense to the enforcement of such obligations; and (c) Agent and Lenders are entitled to all of the rights, remedies and benefits provided for in or arising pursuant to the Original Loan Agreement.

#### **14.4 Restatement**

(a) Except as otherwise stated in Section 14.2 hereof and this Section 14.4, as of the date hereof, the terms, conditions, agreements, covenants, representations and warranties set forth in the Original Loan Agreement are simultaneously amended and restated in their entirety, and as so amended and restated, replaced and superseded by the terms, conditions, agreements, covenants, representations and warranties set forth in this Agreement and the other Financing Agreements executed and/or delivered on or after the date hereof, except that nothing herein or in the other Financing Agreements shall impair or adversely affect the continuation of the liability of Borrower for the Obligations heretofore incurred and the security interests, liens, hypothecs and other interests in the collateral heretofore granted, pledged and/or assigned by Borrower to Agent, Original Lender or any Lender (whether directly, indirectly or otherwise).

(b) The amendment and restatement contained herein shall not, in any manner, be construed to constitute payment of, or impair, limit, cancel or extinguish, or constitute a novation in respect of, the Obligations and other obligations and liabilities of Borrower evidenced by or arising under the Original Loan Agreement, and the liens and security interests

of Original Lender securing such Obligations and other obligations and liabilities, which shall not in any manner be impaired, limited, terminated, waived or released, but shall continue in full force and effect in favor of Agent for the benefit of itself and Secured Parties.

(c) All loans, advances and other financial accommodations under the Original Loan Agreement and all other obligations, liabilities and indebtedness of Borrower to Original Lender outstanding and unpaid as of the date hereof pursuant to the Original Loan Agreement or otherwise shall be deemed Obligations of Borrower pursuant to the terms hereof. The principal amount of the Revolving Loans and the amount of the Letters of Credit Accommodations outstanding as of the date hereof under the Original Loan Agreement shall be allocated to the Revolving Loans and Letter of Credit Accommodations hereunder in such manner and in such amounts as Agent shall determine in accordance with the terms hereof.

**[The remainder of this page is intentionally left blank]**

IN WITNESS WHEREOF, Lenders, Agent and Borrower have caused these presents to be duly executed as of the day and year first above written.

AGENT AND LENDER

**WACHOVIA CAPITAL FINANCE CORPORATION  
(CANADA)**

By: /s/ Bruno Mello  
Name: Bruno Mello  
Title: Assistant Vice President  
Wachovia Capital Finance of Canada

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

Revolving Loan Commitment

\$21,333,333.33

Term Loan Commitment

\$18,666,666.67

Address:

40 King Street West, Suite 2500  
Toronto, Ontario, M5H 3Y2  
Attention: Senior Vice President  
Fax: (416) 775-2991

LENDER

**EXPORT DEVELOPMENT CANADA**

By: /s/ Elaine Posthumus  
Name: Elaine Posthumus  
Title: Finance Manager

By: /s/ Brian Craig  
Name: Brian Craig  
Title: Senior Financing Manager

Revolving Loan Commitment

\$18,666,666.67

Term Loan Commitment

\$16,333,333.33

Address:

151 O'Connor Street  
Ottawa, Ontario K1A 1K3  
Attention: Loan Services  
Fax: (613) 598-2514  
Attention: Asset Management/Covenants Officer  
Fax: (613) 598-3186

BORROWER

**IMAX CORPORATION**

By: /s/ Ed MacNeil  
Name: Ed MacNeil  
Title: Senior Vice President, Finance

By: /s/ G. Mary Ruby  
Name: G. Mary Ruby  
Title: Exec VP, Corporate Services  
& Corporate Secretary

Address of Chief Executive Office:

110 East 59<sup>th</sup> Street  
Suite 2100  
New York, New York, 10022  
Attention: Senior Executive Vice President  
and General Counsel  
Fax: (212) 371-7584

**IMAX CORPORATION**

**Exhibit 21**

**Subsidiaries of IMAX Corporation**

Significant and other major subsidiary companies of the Registrant, as at December 31, 2009, comprise of the following:

<b>Name of Subsidiary</b>	<b>Jurisdiction of Organization</b>	<b>Percentage held by Registrant</b>
3183 Films Ltd.	Canada	100%
1329507 Ontario Inc.	Ontario	100%
6822967 Canada Ltd.	Canada	100%
7096267 Canada Ltd. (formerly 3D Sea II Ltd.)	Canada	100%
7103077 Canada Ltd.	Canada	100%
7109857 Canada Ltd.	Canada	100%
7214316 Canada Ltd.	Canada	100%
Animal Orphans 3D Ltd.	Ontario	100%
Arizona Big Frame Theatres, L.L.C.	Arizona	100%
Big Engine Films Inc.	Delaware	100%
Coral Sea Films Ltd.	Canada	100%
David Keighley Productions 70 MM Inc.	Delaware	100%
IMAX (Netherlands) B.V.	Netherlands	100%
IMAX Chicago Theatre LLC	Delaware	100%
IMAX II U.S.A. Inc.	Delaware	100%
IMAX Indianapolis LLC	Indiana	100%
IMAX International Sales Corporation	Canada	100%
IMAX Japan Inc.	Japan	100%
IMAX Minnesota Holding Co.	Delaware	100%
IMAX Rhode Island Limited Partnership	Rhode Island	100%
IMAX Scribe Inc.	Delaware	100%
IMAX Space Ltd.	Ontario	100%
IMAX Space Productions Ltd.	Canada	100%
IMAX Theatre Holding Co.	Delaware	100%
IMAX Theatre Holdings (OEI), Inc.	Delaware	100%
IMAX Theatre Management Company	Delaware	100%
IMAX Theatre Services Ltd.	Ontario	100%
IMAX U.S.A. Inc.	Delaware	100%
Nyack Theatre LLC	New York	100%
Raining Arrows Productions Ltd.	Canada	100%
Ridefilm Corporation	Delaware	100%
Ruth Quentin Films Ltd. (formerly Acorn Rain Productions Ltd.)	Canada	100%
Sacramento Theatre LLC	Delaware	100%
Starboard Theatres Ltd.	Canada	100%
Sonics Associates, Inc.	Alabama	100%
Strategic Sponsorship Corporation	Delaware	100%
Taurus-Littrow Productions Inc.	Delaware	100%
The Deep Magic Company Ltd.	Canada	100%
Walking Bones Pictures Ltd.	Canada	100%

**CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

We hereby consent to the incorporation by reference in (i) the Registration Statements on Form S-8 (No. 333-2076; No. 333-5720; No. 333-30970; No. 333-44412; No. 333-155262), (ii) the Post-Effective Amendment No. 1 to Form S-8 (No. 333-5720) as amended, and (iii) the Registration Statement on Form S-3 (No. 333-157300) of IMAX Corporation of our report dated March 11, 2010, relating to the financial statements, financial statement schedule and the effectiveness of internal control over financial reporting, which appears in this Form 10-K.

/s/ PricewaterhouseCoopers LLP  
Toronto, Ontario  
March 11, 2010

**IMAX CORPORATION**

**EXHIBIT 24**

**POWER OF ATTORNEY**

Each of the persons whose signature appears below hereby constitutes and appoints Joseph Sparacio and Robert D. Lister, and each of them severally, as his true and lawful attorney or attorneys with power of substitution and re-substitution to sign in his name, place and stead in any and all such capacities the 10-K, including the French language version thereof, and any and all amendments thereto and documents in connection therewith, and to file the same with the United States Securities Exchange Commission (the "SEC") and such other regulatory authorities as may be required, each of said attorneys to have power to act with and without the other, and to have full power and authority to do and perform, in the name and on behalf of each of the directors of the Corporation, every act whatsoever which such attorneys, or either of them, may deem necessary or desirable to be done in connection therewith as fully and to all intent and purposes as such directors of the Corporation might or could do in person.

Dated this 10<sup>th</sup> day of March, 2010

<u>Signature</u>	<u>Title</u>
<u>/s/ Bradley J. Wechsler</u> Bradley J. Wechsler	Chairman of the Board
<u>/s/ Richard L. Gelfond</u> Richard L. Gelfond	Chief Executive Officer (Principal Executive Officer)
<u>/s/ Neil S. Braun</u> Neil S. Braun	Director
<u>/s/ Kenneth G. Copland</u> Kenneth G. Copland	Director
<u>/s/ Garth M. Girvan</u> Garth M. Girvan	Director
<u>/s/ David W. Leebron</u> David W. Leebron	Director
<u>/s/ Marc A. Utay</u> Marc A. Utay	Director
<u>/s/ Joseph Sparacio</u> Joseph Sparacio	Chief Financial Officer (Principal Financial Officer)
<u>/s/ Jeffrey Vance</u> Jeffrey Vance	Controller (Principal Accounting Officer)



IMAX CORPORATION

EXHIBIT 31.1

Certification Pursuant to Section 302 of the Sarbanes — Oxley Act of 2002

I, Richard L. Gelfond, certify that:

1. I have reviewed this Annual Report on Form 10-K for the year ended December 31, 2009 of the registrant, IMAX Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 11, 2010

By: /s/ Richard L. Gelfond

Richard L. Gelfond  
Chief Executive Officer

IMAX CORPORATION

EXHIBIT 31.2

Certification Pursuant to Section 302 of the Sarbanes — Oxley Act of 2002

I, Joseph Sparacio, certify that:

1. I have reviewed this Annual Report on Form 10-K for the year ended December 31, 2009 of the registrant, IMAX Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 11, 2010

By: /s/ Joseph Sparacio

Joseph Sparacio  
Executive Vice President and  
Chief Financial Officer

**IMAX CORPORATION**

**EXHIBIT 32.1**

**CERTIFICATIONS**

**Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002  
(Subsections (A) and (B) of Section 1350, Chapter 63 of Title 18, United States Code)**

Pursuant to section 906 of the Sarbanes-Oxley Act of 2002 (subsections (a) and (b) of section 1350, chapter 63 of title 18, United States Code), I, Richard L. Gelfond, Chief Executive Officer of IMAX Corporation, a Canadian corporation (the "Company"), hereby certify, to my knowledge, that:

The Annual Report on Form 10-K for the year ended December 31, 2009 (the "Form 10-K") of the Company fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934, and information contained in the Form 10-K fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: March 11, 2010

/s/ Richard L. Gelfond

Richard L. Gelfond  
Chief Executive Officer

**IMAX CORPORATION**

**EXHIBIT 32.2**

**CERTIFICATIONS**

**Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002  
(Subsections (A) and (B) of Section 1350, Chapter 63 of Title 18, United States Code)**

Pursuant to section 906 of the Sarbanes-Oxley Act of 2002 (subsections (a) and (b) of section 1350, chapter 63 of title 18, United States Code), I, Joseph Sparacio, Chief Financial Officer of IMAX Corporation, a Canadian corporation (the "Company"), hereby certify, to my knowledge, that:

The Annual Report on Form 10-K for the year ended December 31, 2009 (the "Form 10-K") of the Company fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934, and information contained in the Form 10-K fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: March 11, 2010

/s/ Joseph Sparacio

Joseph Sparacio  
Executive Vice President and  
Chief Financial Officer