



New Mexico's Smokin' Film Incentives

November 2007

Painless 25% Tax Rebate Pages 2-8

Film Investment Loan – \$15M per project Pages 9-27

You may apply for the Tax Rebate and the Film Investment Loan

Film Crew Advancement Program – “FCAP” Page 28

A 50% wage reimbursement for on-the-job training of NM residents in advanced BTL crew positions

No State Sales Tax - Nontaxable Transaction Certificates (NTTCs) Page 29

Not to be used in conjunction with the 25% Tax Rebate. Used primarily for local commercials & PSAs

Exceptional and extensive crew base – the largest between coasts

Over 300 days of sunshine and four temperate seasons

Awe-inspiring locations from snowcapped mountain peaks to barren deserts

New Mexico has doubled Canada, Mexico and everything in between – even Mars

Stages from 2,000 sq ft to 48,000 sq ft and dozens of dedicated industry vendors

A searchable location database on our web site with over 50,000 photos

Film-friendly communities and liaisons throughout the state

22 Native American tribes

A film office willing to jump through rings of fire

New Mexico's GREEN Filmmaking Initiative

Learn how you can make your next production earth-friendly!

Visit: www.nmfilm.com/filming/green-filming

25% FILM PRODUCTION TAX REBATE

New Mexico offers a **25% Tax Rebate** on all direct production expenditures, including New Mexico labor, that are subject to taxation by the State of New Mexico. This is a *refund*, not a credit, on the full amount of the expenditure, not just the tax portion. (i.e. if the expense of an item *including tax* is \$100, the rebate is \$25). **There is no minimum spend required, no cap, and no sunset clause.** Our rebate applies to feature films, television, regional and national commercials, documentaries, video games and post-production. Out-of-state actors will also qualify, though under a separate tax structure.

Requirements for 25% rebate:

- Script cannot be obscene in nature. Any non-scripted projects (reality television, documentaries, etc...) must submit a treatment and/or synopsis and indicate if it involves any potentially hazardous conditions, minors or animals, and its compliance with state laws.
- Film shall contain an acknowledgment that the production was filmed in the State of New Mexico.
- Production shall agree to pay all obligations the film production company has incurred in New Mexico.
- Production shall agree to publish, at completion of principal photography, a notice at least once a week, for three consecutive weeks, in local newspapers in regions where filming has taken place to notify the public of the need to file creditor claims against the film production company by a specified date. This information will also be posted on the web site of the New Mexico Film Office for sixty (60) days.
- Production shall agree that outstanding obligations are not waived should a creditor fail to file by the specified date.
- Production shall agree to delay filing of a claim for the Production Tax Rebate until the New Mexico Film Office delivers written notification to the Taxation and Revenue Department that the film production company has fulfilled all requirements for the credit.
- Production shall agree to enter into a contract with the New Mexico Film Office (*Production Tax Credit Agreement*), accepting the terms of the above.

Who Qualifies:

Feature films, television, national and regional commercials, documentaries and commercial audiovisual product.

What Qualifies (all must be subject to taxation by the State of New Mexico):

See page 4 for the Rebate Guidelines "Cheat Sheet."

- Wages or salaries, fringe benefits or fees of **New Mexico residents**, which includes talent, management, and labor. Out-of-state crew members do **not** qualify.
- Payment to a personal services corporation for the services of an out-of-state performing artist (actors and stunt performers only) if: the personal services corporation pays gross receipts tax in New Mexico on the portion of those payments qualifying for the tax credit (For out-of-state companies, this means paying a 5% tax on the total cast salaries.); and the performing artist receiving payments from the personal services corporation pays New Mexico income tax. Call Jerry at TRD or Jennifer at the film office for details – see page 8 for contact info. See following web link for info:
http://www.state.nm.us/tax/pubs/FY1102_INFORMATION_FOR_NEW_BUSINESSES.pdf As applied to direct production expenditures for the services of performing artists, the film production tax credit authorized by this section shall not exceed five million dollars (\$5,000,000)

for services rendered by all performing artists in a production for which the film production tax credit is claimed *meaning* collectively, actors' salaries up to \$20 million are eligible.

- Costs of a story and scenario to be used for a film if writer is a New Mexico resident
- Costs of set construction and operations, wardrobe, accessories, and related services
- Costs of photography, sound synchronization, lighting, and related services
- Costs of editing and related services
- Rental of facilities and equipment (including location fees)
- Leasing of vehicles, not including the chartering of aircraft for out-of-state transportation; however New Mexico-based chartered aircraft for in-state transportation directly attributable to the production shall be considered a direct production expenditure
- Food and lodging
- Commercial airfare if purchased through a New Mexico-based travel agency or company for travel to and from New Mexico or within New Mexico that is directly attributable to the production
- Insurance coverage and bonding if purchased through a New Mexico-based insurance agent
- Post-production expenditures that are directly attributable to the production of a commercial film or audiovisual product, for services performed in New Mexico; and subject to taxation by the State of New Mexico
- Other direct costs of producing a film in accordance with generally accepted entertainment industry practices

Definitions:

“Film” means:

a single media or multimedia program, excluding advertising messages other than national or regional advertising messages intended for exhibition, that is fixed on film, digital medium, videotape, computer disc, laser disc or other similar delivery medium; can be viewed or reproduced; is not intended to and does not violate a provision of Chapter 30, Article 37 NMSA 1978; and is intended for reasonable commercial exploitation for the delivery medium used.

“Commercial audiovisual product” means:

a film or a videogame intended for commercial exploitation.

“Direct production expenditures” means:

a transaction that is subject to taxation in New Mexico.

“Film production company” means:

a person that produces one or more films or any part of a film.

“Post-production expenditure” means:

an expenditure for editing, Foley recording, automatic dialogue replacement, sound editing, special effects, including computer-generated imagery or other effects, scoring and music editing, beginning and end credits, negative cutting, soundtrack production, dubbing, subtitling or addition of sound or visual effects; but not including an expenditure for advertising, marketing, distribution or expense payments.

Note: Expenditures attributable to a production for which the film production company receives a tax credit pursuant to the federal new markets tax credit program will only qualify for a 20% rebate.

Film Production Tax Rebate Guidelines “*Cheat Sheet*”

Please photocopy this page and distribute to your department heads.

Note: the tax rebate only applies to expenditures that are subject to taxation in New Mexico.

- It is not necessary to register the filing entity to do business in New Mexico. Tax & Rev will use your Federal ID number to process the rebate/return.
- Employee fringe benefits paid to a payroll company qualify for the tax rebate, including Pension, Health & Welfare, Holiday, Vacation. The following **does not**: SUI, FICA, FUI and Workers Compensation fee. Workers Compensation Insurance will qualify only if purchased through a New Mexico based agent.
- Out-of-state *performing artists* (actors and stunt performers only) **will** qualify if the personal services corporation pays gross receipts tax in New Mexico on the portion of those payments qualifying for the tax credit (For out-of-state companies, this means paying a 5% tax on the total cast salaries.); and the performing artist receiving payments from the personal services corporation pays New Mexico income tax. Call Jerry at TRD or Jennifer at the film office for details. See page 8 for contact info. There is a tax rebate cap of \$5 million dollars collectively for all performing artists *meaning* collectively, actors’ salaries up to \$20 million are eligible. Fringes for out-of-state actors do **not** qualify.
- Out-of-state *crew members* **do not** qualify; however, per diem and housing **do**.
- New Mexico-based chartered aircraft for in-state transportation directly attributable to the production **will qualify**; however the chartering of aircraft for out-of-state transportation **will not**.
- Commercial airfare if purchased through a New Mexico-based travel agency or company for travel *to* and *from* New Mexico or *within* New Mexico that is directly attributable to the production **will qualify**.
- Purchases made using petty cash must be documented by **vendor receipts**. Copy the front of each petty cash envelope and include with your summary report. The **vendor** to whom the petty cash was paid is needed, not the crew member who was given the petty cash.
- Credit card purchases must include detail of purchase/vendor name.
- Fuel cards will need backup/detail (especially location) of transaction
- Expenditures made to Section 501 (c), non-profit organizations **do not** qualify because these organizations are tax exempt. These include Goodwill, Salvation Army, churches, museums, schools, etc.
- Purchases made on the Internet **do not** qualify *unless the seller is located in New Mexico*.
- Payments made to the State or Federal Government **do not** qualify. This would include permits and postage (parking lots are the exception).
- FedEx or UPS packages will only qualify if they’re being sent *from* New Mexico.
- Purchases made on Native American tribal lands **do not** qualify as they are tax exempt. This includes gas stations, restaurants, hotels, etc... located on these lands.
- Cell phone reimbursements when the billing address is outside of New Mexico **do not** qualify.
- A *Declaration of Residency* form is required for the payroll of every New Mexico resident you include for the tax rebate *except for Background Talent* and you must get proof of residency (valid New Mexico driver’s license, current New Mexico voter registration card, or copy of last year’s New Mexico personal income tax return). Please make certain that the employee completely fills out his/her *Declaration of Residency* form, and include a copy of that form **and** a copy of their proof of residency in your tax rebate package.
- The address on your *Application for Film Production Tax Credit* form should be your corporate, home or primary office – **not** your New Mexico production office, as your rebate check will be sent to the address you list.

For questions, please contact Jennifer Schwalenberg, Deputy Director, New Mexico Film Office: (505) 476-5610 or jennifer@nmfilm.com

The Process:

BEFORE PRODUCTION:

(You do not need to complete these steps until you are officially greenlit for New Mexico)

1. Complete the following two forms. Forms can be found at www.nmfilm.com under “Incentives.”

- *Film Production Company Registration*
- *Production Tax Credit Agreement**

Mail, fax or email forms to:

John Raymond Armijo

New Mexico Film Office @ the Jean Cocteau

418 Montezuma Ave.

Santa Fe, NM 87501

Fax: (505) 476-5601

Email: john@nmfilm.com

*After we receive this agreement, a signed copy will be faxed to you for your records.

Please note: Failure to comply with the *Production Tax Credit Agreement* may delay your tax rebate.

2. Submit script to the New Mexico Film Office. If you have applied for the Film Investment Loan Program and already submitted your script, please skip to Step 3. *Preferred method for sending script: Final Draft or PDF via email to jennifer@nmfilm.com or hard copy (to support our Green efforts, printing double-sided would be appreciated) to:*

Jennifer Schwalenberg, Deputy Director

New Mexico Film Office @ the Jean Cocteau

418 Montezuma Ave.

Santa Fe, NM 87501

Phone: (505) 476-5610

3. Call or email Jennifer Schwalenberg to schedule a pre-production meeting with the *New Mexico Taxation & Revenue Dept.* and the *New Mexico Film Office*. This meeting should include your *Head Accountant, Line Producer and/or UPM and/or Production Supervisor*. Jennifer Schwalenberg: (505) 476-5610 or jennifer@nmfilm.com
4. Distribute the *Rebate Guidelines Cheat Sheet* (on page 4) to your department heads.

DURING PRODUCTION:

5. Each New Mexico resident employed on your production (excluding Background Talent) must complete a *Declaration of Residency* form, a legal binding form which indicates they are in fact a New Mexico resident **and** provide proof of residency, which can be one of the following:
 - a. valid New Mexico driver's license
 - b. or current New Mexico voter registration card
 - c. or copy of last year's New Mexico personal income tax return
6. Keep a detailed account (ledger), in print or on CD, of all expenditures incurred in New Mexico during pre-production, production and post (if applicable). See box below.

Tips for preparing your Tax Rebate Package:

- ~Full vendor names must be clearly visible on ledger
- ~Create *two* separate binders: one for payroll, one for vendors/all other transactions
- ~Any credit card purchases must include detail of purchases/vendor names
- ~Make copies of each employee's *Declaration of Residency* form and proof of residency (attaching them) and sort alphabetically by last name
- ~Make copies of petty cash envelope summaries (copy the front of each petty cash envelope) and sort by PC envelope number
- ~Make copies of receipts (keep originals for your records) in case they are requested from TRD
- ~If possible, scan your invoices/receipts into Word or PDF files, sort alphabetically by vendor name, and submit on CD

AFTER PRODUCTION:

7. Once production is completed, use your records from Step 6 to compile a comprehensive ledger of New Mexico expenditures and calculate your 25% rebate. Do not complete your ledger until your very last New Mexico expenditure, which would include any post-production.
8. In compliance with the *Production Tax Credit Agreement*, please provide proof of the following:

“Production shall agree to publish, at completion of principal photography, a notice at least once a week, for three consecutive weeks, in local newspapers in regions where filming has taken place to notify the public of the need to file creditor claims against the film production company by a specified date.” Ads can be of any size. Please include production title, address phone, fax, and contact name(s) for your primary or corporate office – not your New Mexico production office, as vendors need to be able to contact you after you have closed your NM office. Please submit this information to John

Raymond Armijo at john@nmfilm.com and fax a copy of the newspaper bill for all three weeks to John Raymond Armijo: (505) 476-5601

This information will also be posted on the web site of the New Mexico Film Office for sixty (60) days.

To view a **sample** newspaper ad, please contact John Raymond Armijo: (505) 476-5600

9. Contact Jennifer Schwalenberg at the NMFO (505) 476-5610 or jennifer@nmfilm.com for verification that payment of all financial obligations incurred in the State of New Mexico has been made. The NMFO will provide a letter to the New Mexico Taxation and Revenue Department confirming that this requirement, per law, has been fulfilled.

In addition, the NMFO will need the following nine (9) pieces of information:

- **Total** dollar amount spent in New Mexico (including labor):
- Total New Mexico Below-the-line payroll figure:
- Total number of New Mexico crew members hired (please include prep crew, construction, caterers, teamsters, production office, etc... Do not include day players or actors.):
- Average New Mexico crew size (per day) for prep:
- Average New Mexico crew size (per day) for shoot:
- Prep dates & Number of prep days:
- Shoot dates & Number of shoot days:
- List of all New Mexico cities used for locations:
- Final Crew list and Final Vendor list

Please email this information to Jennifer@nmfilm.com

10. Complete the following form:

- *Application for Film Production Tax Credit (RPD-41229)*
TRD will use the address on this form to send your rebate check.

Mail this package, which **must** include the following (see *Tips for Preparing your Tax Rebate Package* in Step 6):

- **Ledgers (Two binders: one for payroll, one for vendors)**
- **Declaration of Residency forms with Proof of Residency (attached to the Declaration of Residency forms), sorted alphabetically by last name**
- **Petty cash envelope summaries, sorted by PC envelope number**
- **CD of scanned invoices/receipts (if applicable)**
- **Hard copy Final Crew list and Final Vendor list**
- **And above form**

NOTE: FEWER MISTAKES EQUAL A FASTER REBATE!

To:
John Raymond Armijo
New Mexico Film Office
@ the Jean Cocteau
418 Montezuma Ave.
Santa Fe, NM 87501

Upon review by the NMFO and after confirmation that all financial obligations in the state have been met, this package will be forwarded to the New Mexico Taxation & Revenue Department (TRD). TRD performs two audits and will review your claim *line by line* and **return** the *Application for Film Production Tax Credit* form to you with the approved amount. TRD projects that the audit process will take approximately sixty (60) days to complete; however, it is imperative to provide TRD with any documentation *immediately upon request* in order to stay within this timeframe.

11. After you receive the form back from TRD with the approved amount, **file an income tax return** (Using forms: PIT, CIT, PTE or FID-1). **For a quicker check, be sure to check the “REFUND EXPRESS” box for direct deposit.**

Complete the following form:

- *Film Production Tax Credit Claim* form

Attach this form to your income tax return and send to:

Jerry Montoya
Audit and Compliance Division, Director’s Office
P.O. Box 630
Santa Fe, NM 87504-0630

The credit will then be applied to any tax liability you have incurred (franchise fees, if applicable), with the excess credit refunded, by check, back to your production company.

For questions regarding the tax incentive program, you may contact Jennifer Schwalenberg, Deputy Director, New Mexico Film Office: (505) 476-5610 or jennifer@nmfilm.com OR Jerry Montoya, Taxation & Revenue Department: (505) 827-0929 or jerrym@state.nm.us

Film Investment Loan Program Procedure & Package Requirements

New Mexico offers a 0% loan, with backend participation in lieu of interest, for up to \$15 million per project (which can represent 100% of the budget) for qualifying feature films or television projects – animation included.

Terms are negotiated and budget must be at least \$2 million.

You may apply for the loan and the 25% Tax Rebate.

For the New Mexico State Investment Council's (SIC) Film Investment Loan Policy & Procedures, please visit: www.sic.state.nm.us

- Click on *Investments*, then scroll to *Film Investments*
- Click on *Film Investments Policy*

For the Performance Summary, which includes: name of film projects funded, loan amounts, participation percentage, and guarantor:

- Click on *Film Investment Performance Summary* located on the SIC home page

KEY REQUIREMENTS:

- A guarantor for the principal amount of the loan must be in place (See Step Three for a description of the necessary qualifications of acceptable guarantors)
- Script must meet Eligibility requirement (See Step Four for further details)
- The film must be wholly or substantially shot in New Mexico – at least 85% of principal and second unit photography. Animation projects must spend at least 85% of their production budget in New Mexico.
- A signed distribution contract from a reputable and appropriate distributor for significant rights must be in place (See Step Seven for more details on distribution)
- 60% of Below-the-Line (BTL) payroll and body count must be allocated to New Mexico residents

STEP ONE:

Contact Lisa Strout, Director of the New Mexico Film Office (NMFO), or Jennifer Schwalenberg, Deputy Director: Out-of-state 1-800-545-9871 or In-state (505) 476-5600 or email jennifer@nmfilm.com to initiate process.

NOTE: There is no actual application – this is a process of submitting information.

STEP TWO

Fill out the *Film Production Company Registration* form and fax or email to John Raymond Armijo, NMFO. If applying for the 25% Tax Rebate, please fill out the *Production Tax Credit*

Agreement and fax or email as well. All forms can be found at nmfilm.com under “Incentives.”
John Raymond Armijo: fax (505) 476-5601 or john@nmfilm.com

STEP THREE:

Email Greg Kulka of the State Investment Council (SIC) the *name of your guarantor* and *provide a letter* from that entity stating that they have reviewed the project and are prepared to issue the requisite guarantee to the State of New Mexico pending SIC approval. Your guarantor must be one of the following:

- (i) An irrevocable Letter of Credit from a U.S. based bank having at least an investment grade credit rating (“A” or better) by either Moody’s Investor Services or Standard & Poor’s.
- (ii) A corporate guarantee by a corporate entity having at least an investment grade credit rating (“BBB” or better) by either Moody’s Investor Services or Standard & Poor’s.

Greg Kulka, State Investment Council: greg.kulka@state.nm.us

After Greg has approved your guarantor, you may proceed to Step Four.

STEP FOUR:

Submit script to the New Mexico Film Office. For non-scripted projects (reality television), you must submit treatments and/or a synopsis. Please note that we read scripts for content and locations purposes *only* so that we may determine the following:

- **Eligibility requirement:** The State of New Mexico’s incentive program is limited by statute and regulation to avoid excessive or gratuitous violence or sexual content, severe language, drug abuse, culturally sensitive material (glorification of drugs, suicide, irresponsibility with racial or religious subject matter, etc...) or a combination of some of the above. The NMFO will determine eligibility based upon these elements.
- **Viability of project for New Mexico:** suitable locations (storyline does not need to be New Mexico specific – we can double for many locations), a budget that will reasonably cover scope of project.

Preferred method for sending script: Final Draft or PDF via email to jennifer@nmfilm.com
OR hard copy (to support our Green efforts, printing double-sided would be appreciated), including all contact information, to:

Jennifer Schwalenberg, Deputy Director
New Mexico Film Office
418 Montezuma Ave.
Santa Fe, NM 87501

After the script has been read and it has been determined that it will meet the Eligibility requirement, the Film Office will call or email you.

STEP FIVE:

Contact Jon Hendry, Business Agent for IATSE Local 480: ba480@hotmail.com or (505) 670-7381, and all other unions and guilds associated with the project to determine the availability of NM crew during your proposed production schedule. This is imperative for determining that you'll be able to fulfill the 60% BTL requirement to New Mexicans. You may be in touch with Jon Hendry at any point during this process, but it is imperative to make contact at this juncture, as Local 480 will make up the bulk of your BTL crew.

STEP SIX:

Submit to Lisa Strout:

- **Full budget**
- **Production schedule**

Note: It is understood that the budget and schedule are preliminary and subject to change up until the time of approval of the loan

Preferred method for sending budget & schedule: Movie Magic via email to lisas@nmfilm.com

STEP SEVEN:

When you have **DISTRIBUTION** in place, contact the State of New Mexico's Film Advisor via email for acceptability: filmadvisor@state.nm.us

Distributors (Distribution is a statutory requirement although every medium or territory does not have to be accounted for.) The State is seeking vindication in the commercial marketplace that the contemplated motion picture is a viable and commercial production. Thus, there is a requirement that there be a signed distribution agreement in place in respect of a sufficiently economically significant media and/or territories such that the film in question is clearly a viable commercial product. The distribution agreement must be with an appropriate, experienced and economically stable distributor. The distributor must be approved by the Film Advisor, and the distribution agreement must be for a significant territory that supports revenue estimates covering a substantial part of the budget. For example, having foreign distribution in place and shopping domestic distribution after completion of the film is acceptable, but having a back-up plan for the domestic marketplace should that effort fail is then essential. Increasingly, the Film Advisor is emphasizing domestic marketing and distribution because of recent changes in the global marketplace.

The Film Advisor also needs the distributor's track record and financials, unless they are well known in the industry, and the same information regarding any sales agent, who might count as a distributor.

The State Investment Council and the Film Advisor are aware of the relatively recent significant increase in the number of theatrical, feature-length motion pictures produced independently (i.e., without a meaningful up-front distribution commitment from an established domestic distributor) with the intention of seeking initial release in the U.S. theatrical distribution marketplace or in other relevant and economically significant media. The SIC and the Film Advisor have also

noticed the trend where, despite the thousands of such films produced annually, less than 2% of that pool eventually achieve that level of domestic distribution. Thus, in reviewing applications for the upside in lieu of interest film loan program, where revenues are expected on any given motion picture in any medium within the domestic market and such revenues are critical to the film's achieving breakeven and profitability, the Film Advisor must take into consideration whether or not the respective motion picture has a high degree of probability of achieving the desired level of distribution.

Under these circumstances, the following represent the primary factors that will determine such viability:

1. Binding and meaningful contractual commitments from established domestic distributors/telecasters for the media which is required for economic success of the project.
2. Films which generate their economic viability (with tangible evidence of such viability) from revenues generated outside of the domestic marketplace (i.e., the domestic marketplace can only enhance the international success).
3. High production/talent (including director) value motion pictures from filmmakers with a clearly established and consistent track record of achieving such domestic distribution on past films within the recent past.
4. Motion picture productions with economically viable and committed marketing and distribution funding in place and sufficient to support the level of anticipated domestic release contemplated coupled with a realistic and viable marketing and distribution plan for the deployment of that funded commitment.

STEP EIGHT:

Our Film Advisor, contracted by the State of New Mexico, will help you to prepare your package. He (not you) will write a Recommendation (see included **Sample** on page 16) which, upon completion, will be presented at two hearings* you must attend in Santa Fe, NM: the Private Equity Investment Advisory Committee (PEIAC), which usually meets the second Wednesday of each month, and the State Investment Council (SIC), which typically meets the fourth Tuesday of each month.

**Please see "What to Expect at your Hearing" on Page 15.*

Our Film Advisor must have completed and submitted your Recommendation eight days prior to each hearing. A Recommendation document takes approximately 25 – 50 hours of work to complete; therefore you must submit your full package requirements to our Film Advisor at least 30 days prior to the next scheduled meeting of the PEIAC. ***Ultimately, our Film Advisor will determine which month your project will be presented.***

Note: The services provided by our Film Advisor are of no cost to your production; however, if you are approved for the Film Investment Loan, you are responsible for associated legal fees that can range from \$25,000-\$40,000. See "When you can expect the funds" on page 15.

After distribution has been approved by our Film Advisor (Step Seven), he will need the following sixteen (16) pieces of information:

- The **approved guarantor** from the State Investment Council for the principal amount of the loan (from Step Five)
- Top sheet** from the budget
- The **number of shoot days and locations in New Mexico** (if shooting takes place elsewhere, the Film Advisor needs to know where and how many days)
- Synopsis**
- Cast list** (with credits)
- Producers and Executive Producers** (with credits)
- Director** (with credits)
- Writer** (with credits and underlying source material, if any)
- A viable **completion bond** commitment (if delivery is a precondition to payment by the guarantor from paragraph 1 above)
- Information about **the production company applicant** (who owns, any assets, etc.)
- Information about how **the financing** that supports the bank guarantee works and who is supplying it
- The **material terms of distribution and written confirmation** from the relevant distributors that this project is being distributed by them
- A **marketing plan** (which may be subsumed under the distribution agreement)
- Substantiated low, medium and high projections** (these need to be based on some meaningful and objective basis, preferably by the relevant sales agent or distributor as to the film's performance). The entire world does not have to be accounted for, and we can make the approval contingent on securing a limited number of identified elements. The Film Advisor also needs to see what the production company receives and what it is required to pay out before recoupment or profits are generated. You should show the revenues and costs in a mini-spread sheet.
- How many years from funding you are requesting the loan's outside date for payback** (not to exceed 4-5 years, normally not more than 3 years for film) Note: the State can recoup behind the distributor and the equity investors (where there is equity in addition to the loan), but if it does not recoup its principal, then the guarantee of principal is called.
- If applicable, source of additional equity.

Please note that the requirements listed above do not guarantee that you will receive a film loan. The PEIAC has the full discretion to determine whether or not to recommend a film to the SIC for additional consideration and final determination.

Any questions, please contact: filmadvisor@state.nm.us

Since the loan will not bear interest, the State takes an appropriate piece of the post-breakeven revenues in lieu of interest. The State needs the above information to make a business decision as to whether this is an appropriate vehicle for the SIC to deploy its investment capital. The decision is discretionary with the State. No one individual has the authority to approve a loan, and that power, totally discretionary, is vested solely with the SIC. Commercial viability is the most significant factor that the SIC will examine.

The Film Investment Advisor will review the submitted materials for completeness and will begin due diligence on the potential film loan if it is found to be in proper order. If incomplete, the Film Investment Advisor will notify the applicant along with a list detailing the missing items. The applicant will then have ten (10) business days to submit the requested information.

If the Film Investment Advisor determines that the project does not meet the investment requirements of the New Mexico State Investment Council, the applicant will be so informed of this decision. Resubmission of the project will be at the discretion of the Film Advisor and/or SIC staff.

The other incentives, such as the 25% Tax Rebate Program, are administered directly by the New Mexico Film Office (505-476-5600), not our Film Advisor.

STEP NINE:

The New Mexico Film Office will need the following to complete your package:

- Copy of full budget
- Copy of full shooting schedule
- One or two sentence synopsis of story
- First New Mexico prep date
- First New Mexico shoot date
- How many days of shooting in New Mexico
- What city you plan to base production
- New Mexico Locations: the Film Office needs to verify that the production (principal & second unit photography) will take place “wholly or substantially” (at least 85%) in New Mexico, broken down by cities or regions. Aside from New Mexico, where else are you shooting and how many days? If you can only make the 85% requirement for principal shooting days, we will allow second unit to take place out-of-state; however, we will then require that 60% of your second unit payroll be allocated to New Mexico residents.
- Estimated expenditure in New Mexico (include pre & post)
- What unions and guilds you are signatory to (IATSE, WGA, DGA, SAG, Teamsters)
- Key Positions held by New Mexicans (or those you believe will be held by New Mexicans)
- Crew Spreadsheet: a Below-the-Line spreadsheet, including rates and total salary for each BTL crew member for the run of the production.
New Mexico hires, including their name, must be clearly indicated.
- Crew Count:
 - Total number of BTL Crew members:
 - Total number of BTL New Mexico Crew:
 - Total number of BTL Distant Hire Crew:

 - Total BTL Payroll: \$
 - Total BTL New Mexico Crew Payroll: \$
 - Total BTL Distant Hire Payroll: \$

 - Total Percentage BTL New Mexico Crew Payroll: %
 - Total Percentage BTL Distant Hire Payroll: %
- Crew Letter: After your contract is completed with Jon Hendry, IATSE Local 480, he will write the Film Office a letter stating that he believes you will make the 60% of BTL New Mexico crew requirement. As the IATSE technicians make up the bulk of crew, this is the only letter required and will be part of your package.

What to Expect at your Hearings:

Once our Film Advisor has determined your package is complete and has issued a Recommendation, he will determine which month he will present your project at the two hearings you (producer and/or director) must attend.

The First Hearing:

The Private Equity Investment Advisory Committee (PEIAC), which usually meets the second Wednesday of each month

Location: State Investment Council, Santa Fe, NM

The Second Hearing:

The State Investment Council (SIC), which typically meets the fourth Tuesday of each month.

Location: Governor's Office, State Capitol Building, Santa Fe, NM

Hearings are generally held at 9:00 am, so please plan to arrive in New Mexico the evening prior to your hearing.

What happens at the hearings:

- Our Film Advisor will be there to represent your project and describe the financials and structure of the deal
- Lisa Strout will be in attendance and give testimony to the rating, the 60% BTL crew requirement, the “wholly or substantially shot in NM” requirement, affiliations with unions, and number of shoot days, etc...
- Greg Kulka, State Investment Council, may answer questions from Council Members about your project
- You (producer and/or director) will be asked to briefly speak on behalf of your project: story line, creative elements, etc...

Note: These are public hearings and Press will be present

Council Members will vote in your presence as to the approval/disapproval of the loan.

If you're approved at the PEIAC hearing, you will attend the SIC hearing two weeks later and the process will be the same.

NEGOTIATION OF DOCUMENTS AND FUNDING (When can you expect the funds?):

If the project has been approved at the second (SIC) hearing, plan on 5 to 8 weeks for negotiation and preparation of final loan documents from the time of provision of the retainer to the SIC's counsel. This period could be longer depending upon how responsive the project representatives are in providing diligence materials requested by the SIC's counsel, how responsive counsel to the project is in negotiation of documents, the overall complexity of the financing structure in which the SIC funds may be a part, as well as other factors.

Immediately upon approval by the State Investment Council, applicants will be required to fund at least half of the estimated \$25,000 – \$40,000 State legal fee commitment that is required to be

paid in connection with the expected implementing paperwork, as instructed by the Film Advisor.

The project will also be required to provide an opinion of outside counsel in connection with the delivery of the loan agreement. The SIC ordinarily requires the grant of a security interest in the film collateral and also requires credit for itself in the main/end titles.

The SIC's counsel will need the following due diligence materials in order to negotiate and prepare final loan documents for closing:

- chain of title for the picture
- all documents that involve any dispute or claim that alleges infringement of intellectual property rights
- all sales agency and distribution agreements
- all agreements with key cast and key crew
- all production agreements
- all material agreements related to production of the picture
- all documents related to borrowings, guarantees of debt or similar arrangements by any entities involved in production of the picture
- all security agreements relating to assets involved in the Film
- all documents relating to any liens, claims, pledges or the like on property owned or leased by any entities involved in the production of the picture
- UCC and copyright searches
- copies of insurance policies
- information concerning litigation
- the following for all entities involved in production:
 - o charter documents
 - o jurisdiction in which each entity is organized
 - o list of jurisdictions in which each entity is qualified to do business
 - o list of officers, directors, shareholders, managers and/or members
 - o location of books and records
 - o bank names and account numbers
- organizational chart showing ownership relationship of all entities involved in production
- description of transactions and agreements between any entities involved in production and their owners, officers and directors
- financial statements for the past 3 years (as available)
- tax returns filed for the past 3 years (as available)
- other due diligence materials as requested by SIC's counsel

Funds become available within two or three days after the loan closing, depending on the funding schedule negotiated in the loan agreement.

***Note:** If you are approved for the loan and then decide not to take it, you are **still** responsible for the associated legal fees for the preparation of the final loan documents.*

RECOMMENDATION DOCUMENT - SAMPLE

The mechanism for an approval for a loan (capped at \$15M or the budget, whichever is less) from the State Investment Council (SIC) requires that the staff of the SIC and the Film Advisor issue a written Recommendation, first to the Private Equity Investment Advisory Committee (PEIAC) and then to the SIC.

To help you see what the Film Advisor and the SIC have to present, below is an example of an actual Recommendation that was approved so that you have an example of how it comes together.

Sample:

FILM INVESTMENT RECOMMENDATION MEMORANDUM

To: The State Investment Council

From: Peter J. Dekom, New Mexico Film Investment Advisor to the SIC

Date: October 11, 2006

Re: Lending/Equity Arrangement with Promenade Pictures/Global Creative Media
– *Gideon's Gift* – October 24, 2006 Meeting

Overview: Promenade Pictures, LLC ("Promenade"), a California limited liability company with offices at 1149 3rd Street, Suite 210, Santa Monica, CA 90403, and Global Creative Media, Inc, ("Global"), a Nevada corporation, 4760 S. Pecos Road Suite 103-07, Las Vegas, NV 89121, which are hereinafter jointly and severally referred to as "PGC," have jointly submitted a request to the PEIAC/SIC and the Film Office pursuant to NMSA 7-27-5.26 for a three year fixed term feature film production loan for \$5,034,824, which shall generate an equity rate of return (22.3% of the post-breakeven revenue stream as defined below) in lieu of interest, inclusive of the required legal fees to the state of New Mexico (estimated at \$35,000). This total loan amount represents 100% of the total budget. By a unanimous voice vote at its October 11, 2006 meeting, the Private Equity Investment Advisory Committee approved that this recommendation be submitted for approval by the State Investment Council.

Promenade is a development-production-distribution vehicle with a reasonable level of assets (which they value in the amount of \$12 million) and is owned by Frank Yablans, Cindy Bond, Ron Booth, Charlie Gay and Dr. Chester Semel. Global is a development-production company with limited assets (film projects in development) and is owned by David Svec and Ed Pickens. However, since the State will be looking to a qualified guarantor (Washington Mutual) for the repayment, the financial net worth of either Promenade or Global is not a material consideration; limited asset borrowers are normal in transactions of this type.

Note: The New Mexico loan is a fixed term (3 years) and would not be paid from the revenue flow of the Film.

PGC is in the process of finalizing the acquisition of all rights in the Film from Global Moon Productions, LLC (a Las Vegas, New Mexico-based limited liability company, owned by producer, Dave Svec, and producer, writer & director, Rudy Luna).

Synopsis: This is a Christian faith-based motion picture about a man, Earl Badgett, who has lost his beloved wife and daughter, leaving him empty and bitter. As Badgett's slides slowly downhill, taking meals at a Christian mission (where 8-year-old Gideon Mercer's family does volunteer work), his life is turned around by a pesky little Gideon who is in remission from leukemia (which she sees as a Christmas gift from God) as she presents him with a life-saving gift at a mission Christmas dinner. The Film is based on a novella of the same name by Karen Kingsbury.

Creative Team: The Film was written by **Grace McAdams, Bill McAdams, Tereso Caspa-Hurst and the director/producer, Rudy Luna** {whose writing, producing and directing credits are *Attract Opposites* (2005) (screenplay) and *PrimeMates* (2005)}, will also be **produced by John McAdams, Tereso Caspa-Hurst** (who also produced *Attract Opposites* and *PrimeMates*) **and Tomas Hejda** (also a credited producer on *PrimeMates*). The **executive producers will be** former Paramount Pictures President, **Frank Yablans** {whose credits include: *"Rome"* (2005) TV Series (producer), *A Dog of Flanders* (1999) (producer), *Baby Geniuses* (1999) (executive producer), *Congo* (1995) (executive producer), *Lisa* (1989) (producer), *Mommie Dearest* (1981) (producer), *North Dallas Forty* (1979) (producer), *The Fury* (1978) (producer), *The Other Side of Midnight* (1977) (producer) and *Silver Streak* (1976) (executive producer)}, **Dave Svec, Cindy Bond** {*Extreme Days* (2001) (producer), *The Joyriders* (1999) (producer) and *Stranger in My House* (1999) (co-executive producer)} **and Dave Hickey**.

The Film producers hope to **cast**, but have not secured, **Christian Slater** {whose acting credits include: *Bobby* (2006) Timmons, *The Deal* (2005) Tom Hanson, *Alone in the Dark* (2005) Edward Carnby, *Churchill: The Hollywood Years* (2004) Winston Churchill, *The Good Shepherd* (2004) Daniel Clemens, *"The West Wing"* (2002) Lt. Cmdr. Jack Reese, *Windtalkers* (2002) Sgt. Pete 'Ox' Anderson, *3000 Miles to Graceland* (2001) Hanson, *The Contender* (2000) Rep. Reginald Webster, *Love Stinks* (1999) (uncredited) Eddie, *White Lies* (1999) Zach, *Very Bad Things* (1998) Robert Boyd, *Hard Rain* (1998) Tom, *Interview with the Vampire: The Vampire Chronicles* (1994) Daniel Malloy, *True Romance* (1993) Clarence Worley, *Robin Hood: Prince of Thieves* (1991) Will Scarlett, *Young Guns II* (1990) Arkansas Dave Rudabaugh, *The Wizard* (1989) Nick Woods, *Heathers* (1989) Jason 'J.D.' Dean and *Tucker: The Man and His Dream* (1988) Junior Tucker} **and Elle Fanning** {who has appeared in productions such as: *Babel* (2006) Debbie, *Because of Winn-Dixie* (2005) Sweetie Pie Thomas, *P.N.O.K.* (2005) Rebecca Bullard, *I Want Someone to Eat Cheese with* (2005) Penelope, *The Door in the Floor* (2004) Ruth Cole, *Daddy Day Care* (2003) Jamie, *"Taken"* (2002/I) (mini) TV Series Allison Clarke - Age 3 and *I Am Sam* (2001) Lucy at 2 Years}.

Rating: The Film Office has reviewed the teleplay and has noted that this is entertainment which is expected to receive an MPAA rating no more restrictive than PG.

Underlying Financing: The guarantee is sustained by a combination of the estimated value of international presales, the estimated value of the New Mexico refundable tax credit, and equity financing/bank guarantee supplied to Global through Hugh Management Group, LLC (a structured financing company based in Las Vegas, NV).

Distribution: International - The Film will be distributed (15 year term) in the international marketplace through presales by American Cinema International ("ACI"), a production and distribution company with a library primarily comprised of domestic made-for-television or made-for-video titles and low budget genre films. PGC's sales agreement with ACI calls for the latter to charge an off-the-top sales commission of 20% of international sales (and revenues generated in excess of presales, but one quarter of this sales commission will be deferred out of post-breakeven international revenues), deduct the costs of marketing and delivering the Film to buyers (which costs, except for union/guild-mandated residuals and taxes, are capped at \$75K), with the balance being paid to PGC for distribution in recoupment of the production costs and as upside to the various participants according to their agreements with PGC. New Mexico will of course be entitled to its share of upside from this revenue flow from the Film. The State may require that all receipts, foreign and domestic, flow through an approved collection account (Fintage House would be such an approved entity).

Domestic - Promenade itself currently plans to release the Film theatrically in the domestic market as a family film over the 2007 Christmas holiday season. The initial release is expected to be on no fewer than 500 screens in 20 major markets in North America, and if the market proves receptive, to broaden the release to approximately 1,000 screens (50 major markets). The minimum commitment (in releasing costs for this theatrical release) is \$2.5 million, of which, no less than 75% of which will be expended on or before the expiration of the first week of the initial domestic theatrical release. Promenade is funding this release from its own internal sources. While Promenade may utilize subdistributors for some of the ancillary exploitation, all of the relevant gross revenues from the Film will be measured at the subdistributor's source (including DVD/home video, which currently represents 63% of the average distributor's gross receipts for all theatrically-released films).

Promenade's distribution fee (which will absorb all subdistribution fees) in the domestic marketplace will be 25%, payable 22.5% to Promenade and 2.5% towards the recoupment of the State's loan, thereafter Promenade/PGC will deduct all of its direct, out-of-pocket releasing costs paid to unrelated third parties in connection with its domestic distribution of the Picture, and remit the balance to be applied against the State's loan, and, if sufficient revenues remain, toward the upside of the Film.

Promenade's Chairman and Chief Executive Officer, Frank Yablans, established his domestic distribution credentials at Paramount Pictures, beginning as Assistant General Sales Managers and rising through the ranks of the distribution arm of that company until finally becoming President of the entire Paramount film and television operation. During his tenure, films like *The Godfather*, *Chinatown* and the original *The Longest Yard* and television series like *Happy Days*, *Star Trek* and *The Odd Couple* were produced and marketed.

Schedule 1 attached hereto illustrates the international revenue projections from ACI (the range between acceptable and better-than-average). Schedule 2 attached hereto provides the high, low and expected domestic revenues from Promenade. Independent theatrical distributors collect a lower-than-average percentage of the box office as their share thereof (between 35% and 42%, and Promenade's projections are at the higher end of this statistic). Schedule 3 combines the gross results of Schedules 1 & 2 including the 2.5% contribution from the domestic distribution fee, the economic value of various New Mexico incentives, applies the respective sales and distribution fees as permitted above, releasing/marketing costs, costs of production, deferrals and thereby generates the projections of defined gross receipts at the high, low and expected levels.

Staffing and Location Parameters: The New Mexico Film Office has also ascertained that, if the loan is provided by the state, production will in fact take place in New Mexico as required by law and that 60 per cent or more of the production crew (based on compensation) will be New Mexico residents. PGC estimates that such crew staffing level, based on budget, could achieve in excess of a 70+% level. The Film is scheduled to commence preproduction in early January of 2007 and is tentatively scheduled for principal photography starting in mid- to late February of 2007 year (30 days, scheduled entirely in New Mexico). The production will be based out of Albuquerque. The Film will be subject to the applicable collective bargaining agreements of SAG, WGA, DGA, IATSE and the Teamsters.

Completion Guarantee: Film Finances, Inc. ("FF"), an established completion bond which has guaranteed New Mexico-financed films before, has written that if all of its criteria are in fact met, it is prepared to issue a completion bond to guarantee completion and delivery of the Film.

Guarantor of Principal: The New Mexico-required guarantor of the relevant principal for the above loan will be Washington Mutual (Trails Center Financial Center 1990 Village Center Drive Suite 7-8 Las Vegas, NV 89134), which the SIC staff has ascertained maintains a balance sheet and related financials that fully qualifies as an A or better rated domestic bank and is thus an acceptable loan guarantor under the relevant New Mexico regulatory and statutory requirements (hereinafter the "Guarantor").

Thus, this Film meets the statutory and policy requirement of the New Mexico Film investment program.

Proposed Promenade Pictures/Global, Agreement with New Mexico:

A \$5,034,824 (inclusive of the specified reimbursement of State legal fees) loan would be made to PGC for the production, payable in installments (to be negotiated), with a guaranteed fixed payback date of three years from receipt of the final installment. The State would be entitled to a participation in the upside of the film of 22.3% of 100% gross receipts after breakeven (defined below).

Typically, after distribution fees and costs are recouped, the cost of producing a film (normally plus interest, which is not relevant here) is recovered, all of the foregoing on an on-going basis, the remaining sums are the aggregate pool of "profits" which represent the upside inherent in the film. Usually, half of this profit pool is accorded to

the talent (writers, director, producers, actors, etc.), and half is accorded the investors putting up the risk capital for the production of the film. In the State's case, the amount that is truly "at risk" is the interest portion on the loan, which I will estimate at approximately \$1M (the net present value of which is approximately \$915K). Hence the State is assuming risk of approximately 18+% of the total production cost (\$5,034,824), but clearly a higher percentage of the true "at-risk" equity as analyzed below.

While the loan would not have a recoupment position from revenues generated from the Film (it is a fixed three year term), the State would have an upside position in the defined post-breakeven revenues (based on non-refundable gross receipts, worldwide, from all sources of exploitation from the Film paid to Promenade/ACI (including the New Mexico rebate, if any), revenues received by PGC from the relevant domestic and international distribution/sales, which would be defined, calculated and paid as follows in the following order:

1. The respective international sales commissions to ACI (20% on foreign sales and overages; ¼ of which shall be deferred until after international breakeven – money in excess of the net [less commission and sales costs] international contribution towards negative cost) and the 25% domestic fee to Promenade (remitting 2.5% of 100% from that distribution fee for recoupment of the loan). Clearly, there will be full distribution fees from the individual territorial distributors.
2. The distribution costs which include the following:
 - a. union and guild mandated residuals (which will be PGC's obligation).
 - b. master prints/DVDs, marketing, advertising.
 - c. sale materials and screening costs.
 - d. all remaining normal and customary distribution costs (placing a cap on international marketing expenses, excluding residuals and taxes, of \$75k).
3. The New Mexico loan repayment (\$5,034,824).
4. Any over-budget amounts not covered by the completion bond (which may accrue prior to the payback date to New Mexico).

NOTE: The viability of such an agreement and the contemplated distribution very much depends on the quality and commerciality of the Film as produced.

This is a possible estimated economic model but by no means a guarantee. Any attempt to project actual revenues from a motion picture, particularly before it is made, would be very speculative.

When the financial structure is analyzed, that portion of the financing not covered by the estimated value of the New Mexico refundable tax credit (\$250K) and minimum presales (\$2.734 million) is \$2.984 million, which leaves \$2.051 million (which represents 41% of the total budget). This is the true at-risk equity portion of this financing, and thus the State's risk will be factored against that number. It is not unreasonable to assume that 50% of defined post-breakeven revenues are accorded to the investors in most deals, so the Film Advisor has made that assumption here. That would suggest that the State would be entitled to a participation in the Film's defined post-breakeven revenues based on three years of foregone interest (which has been estimated, per the above calculation, to be approximately \$915K/\$2.051 million. x 50% = approximately 22.3%.

Based upon the projections set forth in greater detail in Schedules 1, 2 and 3 attached hereto, in the expected range (without any major "hit" level of performance or a significant theatrical release), the State's participation could range from zero (if the Film does not garner sufficient public acceptance to widen the theatrical release beyond the minimum commitment) to 22.3% of \$13,350,950 = \$2,977,261 (4 year net present value @ 6.75%: \$2,447,446) on the low end, 22.3% of \$16,913,450 = \$3,77,170 (4 year net present value: \$3,100,513) in the mid-range and 22.3% of \$20,475,950 = \$4,566,137 (4 year net present value: \$3,753,577) on the higher end, which numbers are reasonably reflective of the foregone interest with the reasonable potential of generating a premium above that foregone interest (approximately \$915K). Obviously, if the Film finds an even wider audience or generates a significantly higher theatrical release, these numbers could be substantially higher.

Distribution fees are typically paid in part for any advances or guarantees provided but there is always a service provided in connection with the placing of film product into one or more channels of distribution. Both ACI and Promenade maintain a distribution, sales and marketing force that have negotiated beneficial agreements for filmmakers on a variety of projects.

PGC is responsible for all costs incurred by New Mexico's outside legal counsel in the preparation of the relevant documents.

Neither Promenade nor Global has significant assets, a factor which the Committee must take into consideration in evaluating risk. Since the financing is being generated outside of this entity, and such single purpose companies are within normal industry practices, it is therefore less critical than most business scenarios. The state may require that all sales agents or distributors (e.g., Promenade and ACI) make direct payments to the state of their upside, and require that PGC secure such direct payment obligations to the state and/or to a collection agency approved by the State (such as Fintage House). Additionally, the state may require a security interest (subordinate to that of Washington Mutual) in the Film and the proceeds therefrom to secure its upside.

Benefits/Risks to New Mexico

Initial analysis provides a reasonable if not quite significant upside in a lower budget, targeted family “Christmas” film audience (a category that covers films opening on or after the beginning of November through the holiday season). It should be noted that this season is considered the second most exploitable (read: lucrative) period of the year (behind summer), where advertising costs are the highest and major studios are releasing their big-production-value holiday slates of films, a highly competitive period. PGC is offering a faith-based, “heart-warming” tale as counter-programming to the expected competition, a gamble that may well produce results. Promenade feels strongly that there is a dearth of high quality faith-based family entertainment even during this Christian holiday period, so the prognosis for audience receptivity is high under this analysis. The Film Advisor believes this to be a reasonable and calculated assumption.

The Film is a family film that focuses on an uplifting story that may motivate parents to take their children under twenty years of age. The leading actors are recognizable names which are a value to a film with this limited budget. The financial analysis for such a motion picture must of necessity take into consideration that this product is being created with limited capital (and hence fairly low risk of significant loss), but the budget is still considered significant in the independent art film world. Foreign revenue estimates for this Film are conservative, but clearly the lowest risk (and hence the basis for the estimates) is in that market. The “bet” on this Film is that the domestic marketplace proves to be generally receptive to the Film, the storyline is well-executed and, since this is a family film, that it provides the requisite faith-based alternative to competitive product.

Since the cost of production is extremely modest, any level of domestic performance could create the possibility of true upside, well beyond the 5-8% internal rates of return to investors on average filmed product. Because the Film is being independently financed, the PGC structure increases the probability of success because of the more favorable definitions of revenue pots accorded to investors (vs. talent). Since more than half of the reasonably-expected revenue stream (international sales and the New Mexico tax credit) will be generated in the first half of the loan term, the interest risk to the state is further reduced.

Because of the Guarantor (Washington Mutual) to the State of its \$5,034,824, risk of loss of principal is extremely low, and the main risk, as illustrated above is the loss of the time value of money (i.e., the interest factor).

The Film Advisor has been instructed that other non-rate-of-return variables which provide direct economic benefits or prospective economic benefits to the state and people of New Mexico can be considered.

In addition to the potential of upside in a commercial motion picture produced through the State of New Mexico, which is in itself an efficient use of state funds to encourage local jobs, provide income to local vendors and allow additional economic expenditures to be paid into the local economy as those visiting the state for production purposes make expenditures outside of the cost of the film itself, further benefits to New Mexico tourism can be expected. Since this budget is well in excess of the lower budgets accorded to films in this genre, the impact on jobs and local spends will increase accordingly.

Summary

Therefore, the film advisor recommends that this transaction (a three year fixed term loan with a participation to the State of 22.3% of the defined upside from the Film in lieu of interest) be approved by the State Investment Council, pending finalization of all relevant documentation in accordance with the following parameters:

1. Securing the loan guarantee from the Washington Mutual (or equivalent) for \$5,034,824 of the loan to PGC, from New Mexico, subject to payback to the State in three years from drawdown of the last installment of the loan, in which interest is waived in favor of the State's participation in 22.3% of the production company's post-breakeven revenues, which shall be documented in a form reasonably acceptable to the SIC appointed legal counsel.
2. Securing the relevant completion bond as described above from Film Finances, Inc.
3. Securing the necessary written commitments to pay the state directly (with underlying security agreements, if any, as recommended by counsel to the SIC) from Promenade, ACI (including finalization of any relevant implementing documentation) and any other relevant distributors/exploiters of the Film as to the negotiated upside. Counsel may require the use of an approved collection account to implement the foregoing requirements.
4. Finalizing agreements with key cast members and the director, which will generate no less than the minimum estimates set forth in Schedule 1.
5. Finalizing an agreement or agreements with PGC, as determined by counsel for the SIC, setting forth: their detailed production and delivery obligations as required in the SIC/PEIAC approval, their detailed compliance obligations to insure that all relevant statutes and regulations are followed, the State's right to participate in the upside percentage from the film's revenues, if such upside is in fact generated, together with normal auditing and accounting provisions, verification and the relevant representations that all promised distribution arrangements are in fact finalized and in place, the state's customary on screen credit requirements, normal and customary representations and warranties that the chain of title is intact, that production of the film will not violate any third party rights, full indemnification of the State against claims, verification that all necessary insurance is in place and such other and customary provisions that are contained in agreements of this type are appropriately set forth.

Schedule 1

ACI'S INTERNATIONAL TERRITORIAL SALES ESTIMATES

PRIMARY TERRITORIES	ASK		TAKE	
GERMANY	\$	375,000	\$	300,000
ITALY	\$	375,000	\$	300,000
FRANCE	\$	375,000	\$	300,000
SPAIN	\$	375,000	\$	300,000
UK	\$	312,500	\$	250,000
SCANDINAVIA	\$	156,250	\$	125,000
BENELUX	\$	93,750	\$	75,000
PORTUGAL	\$	43,750	\$	35,000
POLAND	\$	37,500	\$	30,000
HUNGARY	\$	31,250	\$	25,000
CZECH	\$	37,500	\$	30,000
BULGARIA	\$	5,000	\$	4,000
CROATIA	\$	8,750	\$	7,000
CIS	\$	93,750	\$	75,000
ROMANIA	\$	12,500	\$	10,000
TOTAL PRIMARY	\$	2,332,500	\$	1,866,000
SECONDARY TERRITORIES				
LATIN AM	\$	156,250	\$	125,000
BRAZIL	\$	62,500	\$	50,000
GREECE	\$	56,250	\$	45,000
TURKEY	\$	62,500	\$	50,000
MIDDLE EAST	\$	37,500	\$	30,000
ISRAEL	\$	12,500	\$	10,000
JAPAN	\$	312,500	\$	250,000
AUSTRALIA	\$	125,000	\$	100,000
MALAYSIA	\$	12,500	\$	10,000
INDIA	\$	12,500	\$	10,000
FAR EAST CHANNEL	\$	31,250	\$	25,000
INDONESIA	\$	50,000	\$	40,000
TAIWAN	\$	12,500	\$	10,000
CHINA	\$	31,250	\$	25,000
KOREA	\$	43,750	\$	35,000
HONG KONG	\$	5,000	\$	4,000
SINGAPORE	\$	5,000	\$	4,000
THAILAND	\$	31,250	\$	25,000
SOUTH AFRICA	\$	25,000	\$	20,000
TOTAL SECONDARY	\$	1,085,000	\$	868,000
TOTAL FOREIGN SALES	\$	3,417,500	\$	2,734,000

DISCLAIMER:

*The projections in Schedules 1, 2 & 3, reflect estimates only, and are made without representation and warranty. It should not and may not be relied upon by any person or entity for any reason. There is no guarantee, express or implied, that the values set forth herein shall be achieved.

Schedule 2: PROMENDADE'S DOMESTIC REVENUE PROJECTIONS

REVENUE	Low			Medium			High		
THEATRICAL									
U.S. Gross Box Office	\$7,500,000			\$12,500,000			\$17,500,000		
Distributor's Share of Box Office (Rentals)	42%	\$3,150,000		44%	\$5,500,000		46%	\$8,050,000	
Prints and Advertising Expenditures = 35% of B.O. Gross		(\$2,625,000)			(\$4,375,000)			(\$6,125,000)	
Prints and Advertising Interest (15%)		(\$393,750)			(\$656,250)			(\$918,750)	
Distribution Fee (25%)		(\$787,500)			(\$1,375,000)			(\$2,012,500)	
Theatrical Gross Profits (Loss)			(\$656,250)			(\$906,250)			(\$1,006,250)
HOME VIDEO (RENTAL)									
Units	300,000			400,000			500,000		
Wholesale Price	<u>\$ 25.00</u>			<u>\$25.00</u>			<u>\$ 25.00</u>		
Wholesale Revenue		\$7,500,000			\$10,000,000			\$12,500,000	
Less Expenses									
Returns (5.0%)		(\$375,000)			(\$500,000)			(\$625,000)	
Duplication (\$1.25 per unit)		(\$375,000)			(\$500,000)			(\$625,000)	
Mastering		(\$25,000)			(\$25,000)			(\$25,000)	
Marketing Expense (15%)		(\$1,125,000)			(\$1,500,000)			(\$1,875,000)	
Distribution Fee (25%)		(\$1,875,000)			(\$2,500,000)			(\$3,125,000)	
Total Expenses		<u>(\$3,775,000)</u>			<u>(\$5,025,000)</u>			<u>(\$6,275,000)</u>	
TOTAL VIDEO NET REVENUE (RENTAL)	\$ 12.42	Per Unit	\$3,725,000	\$ 12.44	Per Unit	\$4,975,000	\$ 12.45	Per Unit	\$6,225,000
HOME VIDEO (SELL THROUGH)									
Units	1,500,000			2,000,000			2,500,000		
Wholesale Price	<u>\$ 10.00</u>			<u>\$ 10.00</u>			<u>\$ 10.00</u>		
Wholesale Revenue		\$15,000,000			\$20,000,000			\$25,000,000	
Less Expenses									
Returns (5.0%)		(\$750,000)			(\$1,000,000)			(\$1,250,000)	
Duplication (\$1.25 per unit)		(\$1,875,000)			(\$2,500,000)			(\$3,125,000)	
Mastering		(\$10,000)			(\$10,000)			(\$10,000)	
Marketing Expense (10%)		(\$1,500,000)			(\$2,000,000)			(\$2,500,000)	
Distribution Fee (25%)		(\$3,750,000)			(\$5,000,000)			(\$6,250,000)	
Total Expenses		<u>(7,885,000)</u>			<u>(10,510,000)</u>			<u>(13,135,000)</u>	
TOTAL VIDEO NET REVENUE (SELL THROUGH)	\$ 4.74	Per Unit	\$7,115,000	\$ 4.75	Per Unit	\$9,490,000	\$ 4.75	Per Unit	\$11,865,000
OTHER REVENUES									
Television		\$750,000			\$1,250,000			\$1,750,000	
Other Ancillary Markets		\$350,000			\$350,000			\$350,000	
TOTAL OTHER REVENUES			<u>\$1,100,000</u>			<u>\$1,600,000</u>			<u>\$2,100,000</u>
TOTAL REVENUE (RENTAL, SELL THROUGH, OTHER)			\$11,283,750			\$15,158,750			\$19,183,750
OTHER EXPENSES									
Television Distribution Fee	25.0%	(\$187,500)		25%	(\$312,500)		25%	(\$437,500)	
Other Ancillary Markets Distribution Fee	25.0%	(\$87,500)		25%	(\$87,500)		25%	(\$87,500)	
TOTAL OTHER EXPENSES			<u>(\$275,000)</u>			<u>(\$400,000)</u>			<u>(\$525,000)</u>
TOTAL NET REVENUE			\$11,008,750			\$14,758,750			\$18,658,750

Schedule 3: Upside Projections (Aggregating Revenues and Deducting Costs)

REVENUE	Low			Medium			High		
THEATRICAL									
U.S. Gross Box Office	\$7,500,000			\$12,500,000			\$17,500,000		
Distributor's Share of Box Office (Rentals)	42%	\$3,150,000		42%	\$5,250,000		42%	\$7,350,000	
Prints and Advertising Expenditures = 35% of B.O. Gross		(\$2,625,000)			(\$4,375,000)			(\$6,125,000)	
Prints and Advertising Interest (15%)		(\$393,750)			(\$656,250)			(\$918,750)	
Promenade Distribution Fee (22.5%) – based on Rentals		(\$708,750)			(\$1,181,250)			(\$1,653,750)	
New Mexico Distribution Fee (2.5%) – based on Rentals		(\$78,750)			(\$131,250)			(\$183,750)	
Theatrical Gross Profits (Loss)			(\$656,250)			(\$1,093,750)			(1,531,250)
HOME VIDEO (RENTAL)									
Units	300,000			400,000			500,000		
Wholesale Price	<u>\$ 25.00</u>			<u>\$ 25.00</u>			<u>\$ 25.00</u>		
Wholesale Revenue		\$7,500,000			\$10,000,000			\$12,500,000	
Less Expenses									
Returns (5.0%)		(\$375,000)			(\$500,000)			(\$625,000)	
Duplication (\$1.25 per unit)		(\$375,000)			(\$500,000)			(\$625,000)	
Mastering		(\$25,000)			(\$25,000)			(\$25,000)	
Marketing Expense (15%)		(\$1,125,000)			(\$1,500,000)			(\$1,875,000)	
Promenade Distribution Fee (22.5%)		(\$1,687,500)			(\$2,250,000)			(\$2,812,500)	
New Mexico Distribution Fee (2.5%)		(\$187,500)			(\$250,000)			(\$312,500)	
Total Expenses		<u>(\$3,775,000)</u>			<u>(\$5,025,000)</u>			<u>(\$6,275,000)</u>	
TOTAL VIDEO NET REVENUE (RENTAL)	\$ 12.42	Per Unit	\$3,725,000	\$ 12.44	Per Unit	\$4,975,000	\$ 12.45	Per Unit	\$6,225,000
HOME VIDEO (SELL THROUGH)									
Units	1,500,000			2,000,000			2,500,000		
Wholesale Price	<u>\$ 10.00</u>			<u>\$ 10.00</u>			<u>\$ 10.00</u>		
Wholesale Revenue		\$15,000,000			\$20,000,000			\$25,000,000	
Less Expenses									
Returns (5.0%)		(\$750,000)			(\$1,000,000)			(\$1,250,000)	
Duplication (\$1.25 per unit)		(\$1,875,000)			(\$2,500,000)			(\$3,125,000)	
Mastering		(\$10,000)			(\$10,000)			(\$10,000)	
Marketing Expense (10%)		(\$1,500,000)			(\$2,000,000)			(\$2,500,000)	
Promenade Distribution Fee (22.5%)		(\$3,375,000)			(\$4,500,000)			(\$5,625,000)	
New Mexico Distribution Fee (2.5%)		(\$375,000)			(\$500,000)			(\$625,000)	
Total Expenses		<u>(\$7,885,000)</u>			<u>(\$10,510,000)</u>			<u>(\$13,135,000)</u>	
TOTAL VIDEO NET REVENUE (SELL THROUGH)	\$ 4.74	Per Unit	\$7,115,000	\$ 4.75	Per Unit	\$9,490,000	\$ 4.75	Per Unit	\$11,865,000
OTHER REVENUES									
Television		\$750,000			\$1,250,000			\$1,750,000	
Other Ancillary Markets		\$350,000			\$350,000			\$350,000	
International		\$2,734,000			\$2,734,000			\$2,734,000	
New Mexico Rebate		\$250,000			\$250,000			\$250,000	
TOTAL OTHER REVENUES			<u>\$4,084,000</u>			<u>\$4,584,000</u>			<u>\$5,084,000</u>
TOTAL REVENUE (RENTAL, SELL THROUGH, OTHER)			<u>\$14,267,750</u>			<u>\$17,955,250</u>			<u>\$21,642,750</u>
OTHER EXPENSES									
Promenade Television Distribution Fee	22.5%	(\$168,750)		22.5%	(\$281,250)		22.5%	(\$393,750)	
New Mexico Television Distribution Fee	2.5%	(\$18,750)		2.5%	(\$31,250)		2.5%	(\$43,750)	
Promenade Other Ancillary Markets Distribution Fee	22.5%	(\$78,750)		22.5%	(\$78,750)		22.5%	(\$78,750)	
New Mexico Other Ancillary Markets Distribution Fee	2.5%	(\$8,750)		2.5%	(\$8,750)		2.5%	(\$8,750)	
ACI International Distribution Fee	20.0%	(\$546,800)		20.0%	(\$546,800)		20.0%	(\$546,800)	
ACI International Marketing Expenses		(\$75,000)			(\$75,000)			(\$75,000)	
ACI Delivery Costs		(\$20,000)			(\$20,000)			(\$20,000)	
TOTAL OTHER EXPENSES			<u>(\$916,800)</u>			<u>(\$1,041,800)</u>			<u>(\$1,166,800)</u>
TOTAL EXPECTED PROJECTION – NET REVENUE			\$13,350,950			\$16,913,450			\$20,475,950
NEW MEXICO SHARE OF REVENUE (22.3%)			\$2,977,261			\$3,771,70			\$4,566,137

Film Crew Advancement Program – FCAP

New Mexico offers a 50% reimbursement of wages for on-the-job training of New Mexico residents in advanced below-the-line crew positions. New Mexican Supervisors and Keys have the opportunity to hire and mentor qualifying NM crew in advanced positions for this program.

For example: if a New Mexican Key Grip is hired, the Key Grip may mentor a New Mexican Best Boy Grip who has less than two film/TV credits as a Best Boy Grip prior to being hired on the production. The Best Boy Grip in this example would qualify for the 50% reimbursement of hourly wages for as many hours the Best Boy Grip has available in the program (up to 1040). For more details regarding this program, contact the New Mexico Film Office *upon opening production offices in New Mexico*.

Step One: Fill out *Film Production Registration Form* (if you have already applied for the 25% Tax Rebate or Film Investment Loan program and have already filled out this form, please skip to Step Two).

Step Two: When you have opened production offices in New Mexico, fill out *FCAP Application Part One* (available at www.nmfilm.com/incentive-forms.php) and fax to (505) 476-5601 Attn: Workforce Training Administrator.

Our Workforce Training Administrator will contact you for further instruction.

NO STATE SALES TAX - Nontaxable Transaction Certificates (NTTCs)
Not to be used in conjunction with the 25% tax rebate

(Used primarily for local commercials and PSAs)

NOTE: If you choose to use the Nontaxable Transaction Certificates (NTTCs) on a given expenditure, you may not count the same expenditure toward the 25% Tax Rebate. You must choose one or the other.

The State of New Mexico charges a gross receipts tax, or sales tax, at the point of sale. As an incentive, the state will issue your company Type 16 Nontaxable Transaction Certificates (NTTCs), which work much like grocery-store coupons. A certificate is presented at the point of sale and no gross receipts tax is charged.

Who Qualifies:

This program is used primarily by producers of local, regional, and national advertisements.

What Qualifies for the NTTCs:

- the cost of a story and scenario to be used for a film
- salaries of talent, management and labor; including payments to personal services corporations with respect to the services of qualified performing artists, as determined under Section 62b(a)(A) of the Internal Revenue Code of 1986
- cost of the construction and operations, wardrobe, accessories, and related services
- costs of sound synchronization, lighting, and related services
- costs of editing and related services
- rental of facilities and equipment (including location fees)
- other direct costs of producing the film, not including lodging, rental of vehicles, or catering

The Process:

1. Complete the following forms (available at nmfilm.com):
 - *Film Production Company Registration*
 - *Application for Business Tax Identification Number*
 - *Application for Nontaxable Transaction Certificates – NTTCs*
2. Mail or fax the completed forms to: John Armijo, New Mexico Film Office, 418 Montezuma Ave. Santa Fe, NM 87501 Fax: 505-476-5601
3. New Mexico Taxation and Revenue Department will send you a New Mexico Business ID Number and CRS -1 Filer's Kit.
4. You will receive Type 16 NTTC certificates from the New Mexico Taxation and Revenue Department. Present them to the vendor at the point of sale and no tax will be added to your bill.

FORMS

Available at <http://www.nmfilm.com/filming/incentives/incentive-forms.php>

25% Film Production Tax Rebate

Forms needed:

- Film Production Company Registration Form
- Production Tax Credit Agreement
- Declaration Of Residency
- Application for Film Production Tax Credit & Instructions
- Film Production Tax Credit Claim Form

Film Investment Program (loan)

Forms needed:

- Film Production Company Registration Form

Film Crew Advancement Program (FCAP)

Forms needed:

- Film Production Company Registration Form
- FCAP Application Part One

Nontaxable Transaction Certificates - NTTCs

Forms needed:

- Film Production Company Registration Form
- Application For Business Tax Identification Number
- Application for Nontaxable Transaction Certificates
- NTTC Type Descriptions

For more information on New Mexico's film incentives,
Call 505-476-5600 or visit nmfilm.com