WINMARK CORP
Form 10-K
March 11, 2010
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UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-K

(Mark one)

x ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(D) OF THE SECURITIES EXCHANGE ACT OF 1934

For the fiscal year ended December 26, 2009, or

o TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(D) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from to

Commission File Number: 000-22012

WINMARK CORPORATION

(exact name of registrant as specified in its charter)

Minnesota (State or Other Jurisdiction of Incorporation or Organization)	**41-1622691** (I.R.S. Employer Identification No.)
605 Highway 169 North, Suite 400, Minneapolis, Minnesota (Address of Principal Executive Offices)	**55441** (Zip Code)

Registrant s Telephone Number, Including Area Code: **(763) 520-8500**

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

Title of Each Class	**Name of Each Exchange On Which Registered**
Common Stock, no par value per share	Nasdaq Global Market

Securities registered pursuant to Section 12(g) of the Act: **None**

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 x

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 x

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 x 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. x

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): (Do not check if a smaller reporting company)

Large accelerated filer o	Accelerated filer o
Non-accelerated filer o	Smaller reporting company x

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

The aggregate market value of the voting and non-voting common equity held by non-affiliates of the registrant, computed by reference to the price at which the common equity was last sold, of the average bid and asked price of such common equity, as of the last business day of the registrant s most recently completed second fiscal quarter was $30,326,345.

Shares of no par value Common Stock outstanding as of March 8, 2010: 5,122,233 shares.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the definitive Proxy Statement for the Registrant s Annual Meeting of Shareholders to be held on April 28, 2010 have been incorporated by reference into **Items 10, 11, 12, 13 and 14** of Part III of this report.

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WINMARK CORPORATION AND SUBSIDIARIES

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PART IV

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PART I

ITEM 1: BUSINESS

Background

We are a franchisor of four value-oriented retail store concepts that buy, sell, trade and consign merchandise. Each of our retail store brands emphasizes consumer value by offering high-quality used merchandise at substantial savings from the price of new merchandise and by purchasing customers used goods that have been outgrown or are no longer used. The retail brands also offer new merchandise to customers.

We operate a middle-market equipment leasing business through our wholly owned subsidiary, Winmark Capital Corporation. Our middle-market leasing business serves large and medium-sized businesses and focuses on technology-based assets which typically cost more than $250,000. The businesses we target generally have annual revenue of $50 million or more. We generate middle-market equipment leases primarily through business alliances, equipment vendors and directly from customers.

We also operate a small-ticket financing business through our wholly owned subsidiary, Wirth Business Credit, Inc. (formerly known as Winmark Business Solutions, Inc.). Our small-ticket financing business serves small businesses and focuses on assets which generally have a cost of $5,000 to $250,000. We generate financing business directly from customers, and also through our Wirth Business Credit franchisees.

Our significant assets are located within the United States, and we generate all revenues from United States operations other than franchising revenues from Canadian operations of approximately $1.8 million, $2.0 million and $2.0 million for 2009, 2008 and 2007, respectively. For additional financial information, please see Item 6 Selected Financial Data and Item 8 Financial Statements and Supplementary Data. We were incorporated in Minnesota in 1988.

Franchise Operations

Our four retail brands with their fiscal year 2009 system-wide sales, defined as estimated revenues generated by all franchise owned locations, are summarized as follows:

Play It Again Sports® - $222 million.

We began franchising the Play It Again Sports brand in 1988. Play It Again Sports franchises sell, buy, trade and consign used and new sporting goods, equipment and accessories for a variety of athletic activities including hockey, wheeled sports (in-line skating, skateboards, etc.), fitness, ski/snowboard, golf and baseball/softball. The franchises offer a flexible mix of merchandise that is adjusted to adapt to seasonal and regional differences. Play It Again Sports is known for providing high value to the customer by offering a mix of new and used sporting goods. For the years ended 2009, 2008 and 2007, Play It Again Sports contributed royalties and franchise fees of $9.1 million, $9.8 million and $10.4 million, respectively. As a percentage of consolidated revenues for 2009, 2008 and 2007, these amounts equaled 24.3%, 27.6% and 33.3%, respectively.

Plato s Closet® - $206 million.

We began franchising the Plato s Closet brand in 1999. Plato s Closet franchises sell and buy used clothing and accessories geared toward the teenage and young adult market. Customers have the opportunity to sell their used items to a Plato s Closet franchise when gently-used or outgrown and to purchase quality used clothing and accessories at prices lower than new merchandise. For the years ended 2009, 2008 and 2007, Plato s Closet contributed royalties and franchise fees of $8.5 million, $6.9 million and $5.4 million, respectively. As a percentage of consolidated revenues for 2009, 2008 and 2007, these amounts equaled 22.8%, 19.5% and 17.2%, respectively.

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Once Upon A Child® - $154 million.

We began franchising the Once Upon A Child brand in 1993. Once Upon A Child franchises sell and buy used and new children s clothing, toys, furniture, equipment and accessories. This brand primarily targets cost-conscious parents of children ages infant to 10 years with emphasis on children ages seven years old and under. These customers have the opportunity to sell their used children s items to a Once Upon A Child franchise when outgrown and to purchase quality used children s clothing, toys, furniture and equipment at prices lower than new merchandise. New merchandise is offered to supplement the used merchandise. For the years ended 2009, 2008 and 2007, Once Upon A Child contributed royalties and franchise fees of $6.4 million, $5.7 million, and $5.4 million, respectively. As a percentage of consolidated revenues for 2009, 2008 and 2007, these amounts equaled 17.1%, 16.0% and 17.3%, respectively.

Music Go Round® - $25 million.

We began franchising the Music Go Round brand in 1994. Music Go Round franchises sell, buy, trade and consign used and new musical instruments, speakers, amplifiers, music-related electronics and related accessories for parents of children who play musical instruments, as well as professional and amateur musicians. For the years ended 2009, 2008 and 2007, Music Go Round contributed royalties and franchise fees of $0.8 million each year. As a percentage of consolidated revenues for 2009, 2008 and 2007, these amounts equaled 2.0%, 2.2% and 2.4%, respectively.

Wirth Business Credit®

We began franchising the Wirth Business Credit business in 2006. The Wirth Business Credit brand franchises leasing and financing services businesses that provide franchisees an array of small-ticket equipment leasing and financing options funded through Winmark or its affiliates to offer to customers for business essential equipment and assets. Wirth Business Credit franchisees are paid a transaction fee for each leasing or financing transaction funded through Winmark or its affiliates, and as such Winmark Corporation does not receive royalties from Wirth Business Credit franchisees.

The following table presents a summary of our franchising activity for the fiscal year ended December 26, 2009:

	TOTAL 12/27/08	OPENED	CLOSED	TOTAL 12/26/09	AVAILABLE FOR RENEWAL	COMPLETED RENEWALS	% RENEWED
Play It Again Sports							
Franchises - US and Canada	364	6	(29)	341	15	15	100%
Plato s Closet							
Franchises - US and Canada	241	30	(4)	267	11	11	100%
Once Upon A Child							
Franchises - US and Canada	229	13	(7)	235	22	20	91%

Music Go Round							
Franchises - US	36	0	(2)	34	4	4	100%
Total Franchised Stores	870	49	(42)	877	52	50	96%
Wirth Business Credit							
Territories - US	54	0	(17)	37			N/A
Total Franchises/Territories	924	49	(59)	914	52	50	96%

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Retail Brands Franchising Overview

We use franchising as a business method of distributing goods and services through our retail brands to consumers. We also use franchising as a method to originate small-ticket leasing transactions with our Wirth Business Credit franchises. We discuss our Wirth Business Credit franchise system in the Equipment Leasing Operations subsection of this Business section. We, as franchisor, own a retail business brand, represented by a service mark or similar right, and an operating system for the franchised business. We then enter into franchise agreements with franchisees and grant the franchisee the right to use our business brand, service marks and operating system to manage a retail business. Franchisees are required to operate their retail businesses according to the systems, specifications, standards and formats we develop for the business brand. We train the franchisees how to operate the franchised business. We also provide continuing support and service to our franchisees.

We have developed value-oriented retail brands based on a mix of used and new merchandise. We franchise rights to franchisees who open franchised locations under such brands. The key elements of our franchise strategy include:

- franchising the rights to operate retail stores offering value-oriented merchandise;
- attracting new, qualified franchisees; and
- providing initial and continuing support to franchisees.

We have and will continue to reinvest operating cash flow generated from our business into:

- supporting the current franchise systems;
- making investments in infrastructure to support our corporate needs;
- supporting Wirth Business Credit and Winmark Capital; and
- pursuing new business opportunities.

Offering Value-Oriented Merchandise

Our retail brands provide value to consumers by purchasing and reselling used merchandise that consumers have outgrown or no longer use at substantial savings from the price of new merchandise. Our retail brands also offer value-priced new merchandise. By offering a combination of high-quality used and value-priced new merchandise, we benefit from consumer demand for value-oriented retailing. In addition, we believe that among national retail operations our retail store brands provide a unique source of value to consumers by purchasing used merchandise. We also believe that the strategy of buying used merchandise increases consumer awareness of our retail brands.

Attracting Franchisees

Our franchise marketing program for retail brands seeks to attract prospective franchisees with experience in management and operations and an interest in being the owner and operator of their own business. We seek franchisees who:

- have a sufficient net worth;
- have prior business experience; and
- intend to be integrally involved with the management of the business.

At December 26, 2009, we had 46 signed retail franchise agreements that are expected to open in 2010.

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We began franchising in Canada in 1991 and, as of December 26, 2009, had 62 franchised retail stores open in Canada. The Canadian retail stores are operated by franchisees under agreements substantially similar to those used in the United States.

Retail Brand Franchise Support

As a franchisor, our success depends upon our ability to develop and support competitive and successful franchise brands. We emphasize the following areas of franchise support and assistance.

Training

Each franchisee must attend our training program regardless of prior experience. Soon after signing a franchise agreement, the franchisee of one of our retail brands is required to attend new owner orientation training. This course covers basic management issues, such as preparing a business plan, lease evaluation, evaluating insurance needs and obtaining financing. Our training staff assists each franchisee in developing a business plan for their retail store with financial and cash flow projections. The second training session is centered on store operations. It covers, among other things, point-of-sale computer training, inventory selection and acquisition, sales, marketing and other topics. We provide the franchisee with operations manuals that we periodically update.

Field Support

We provide operations personnel to assist the franchisee in the opening of a new business. We also have an ongoing field support program designed to assist franchisees in operating their retail stores. Our franchise support personnel visit each retail store periodically and, in most cases, a business assessment is made to determine whether the franchisee is operating in accordance with our standards. The visit is also designed to assist franchisees with operational issues.

Purchasing

During training each franchisee is taught how to evaluate, purchase and price used goods. In addition to purchasing used products from customers who bring merchandise to the store, the franchisee is also encouraged to develop sources for purchasing used merchandise in the community. Franchisees typically do not repair or recondition used products, but rather, purchase quality used merchandise that may be put directly on display for resale on an *as is* basis. We have developed specialized computer point-of-sale systems for Once Upon A Child and Plato s Closet stores that provide the franchisee with standardized pricing information to assist in the purchasing of used items. Play It Again Sports, Once Upon A Child and Music Go Round also use buying guides and the point-of-sale system to assist franchisees in pricing used items.

We provide centralized buying services, which on a limited basis include credit and billing for the Play It Again Sports franchisees. Upon credit approval, Play It Again Sports franchisees may order through the buying group, in which case, product is shipped directly to the store by the vendor. We are invoiced by the vendor, and in turn, we invoice the franchisee adding a 4% service fee to cover our costs of operating the buying group. Our Play It Again Sports franchise system uses several major vendors including Horizon Fitness, Nautilus, Wilson Sporting Goods, Champro Sporting Goods, Easton-Bell Sports, RBK CCM Hockey and Bauer Hockey. The loss of any of the above vendors would change the vendor mix, but not significantly change our products offered. The amount of product being sold through the buying group has significantly decreased over the past few years as a result of our strategic decision to have more franchisees purchase merchandise directly from vendors.

To provide the franchisees of our Once Upon A Child and Music Go Round systems a source of affordable new product, we have developed relationships with our significant vendors and negotiated prices for our franchisees to take advantage of the buying power a franchise system brings.

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Our typical Once Upon A Child franchised store purchases approximately 30% of its new product from Graco, Million Dollar Baby and Dorel Juvenile Group. The loss of any of the above vendors would change the vendor mix, but not significantly change our products offered.

There are no significant vendors to our typical Plato s Closet franchised store.

Retail Advertising and Marketing

We encourage our franchisees to implement a marketing program that includes one or more of the following: television, radio, direct mail, point-of-purchase materials, in store signage and local store marketing programs. Through these mediums, we advertise that we buy, sell and trade used and new items. Franchisees of the respective retail brands are required to spend the following minimum percentage of their gross sales on approved advertising and marketing: Play It Again Sports - 5%, Plato s Closet - 5%, Once Upon A Child - 5% and Music Go Round - 5%. In addition, Play It Again Sports, Plato s Closet, Once Upon A Child and Music Go Round are required to pay us an annual marketing fee. Franchisees may be required to participate in regional cooperative advertising groups.

Computerized Point-Of-Sale Systems

We require our retail brand franchisees to use a retail information management computer system in each store, which has evolved with the development of new technology. This computerized point-of-sale system is designed specifically for use in our franchise retail stores. The current system includes our proprietary Data Recycling System software, a dedicated server, two or more work station registers, a receipt printer, a report printer and a bar code scanner, together with software modules for inventory management, cash management and customer information management. Our franchisees purchase the computer hardware from us. We charge a fee of approximately 4% for handling and configuration of systems sold through us. The Data Recycling System software is designed to accommodate buying and consigning of used merchandise. This system provides franchisees with an important management tool that reduces errors, increases efficiencies and enhances inventory control. We provide point-of-sale system support through our Computer Support Center located at our Company headquarters.

Winmark Business Solutions

We established Winmark Business Solutions to provide business support services to franchisees and other small businesses. We provide a web site that:

- aggregates the purchasing power of small businesses, including our franchisees, which allows us to more effectively negotiate arrangements for products and services critical to most small businesses;
- provides an easy point of contact between vendors and small businesses;
- provides small business owners information and tools that will help them be successful at every stage of their small business;

- provides equipment leasing options for small businesses; and
- provides advertising and promotional opportunities for small businesses.

We have established preferred provider relationships with high quality vendors that provide small businesses a host of critical services. Included in the array of services available through the web site are accounting, tax and payroll services, copying and printing services, purchase of office supplies, credit card processing, loss prevention, business insurance, computer/POS equipment, and more. A small business becomes a member of Winmark Business Solutions by registration, which is free.

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The Retail Franchise Agreement

We enter into franchise agreements with our franchisees. The following is a summary of certain key provisions of our current standard retail brand franchise agreement. Except as noted, the franchise agreements used for each of our retail brands are generally the same. The Franchise Agreement signed by Wirth Business Credit franchisees is described in the Wirth Business Credit Franchise System subsection of this Business section.

Each franchisee must execute our franchise agreement and pay an initial franchise fee. At December 26, 2009, the franchise fee for all brands was $25,000 for an initial store in the U.S. and $30,000CAD for an initial store in Canada. Once a franchisee opens its initial store, it can open additional stores, in any brand, by paying a $15,000 franchise fee for a store in the U.S. and $18,000CAD for a store in Canada, provided an acceptable territory is available and the franchisee meets the brand s additional store standards. The franchise fee for our initial retail store and additional retail store in Canada is based upon the exchange rate applied to the United States fee on the last business day of the preceding fiscal year. The franchise fee in March 2010 for an initial retail store in Canada will be $26,000CAD, and an additional retail store in Canada will be $16,000CAD. Typically, the franchisee s initial store is open for business between eight and ten months from the date the franchise agreement is signed. The franchise agreement has an initial term of 10 years, with subsequent 10-year renewal periods, and grants the franchisee an exclusive geographic area, which will vary in size depending upon population, demographics and other factors. Under current franchise agreements, franchisees of the respective brands are required to pay us weekly continuing fees (royalties) equal to the percentage of gross sales outlined in their Franchise Agreements, generally ranging from 4% to 5% for Play It Again Sports, Plato s Closet and Once Upon A Child and 3% for Music Go Round.

Each Franchisee is required to pay us an annual marketing fee of between $500 and $1,000. Each new or renewing Play It Again Sports, Plato s Closet, Once Upon A Child and Music Go Round franchisee is required to spend 5% of its gross sales for advertising and promoting its franchised store. Existing franchisees with older Franchise Agreements may only be required to spend 3% to 4% of their gross sales on advertising and promotion. Currently, for all of the retail brands except Play It Again Sports, we have the option to increase the minimum advertising expenditure requirement from 5% to 6% of the franchisee s gross sales, of which up to 2% would be paid to us as an advertising fee for deposit into an advertising fund. While we currently do not have the option to increase the advertising expenditure requirement for Play It Again Sports franchisees, we may also require those franchisees to pay 2% of their gross sales into an advertising fund. This fund, if initiated, would be managed by us and would be used for advertising and promotion of the franchise system.

During the term of a franchise agreement, franchisees agree not to operate directly or indirectly any competitive business. In addition, franchisees agree that after the end of the term or termination of the franchise agreement, franchisees will not operate any competitive business for a period of one year and within a reasonable geographic area. We will pursue enforcement of our noncompetition clause vigorously; however, these noncompetition clauses are not enforceable in certain states or in all circumstances.

Although our franchise agreements contain provisions designed to assure the quality of a franchisee s operations, we have less control over a franchisee s operations than we would if we owned and operated a retail store. Under the franchise agreement, we have a right of first refusal on the sale of any franchised store, but we are not obligated to repurchase any franchise.

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Renewal of the Franchise Relationship

At the end of the 10-year term of each franchise agreement, each franchisee has the option to renew the franchise relationship by signing a new 10-year franchise agreement. If a franchisee chooses not to sign a new franchise agreement, a franchisee must comply with all post termination obligations including the franchisee s noncompetition clause discussed above. This noncompetition clause may not be enforceable in certain states or in all circumstances. We may choose not to renew the franchise relationship only when permitted by the franchise agreement and applicable state law.

In 2009, 15 Play It Again Sports franchise agreements expired. Of those franchise relationships, 15 were renewed with the signing of a new 10-year franchise agreement. In 2010, 2011 and 2012, 25, 53 and 76 Play It Again Sports franchise agreements will expire, respectively.

In 2009, 11 of our Plato s Closet franchise agreements expired. Of those franchise relationships, 11 were renewed with the signing of a new 10-year franchise agreement. In 2010, 2011 and 2012, 22, 23 and 30 Plato s Closet franchise agreements will expire, respectively.

In 2009, 22 Once Upon A Child franchise agreements expired. Of those franchise relationships, 20 were renewed with the signing of a new 10-year franchise agreement. In 2010, 2011 and 2012, 20, 7 and 3 Once Upon A Child franchise agreements will expire, respectively.

In 2009, 4 Music Go Round franchise agreements expired. Of those franchise relationships, 4 were renewed with the signing of a new 10-year franchise agreement. In 2010, 2011 and 2012, 1, 0, and 0 Music Go Round franchise agreements will expire, respectively.

We believe that renewing a significant number of these franchise relationships is important to the success of the Company.

Retail Franchising Competition

Retailing, including the sale of sporting goods, children s and teenage apparel, and musical instruments, is highly competitive. Many retailers have substantially greater financial and other resources than we do. Our franchisees compete with established, locally owned retail stores, discount chains and traditional retail stores for sales of new merchandise. Full line retailers generally carry little or no used merchandise. Resale, thrift and consignment shops and garage and rummage sales offer some competition to our franchisees for the sale of used merchandise. Also, our franchisees increasingly compete with online used and new goods retailers such as eBay, Harmony Central and many others. We are aware of, and compete with, one franchisor of stores which sells new and used sporting equipment, two franchisors of stores which sell used and new children s clothing, toys and accessories and one franchisor of teen apparel stores.

Our Play It Again Sports franchisees compete with large retailers such as Dick s Sporting Goods, The Sports Authority as well as regional and local sporting goods stores. We also compete with Target and Wal-Mart .

Our Plato s Closet franchise stores primarily compete with specialty apparel stores such as Gap, Abercrombie & Fitch, Old Navy, Banana Republic and The Limited. We compete with one other franchisor in the teenage clothing retail market.

Our Once Upon A Child franchisees compete primarily with large retailers such as Babies R Us, Wal-Mart, Target and various specialty children s retail stores such as Gap Kids. We compete with one other franchisor in the specialty children s retail market.

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Our Music Go Round franchise stores compete with large musical instrument retailers such as Guitar Center and Sam Ash Music. We do not believe we compete with any other franchisor directly in the used and new musical instrument market.

Our retail franchises may face additional competition in the future. This could include additional competitors that may enter the used merchandise market. We believe that our franchisees will continue to be able to compete with other retailers based on the strength of our value-oriented brands and the name recognition associated with our service marks.

We also face competition in connection with the sale of franchises. Our prospective franchisees frequently evaluate other franchise opportunities before purchasing a franchise from us. We compete with other franchise companies for franchisees based on the following factors, among others: amount of initial investment, franchise fee, royalty rate, profitability, franchisor services and industry. We believe that our franchise brands are competitive with other franchises based on the fees we charge, our franchise support services and the performance of our existing franchise brands.

Wirth Business Credit Franchise System

We franchise the right to operate a small business equipment leasing and finance business under the brand Wirth Business Credit. Franchisees in the Wirth Business Credit franchise system market and sell small business equipment leasing and financing services offered by us.

Attracting Franchisees

Our franchise marketing program for Wirth Business Credit seeks to attract prospective franchisees with a desire to operate their own sales and marketing business who:

- have a sufficient net worth;
- have prior sales or small business experience; and
- intend to be integrally involved in the operation of the franchise.

During 2009, we did not open additional Wirth Business Credit territories, and we do not anticipate opening additional territories in 2010.

Franchise Support

As a franchisor of Wirth Business Credit, our lease originations volume depends heavily on our ability to support competitive and successful Wirth Business Credit franchisees. We emphasize the following areas of franchise support and assistance in our Wirth Business Credit franchise system:

- Training;
- Marketing; and
- Ongoing Support.

Training

Each franchisee, along with any hired salespersons, must attend our training program prior to commencing operations. Soon after signing the franchise agreement, a Wirth Business Credit franchisee is required to participate in our training program. We begin with pre-training. At pre-training, we cover, among other topics, sales basics, owning your own business and valuation. Our franchisees next come to our headquarters for a week-long training session. This week-long training session covers the basics of leasing, market orientation, lead generation, selling to vendors, owning your own business, business planning, credit basics, marketing, computer and software training and the nature of our franchise relationship.

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After the initial week of training, we continue to support our Wirth Business Credit franchisees. We provide sales support to our franchisees through a dedicated territory manager. The territory manager provides the opportunity for each franchisee to work together on monthly sales planning and analysis.

Marketing

We encourage our franchisees to implement a marketing program that includes one or more of the following: direct mail, direct email, advertising in approved industry and business publications, joining networking groups and telemarketing. Franchisees are required to spend 4% of their compensation on developing new customers in their local market area. Franchisees may be required to participate in regional cooperative advertising groups.

Ongoing Support

In addition to receiving support from their territory manager, an operations manager supports franchisees by expediting the lease transaction process. The operations manager ensures credit applications are complete, interfaces with the credit department, manages vendor communications and documents transactions a Wirth Business Credit franchisee submits. We also provide any changes to the franchise system to our franchisees as they are available. We provide all updates to our Operations Manual to franchisees. We continue to develop marketing materials to assist franchisees in the generation of financing transactions.

Computer and Software

We require our franchisees to use our proprietary computer system. This computer system allows our franchisees to submit and track leasing transactions. It also allows us to manage the lease transaction process.

The Franchise Agreement

We enter into 10-year franchise agreements with our franchisees. The following is a summary of certain key provisions of our current standard franchise agreement.

Each franchisee must execute our franchise agreement and pay an initial franchise fee. The Initial Franchise Fee for our standard market area is $35,000. However, beginning in March 2008, we amended our Pioneer Program, which offers a reduced initial franchise fee to prospective franchisees for their first territory and second territory. The Pioneer Program reduces the initial franchise fee to $22,500 for the first territory. In addition, $10,000 of the $22,500 fee is eligible for reimbursement from us if a franchisee spends amounts on qualified marketing expenditures within 12 months of signing the Franchise Agreement. For their second territory, the Initial Franchise Fee is $10,000, $5,000 of which is eligible for reimbursement from us if the franchisee spends amounts on qualified marketing expenditures with 12 months of signing the Franchise Agreement. Wirth may, at its discretion, award more than two territories at one time using the Pioneer Program.

Our franchisees pay no continuing fees in the form of royalty payments like the retail brand franchisees. Instead, a Wirth Business Credit franchisee s compensation primarily depends on the profit a franchisee adds to a transaction. Franchisees are paid monthly.

Our franchisees can only fund their transactions through us. During the term of a franchise agreement, franchisees agree not to operate any competitive business directly or indirectly. In addition, franchisees agree that after the end of the term or termination of the franchise agreement, franchisees will not operate any competitive business for 18 months within a reasonable geographic area. We will pursue enforcement of our non-competition clause vigorously; however, these non-competition clauses are not enforceable in certain states or all circumstances.

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At the end of the term of each 10-year term of each Wirth Business Credit franchise agreement, each franchisee has the option to renew the franchise relationship by signing a new 10-year franchise agreement. If a franchisee chooses not to sign a new franchise agreement, a franchisee must comply with all post termination obligations including the franchisee s non-competition clause. In 2009, none of our Wirth Business Credit franchise agreements expired, and none will expire in 2010, 2011 or 2012.

The small-ticket leasing industry is very competitive. Our franchisees compete directly with multiple financial institutions, many of which have greater financial resources than us. We compete with various other franchise opportunities for franchisees. We are not aware of any other companies offering similar franchising opportunities in the small-ticket financing industry.

Equipment Leasing Operations

We are engaged in the business of providing non-cancelable leases for high-technology and business-essential assets to both larger organizations and smaller, growing companies. We started our equipment leasing operations in April of 2004.

We operate our middle-market leasing operation through Winmark Capital Corporation, a wholly owned subsidiary. We operate our small-ticket financing operation through Wirth Business Credit, Inc., a wholly owned subsidiary (formerly known as Winmark Business Solutions, Inc.). We incorporated both of the corporations on April 2, 2004. To differentiate ourselves from our competitors in the leasing industry, we offer innovative lease and financing products and concentrate on building long-term, relationship-based associations with our customers and business alliances.

During the past three years, our leasing operations have experienced moderate growth and improved financial results. Our leasing portfolio has grown from $18.3 million at the end of 2006 to $37.0 million at the end of 2009, and our operating losses from this segment have decreased from a loss of $3.3 million in fiscal 2006 to a loss of $1.4 million in fiscal 2009. Growth in the leasing portfolio during this period primarily occurred during 2007, as the level of equipment purchases for lease contracts during 2008 and 2009 were impacted by the unfavorable general economic environment as well as our decision during 2008 to tighten credit standards in our small-ticket financing business in response to these conditions.

Winmark Capital Corporation

Winmark Capital Corporation focuses on middle-market transactions that generally have terms from two to five years. We target businesses with annual revenue of $50 million or more. Such transactions are generally larger than $250,000 and include high-technology equipment and/or business essential equipment, including computers, telecommunications equipment, point-of-sale systems and other business-essential equipment. The leases are retained in our portfolio to accommodate equipment additions and upgrades to meet customers changing needs.

Industry

The high-technology equipment industry has been characterized by rapid and continuous advancements permitting broadened user applications and reductions in processing costs. The introduction of new equipment generally does not cause existing equipment to become obsolete but usually does cause the market value of existing equipment to decrease to reflect the improved performance per dollar cost of the new equipment. Users frequently replace equipment as their existing equipment becomes inappropriate for their needs or as increased data processing capacity is required, creating a secondary market in used equipment.

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Generally, high-technology equipment, such as data processing equipment, does not suffer from material physical deterioration if properly maintained. Our leased equipment is kept under continual maintenance, in accordance with the manufacturer s specifications, most often provided by the manufacturer. The economic life and residual value of data processing equipment is subject to, among other things, the development of technological improvements and changes in sale and maintenance terms initiated by the manufacturer.

Business Strategy

Our business strategy allows us to differentiate ourselves from our competitors in the leasing industry. Key elements of this strategy include:

- Relationship Focus. We maintain a focused, long-term, customer-service approach to our business.
- Full Service. We can service the equipment leasing needs of large organizations through our middle-market operations and small organizations through our small-ticket operations. Our enterprise-wide capabilities allow us to service the needs of a large company and its many small business affiliates.
- Asset Ownership. We typically retain ownership of our leases and the underlying equipment.

Leasing and Sales Activities

Our middle-market lease products are marketed nationally through our principal office in Minneapolis, Minnesota and our satellite offices in Atlanta, Georgia; Boulder, Colorado and Santa Barbara, California.

We market our leasing services directly to end-users and indirectly through business alliances, and through vendors of equipment, software, value-added services and consulting services. We attend trade shows and directly market to customers and prospects by telephone canvassing. We may also advertise in magazines or other periodicals in targeted industries.

We generally lease high-technology and other business-essential equipment for terms ranging from two to five years. Additionally, we may lease operating system and application software to our customers, but typically only with a hardware lease. Our standard lease agreements, entered into with each customer, are noncancelable net leases which contain hell-or-high water provisions under which the customer, upon acceptance of the equipment, must make all lease payments regardless of any defects or performance of the equipment, and which require the customer to maintain and service the equipment, insure the equipment against casualty loss and pay all property, sales and other taxes related to the equipment. We retain ownership of the equipment we lease and, in the event of default by the customer, we or the financial institution to whom the lease payment has been assigned may declare the customer in default, accelerate all lease payments due under the lease and pursue other available remedies, including repossession of the equipment. Upon expiration of the initial term or extended lease term, depending on the structure of the lease, the customer may:

- return the equipment to us;
- renew the lease for an additional term; or
- purchase the equipment.

If the equipment is returned to us, it will be either re-leased to another customer or sold into the secondary-user marketplace.

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Wirth Business Credit, Inc.

Our small-ticket financing operation serves the needs of small businesses. Small-ticket financing transactions are typically between $5,000 and $250,000, have terms of between two and five years and cover business essential assets, including computers, printing equipment, security systems, telecommunications equipment, car wash equipment, production equipment and other assets. Small-ticket financing products are marketed under the trade name Wirth Business Credit through our network of Wirth Business Credit franchisees or directly through our employed sales representatives.

Industry

The small ticket finance industry is highly fragmented and competitive. Small business owners typically finance their businesses through one of many possible sources including banks, vendor captive finance companies, leasing brokers, credit card companies and independent leasing companies. These sources of funding typically limit their focus to certain types of transactions and may base their decision on credit quality, geography, size of transaction, type of asset or other criteria. The small-ticket finance industry is very competitive, however, small business owners do not generally receive the same level of customer service as larger businesses do. Small business owners desire products that are convenient, easy to understand, competitive and come from a trusted source.

The small ticket finance industry has faced particularly unfavorable economic trends during the past few years that have significantly impacted the financial viability and credit quality of many small business owners. These circumstances have the effect of not only reducing the pool of credit worthy customers, but increasing the level of non-performing and under-performing existing financing transactions of lending institutions and leasing companies.

Business Strategy

Key elements of our small-ticket business strategy include:

- Local Presence. Through a network of franchisees, Wirth Business Credit maintains a local presence in its markets.
- Relationship Focus. We maintain a focused, long-term, customer-service approach to our business. In our small-ticket segment, we establish relationships with companies that control or have influence over multiple smaller businesses such as franchisors, equipment vendors and associations.
- Customer Service.   We understand that small business owners desire a convenient, flexible financing solution. We provide fast credit decisions, flexible terms and an easy to understand process.

Leasing and Sales Activities

We originate financing transactions through our Wirth Business Credit franchisees and territory managers employed by Wirth Business Credit, Inc. We focus our sales efforts on establishing relationships with organizations with influence over many small businesses such as vendors, franchisors and trade associations.

As described above, we franchise the right to operate small businesses under the name Wirth Business Credit. Our franchisees in our Wirth Business Credit franchise system are dedicated to originating equipment lease and financing transactions. Our franchisees build business relationships at the local level and also have the support and infrastructure of a national leasing company.

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We generally finance business-essential assets for terms ranging from two to five years. Our financing transactions are generally full pay out transactions, which means, after paying all required payments under the financing agreement, the customer owns the asset.

Financing

Our ability to arrange financing is important to our middle-market leasing and our small-ticket financing businesses.

Winmark Capital Corporation will from time to time arrange permanent financing of leases through non-recourse discounting of lease rentals with various financial institutions at fixed interest rates. The proceeds from the assignment of the lease rentals will be generally equal to the present value of the remaining lease payments due under the lease, discounted at the interest rate charged by the financial institution. Interest rates obtained under this type of financing will be negotiated on a transaction-by-transaction basis and reflect the financial strength of the customer, the term of the lease and the prevailing interest rates. For leases discounted on a non-recourse basis, the financial institution will have no recourse against us unless we are in default of the terms of the agreement under which the lease and the leased equipment will be assigned to the institution as collateral. The institution may, however, take title to the collateral in the event the customer fails to make lease payments or certain other defaults by the customer occur under the terms of the lease.

To date, we have funded the vast majority of our leases internally using our available cash, bank or subordinated debt. Leases are funded internally for a variety of reasons, including:

- we may have a sufficient amount of cash on hand;
- lease amounts are too small to be attractive to financial institutions;
- the credit strength of the customer is acceptable only for recourse funding; or
- when we intend to discount a lease but the discounting process has not been completed.

We will rely on recourse bank facilities to fund both our middle-market and small-ticket portfolios**.** We currently have a $40 million line of credit with Bank of America, N.A. and The PrivateBank and Trust Company. We may also use the proceeds from our offering of $50 million in principal of unsecured subordinated debt of varying interest rates and maturity dates filed on Form S-1 to fund both our middle-market and small-ticket portfolios. As of December 26, 2009, we had $21.2 million outstanding in unsecured subordinated notes.

Equipment Leasing Competition

We compete with a variety of equipment financing sources that are available to businesses, including: national, regional and local finance companies that provide lease and loan products; financing through captive finance and leasing companies affiliated with major equipment manufacturers; credit card companies; and commercial banks, savings and loans, and credit unions. Many of these companies are substantially larger than we are and have considerably greater financial, technical and marketing resources than we do.

Some of our competitors have a lower cost of funds and access to funding sources that are not available to us. A lower cost of funds could enable a competitor to offer leases with yields that are much less than the yields that we use to price our leases, which might force us to lower our yields or lose lease origination volume. In addition, certain of our competitors may have higher risk tolerances or different risk assessments, which could enable them to establish more origination sources and end user customer relationships and increase their market share. We have and will continue to encounter significant competition.

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Government Regulation

Fourteen states, the Federal Trade Commission and three Canadian Provinces impose pre-sale franchise registration and/or disclosure requirements on franchisors. In addition, a number of states have statutes which regulate substantive aspects of the franchisor-franchisee relationship such as termination, nonrenewal, transfer, discrimination among franchisees and competition with franchisees.

Additional legislation, both at the federal and state levels, could expand pre-sale disclosure requirements, further regulate substantive aspects of the franchise relationship and require us to file our Franchise Disclosure Documents with additional states. We cannot predict the effect of future franchise legislation, but do not believe there is any imminent legislation currently under consideration which would have a material adverse impact on our operations.

Although most states do not directly regulate the commercial equipment lease financing business, certain states require licensing of lenders and finance companies, and impose limitations on interest rates and other charges, and a disclosure of certain contract terms and constrain collection practices. We believe that we are currently in compliance with all material statutes and regulations that are applicable to our business.

Trademarks and Service Marks

Play It Again Sports®, Plato s Closet®, Once Upon A Child®, Music Go Round®, Winmark®, Winmark Business Solutions®, Wirth Business Credit®, Winmark Capital® and LeaseManager®, among others, are our registered service marks. These marks are of considerable value to our business. We intend to protect our service marks by appropriate legal action where and when necessary. Each service mark registration must be renewed every 10 years. We have taken, and intend to continue to take, all steps necessary to renew the registration of all our material service marks.

Seasonality

Our Play It Again Sports and Music Go Round franchise brands have experienced higher than average sales volumes during the holiday shopping season. Our Plato s Closet and Once Upon A Child franchise brands have experienced higher than average sales volumes during the spring months and, along with our Music Go Round brand, also during the back to school season. Overall, the different seasonal trends of our brands partially offset each other and do not result in significant seasonality trends on a Company-wide basis. Our equipment leasing business is not seasonal; however, quarter to quarter results may vary significantly.

Employees

As of December 26, 2009, we employed 106 full-time employees, of which 15 were salespersons, 60 were support personnel and 31 were administrative.

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ITEM 1A: RISK FACTORS

We are dependent on franchise renewals.

Each of our franchise agreements is 10 years long. At the end of the term of each franchise agreement, each franchisee has the option to renew the franchise relationship by signing a new 10-year franchise agreement. In 2009, of the 15 franchisees that had their Play It Again Sports franchise agreement expire, 15 signed new 10-year franchise agreements. In 2010, 2011 and 2012, 25, 53 and 76 Play It Again Sports franchise agreements will expire, respectively. In 2009, of the 11 franchises that had Plato s Closet franchise agreements expire, 11 signed new 10-year franchise agreements. In 2010, 2011 and 2012, 22, 23 and 30 Plato s Closet franchise agreements will expire, respectively. In 2009, of the 22 franchisees that had their Once Upon A Child franchise agreement expire, 20 signed new 10-year franchise agreements. In 2010, 2011 and 2012, 20, 7 and 3 Once Upon A Child franchise agreements will expire, respectively. In 2009, of the 4 franchisees that had Music Go Round franchise agreement expire, 4 signed new 10-year franchise agreements. In 2010, 2011 and 2012, 1, 0 and 0 Music Go Round franchise agreements will expire, respectively. We believe that renewing a significant number of these franchise relationships is important to our continued success. If a significant number of franchise relationships are not renewed our financial performance would be materially and adversely impacted.

We are dependent on new franchisees.

Our ability to generate increased revenue and achieve higher levels of profitability depends in part on increasing the number of franchises open. While we believe that many larger and smaller markets will continue to provide significant opportunities for sales of franchises, continuing unfavorable macro-economic conditions may affect the ability of potential franchisees to obtain external financing and/or impact their net worth, both of which could lead to a lower level of openings than we have historically experienced. There can be no assurance that we will sustain our current level of franchise openings.

We are dependent upon our chief executive officer.

Our success depends on the efforts and abilities of John L. Morgan, our chairman of the board and chief executive officer. The loss of the services of Mr. Morgan could materially harm our business. Such a loss would also divert management attention away from operational issues.

We may sell franchises for a territory, but the franchisee may not open.

We believe that a substantial majority of franchises sold but not opened will open within the time period permitted by the applicable franchise agreement or we will be able to resell the territories for most of the terminated or expired franchises. However, there can be no assurance that substantially all of the currently sold but unopened franchises will open and commence paying royalties to us. At December 26, 2009, we had 46 franchise agreements expected to open in 2010.

Our retail franchisees are dependent on supply of used merchandise.

Our retail brands are based on offering customers a mix of used and new merchandise. As a result, the ability of our franchisees to obtain continuing supplies of high quality used merchandise is important to the success of our brands. Supply of used merchandise comes from the general public and is not regular or highly reliable. In addition, adherence to federal and state product safety requirements may limit the amount of used merchandise available to our franchisees. There can be no assurance that our franchisees will avoid supply problems with respect to used merchandise.

We may be unable to collect accounts receivable from franchisees.

In the event that our ability to collect accounts receivable significantly declines from current rates, we may incur additional charges that would affect earnings. If we are unable to collect payments due from our franchisees, it would materially adversely impact our results of operations and financial condition.

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We operate in extremely competitive industries.

Retailing, including the sale of sporting goods, children s and teenage apparel and musical instruments, is highly competitive. Many retailers have significantly greater financial and other resources than us and our franchisees. Individual franchisees face competition in their markets from retailers of new merchandise and, in certain instances, resale, thrift and other stores that sell used merchandise. To date, our franchisees have not faced a high degree of competition in the sale of used merchandise, but do so in connection with the sale of new merchandise. However, we may face additional competition as our franchise systems expand and if additional competitors enter the used merchandise market.

Our equipment leasing businesses compete with a variety of equipment financing sources that are available to businesses, including: national, regional, and local finance companies that provide leases and loan products; financing through captive finance and leasing companies affiliated with major equipment manufacturers; and commercial banks, savings and loans, credit unions and credit cards. Many of these companies are substantially larger than we are and have considerably greater financial, technical and marketing resources than we do. There can be no assurances that we will be able to successfully compete with these larger competitors.

We are subject to credit risk from nonpayment or slow payments in our lease portfolio and our allowance for credit losses may be inadequate to absorb losses.

In our leasing business, if we inaccurately assess the creditworthiness of our customers, we may experience a higher number of lease defaults than expected, which would reduce our earnings. For our smaller customers, there is typically only limited publicly available financial and other information about their businesses and they often do not have audited financial statements. Accordingly, in making credit decisions, we rely upon the accuracy of information from the small business owner and/or third party sources, such as credit reporting agencies. If the information we obtain from small business owners and/or third party sources is incorrect, our ability to make appropriate credit decisions will be impaired.

If losses from leases exceed our allowance for credit losses, our operating income will be reduced. In connection with our leases, we record an allowance for credit losses to provide for estimated losses. Determining the appropriate level of the allowance is an inherently uncertain process and therefore our determination of this allowance may prove to be inadequate to cover losses in connection with our portfolio of leases. Losses in excess of our allowance for credit losses would cause us to increase our provision for credit losses, reducing or eliminating our operating income.

During 2009, our provision for credit losses increased to $2.8 million from $2.6 million in 2008 and $0.6 million in 2007, primarily due to a higher level of net charge-offs in the small-ticket financing business portion of our leasing segment, as well as an increase in our allowance for credit losses due to the worsening general economic trends that have increased the level of delinquencies in this business. During 2009, we had total net charge-offs of $3.0 million compared to $1.6 million in 2008 and $0.4 million in 2007. Continued charge-offs at these levels or higher would have a material adverse impact on our results of operations and financial condition.

Deteriorated economic or business conditions may negatively impact our leasing business.

In an economic slowdown or recession, our equipment leasing businesses may face an increase in delinquent payments, lease defaults and credit losses. The volume of leasing business for our new and existing customers may decline, as well as the credit quality of our customers. Because we extend credit primarily to small businesses through our subsidiary Wirth Business Credit, Inc., and to many emerging companies through our subsidiary Winmark Capital Corporation, our customers may be particularly susceptible to economic slowdowns or recessions. Any protracted economic slowdowns or recessions may make it difficult for us to maintain the volume of lease originations for new and existing customers, and may deteriorate the credit quality of new leases. Any of these events may slow the growth of our leasing portfolio and impact the profitability of our leasing operations.

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We must control our selling, general and administrative expense to be successful.

Our ability to control the amount, and rate of growth in, selling, general and administrative expenses and the impact of unusual items resulting from our ongoing evaluation of our business strategies, asset valuations and organizational structures is important to our financial success. In the near term, our leasing income may not exceed our expenses. We cannot assure any investor that we will be able to control such items of expense.

We have suffered losses from investments outside of our franchise and leasing businesses and may continue to suffer losses in the future

We currently have investments in two private companies. We have purchased 18.3% of the common stock of Tomsten, Inc., a privately held corporation (d/b/a Archiver s). Archiver s is a retail concept created to help people preserve and enjoy their photographs. In addition, we currently have an investment of subordinated debt with warrants in BridgeFunds Limited (BridgeFunds). BridgeFunds advances funds to claimants involved in civil litigation to cover litigation expenses.

Since the inception of our investment in 2002, Archiver s has incurred over $13.3 million in losses. As of December 26, 2009, the carrying value of our $7.5 million investment equaled $2.2 million. If Archiver s continues to sustain losses, it may need to seek external financing in the form of equity and/or debt. There can be no assurance that Archiver s will be able to obtain additional financing. Any continued losses or inability to obtain financing on attractive terms may result in a further impairment of the carrying value of our investment and a reduction in our book value and profitability. Also, there is not a market for the equity of Archiver s and our ability to receive our investment back and realize a cash return on our investment in these companies will depend on the development of a market for Archiver s equity or the sale of Archiver s.

During 2009, the board of BridgeFunds decided to cease advancing funds to new claimants and place its portfolio of receivables in run-off. On October 22, 2009, we entered into a modification agreement with BridgeFunds, whereby the maturity date of our investment was changed to September 30, 2010, the annual rate of interest on the notes was increased to 15% and monthly prepayments of the principal of such notes in an amount equal to Available Cash Flow (as defined within the modification agreement) is required. We have not received any payments of principal or interest since the date of the modification agreement. Our ability to receive our investment back and realize a cash return on our investment in Bridge Funds will depend on the successful run-off of the BridgeFunds portfolio. In addition, the warrant we hold in BridgeFunds may be of no value.

The loss of our entire investment in any one or both of these investments would have a material adverse impact on our financial results.

From time to time, we have and will continue to make investments outside of our franchise and leasing businesses. There can be no assurance that such investments will be profitable.

We are subject to restrictions in our credit facility and our subordinated note indenture. Additionally, we are subject to counterparty risk in our credit facility.

The terms of our $40.0 million credit facility with Bank of America and The PrivateBank impose certain operating and financial restrictions on us and require us to meet certain financial tests including tests related to minimum levels of debt service coverage and tangible net worth and maximum levels of leverage. The terms of the indenture governing our $50.0 million subordinated note offering contain limited restrictive covenants, which include requiring us to maintain a positive net worth. As of December 26, 2009, we were in compliance with all of our financial covenants; however, failure to comply with these covenants in the future may result in default under one or both of these sources of capital and could result in acceleration of the related indebtedness. Any such acceleration of indebtedness would have an adverse impact on our business activities and financial condition.

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Recent events in the worldwide credit markets have had an adverse impact on the general availability of credit. Although our credit facility does not expire until June 2013, continued market deterioration could jeopardize the counterparty obligations of one or both of the banks participating in this facility, which could have an adverse impact on our business if we are not able to replace such credit facility or find other sources of liquidity on acceptable terms.

We are subject to government regulation.

As a franchisor, we are subject to various federal and state franchise laws and regulations. Fourteen states, the Federal Trade Commission and three Canadian Provinces impose pre-sale franchise registration and/or disclosure requirements on franchisors. In addition, a number of states have statutes which regulate substantive aspects of the franchisor-franchisee relationship such as termination, nonrenewal, transfer, discrimination among franchisees and competition with franchisees.

Additional legislation, both at the federal and state levels, could expand pre-sale disclosure requirements, further regulate substantive aspects of the franchise relationship and require us to file our franchise offering circulars with additional states. Future franchise legislation could impose costs or other burdens on us that could have a material adverse impact on our operations.

Although most states do not directly regulate the commercial equipment lease financing business, certain states require licensing of lenders and finance companies, impose limitations on interest rates and other charges, constrain collection practices and require disclosure of certain contract terms. Laws or regulations may be adopted with respect to our equipment leases or the equipment leasing industry, and collection processes. Any new legislation or regulation, or changes in the interpretation of existing laws, which affect the equipment leasing industry could increase our costs of compliance.

ITEM 2: PROPERTIES

We lease 33,513 square feet at our headquarters facility in Minneapolis, Minnesota, under a lease that commenced in March 2009. We are obligated to pay rent monthly under the Lease, and will pay an estimated $5.1 million in total rental payments over the entire term of the Lease which runs ten years and six months from the commencement date. We are also obligated to pay Landlord s estimated taxes and operating expenses as described in the Lease, which change annually. The total rentals, taxes and operating expenses paid may increase if we exercise any of our rights to acquire additional space described in the Lease.

ITEM 3: LEGAL PROCEEDINGS

We are not a party to any material litigation and are not aware of any threatened litigation that would have a material adverse effect on our business.

ITEM 4: RESERVED

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PART II

ITEM 5: MARKET FOR REGISTRANT S COMMON EQUITY, RELATED STOCKHOLDER MATTERS, AND ISSUER PURCHASES OF EQUITY SECURITIES

Market Information, Holders, Dividends

Winmark Corporation s common stock trades on the Nasdaq Global Market under the symbol WINA . The table below sets forth the high and low sales prices of our common stock as reported by Nasdaq for the quarterly periods indicated:

FY 2009:	**First**	**Second**	**Third**	**Fourth**
High	13.99	17.14	21.95	23.00
Low	8.20	9.50	16.02	19.87

FY 2008:	**First**	**Second**	**Third**	**Fourth**
High	22.47	19.99	19.49	18.49
Low	17.00	16.12	13.60	10.28

At March 8, 2010, there were 5,122,233 shares of common stock outstanding held by approximately 114 shareholders of record. Shareholders of record do not include holders who beneficially own common stock held in nominee or street name . We have not declared any cash dividends on our common stock during the two most recent fiscal years. Any future declaration of dividends will be subject to the discretion of our Board of Directors and subject to our results of operations, financial condition, cash requirements and other factors deemed relevant by our Board of Directors.

Purchases of Equity Securities by the Issuer and Affiliated Purchasers

	Total Number of Shares Purchased	**Average Price Paid Per Share**	**Total Number of Shares Purchased as Part of a Publicly Announced Plan(1)**	**Maximum Number of Shares that may yet be Purchased Under the Plan(2)**
December 28, 2008 to January 31, 2009	33,795	$ 11.94	33,795	40,746
February 1, 2009 to February 28, 2009	7,424	10.27	7,424	533,322
March 1, 2009 to March 28, 2009	46,722	9.12	46,722	486,600
March 29, 2009 to May 2, 2009	13,676	12.25	13,676	472,924
May 3, 2009 to May 30, 2009	16,813	13.28	16,813	456,111
May 31, 2009 to June 27, 2009	12,591	15.24	12,591	443,520
June 28, 2009 to August 1, 2009	14,465	17.70	14,465	429,055
August 2, 2009 to August 29, 2009	25,937	19.27	25,937	403,118
August 30, 2009 to September 26, 2009	11,903	20.90	11,903	391,215

September 27, 2009 to October 31, 2009	35,173	20.83	35,173	356,042
November 1, 2009 to November 28, 2009	25,086	21.89	25,086	330,956
November 29, 2009 to December 26, 2009	70,000	21.55	70,000	260,956
Total	313,585	$ 16.85	313,585	260,956

(1) The Board of Directors authorization for the repurchase of shares of the Company s common stock was originally approved in 1995 with no expiration date. The total shares approved for repurchase has been increased by additional Board of Directors approvals and as of December 26, 2009 was limited to 4,500,000 shares, of which 260,956 may still be repurchased.

(2) On February 26, 2009, the Board of Directors authorized a 500,000 share repurchase.

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ITEM 6: SELECTED FINANCIAL DATA

The following table sets forth selected financial information for the periods indicated. The information should be read in conjunction with the consolidated financial statements and related notes discussed in Item 8 and 15, and Management s Discussion and Analysis of Financial Condition and Results of Operations discussed in Item 7.

	Fiscal Year Ended (in thousands except per share data)				
	December 26, 2009	**December 27, 2008**	**December 29, 2007**	**December 30, 2006(2)**	**December 31, 2005(2)**
Revenue:					
Royalties	$ 23,616	$ 21,804	$ 20,447	$ 19,212	$ 17,875
Leasing income	9,537	8,093	4,416	1,853	437
Merchandise sales	2,387	3,268	3,999	4,469	6,655
Franchise fees	1,073	1,705	1,724	1,246	1,052
Other	683	554	579	591	