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

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**FORM 10-Q**

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(Mark One)

**QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the quarterly period ended June 30, 2008

OR

**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: 000-26489

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**ENCORE CAPITAL GROUP, INC.**

(Exact name of registrant as specified in its charter)

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**Delaware**  
(State or other jurisdiction of  
incorporation or organization)

**8875 Aero Drive, Suite 200**  
**San Diego, California**  
(Address of principal executive offices)

**48-1090909**  
(IRS Employer  
Identification No.)

**92123**  
(Zip code)

**(877) 445 - 4581**  
(Registrant's telephone number, including area code)

**(Not Applicable)**  
(Former name, former address and former fiscal year, if changed since last report)

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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 last 90 days. Yes  No

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.

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

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

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the latest practicable date.

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Class	Outstanding at July 21, 2008
Common Stock, \$0.01 par value	23,017,202 shares

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**PART I. FINANCIAL INFORMATION**  
**Item 1. Condensed Consolidated Financial Statements (Unaudited)**

**ENCORE CAPITAL GROUP, INC.**  
**Condensed Consolidated Statements of Financial Condition**  
(In Thousands, Except Par Value Amounts)  
(Unaudited)

	June 30, 2008	December 31, 2007
<b>Assets</b>		
Cash and cash equivalents	\$ 5,047	\$ 4,900
Restricted cash	3,649	3,776
Accounts receivable, net	3,588	4,136
Investment in receivable portfolios, net	414,559	392,209
Deferred court costs	25,155	20,533
Property and equipment, net	5,344	4,390
Prepaid income tax	1,518	10,346
Forward flow asset	10,302	15,863
Other assets	8,180	8,800
Goodwill	15,985	15,985
Identifiable intangible assets, net	2,148	2,557
<b>Total assets</b>	<b>\$495,475</b>	<b>\$ 483,495</b>
<b>Liabilities and stockholders' equity</b>		
<b>Liabilities:</b>		
Accounts payable and accrued liabilities	\$ 20,156	\$ 20,346
Deferred tax liabilities, net	13,659	13,669
Deferred revenue and purchased servicing obligation	4,370	3,898
Debt	265,635	272,420
Other liabilities	1,668	1,642
<b>Total liabilities</b>	<b>305,488</b>	<b>311,975</b>
Commitments, contingencies and subsequent events		
<b>Stockholders' equity:</b>		
Convertible preferred stock, \$.01 par value, 5,000 shares authorized, no shares issued and outstanding	—	—
Common stock, \$.01 par value, 50,000 shares authorized, 23,016 shares and 22,992 shares issued and outstanding as of June 30, 2008, and December 31, 2007, respectively	230	230
Additional paid-in capital	76,963	73,310
Accumulated earnings	113,805	98,975
Accumulated other comprehensive loss	(1,011)	(995)
<b>Total stockholders' equity</b>	<b>189,987</b>	<b>171,520</b>
<b>Total liabilities and stockholders' equity</b>	<b>\$495,475</b>	<b>\$ 483,495</b>

*See accompanying notes to unaudited condensed consolidated financial statements*

**ENCORE CAPITAL GROUP, INC.**  
**Condensed Consolidated Statements of Operations**  
(In Thousands, Except Per Share Amounts)  
(Unaudited)

	<u>Three Months Ended</u> <u>June 30,</u>		<u>Six Months Ended</u> <u>June 30,</u>	
	<u>2008</u>	<u>2007</u>	<u>2008</u>	<u>2007</u>
<b>Revenues</b>				
Revenue from receivable portfolios, net	\$66,275	\$ 64,021	\$130,343	\$126,174
Servicing fees and other related revenue	3,745	3,207	7,231	6,429
<b>Total revenues</b>	<u>70,020</u>	<u>67,228</u>	<u>137,574</u>	<u>132,603</u>
<b>Operating expenses</b>				
Salaries and employee benefits (excluding stock-based compensation expense)	15,689	16,064	30,540	33,250
Stock-based compensation expense	1,228	1,204	2,322	2,005
Cost of legal collections	23,829	21,159	44,135	38,780
Other operating expenses	5,987	6,239	11,638	11,983
Collection agency commissions	3,781	2,867	7,812	6,161
General and administrative expenses	4,581	4,232	9,041	8,503
Depreciation and amortization	766	840	1,488	1,709
<b>Total operating expenses</b>	<u>55,861</u>	<u>52,605</u>	<u>106,976</u>	<u>102,391</u>
<b>Income before other (expense) income and income taxes</b>	<u>14,159</u>	<u>14,623</u>	<u>30,598</u>	<u>30,212</u>
<b>Other (expense) income</b>				
Interest expense	(3,583)	(3,336)	(7,529)	(6,256)
Contingent interest expense	—	(888)	—	(4,123)
Pay-off of future contingent interest	—	(11,733)	—	(11,733)
Gain on repurchase of convertible notes, net	1,417	—	1,417	—
Other income (expense)	352	(42)	373	74
<b>Total other expense</b>	<u>(1,814)</u>	<u>(15,999)</u>	<u>(5,739)</u>	<u>(22,038)</u>
<b>Income (loss) before income taxes</b>	<u>12,345</u>	<u>(1,376)</u>	<u>24,859</u>	<u>8,174</u>
(Provision) benefit for income taxes	(5,015)	555	(10,029)	(3,338)
<b>Net income (loss)</b>	<u>\$ 7,330</u>	<u>\$ (821)</u>	<u>\$ 14,830</u>	<u>\$ 4,836</u>
<b>Weighted average shares outstanding:</b>				
Basic	23,007	22,803	23,000	22,794
Diluted	23,512	22,803	23,468	23,388
<b>Earnings (loss) per share:</b>				
Basic	\$ 0.32	\$ (0.04)	\$ 0.64	\$ 0.21
Diluted	\$ 0.31	\$ (0.04)	\$ 0.63	\$ 0.21

*See accompanying notes to unaudited condensed consolidated financial statements*

**ENCORE CAPITAL GROUP, INC.**  
**Condensed Consolidated Statement of Stockholders' Equity**  
(Unaudited, In Thousands)

	<u>Common Stock</u>		<u>Additional Paid-In Capital</u>	<u>Accumulated Earnings</u>	<u>Accumulated Other Comprehensive Loss</u>	<u>Total Equity</u>	<u>Comprehensive Income (loss)</u>
	<u>Shares</u>	<u>Par</u>					
<b>Balance at December 31, 2007</b>	22,992	\$230	\$ 73,310	\$ 98,975	\$ (995)	\$171,520	
Net income	—	—	—	14,830	—	14,830	14,830
Other comprehensive loss:							
Unrealized loss on cash flow hedge, net of tax	—	—	—	—	(16)	(16)	(16)
Exercise of stock options	7	—	8	—	—	8	—
Issuance of share-based awards	17	—	(36)	—	—	(36)	—
Stock-based compensation	—	—	2,322	—	—	2,322	—
Tax provision related to stock option exercises	—	—	(12)	—	—	(12)	—
Tax benefit from convertible notes interest expense	—	—	1,067	—	—	1,067	—
Tax benefit from repurchase of convertible notes	—	—	304	—	—	304	—
<b>Balance at June 30, 2008</b>	<u>23,016</u>	<u>\$230</u>	<u>\$ 76,963</u>	<u>\$ 113,805</u>	<u>\$ (1,011)</u>	<u>\$189,987</u>	<u>\$ 14,814</u>

*See accompanying notes to unaudited condensed consolidated financial statements*

**ENCORE CAPITAL GROUP, INC.**  
**Condensed Consolidated Statements of Cash Flows**  
(Unaudited, In Thousands)

	Six Months Ended June 30,	
	2008	2007
<b>Operating activities</b>		
Gross collections	\$206,485	\$ 184,152
Amounts collected on behalf of third parties	(145)	(266)
Amounts applied to principal on receivable portfolios	(75,997)	(57,711)
Provision for impairment (reversal)	8,725	(1,263)
Servicing fees	61	64
Operating expenses	(99,572)	(100,744)
Interest payments	(6,792)	(6,010)
Contingent interest payments	—	(22,724)
Other income	373	74
Decrease in restricted cash	127	718
Income tax refund (payments)	236	(5,362)
Tax provision (benefit) from stock-based payment arrangements	12	(123)
<b>Net cash provided by (used in) operating activities</b>	<b>33,513</b>	<b>(9,195)</b>
<b>Investing activities</b>		
Purchases of receivable portfolios, net of forward flow allocation	(94,833)	(80,035)
Collections applied to investment in receivable portfolios	67,272	58,974
Proceeds from put-backs of receivable portfolios	2,047	1,574
Purchases of property and equipment	(2,034)	(878)
<b>Net cash used in investing activities</b>	<b>(27,548)</b>	<b>(20,365)</b>
<b>Financing activities</b>		
Proceeds from notes payable and other borrowings	15,000	27,000
Repayment of notes payable and other borrowings	(17,169)	(4,000)
Repurchase of convertible notes	(3,500)	—
Proceeds from exercise of stock options	8	263
Tax (provision) benefit from stock-based payment arrangements	(12)	123
Repayment of capital lease obligations	(145)	(122)
<b>Net cash (used in) provided by financing activities</b>	<b>(5,818)</b>	<b>23,264</b>
Net increase (decrease) in cash	147	(6,296)
Cash and cash equivalents, beginning of period	4,900	10,791
Cash and cash equivalents, end of period	<u>\$ 5,047</u>	<u>\$ 4,495</u>

*See accompanying notes to unaudited condensed consolidated financial statements*

**ENCORE CAPITAL GROUP, INC.**  
**Condensed Consolidated Statements of Cash Flows (cont.)**  
**Reconciliation of Net Income to Net Cash Provided by Operating Activities**  
(Unaudited, In Thousands)

	Six Months Ended June 30,	
	2008	2007
<b>Net income</b>	\$14,830	\$ 4,836
Adjustments to reconcile net income to net cash provided by (used in) operating activities:		
Depreciation and amortization	1,488	1,709
Amortization of loan costs	608	607
Stock-based compensation expense	2,322	2,005
Gain on repurchase of convertible notes, net	(1,417)	—
Tax benefit from repurchase of convertible notes	304	—
Tax benefit from convertible notes interest expense	1,067	985
Tax provision from stock option exercises	(12)	(107)
Deferred income tax (benefit) expense	(10)	1,824
Tax provision (benefit) from stock-based payment arrangements	12	(123)
Provision for impairment (reversal) on receivable portfolios, net	8,725	(1,263)
Changes in operating assets and liabilities		
Decrease in restricted cash	127	718
Decrease in other assets	1,008	255
Increase in deferred court costs	(4,622)	(4,718)
Decrease (increase) in prepaid income tax	8,828	(4,352)
Decrease in accrued profit sharing arrangement	—	(6,869)
Increase in deferred revenue and purchased service obligation	472	158
Decrease in accounts payable and accrued liabilities	(217)	(4,860)
<b>Net cash provided by (used in) operating activities</b>	<u>\$33,513</u>	<u>\$(9,195)</u>

*See accompanying notes to unaudited condensed consolidated financial statements*

**ENCORE CAPITAL GROUP, INC.**  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS**  
(Unaudited)

**Note 1: Ownership, Description of Business and Summary of Significant Accounting Policies**

Encore Capital Group, Inc. (“Encore”), through its subsidiaries (collectively, the “Company”), is a systems-driven purchaser and manager of charged-off consumer receivable portfolios and, through its wholly owned subsidiary Ascension Capital Group, Inc. (“Ascension”), a provider of bankruptcy services to the finance industry. The Company acquires its receivable portfolios at deep discounts from their face values using its proprietary valuation process that is based on the consumer attributes of the underlying accounts. Based upon the Company’s ongoing analysis of these accounts, it employs a dynamic mix of collection strategies to maximize its return on investment. The receivable portfolios the Company purchases consist primarily of unsecured, charged-off domestic consumer credit card, auto deficiency and telecom receivables purchased from national financial institutions, major retail credit corporations, telecom companies and resellers of such portfolios. Acquisitions of receivable portfolios are financed by operations and by borrowings from third parties. See Note 7 for further discussion of the Company’s debt.

***Financial Statement Preparation***

The accompanying interim condensed consolidated financial statements have been prepared by Encore, without audit, in accordance with the instructions to Form 10-Q, and Rule 10-01 of Regulation S-X promulgated by the Securities and Exchange Commission and, therefore, do not include all information and footnotes necessary for a fair presentation of its consolidated financial position, results of operations and cash flows in accordance with accounting principles generally accepted in the United States. The condensed consolidated statements of financial condition at December 31, 2007 were derived from the audited financial statements at that date but do not include all disclosures required by accounting principles generally accepted in the United States.

In the opinion of management, the unaudited financial information for the interim periods presented reflects all adjustments, consisting of only normal and recurring adjustments, necessary for a fair presentation of the Company’s consolidated results of operations, financial position and cash flows. These condensed consolidated financial statements should be read in conjunction with the consolidated financial statements included in the Company’s Annual Report on Form 10-K for the fiscal year ended December 31, 2007. Operating results for interim periods are not necessarily indicative of operating results for an entire fiscal year.

The preparation of financial statements in conformity with accounting principles generally accepted in the United States requires management to make estimates and assumptions that affect the reported amounts and the disclosure of contingent amounts in the Company’s financial statements and the accompanying notes. Actual results could materially differ from those estimates.

***Principles of Consolidation***

The Company’s condensed consolidated financial statements include the assets, liabilities and operating results of its wholly-owned subsidiaries. All significant intercompany accounts and transactions have been eliminated.

***Reclassification***

Certain reclassifications have been made to the 2007 condensed consolidated statements of operations to separately show contingent interest expense and to the condensed consolidated statements of cash flows to separately show provisions for impairment and to separately show the change in other assets and the change in deferred court costs.

***Changes in Accounting Estimate***

Effective January 1, 2008, the Company revised its Unified Collection Score (“UCS”) and Behavioral Liquidation Score (“BLS”) methodologies by extending the collection forecast from 72 months to 84 months. UCS is a proprietary forecasting tool that generates portfolio level expectations of liquidation for portfolios that the Company has owned and serviced for greater than six months. BLS forecasts portfolio level expectations based on credit characteristics for portfolios owned and serviced less than six months. The Company has observed that receivable portfolios purchased in 2001 and prior have consistently experienced cash collections beyond 72 months from the date of purchase. When the Company first developed its cash forecasting models in 2001, limited historical collection data was available with which to accurately model projected cash flows beyond 60 months. During the quarter ended June 30, 2006, the Company determined there was enough additional collection data accumulated over the previous several years, in addition to improvements in its forecasting tools, allowing it to extend the collection forecast to 72 months. During the quarter ended March 31, 2008, the Company determined that there was enough additional collection data to accurately extend the collection forecast in both the UCS and BLS models to 84 months.



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The increase in the collection forecast from 72 to 84 months was applied effective January 1, 2008, to each portfolio for which the Company could accurately forecast through such term and resulted in an increase in the aggregate total estimated remaining collections for the receivable portfolios by \$67.3 million, or 7.5%, as of March 31, 2008. The Company did not extend the forecast on telecom portfolios as it did not anticipate significant collections past 72 months on these portfolios. The extension of the collection forecast was being treated as a change in estimate and, in accordance with Statement of Financial Accounting Standard No. 154, “*Accounting Changes and Error Corrections*,” was recognized prospectively in the consolidated financial statements, effective January 1, 2008. In the quarter ended March 31, 2008, this prospective treatment resulted in a reduction in the Company’s net impairment provision of \$3.1 million and an increase in revenue of \$0.1 million. The impact of the change in estimate resulted in an increase in net income of \$1.9 million and an increase in fully diluted earnings per share of \$0.08 for the three months ended March 31, 2008. The impact of the change in estimate for the quarter ended June 30, 2008, was not material to the Company’s condensed consolidated financial statements.

### **Earnings per Share**

Basic earnings per share (“EPS”) is calculated by dividing net earnings applicable to common stockholders by the weighted average number of shares of common stock outstanding. Common stock outstanding includes shares of common stock and restricted stock units for which no future service is required as a condition to the delivery of the underlying common stock. Diluted EPS includes the determinants of basic EPS and, in addition, reflects the dilutive effect of the common stock deliverable pursuant to stock options and to restricted stock units for which future service is required as a condition to the delivery of the underlying common stock. Employee stock options to purchase approximately 1,298,000 shares of common stock during the three months and six months ended June 30, 2008, and employee stock options to purchase approximately 1,181,000 and 1,277,000 shares of common stock during the three months and six months ended June 30, 2007, respectively, were outstanding but not included in the computation of diluted earnings per share because the effect on diluted earnings per share would be anti-dilutive.

### **Effects of New Accounting Pronouncement**

In December 2007, the Financial Accounting Standard Board (the “FASB”) issued Statements No. 141 (revised 2007), “*Business Combinations*.” The new standard requires the acquiring entity in a business combination to recognize all (and only) the assets acquired and liabilities assumed in the transaction, establishes the acquisition-date fair value as the measurement objective for all assets acquired and liabilities assumed and requires the acquirer to disclose to investors and other users all of the information they need to evaluate and understand the nature and financial effect of the business combination. The Company will adopt this new standard for its fiscal year beginning January 1, 2009.

In December 2007, the FASB issued Statement No. 160, “*Noncontrolling Interests in Consolidated Financial Statements—an amendment of ARB No. 51*.” This statement establishes accounting and reporting standards for the noncontrolling interest in a subsidiary and for the deconsolidation of a subsidiary. This statement is effective prospectively, except for certain retrospective disclosure requirements, for fiscal years beginning after December 15, 2008. The Company is currently analyzing the effects of the new standard and its potential impact, if any, on its consolidated financial statements.

In March 2008, the FASB issued Statement No. 161, “*Disclosures about Derivative Instruments and Hedging Activities*.” This new standard is intended to improve financial reporting about derivative instruments and hedging activities by requiring enhanced disclosures to enable investors to better understand their effects on an entity’s financial position, financial performance, and cash flows. It is effective for financial statements issued for fiscal years and interim periods beginning after November 15, 2008. The Company expects to adopt this new standard and its required disclosures, in its consolidated financial statements for the fiscal year beginning January 1, 2009.

In May 2008, the FASB issued FASB Staff Position (“FSP”) No. APB 14-1, “*Accounting for Convertible Debt Instruments That May Be Settled in Cash upon Conversion (Including Partial Cash Settlement)*.” This FSP requires that issuers of convertible debt instruments that, upon conversion, may be settled fully or partially in cash, must separately account for the liability and equity components in a manner that will reflect the entity’s nonconvertible debt borrowing rate when interest cost is recognized in subsequent periods. This FSP is effective for financial statements issued for fiscal years beginning after December 15, 2008, and interim periods within those fiscal years. This FSP is to be applied retrospectively to all past periods presented, even if the instrument has matured, converted, or otherwise been extinguished as of the FSP’s effective date. The Company believes that this FSP will change the accounting treatment of its current outstanding convertible senior notes, and result in a reduction in the carrying value of debt, an increase in equity, an increase in interest expense and a reduction in earnings per share.

## **Note 2: Fair Value Measurements**

On January 1, 2008, the Company adopted Statement of Financial Accounting Standard No. 157, “*Fair Value Measurements*” (“FAS 157”), for financial assets and liabilities. FAS 157 defines fair value, provides guidance for measuring fair value and requires certain disclosures. It does not require any new fair value measurements, but rather applies to all other accounting pronouncements that require or permit fair value measurements. The Company will adopt the provisions of FAS 157 for non-financial assets and non-financial liabilities that are recognized and disclosed at fair value on a nonrecurring basis for its fiscal year beginning January 1, 2009.

The fair values of the Company’s financial instruments reflect the amounts that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date (*i.e.* the “exit price”). The statement utilizes a fair value hierarchy that prioritizes the inputs to valuation techniques used to measure fair value into three broad levels. The following is a brief description of those three levels:

- Level 1: Observable inputs such as quoted prices (unadjusted) in active markets for identical assets or liabilities.
- Level 2: Inputs other than quoted prices that are observable for the asset or liability, either directly or indirectly. These include quoted prices for similar assets or liabilities in active markets and quoted prices for identical or similar assets or liabilities in markets that are not active.
- Level 3: Unobservable inputs that reflect the reporting entity’s own assumptions.

The Company’s financial instruments consist of the following:

### ***Financial instruments with carrying value equal to fair value***

- Cash and cash equivalents
- Accounts receivable
- Hedged derivative instruments

The fair value of cash and cash equivalents and accounts receivable approximates their respective carrying value. Cash flow hedging instruments, which are considered over-the-counter derivatives, are also carried at their fair values. The Company’s fair value estimate for such derivative instruments incorporates quoted market prices at the balance sheet date from the counter party using significant observable inputs and is considered a level 2 fair value measurement.

### ***Financial instruments not required to be carried at fair value***

- Investment in receivable portfolios, net
- Deferred court costs
- Forward flow asset
- Long term debt

The Company has elected not to adopt the provisions of Statements of Financial Accounting Standard No. 159, “*Fair Value Option*,” for its fiscal year ended December 31, 2008. Therefore, the above instruments are not required to be recorded at their fair value. However, for disclosure purposes in connection with the provisions of Statements of Financial Accounting Standard No. 107, “*Disclosures about Fair Value of Financial Instruments*,” the Company is required to estimate the fair value of financial instruments when it is practical to do so. Borrowings under the Company’s revolving credit facility are carried at historical cost, adjusted for additional borrowings less principal repayments, which approximates fair value. The Company’s convertible senior notes are carried at a principal amount of \$95.0 million at June 30, 2008. Their fair value estimate incorporates quoted market prices at the balance sheet date. However, the market for these securities is not active, and, therefore, results in a level 2 fair value measurement. As of June 30, 2008, the fair value estimate of the Company’s convertible senior notes based on quoted market prices amounts to approximately \$72.2 million. For investment in receivable portfolios, deferred court costs and the forward flow asset, there is no active market or observable inputs for the fair value estimation. The Company considers it not practical to attempt to estimate the fair value of such financial instruments due to the excessive costs that would be incurred in doing so.

## **Note 3: Stock-Based Compensation**

On January 1, 2006, the Company implemented Statement of Financial Accounting Standard No. 123R, “*Share-Based Payment*” (“FAS 123R”), which is a revision of Statement of Financial Accounting Standard No. 123, “*Accounting For Stock-Based Compensation*” (“FAS 123”), using the modified prospective approach. The adoption of FAS 123R requires all stock-based compensation to be recognized in the consolidated financial statements at fair value.

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On March 30, 2005, the Board of Directors of the Company adopted the 2005 Stock Incentive Plan ("2005 Plan") for Board members, employees, officers, and executives of, and consultants and advisors to the Company. The 2005 Plan provides for the granting of incentive stock options, nonqualified stock options, stock appreciation rights, restricted stock, performance shares, and performance-based awards to eligible individuals. Upon adoption, an aggregate of 1,500,000 shares of the Company's common stock were available for awards under the 2005 Plan, plus ungranted shares of stock that were available for future awards under the 1999 Equity Participation Plan ("1999 Plan"). In addition, shares subject to options granted under either the 1999 Plan or the 2005 Plan that terminate or expire without being exercised are available for grant under the 2005 Plan. The benefits provided under these plans are share-based compensation subject to the provisions of FAS 123R.

In accordance with FAS 123R, compensation expense is recognized only for those shares expected to vest, with estimated forfeitures based on the Company's historical experience and future expectations. For the six months ended June 30, 2008, \$2.3 million was recognized as stock-based compensation expense.

The Company's stock-based compensation arrangements are described below:

### **Stock Options**

The 2005 Plan permits the granting of stock options to certain employees and directors of the Company. Option awards are generally granted with an exercise price equal to the market price of the Company's stock at the date of issuance. Options generally vest based on three to five years of continuous service and have ten-year contractual terms.

The Company uses the Black-Scholes option-pricing model to determine the fair-value of stock-based awards. All options are amortized ratably over the requisite service periods of the awards, which are generally the vesting periods.

The fair value of options granted is estimated at the date of grant using a Black-Scholes option-pricing model with the following weighted-average assumptions (there were no options granted during the six months ended June 30, 2008):

	Six Months Ended June 30, 2008	Six Months Ended June 30, 2007
Weighted average fair value of options granted	—	\$ 7.52
Risk free interest rate	—	4.8%
Dividend yield	—	0.0%
Volatility factor of the expected market price of the Company's common stock	—	79.0%
Weighted-average expected life of options	—	5 Years

Unrecognized estimated compensation cost related to stock options as of June 30, 2008, was \$1.6 million, which is expected to be recognized over a weighted-average period of approximately 2.3 years.

A summary of the Company's stock option activity and related information is as follows for the six months ended June 30, 2008:

	Number of Shares	Option Price Per Share	Weighted Average Exercise Price	Aggregate Intrinsic Value (in thousands)
Outstanding at December 31, 2007	2,126,852	\$ 0.35 - \$20.09	\$ 9.30	
Granted	—	—	—	
Cancelled/forfeited	(79,984)	10.60 - 18.02	17.61	
Exercised	(7,166)	1.00 - 1.30	1.09	
Outstanding at June 30, 2008	<u>2,039,702</u>	<u>\$0.35 - \$20.09</u>	<u>\$ 9.00</u>	\$ 5,936
Exercisable at June 30, 2008	<u>1,586,341</u>	<u>\$ 0.35 - \$20.09</u>	<u>\$ 8.19</u>	\$ 5,936

The total intrinsic value of options exercised during the six months ended June 30, 2008 and 2007 was \$0.1 million and \$0.2 million, respectively. As of June 30, 2008, the weighted-average remaining contractual life of options outstanding and options exercisable was 5.79 years and 5.11 years, respectively.

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### **Restricted Stock Units**

Under the Company's 2005 Plan, certain employees and directors are eligible to receive restricted stock units. In accordance with FAS 123R, the fair value of restricted stock units is equal to the closing price of the Company's common stock on the date of issuance. The total number of restricted stock awards expected to vest is adjusted by estimated forfeiture rates. As of June 30, 2008, 154,150 of the non-vested shares are expected to vest over approximately three to five years based on certain performance goals ("Performance Shares"). The fair value of the Performance Shares is expensed over the expected vesting period based on the probability of performance goals being met. If performance goals are not expected to be met, the compensation expense previously recognized would be reversed. As of June 30, 2008, no reversals of compensation expense related to the Performance Shares have been made. The remaining 464,139 non-vested shares are not performance based, and will vest, and are being expensed over approximately two to five years.

For the six months ended June 30, 2008, restricted stock unit activity and related information is as follows:

<u>Restricted Stock Units</u>	<u>Non-Vested Shares</u>	<u>Weighted Average Grant Date Fair Value</u>
Non-vested at December 31, 2007	671,900	\$ 11.28
Awarded	14,686	\$ 8.85
Vested	(36,197)	\$ 10.66
Cancelled/forfeited	(32,100)	\$ 11.79
Non-vested at June 30, 2008	<u>618,289</u>	<u>\$ 11.23</u>

Unrecognized estimated compensation cost related to restricted stock units as of June 30, 2008, was \$3.5 million, which is expected to be recognized over a weighted-average period of approximately 2.8 years. The fair value of restricted stock units vested for the six months ended June 30, 2008 and 2007 was \$0.2 million and less than \$0.1 million, respectively.

### **Note 4: Investment in Receivable Portfolios, Net**

In accordance with the provisions of AICPA Statement of Position 03-3, "Accounting for Certain Debt Securities in a Transfer" ("SOP 03-3"), discrete receivable portfolio purchases during a quarter are aggregated into pools based on common risk characteristics. Once a pool is established, the portfolios with common risk characteristics are permanently assigned to that pool. The discount (*i.e.*, the difference between the cost of each pool and the related aggregate contractual receivable balance) is not recorded because the Company expects to collect a relatively small percentage of each pool's contractual receivable balance. As a result, receivable portfolios are recorded at cost at the time of acquisition. All portfolios with common risk characteristics purchased prior to the adoption of SOP 03-3 in the first quarter of 2005 were aggregated by quarter of purchase.

In compliance with SOP 03-3, the Company accounts for its investments in consumer receivable portfolios using either the interest method or the cost recovery method. The interest method applies an effective interest rate, or IRR, to the cost basis of the pool, which remains unchanged throughout the life of the pool unless there is an increase or decrease in subsequent expected cash flows. Effective January 1, 2008, the IRR is based on the Company's collection forecast up to 84 months from the date a portfolio is purchased. (See Note 1 for discussion of the Company's extension of its collection forecast). Subsequent increases in cash flows expected to be collected are generally recognized prospectively through an upward adjustment of the pool's IRR over its remaining life. Subsequent decreases in expected cash flows do not change the IRR, but are recognized as an impairment of the cost basis of the pool, and are reflected in the consolidated statements of operations as a reduction in revenue with a corresponding valuation allowance offsetting the investment in receivable portfolios in the consolidated statements of financial condition.

The Company accounts for each pool as a unit for the economic life of the pool (similar to one loan) for recognition of revenue from receivable portfolios, for collections applied to the cost basis of receivable portfolios and for provision for loss or impairment. Revenue from receivable portfolios is accrued based on each pool's effective interest rate applied to each pool's adjusted cost basis. The cost basis of each pool is increased by revenue earned and decreased by gross collections and impairments.

If the amount and timing of future cash collections on a pool of receivables are not reasonably estimable, the Company accounts for such portfolios on the cost recovery method ("Cost Recovery Portfolios"). The accounts in these portfolios have different risk characteristics than those included in other portfolios acquired during the same quarter, or the necessary information was not available to estimate future cash flows and, accordingly, they were not aggregated with other portfolios.

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Under the cost recovery method of accounting, no income is recognized until the purchase price of a Cost Recovery Portfolio has been fully recovered. In September 2007, the Company decided to exit its healthcare purchasing and collection activities. At that time, the Company anticipated either selling these healthcare portfolios or placing the underlying accounts with external agencies for collections. The Company no longer anticipates a sale of these receivable portfolios and has placed them with external collection agencies. Since the Company is no longer actively collecting on these accounts internally, it has classified them as Cost Recovery Portfolios. As of June 30, 2008, there were six portfolios accounted for using the cost recovery method, consisting of \$1.3 million in net book value representing all of the healthcare portfolios that the Company had acquired. The \$1.3 million is included in investment in receivable portfolios, net, which reflects the value the Company expects to realize through the collection activities of the external agencies.

Accretable yield represents the amount of revenue the Company expects to generate over the remaining life of its existing investment in receivable portfolios based on estimated future cash flows. Total accretable yield is the difference between future estimated collections and the current carrying value of a portfolio. All estimated cash flows on portfolios where the cost basis has been fully recovered are classified as zero basis cash flows.

The following tables summarize the Company's accretable yield and an estimate of zero basis future cash flows at the beginning and end of the current period (*in thousands*):

	<b>Six Months Ended June 30, 2008</b>		
	<b>Accretable Yield</b>	<b>Estimate of Zero Basis Cash Flows</b>	<b>Total</b>
Beginning balance at December 31, 2007	\$486,652	\$ 13,002	\$499,654
Revenue recognized, net	(61,510)	(2,558)	(64,068)
Reductions on existing portfolios	(50,898)	(1,015)	(51,913)
Additions for 12 months curve extension	67,287	—	67,287
Additions for current purchases	112,780	—	112,780
Balance at March 31, 2008	\$554,311	\$ 9,429	\$563,740
Revenue recognized, net	(63,652)	(2,623)	(66,275)
(Reductions) additions on existing portfolios	(3,206)	1,598	(1,608)
Additions for current purchases	79,159	—	79,159
Balance at June 30, 2008	<u>\$566,612</u>	<u>\$ 8,404</u>	<u>\$575,016</u>

	<b>Six Months Ended June 30, 2007</b>		
	<b>Accretable Yield</b>	<b>Estimate of Zero Basis Cash Flows</b>	<b>Total</b>
Beginning balance at December 31, 2006	\$417,981	\$ 38,967	\$456,948
Revenue recognized, net	(57,045)	(5,108)	(62,153)
Additions (reductions) on existing portfolios	20,438	(3,956)	16,482
Additions for current purchases	52,980	—	52,980
Balance at March 31, 2007	\$434,354	\$ 29,903	\$464,257
Revenue recognized, net	(59,974)	(4,047)	(64,021)
Additions on existing portfolios	39,959	4,442	44,401
Additions for current purchases	58,837	—	58,837
Balance at June 30, 2007	<u>\$473,176</u>	<u>\$ 30,298</u>	<u>\$503,474</u>

During the three months ended June 30, 2008, the Company purchased receivable portfolios with a face value of \$1.8 billion for \$52.5 million, or a purchase cost of 2.9% of face value. The estimated future collections at acquisition for these portfolios amounted to \$128.4 million. During the six months ended June 30, 2008, the Company purchased receivable portfolios with a face value of \$3.0 billion for \$100.4 million, or a purchase cost of 3.3% of face value. The estimated future collections at acquisition for these portfolios amounted to \$246.8 million.

All collections realized after the net book value of a portfolio has been fully recovered ("Zero Basis Portfolios") are recorded as revenue ("Zero Basis Revenue"). During the three months ended June 30, 2008 and 2007, approximately \$2.6 million and \$4.0 million were recognized as Zero Basis Revenue, respectively. During the six months ended June 30, 2008 and 2007, approximately \$5.1 million and \$9.2 million were recognized as Zero Basis Revenue, respectively.

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During the quarter ended March 31, 2008, the Company revised the forecasting methodology it uses to value a portfolio by extending the collection forecast from 72 months to 84 months. This change was made as a result of the Company's increased confidence in its ability to forecast future cash collections to 84 months. Extending the collection forecast from 72 months to 84 months resulted in an increase in the aggregate total estimated remaining collections for the receivable portfolios as of March 31, 2008, by \$67.3 million, or 7.5%.

The following tables summarize the changes in the balance of the investment in receivable portfolios during the six months ended June 30, 2008 (*in thousands, except percentages*):

	For the Six Months Ended June 30, 2008			Total
	Accrual Basis Portfolios	Cost Recovery Portfolios	Zero Basis Portfolios	
Balance, beginning of period	\$ 390,564	\$ 1,645	\$ —	\$ 392,209
Purchases of receivable portfolios	100,394	—	—	100,394
Gross collections <sup>1</sup>	(200,829)	(330)	(5,181)	(206,340)
Put-backs and recalls <sup>2</sup>	(2,035)	(12)	—	(2,047)
Revenue recognized <sup>3</sup>	133,887	—	5,181	139,068
Impairment, net <sup>3</sup>	(8,725)	—	—	(8,725)
Balance, end of period	\$ 413,256	\$ 1,303	\$ —	\$ 414,559
Revenue as a percentage of collections <sup>4</sup>	66.7%	0.0%	100.0%	67.4%

  

	For the Six Months Ended June 30, 2007			Total
	Accrual Basis Portfolios	Cost Recovery Portfolios	Zero Basis Portfolios	
Balance, beginning of period	\$ 300,348	\$ —	\$ —	\$ 300,348
Purchases of receivable portfolios	86,523	—	—	86,523
Gross collections <sup>1</sup>	(174,730)	—	(9,156)	(183,886)
Put-backs and recalls <sup>2</sup>	(1,574)	—	—	(1,574)
Revenue recognized <sup>3</sup>	115,756	—	9,156	124,912
Impairment reversals, net <sup>3</sup>	1,263	—	—	1,263
Balance, end of period	\$ 327,586	\$ —	\$ —	\$ 327,586
Revenue as a percentage of collections <sup>4</sup>	66.2%	0.0%	100.0%	67.9%

<sup>1</sup> Does not include amounts collected on behalf of others.

<sup>2</sup> Put-backs represent accounts that are returned to the seller in accordance with the respective purchase agreement ("Put-Backs"). Recalls represents accounts that are recalled by the seller in accordance with the respective purchase agreement ("Recalls").

<sup>3</sup> Reflects additional revenue of \$0.1 million and a lower net impairment of \$3.1 million, as a result of extending the collection curves from 72 to 84 months.

<sup>4</sup> Revenue as a percentage of collections excludes the effects of net impairment or net impairment reversals.

The following table summarizes the change in the valuation allowance for investment in receivable portfolios during the six months ended June 30, 2008 (*in thousands*):

	Valuation Allowance
Balance at December 31, 2007	\$ 15,752
Provision for impairment losses	5,335
Reversal of prior allowance	—
Balance at March 31, 2008	\$ 21,087
Provision for impairment losses	3,557
Reversal of prior allowance	(167)
Balance at June 30, 2008	\$ 24,477

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The Company utilizes various business channels for the collection of its receivable portfolios. The following table summarizes collections by collection channel (*in thousands*):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2008	2007	2008	2007
Collection sites	\$ 38,929	\$ 32,516	\$ 82,218	\$ 66,511
Legal collections	49,184	44,430	94,476	84,160
Collection agencies	10,009	7,686	20,970	16,503
Sales	3,633	7,972	7,847	15,269
Other	375	1,007	974	1,709
Gross collections for the period	<u>\$ 102,130</u>	<u>\$ 93,611</u>	<u>\$ 206,485</u>	<u>\$ 184,152</u>

### Note 5: Deferred Court Costs

The Company contracts with a nationwide network of attorneys that specialize in collection matters. The Company generally refers charged-off accounts to its contracted attorneys when it believes the related debtor has sufficient assets to repay the indebtedness and has, to date, been unwilling to pay. In connection with the Company's agreement with the contracted attorneys, it advances certain out-of-pocket court costs ("Deferred Court Costs"). The Company capitalizes Deferred Court Costs in its consolidated financial statements and provides a reserve for those costs that it believes will ultimately be uncollectible. The Company determines the reserve based on its analysis of court costs that have been advanced and those that have been recovered. Deferred court costs not recovered within three years of placement are fully written off. Collections received from these debtors are first applied against related court costs with the balance applied to the debtors' account.

Deferred Court Costs consist of the following as of the dates presented (*in thousands*):

	June 30, 2008	December 31, 2007
Court costs advanced	\$ 116,635	\$ 88,385
Court costs recovered	(29,900)	(21,749)
Court costs reserve	(61,580)	(46,103)
Deferred court costs, net	<u>\$ 25,155</u>	<u>\$ 20,533</u>

### Note 6: Other Assets

Other assets consist of the following (*in thousands*):

	June 30, 2008	December 31, 2007
Debt issuance costs	\$ 2,491	\$ 3,177
Deferred compensation assets	2,704	3,158
Prepaid expenses	1,515	785
Other	1,470	1,680
	<u>\$ 8,180</u>	<u>\$ 8,800</u>

### Note 7: Debt

The Company is obligated under borrowings as follows (*in thousands*):

	June 30, 2008	December 31, 2007
Convertible senior notes	\$ 95,000	\$ 100,000
Revolving credit facility	170,000	172,169
Capital lease obligations and other debt	635	251
	<u>\$ 265,635</u>	<u>\$ 272,420</u>

### **Convertible Senior Notes**

In 2005, the Company issued \$100.0 million of 3.375% convertible senior notes due September 19, 2010 (the “Convertible Notes”). Interest on the Convertible Notes is payable semi-annually, in arrears, on March 19 and September 19 of each year. The Convertible Notes rank equally with the Company’s existing and future senior indebtedness and are senior to the Company’s potential future subordinated indebtedness. Prior to the implementation of the net-share settlement feature discussed below, the Convertible Notes were convertible, prior to maturity, subject to certain conditions described below, into shares of the Company’s common stock at an initial conversion rate of 44.7678 per \$1,000 principal amount of notes, which represented an initial conversion price of approximately \$22.34 per share, subject to adjustment.

In April 2008, the Company repurchased \$5.0 million principal amount of its outstanding Convertible Notes, for a total price of \$3.5 million, plus accrued interest. This transaction left \$95.0 million principal amount of the Company’s Convertible Notes outstanding, and resulted in a net gain of \$1.4 million in the second quarter of 2008. As of June 30, 2008, the Company is making the required interest payments on the Convertible Notes and no other changes in the balance or structure of the Convertible Notes has occurred.

In October 2005, the Company obtained stockholder approval of a net-share settlement feature that allows the Company to settle conversion of the Convertible Notes through a combination of cash and stock. Based on the provisions of Emerging Issues Task Force No. 90-19, “*Convertible Bonds with Issuer Option to Settle for Cash upon Conversion*” (“EITF 90-19”), and Emerging Issues Task Force No. 00-19, “*Accounting for Derivative Financial Instruments Indexed to, and Potentially Settled In, a Company’s Own Stock*” (“EITF 00-19”), the net-settlement feature is accounted for as convertible debt and is not subject to the provisions of Statement of Financial Accounting Standards No. 133, “*Accounting for Derivative Instruments and Hedging Activities*” (“FAS 133”). As a result of the net-settlement feature, the Company will be able to substantially reduce the number of shares issuable in the event of conversion of the Convertible Notes by repaying principal in cash instead of issuing shares of common stock for that amount. Additionally, the Company will not be required to include the underlying shares of common stock in the calculation of the Company’s diluted weighted average shares outstanding for earnings per share until the Company’s common stock price exceeds \$22.34.

The aggregate underwriting commissions and other debt issuance costs incurred with respect to the issuance of the Convertible Notes were \$3.4 million, which have been capitalized as debt issuance costs on the Company’s consolidated statements of financial condition and are being amortized using the effective interest rate method over the term of the Convertible Notes.

The Convertible Notes also contain a restricted convertibility feature that does not affect the conversion price of the Convertible Notes but, instead, places restrictions on a holder’s ability to convert their Convertible Notes into shares of the Company’s common stock. A holder may convert the Convertible Notes prior to March 19, 2010, only if one or more of the following conditions are satisfied:

- the average of the trading prices of the Convertible Notes for any five consecutive trading day period is less than 103% of the average of the conversion values of the Convertible Notes during that period;
- the Company makes certain significant distributions to holders of the Company’s common stock;
- the Company enters into specified corporate transactions; or
- the Company’s common stock ceases to be approved for listing on the NASDAQ National Market and is not listed for trading on a U.S. national securities exchange or any similar U.S. system of automated securities price dissemination.

Holders may also surrender their Convertible Notes for conversion anytime on or after March 19, 2010, until the close of business on the trading day immediately preceding September 19, 2010, regardless of whether any of the foregoing conditions have been satisfied. Upon the satisfaction of any of the foregoing conditions, on the last day of a reporting period, or during the twelve months prior to September 19, 2010, the Company would write off to expense all remaining unamortized debt issuance costs in that period.

If the Convertible Notes are converted in connection with certain fundamental changes that occur prior to March 19, 2010, the Company may be obligated to pay an additional make-whole premium with respect to the Convertible Notes converted.

**Convertible Notes Hedge Strategy.** Concurrent with the sale of the Convertible Notes, the Company purchased call options to purchase from the counterparties an aggregate of 4,476,780 shares of the Company’s common stock at a price of \$22.34 per share. The cost of the call options totaled \$27.4 million. The Company also sold warrants to the same counterparties to purchase from the Company an aggregate of 3,984,334 shares of the Company’s common stock at a price of \$29.04 per share and received net proceeds from the sale of these warrants of \$11.6 million. Taken together, the call option and warrant agreements have the effect of increasing



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the effective conversion price of the Convertible Notes to \$29.04 per share. The call options and warrants must be settled in net shares, except in connection with certain termination events, in which case they would be settled in cash based on the fair market value of the instruments. On the date of settlement, if the market price per share of the Company's common stock is above \$29.04 per share, the Company will be required to deliver shares of its common stock representing the value of the call options and warrants in excess of \$29.04 per share.

The warrants have a strike price of \$29.04 and are generally exercisable at anytime. The Company issued and sold the warrants in a transaction exempt from the registration requirements of the Securities Act of 1933, as amended, because the offer and sale did not involve a public offering. There were no underwriting commissions or discounts in connection with the sale of the warrants. In accordance with EITF No. 00-19 and Statement of Financial Accounting Standards No. 150, "Accounting for Certain Financial Instruments with Characteristics of both Liabilities and Equity," the Company recorded the net call options and warrants as a reduction in additional paid in capital as of December 31, 2005, and will not recognize subsequent changes in fair value of the call options and warrants in its consolidated financial statements.

### **Revolving Credit Facility**

During 2005, the Company entered into a three-year revolving credit facility ("Revolving Credit Facility"), to be used for the purposes of purchasing receivable portfolios and for general working capital needs. This Revolving Credit Facility has been amended several times to meet the needs of the Company, and is due to expire in May 2010.

Effective February 27, 2007, and May 9, 2008, the Company amended the Revolving Credit Facility to allow for the Company to repurchase up to \$50 million of a combination of its common stock and Convertible Notes, subject to compliance with certain covenants and available borrowing capacity.

Effective May 7, 2007, the Company amended the Revolving Credit Facility in connection with an agreement reached with the lender under the Company's Secured Financing Facility. This amendment allows the Company to exclude the expense associated with a one-time payment of \$16.9 million in connection with its termination of all future obligations under its Secured Financing Facility as further discussed below.

Effective October 19, 2007, the Company amended the Revolving Credit Facility to change the definition of "change of control" to exclude from that definition acquisitions of stock by Red Mountain Capital Partners LLC ("Red Mountain"), JCF FPK I LP ("JCF FPK") and their respective affiliates. The amendment was entered into in contemplation of a shareholders' agreement between Red Mountain affiliates and JCF FPK. This agreement was subsequently executed.

Effective July 3, 2008, the Company amended the Revolving Credit Facility to expand the capacity from \$230.0 million to \$335.0 million. This amendment added three additional lenders and increased the applicable margin under certain circumstances between 25 and 75 basis points. Refer to Note 12 for further details on this amendment.

Other provisions of the amended Revolving Credit Facility include:

- Interest at a floating rate equal to, at the Company's option, either: (a) reserve adjusted LIBOR plus a spread that ranges from 225 to 275 basis points, depending on the Company's leverage; or (b) the higher of the federal funds rate then in effect plus a spread of 50 basis points or the prime rate plus a spread that ranges from 25 to 75 basis points.
- \$5.0 million sub-limits for swingline loans and letters of credit.
- A borrowing base that provides for an 85.0% initial advance rate for the purchase of qualified receivable portfolios. The borrowing base reduces for each qualifying portfolio by 3% per month beginning after the third complete month subsequent to the initial purchase. The aggregate borrowing base is equal to the lesser of (a) the sum of all of the borrowing bases of all qualified receivable portfolios under this facility, as defined above, or (b) 95% of the net book value of all receivable portfolios acquired on or after January 1, 2005.
- Restrictions and covenants, which limit, among other things, the payment of dividends and the incurrence of additional indebtedness and liens.
- Events of default which, upon occurrence, may permit the lenders to terminate the Revolving Credit Facility and declare all amounts outstanding to be immediately due and payable.
- Collateralization by all assets of the Company.

At June 30, 2008, the outstanding balance on the Revolving Credit Facility was \$170.0 million, which bore a weighted average interest rate of 5.54%. The aggregate borrowing base was \$230.0 million, of which \$60.0 million was available for future borrowings. Effective July 3, 2008, the aggregate borrowing base was expanded to \$335.0 million.

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### **Secured Financing Facility**

The Company repaid in full the principal balance of the Secured Financing Facility at the end of 2006 and will make no further borrowings under that facility. Prior to May 7, 2007, the Company and the lender shared the residual collections, net of servicing fees paid to the Company. The residual collections paid to the lender were classified as contingent interest ("Contingent Interest").

On May 7, 2007, the Company entered into an agreement with the lender under its Secured Financing Facility to eliminate all future Contingent Interest payments, for a one-time payment of \$16.9 million. This agreement released the lender's security interests in the remaining receivables originally financed under the Secured Financing Facility. Subsequent to the second quarter of 2007, the Company is no longer obligated to make any Contingent Interest payments under the Secured Financing Facility and, as a result, no longer records such interest in its statements of operations.

The following table summarizes interest expense associated with the Secured Financing Facility for the periods presented (*in thousands*):

	<u>Three Months Ended June 30,</u>		<u>Six Months Ended June 30,</u>	
	<u>2008</u>	<u>2007</u>	<u>2008</u>	<u>2007</u>
Contingent interest	\$ —	\$ 888	\$ —	\$ 4,123
Pay-off of contingent interest	—	11,733	—	11,733
<b>Total</b>	<b>\$ —</b>	<b>\$ 12,621</b>	<b>\$ —</b>	<b>\$ 15,856</b>

### **Derivative Instruments**

On April 11, 2007, the Company entered into two separate interest rate swap agreements intended to more effectively manage interest rates by establishing a set level of fixed rates associated with a portion of the borrowings under its Revolving Credit Facility. The first agreement is for a notional amount of \$25.0 million, a term of three years and a fixed interest rate of 4.99%. The second agreement is for a notional amount of \$25.0 million, a term of four years and a fixed interest rate of 5.01%. Giving effect to these hedges, the interest rate the Company will pay on \$50.0 million of the outstanding balance under the Revolving Credit Facility will be the fixed interest rates mentioned above plus the required credit spread.

FAS 133 requires that the derivatives be recorded on the balance sheet as either an asset or liability measured at its fair value. The effective portion of the change in fair value of the derivative is recorded in other comprehensive income. The ineffective portion of the change in fair value of the derivative, if any, is recognized in interest expense in the period of change. From the inception of the hedging program, the Company has determined that the hedging instruments are highly effective. Accordingly, for the six months ended June 30, 2008, the Company has recorded the change in fair value as other comprehensive loss. As of June 30, 2008, the fair value of the hedges represented a liability of \$1.7 million and is included in other liabilities and accumulated other comprehensive loss.

The amount recorded in accumulated other comprehensive loss related to cash flow hedging instruments was as follows (*in thousands*):

	<u>Accumulated Other Comprehensive (Loss) Income</u>
Beginning balance at December 31, 2007	\$ (995)
Changes in fair value of derivatives	(26)
Deferred income tax benefit	10
Ending balance at June 30, 2008	<u>\$ (1,011)</u>

### **Capital Lease Obligations and Other Debt**

The Company has capital lease obligations for certain computer equipment. These lease obligations require monthly payments aggregating approximately \$21,000 through November 2008 and have implicit interest rates ranging from 2.9% to 3.1%.

The Company finances certain leasehold improvement projects with its lessors in its Phoenix and St. Cloud facilities. These projects are currently under construction and, as of June 30, 2008, the Company's obligation was approximately \$0.5 million. Commencing in October 2008, these financing agreements require monthly principal and interest payments, accrue interest at 8%—9% per annum and will mature in June and September 2013.

**Note 8: Income Taxes**

The Company recorded an income tax provision of \$5.0 million, reflecting an effective rate of 40.6% of pretax income during the three months ended June 30, 2008. The effective tax rate for the three months ended June 30, 2008, consists primarily of a provision for Federal income taxes of 32.1% (which is net of a benefit for state taxes of 2.9%), a provision for state taxes of 8.2% and a provision for the effect of permanent book versus tax differences of 0.3%. For the three months ended June 30, 2007, the Company recorded an income tax benefit of \$0.6 million, reflecting an effective rate of 40.3% of pretax income. The effective tax rate for the three months ended June 30, 2007, consists primarily of a benefit for Federal income taxes of 31.9% (which is net of a provision for state taxes of 3.1%), a benefit for state taxes of 8.8% and a provision for the effect of permanent book versus tax differences of 0.4%.

The Company recorded an income tax provision of \$10.0 million, reflecting an effective rate of 40.3% of pretax income during the six months ended June 30, 2008. The effective tax rate for the six months ended June 30, 2008, consists primarily of a provision for Federal income taxes of 32.1% (which is net of a benefit for state taxes of 2.9%) and a provision for state taxes of 8.2%. For the six months ended June 30, 2007, the Company recorded an income tax provision of \$3.3 million, reflecting an effective rate of 40.8% of pretax income. The effective tax rate for the six months ended June 30, 2007, consists primarily of a provision for Federal income taxes of 31.9% (which is net of a benefit for state taxes of 3.1%), a provision for state taxes of 8.8% and the effect of permanent book versus tax differences of 0.1%.

Effective January 1, 2007, the Company adopted the provisions of Interpretation No. 48, "Accounting for Uncertainty in Income Taxes" ("FIN 48"). As of December 31, 2007, the Company had a gross unrecognized tax benefit of \$1.3 million that, if recognized, would result in a net tax benefit of approximately \$1.0 million and would have a positive effect on the Company's effective tax rate. During the three and six months ended June 30, 2008, there were no material changes to the unrecognized tax benefit.

For the three months ended June 30, 2008, the Company has not provided for the United States income taxes or foreign withholding taxes on the quarterly undistributed earnings from continuing operations of its subsidiary operating outside of the United States. Undistributed earnings of the subsidiary for the three and six months ended June 30, 2008, were approximately \$0.1 million and \$0.3 million, respectively. Such undistributed earnings are considered permanently reinvested.

The Company's subsidiary operating outside of the United States is currently operating under a tax holiday in India. The tax holiday is due to expire on March 31, 2010. The impact of the tax holiday on the Company's consolidated financial statements is immaterial.

**Note 9: Purchase Concentrations**

The following table summarizes the concentration of the Company's purchases by seller sorted by total aggregate costs for the six months ended June, 2008 and 2007 (in thousands, except percentages):

	Concentration of Initial Purchase Cost by Seller For The Six Months Ended			
	June 30, 2008		June 30, 2007	
	Cost	%	Cost	%
Seller 1	\$ 33,334	33.2%	\$32,142	37.2%
Seller 2	26,772	26.7%	—	0.0%
Seller 3	11,404	11.4%	—	0.0%
Seller 4	8,248	8.2%	1,200	1.4%
Seller 5	7,057	7.0%	7,260	8.4%
Other	13,579	13.5%	45,921	53.0%
	\$100,394	100.0%	\$86,523	100.0%
Adjustments <sup>1</sup>	(54)		(130)	
Purchases, net	\$100,340		\$86,393	

<sup>1</sup> Adjusted for Put-backs and Recalls.

**Note 10: Commitments and Contingencies**

**Litigation**

On October 18, 2004, Timothy W. Moser, one of the Company's former officers, filed an action in the United States District Court for the Southern District of California against the Company, and certain individuals, including several of the Company's officers and directors. On February 14, 2005, the Company was served with an amended complaint in this action alleging defamation, intentional interference with contractual relations, breach of contract, breach of the covenant of good faith and fair dealing, intentional and negligent infliction of emotional distress and civil conspiracy arising out of certain statements in the Company's Registration Statement on Form S-1 originally filed in September 2003 and alleged to be included in the Company's Registration Statement on Form S-3 originally filed in May 2004. The amended complaint seeks injunctive relief, economic and punitive damages in an unspecified amount plus an award of profits allegedly earned by the defendants and alleged co-conspirators as a result of the alleged conduct, in addition to attorney's fees and costs. On May 2, 2006, the court denied the Company's special motion to strike pursuant to California's anti-SLAPP statute, denied in part and granted in part the Company's motion to dismiss, denied a variety of *ex parte* motions and applications filed by the plaintiff and denied the plaintiff's motion for leave to conduct discovery or file supplemental briefing. The court granted the plaintiff 30 days in which to further amend his complaint, and on June 1, 2006, the plaintiff filed a second amended complaint in which he amended his claim for negligent infliction of emotional distress. On May 25, 2006, the Company filed a notice of appeal of the court's order denying the anti-SLAPP motion and on June 16, 2006, the Company filed a motion to stay the case pending the outcome of the appeal, which was granted. Oral argument on the appeal was heard on July 17, 2008, and on July 28, 2008, the appellate court affirmed the trial court's denial of the Company's anti-SLAPP motion. As a consequence, the Company will determine whether or not to seek a rehearing of the appeal. If the Company does not determine to seek a rehearing, the case will be returned to the district court where it will proceed from the point at which it was stayed. Management of the Company believes the claims are without merit and intends to vigorously defend the action. Although the outcome of this matter cannot be predicted with certainty, management does not currently believe that this matter will have a material adverse effect on the Company's consolidated financial position or results of operations.

On September 7, 2005, Mr. Moser filed a related action in the United States District Court for the Southern District of California against Triarc Companies, Inc. ("Triarc"), which at the time was a significant stockholder of the Company, alleging intentional interference with contractual relations and intentional infliction of emotional distress. The case arises out of the same statements made or alleged to have been made in the Company's Registration Statements mentioned above. On January 7, 2006, Triarc was served with an amended complaint seeking injunctive relief, an order directing Triarc to issue a statement of retraction or correction of the allegedly false statements, economic and punitive damages in an unspecified amount and attorney's fees and costs. Triarc tendered the defense of this action to the Company, and the Company accepted the defense and will indemnify Triarc, pursuant to the indemnification provisions of the Registration Rights Agreements dated as of October 31, 2000 and February 21, 2002, and the Underwriting Agreements dated September 25, 2004 and January 20, 2005 to which Triarc is a party. Although the outcome of this matter cannot be predicted with certainty, management does not currently believe that this matter will have a material adverse effect on the Company's consolidated financial position or results of operations.

Claims based on the Fair Debt Collection Practices Act ("FDCPA") and comparable state statutes may result in class action lawsuits, which can be material to the Company due to the remedies available under these statutes, including punitive damages. A number of cases styled as class actions have been filed against the Company. A class has been certified in several of these cases. Several of these cases present novel issues on which there is no legal precedent. As a result, the Company is unable to predict the range of possible outcomes. There are a number of other lawsuits, claims and counterclaims pending or threatened against the Company. In general, these lawsuits, claims or counterclaims have arisen in the ordinary course of business and involve claims for actual damages arising from alleged misconduct or improper reporting of credit information by the Company or its employees or agents. Although litigation is inherently uncertain, based on past experience, the information currently available and the possible availability of insurance and/or indemnification in some cases, management of the Company does not believe that the currently pending and threatened litigation or claims will have a material adverse effect on the Company's consolidated financial position or results of operations. However, future events or circumstances, currently unknown to management, will determine whether the resolution of pending or threatened litigation or claims will ultimately have a material effect on the Company's consolidated financial position, liquidity or results of operations in any future reporting periods.

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### **Purchase Commitments**

In connection with the Company's acquisition of certain assets of Jefferson Capital Group in June 2005, the Company entered into a forward flow agreement to purchase a minimum of \$3.0 billion in face value of credit card charge-offs over a five-year period at a fixed price. As of June 30, 2008, future minimum purchase commitments under this agreement are as follows (*amounts in thousands*):

<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>Total</u>
<u>\$12,836</u>	<u>\$25,672</u>	<u>\$12,836</u>	<u>\$51,344</u>

The purchase commitment above assumes that the remaining commitment as of June 30, 2008, will be incurred ratably over the remaining term of such agreement.

On July 15, 2008, the Company gave Jefferson Capital Group and its parent company, CompuCredit Corporation, notice of breach by Jefferson Capital and CompuCredit of the agreement under which the forward flow purchases are made and initiated arbitration as a result of the breach. Management does not believe that the Company will ultimately make the forward flow purchases identified above as a result of the breach by Jefferson Capital and CompuCredit. See Note 12, "Subsequent Events," for more information on our dispute with Jefferson Capital and CompuCredit.

### **Note 11: Securities Repurchase Program**

On February 27, 2007, the Company's board of directors authorized a securities repurchase program under which the Company may buy back up to \$50 million of a combination of its common stock and Convertible Notes. The purchases may be made from time to time in the open market or through privately negotiated transactions and will be dependent upon various business and financial considerations. Securities repurchases are subject to compliance with applicable legal requirements and other factors. During April 2008, the Company repurchased \$5.0 million principal amount of its outstanding Convertible Notes, for a total of \$3.5 million, plus accrued interest.

### **Note 12: Subsequent Events**

Effective July 3, 2008, the Company amended its Revolving Credit Facility to expand the \$230.0 million senior secured revolving credit facility by increasing the accordion feature to provide for an additional \$105.0 million in availability, resulting in capacity of \$335.0 million. This amendment also added three additional lenders and increased the applicable margin under certain circumstances between 25 and 75 basis points.

On July 15, 2008, the Company gave Jefferson Capital Group and its parent Company, CompuCredit Corporation, notice of breach by Jefferson Capital and CompuCredit of the Asset Purchase and Forward Flow Agreement dated June 2, 2005, as amended, as well as a related Collection Agreement dated the same date. On July 16, 2008, the Company initiated arbitration as a result of the breach, pursuant to the arbitration provisions of the Agreements. The Company asserts that the litigation initiated by the Federal Trade Commission (the "FTC") on June 11, 2008, wherein the FTC alleges that Jefferson Capital and CompuCredit have violated the FTC Act with deceptive marketing practices in selling credit cards, among other allegations, violates the Asset Purchase and Forward Flow Agreement and Collection Agreement. The Company seeks an arbitral award that (i) Jefferson Capital and CompuCredit are in material breach of the Agreements, (ii) declares the Company's obligations to purchase forward flow accounts under the Agreements is thereby excused or discharged, (iii) confirms the Company's rights to cause Jefferson Capital to repurchase certain accounts previously sold to the Company under the Agreements, and other appropriate relief, including return of prepaid amounts relating to forward flow purchases, (iv) confirms the Company's rights to indemnity by Jefferson Capital and CompuCredit and (v) awards compensatory damages, attorney fees, interest, arbitration costs and other appropriate relief.

The Company has just commenced the Arbitration proceedings and no Arbitrator(s) have as yet been identified. In the interim, the Company has ceased forward flow purchases of accounts from Jefferson Capital, the sale of bankrupt accounts to Jefferson Capital and participation in a balance transfer program with CompuCredit. In response to the Notice of Breach from the Company, Jefferson Capital and CompuCredit delivered its own Notice of Default to the Company alleging the breach by the Company of the Company's forward flow purchase, bankruptcy sale and balance transfer obligations.

This matter is in the early stages of development and any impact on the recoverability of the Company's forward flow asset, currently stated at \$10.3 million, is uncertain. The consolidated financial statements do not include any adjustment that might result from the outcome of this uncertainty.

## Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

This information should be read in conjunction with the condensed consolidated financial statements and the notes thereto included in Item 1 of Part I of this Quarterly Report on Form 10-Q and the audited consolidated financial statements and notes thereto and Management's Discussion and Analysis of Financial Condition and Results of Operations for the year ended December 31, 2007 contained in our 2007 Annual Report on Form 10-K. The Form 10-K contains a general description of our industry and a discussion of recent trends affecting the industry. Certain statements herein may constitute "forward-looking statements" under the Private Securities Litigation Reform Act of 1995 (the "Reform Act"), for which we claim the protection of the safe harbor of the Reform Act. See "Part II, Item 1A—Risk Factors" for more discussion on our forward-looking statements.

### Introduction

We are a systems-driven purchaser and manager of charged-off consumer receivable portfolios and a provider of bankruptcy services to the finance industry. We acquire receivable portfolios at deep discounts from their face values using our proprietary valuation process that is based on the consumer attributes of the underlying accounts. Based upon the ongoing analysis of these accounts, we employ a dynamic mix of collection strategies to maximize our return on investment.

### Purchases and Collections

#### Purchases by Paper Type

The following table summarizes the types of charged-off consumer receivable portfolios we purchased for the three and six months ended June 30, 2008 and 2007 (in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2008	2007	2008	2007
Credit card	\$ 40,165	\$ 35,666	\$ 85,445	\$ 80,261
Other	12,327	5,471	14,949	6,262
	<u>\$ 52,492</u>	<u>\$ 41,137</u>	<u>\$ 100,394</u>	<u>\$ 86,523</u>

During the three months ended June 30, 2008, we invested \$52.5 million for portfolios with face values aggregating \$1.8 billion for an average purchase price of 2.9% of face value. This is an \$11.4 million increase, or 27.8%, in the amount invested, compared with the \$41.1 million invested during the three months ended June 30, 2007, to acquire portfolios with a face value aggregating \$1.3 billion for an average purchase price of 3.1% of face value.

During the six months ended June 30, 2008, we invested \$100.4 million for portfolios with face values aggregating \$3.0 billion for an average purchase price of 3.3% of face value. This is a \$13.9 million increase, or 16.1%, in the amount invested compared with the \$86.5 million invested during the six months ended June 30, 2007, to acquire portfolios with a face value aggregating \$3.9 billion for an average purchase price of 2.2% of face value.

During the twelve months ended June 30, 2008, we invested \$222.8 million for portfolios with face values aggregating \$6.1 billion for an average purchase price of 3.7% of face value. This is a \$40.3 million increase, or 22.1%, in the amount invested compared with the \$182.5 million invested during the twelve months ended June 30, 2007, to acquire portfolios with a face value aggregating \$6.4 billion for an average purchase price of 2.9% of face value.

Subsequent to June 30, 2008, we ceased forward flow purchases of accounts from Jefferson Capital Group. See Note 12 "Subsequent Events," to our unaudited condensed consolidated financial statements. Management believes that the supply of available credit card receivable portfolios for purchase in the markets will provide us with opportunities to purchase other portfolios that will generate returns at least comparable to that which we have been purchasing under the agreement with Jefferson Capital.

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### **Collections by Channel**

During the three and six months ended June 30, 2008 and 2007, we utilized several business channels for the collection of charged-off credit card receivables and other charged-off receivables. The following table summarizes gross collections by collection channel (*in thousands*):

	<b>Three Months Ended June 30,</b>		<b>Six Months Ended June 30,</b>	
	<b>2008</b>	<b>2007</b>	<b>2008</b>	<b>2007</b>
Collection sites	\$ 38,929	\$ 32,516	\$ 82,218	\$ 66,511
Legal collections	49,184	44,430	94,476	84,160
Collection agencies	10,009	7,686	20,970	16,503
Sales	3,633	7,972	7,847	15,269
Other	375	1,007	974	1,709
Gross collections for the period	<u>\$ 102,130</u>	<u>\$ 93,611</u>	<u>\$ 206,485</u>	<u>\$ 184,152</u>

Gross collections increased \$8.5 million, or 9.1%, to \$102.1 million during the three months ended June 30, 2008, from \$93.6 million during the three months ended June 30, 2007.

Gross collections increased \$22.3 million, or 12.1%, to \$206.5 million during the six months ended June 30, 2008, from \$184.2 million during the six months ended June 30, 2007.

### **Results of Operations**

Results of operations in dollars and as a percentage of revenue were as follows (*in thousands, except percentages*):

	<b>Three Months Ended June 30,</b>			
	<b>2008</b>		<b>2007</b>	
<b>Revenue</b>				
Revenue from receivable portfolios, net	\$66,275	94.7%	\$ 64,021	95.2%
Servicing fees and other related revenue	3,745	5.3%	3,207	4.8%
<b>Total revenue</b>	<u>70,020</u>	<u>100.0%</u>	<u>67,228</u>	<u>100.0%</u>
<b>Operating expenses</b>				
Salaries and employee benefits	15,689	22.4%	16,064	23.9%
Stock-based compensation expense	1,228	1.8%	1,204	1.8%
Cost of legal collections	23,829	34.0%	21,159	31.5%
Other operating expenses	5,987	8.6%	6,239	9.3%
Collection agency commissions	3,781	5.4%	2,867	4.2%
General and administrative expenses	4,581	6.5%	4,232	6.3%
Depreciation and amortization	766	1.1%	840	1.2%
<b>Total operating expenses</b>	<u>55,861</u>	<u>79.8%</u>	<u>52,605</u>	<u>78.2%</u>
<b>Income before other (expense) income and income taxes</b>	<u>14,159</u>	<u>20.2%</u>	<u>14,623</u>	<u>21.8%</u>
<b>Other (expense) income</b>				
Interest expense	(3,583)	(5.1%)	(3,336)	(5.0%)
Contingent interest expense	—	0.0%	(888)	(1.3%)
Pay-off of contingent interest	—	0.0%	(11,733)	(17.4%)
Gain on repurchase of debt, net	1,417	2.0%	—	0.0%
Other income (expense)	352	0.5%	(42)	(0.1%)
<b>Total other expense</b>	<u>(1,814)</u>	<u>(2.6%)</u>	<u>(15,999)</u>	<u>(23.8%)</u>
<b>Income (loss) before income taxes</b>	<u>12,345</u>	<u>17.6%</u>	<u>(1,376)</u>	<u>(2.0%)</u>
(Provision) benefit for income taxes	(5,015)	(7.1%)	555	0.8%
<b>Net income (loss)</b>	<u>\$ 7,330</u>	<u>10.5%</u>	<u>\$ (821)</u>	<u>(1.2%)</u>

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	Six Months Ended June 30,			
	2008		2007	
<b>Revenue</b>				
Revenue from receivable portfolios, net	\$ 130,343	94.7%	\$ 126,174	95.2%
Servicing fees and other related revenue	7,231	5.3%	6,429	4.8%
<b>Total revenue</b>	<u>137,574</u>	<u>100.0%</u>	<u>132,603</u>	<u>100.0%</u>
<b>Operating expenses</b>				
Salaries and employee benefits	30,540	22.2%	33,250	25.1%
Stock-based compensation expense	2,322	1.7%	2,005	1.5%
Cost of legal collections	44,135	32.1%	38,780	29.2%
Other operating expenses	11,638	8.4%	11,983	9.0%
Collection agency commissions	7,812	5.7%	6,161	4.7%
General and administrative expenses	9,041	6.6%	8,503	6.4%
Depreciation and amortization	1,488	1.1%	1,709	1.3%
<b>Total operating expenses</b>	<u>106,976</u>	<u>77.8%</u>	<u>102,391</u>	<u>77.2%</u>
<b>Income before other (expense) income and income taxes</b>	<u>30,598</u>	<u>22.2%</u>	<u>30,212</u>	<u>22.8%</u>
<b>Other (expense) income</b>				
Interest expense	(7,529)	(5.4%)	(6,256)	(4.7%)
Contingent interest expense	—	0.0%	(4,123)	(3.1%)
Pay-off of contingent interest	—	0.0%	(11,733)	(8.9%)
Gain on repurchase of debt, net	1,417	1.0%	—	0.0%
Other income	373	0.3%	74	0.1%
<b>Total other expense</b>	<u>(5,739)</u>	<u>(4.1%)</u>	<u>(22,038)</u>	<u>(16.6%)</u>
<b>Income before income taxes</b>	24,859	18.1%	8,174	6.2%
Provision for income taxes	(10,029)	(7.3%)	(3,338)	(2.5%)
<b>Net income</b>	<u>\$ 14,830</u>	<u>10.8%</u>	<u>\$ 4,836</u>	<u>3.7%</u>

**Comparison of Results of Operations**

**Revenue**

Our revenue consists primarily of portfolio revenue and bankruptcy servicing revenue. Portfolio revenue consists of accretion revenue and zero basis revenue. Accretion revenue represents revenue derived from pools (quarterly groupings of purchased receivable portfolios) with a cost basis that has not been fully amortized. Revenue from pools with a remaining unamortized cost basis is accrued based on each pool's effective interest rate applied to each pool's remaining unamortized cost basis. The cost basis of each pool is increased by revenue earned and decreased by gross collections and impairments. The effective interest rate is the internal rate of return derived from the timing and amounts of actual cash received and anticipated future cash flow projections for each pool. All collections realized after the net book value of a portfolio has been fully recovered ("Zero Basis Portfolios") are recorded as revenue ("Zero Basis Revenue"). We account for our investment in receivable portfolios utilizing the interest method in accordance with the provisions of the AICPA's Statement of Position 03-3, "Accounting for Certain Debt Securities Acquired in a Transfer" ("SOP 03-3"). Servicing fee revenue is revenue primarily associated with bankruptcy servicing fees earned from our subsidiary, Ascension Capital Group, Inc. ("Ascension"), a provider of bankruptcy services to the finance industry.

Effective January 1, 2008, we revised our Unified Collection Score ("UCS") and Behavioral Liquidation Score ("BLS") methodologies by extending our collection forecast from 72 months to 84 months. UCS is a proprietary forecasting tool that generates portfolio level expectations of liquidation for portfolios that we have owned and serviced for more than six months. BLS forecasts portfolio level expectations based on credit characteristics for portfolios owned and serviced less than six months. We have observed that receivable portfolios purchased in 2001 and prior have consistently experienced cash collections beyond 72 months from the date of purchase. When we first developed our cash forecasting models in 2001, limited historical collection data was available with which to accurately model projected cash flows beyond 60 months. During the quarter ended June 30, 2006, we determined there was enough additional collection data accumulated over the previous several years, in addition to improvements in our forecasting tools,



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allowing us to extend the collection forecast to 72 months. During the quarter ended March 31, 2008, we determined that there was enough additional collection data to accurately extend the collection forecast in both our UCS and BLS models to 84 months. The increase in the collection forecast from 72 to 84 months was applied effective January 1, 2008, to each portfolio for which we could accurately forecast through such term and resulted in an increase in the aggregate total estimated remaining collections for the receivable portfolios by \$67.3 million, or 7.5%, as of March 31, 2008. We did not extend the forecast on telecom portfolios as we do not anticipate significant collections past 72 months on these portfolios. The extension of the collection forecast was treated as a change in estimate and, in accordance with Statement of Financial Accounting Standard No. 154, "Accounting Changes and Error Corrections," was recognized prospectively in our consolidated financial statements, effective January 1, 2008. In the quarter ended March 31, 2008, this prospective treatment resulted in a reduction in our net impairment provision of \$3.1 million and an increase in revenue of \$0.1 million. The impact of the change in estimate resulted in an increase in net income of \$1.9 million and an increase in fully diluted earnings per share of \$0.08 for the three months ended March 31, 2008. The impact of the change in estimate for the quarter ended June 30, 2008, was not material to our condensed consolidated financial statements.

The following tables summarize collections, revenue, end of period receivable balance and other related supplemental data by year of purchase (*in thousands, except percentages*):

	For the Three Months Ended June 30, 2008					As of June 30, 2008	
	Collections <sup>1</sup>	Gross Revenue <sup>2</sup>	Revenue Recognition Rate <sup>3</sup>	Net Reversal (Impairment)	Revenue % of Total Revenue	Unamortized Balances	Monthly IRR
ZBA	\$ 2,623	\$ 2,623	100.0%	\$ —	3.8%	\$ —	—
2002	1,603	1,108	69.1%	140	1.6%	1,080	28.9%
2003	3,880	3,170	81.7%	(24)	4.5%	2,976	30.7%
2004	5,316	4,127	77.6%	(721)	5.9%	16,575	7.9%
2005	18,576	12,383	66.7%	(2,342)	17.8%	69,527	5.6%
2006	19,497	12,608	64.7%	(336)	18.1%	79,001	5.1%
2007	37,059	23,977	64.7%	(107)	34.4%	152,669	5.0%
2008	13,506	9,669	71.6%	—	13.9%	92,731	4.6%
Total	<u>\$ 102,060</u>	<u>\$ 69,665</u>	<u>68.3%</u>	<u>\$ (3,390)</u>	<u>100.0%</u>	<u>\$ 414,559</u>	<u>5.4%</u>

	For the Three Months Ended June 30, 2007					As of June 30, 2007	
	Collections <sup>1</sup>	Gross Revenue <sup>2</sup>	Revenue Recognition Rate <sup>3</sup>	Net Reversal (Impairment)	Revenue % of Total Revenue	Unamortized Balances	Monthly IRR
ZBA	\$ 4,047	\$ 4,047	100.0%	\$ —	6.5%	\$ —	—
2002	2,752	2,428	88.2%	37	3.9%	3,031	25.1%
2003	7,139	6,552	91.8%	(112)	10.4%	6,756	30.6%
2004	9,687	6,883	71.1%	758	10.9%	27,113	7.9%
2005	29,776	18,970	63.7%	1,202	30.1%	105,984	5.6%
2006	24,006	16,347	68.1%	(839)	26.0%	109,770	4.7%
2007	16,067	7,748	48.2%	—	12.2%	74,932	4.6%
Total	<u>\$ 93,474</u>	<u>\$ 62,975</u>	<u>67.4%</u>	<u>\$ 1,046</u>	<u>100.0%</u>	<u>\$ 327,586</u>	<u>6.0%</u>

<sup>1</sup> Does not include amounts collected on behalf of others.

<sup>2</sup> Gross revenue excludes the effects of net impairment or net impairment reversals.

<sup>3</sup> Revenue recognition rate excludes the effects of net impairment or net impairment reversals.

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	For the Six Months Ended June 30, 2008					As of June 30, 2008	
	Collections <sup>1</sup>	Gross Revenue <sup>2</sup>	Revenue Recognition Rate <sup>3</sup>	Net Reversal (Impairment)	Revenue % of Total Revenue	Unamortized Balances	Monthly IRR
ZBA	\$ 5,181	\$ 5,181	100.0%	\$ —	3.7%	\$ —	—
2002	3,268	2,459	75.2%	71	1.8%	1,080	28.9%
2003	8,069	6,951	86.1%	(313)	4.9%	2,976	30.8%
2004	11,353	8,792	77.4%	(1,577)	6.3%	16,575	7.9%
2005	39,512	26,359	66.7%	(4,645)	19.0%	69,527	5.6%
2006	41,072	26,548	64.6%	(2,154)	19.1%	79,001	5.1%
2007	77,091	49,594	64.3%	(107)	35.7%	152,669	5.0%
2008	20,794	13,184	63.4%	—	9.5%	92,731	4.6%
Total	\$ 206,340	\$ 139,068	67.4%	\$ (8,725)	100.0%	\$ 414,559	5.4%

	For the Six Months Ended June 30, 2007					As of June 30, 2007	
	Collections <sup>1</sup>	Gross Revenue <sup>2</sup>	Revenue Recognition Rate <sup>3</sup>	Net Reversal (Impairment)	Revenue % of Total Revenue	Unamortized Balances	Monthly IRR
ZBA	\$ 9,155	\$ 9,155	100.0%	\$ —	7.3%	\$ —	—
2002	6,199	5,334	86.0%	332	4.3%	3,031	25.1%
2003	16,295	14,258	87.5%	(102)	11.3%	6,756	30.6%
2004	20,336	14,580	71.7%	(250)	11.7%	27,113	7.9%
2005	61,074	37,511	61.4%	2,122	30.0%	105,984	5.6%
2006	49,224	33,800	68.7%	(839)	27.1%	109,770	4.7%
2007	21,603	10,273	47.6%	—	8.3%	74,932	4.6%
Total	\$ 183,886	\$ 124,911	67.9%	\$ 1,263	100.0%	\$ 327,586	6.0%

<sup>1</sup> Does not include amounts collected on behalf of others.  
<sup>2</sup> Gross revenue excludes the effects of net impairment or net impairment reversals.  
<sup>3</sup> Revenue recognition rate excludes the effects of net impairment or net impairment reversals.

Total revenue was \$70.0 million for the three months ended June 30, 2008, an increase of \$2.8 million, or 4.2%, compared to total revenue of \$67.2 million for the three months ended June 30, 2007. Portfolio revenue was \$66.3 million for the three months ended June 30, 2008, an increase of \$2.3 million, or 3.5%, compared to portfolio revenue of \$64.0 million for the three months ended June 30, 2007.

Total revenue was \$137.6 million for the six months ended June 30, 2008, an increase of \$5.0 million, or 3.8%, compared to total revenue of \$132.6 million for the six months ended June 30, 2007. Portfolio revenue was \$130.3 million for the six months ended June 30, 2008, an increase of \$4.1 million, or 3.3%, compared to portfolio revenue of \$126.2 million for the six months ended June 30, 2007.

The increase of portfolio revenue for the three and six months ended June 30, 2008, was primarily the result of additional accretion revenue associated with higher purchasing volumes and, as discussed above, from the extension of our collection forecast from 72 to 84 months. The increase was partially offset by a greater portion of our revenues coming from our 2004 to 2008 portfolio purchases that have lower effective accretion rates than our 2003 and prior purchases, due to a more competitive pricing environment since 2004, and the recording of a larger impairment provision on certain portfolios during the quarter. During the three months ended June 30, 2008, we recorded a net impairment provision of \$3.4 million, compared to a net impairment provision reversal of \$1.0 million during the same period in the prior year. During the six months ended June 30, 2008, we recorded a net impairment provision of \$8.7 million, compared to a net impairment provision reversal of \$1.3 million during the same period in the prior year. The increase in impairment for the three and six months ended June 30, 2008, was primarily due to two factors. First, we experienced a shortfall in collections in certain pool groups against our forecast, primarily our 2004, 2005 and 2006 vintages. In these pool groups, we continued to experience a trend in which a larger percentage of collections from our legal channel come from multi-payment settlements versus single-payment settlements. Despite this recent trend in the shift in payment types from single-payment settlements to multi-payment settlements in our legal channel, we have not experienced any material shifts in our overall payer rates or settlement

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rates. Given the high monthly IRRs in our portfolios, when payments are extended over a longer period of time and the cash flows are delayed, this generally results in an impairment provision, even if we ultimately receive the collections in the future. Second, as of March 31, 2008, we decided not to pursue certain collections with a very high cost to collect, primarily low balance telecom accounts. This resulted in a reduction in expected future cash flow from these accounts and increased our impairment provision.

Revenue associated with bankruptcy servicing fees earned from Ascension was \$3.7 million for the three months ended June 31, 2008, an increase of \$0.5 million, or 17.5%, compared to revenue of \$3.2 million for the three months ended June 30, 2007. Revenue associated with bankruptcy servicing fees earned from Ascension was \$7.2 million for the six months ended June 31, 2008, an increase of \$0.8 million, or 12.7%, compared to revenue of \$6.4 million for the six months ended June 30, 2007. The increase in Ascension revenue for the three and six months ended June 30, 2008, is due to the slightly higher volume of bankruptcy placements.

### **Operating Expenses**

Total operating expenses were \$55.9 million for the three months ended June 30, 2008, an increase of \$3.3 million, or 6.2%, compared to total operating expenses of \$52.6 million for the three months ended June 30, 2007.

Total operating expenses were \$107.0 million for the six months ended June 30, 2008, an increase of \$4.6 million, or 4.5%, compared to total operating expenses of \$102.4 million for the six months ended June 30, 2007.

Operating expenses are explained in more detail as follows:

#### ***Salaries and employee benefits***

Total salaries and employee benefits decreased by \$0.4 million, or 2.3%, to \$15.7 million during the three months ended June 30, 2008, from \$16.1 million during the three months ended June 30, 2007. The decrease was primarily the result of a decrease of \$1.2 million in salaries and related payroll taxes and benefits resulting from the reduction in our workforce, primarily attributable to our cost savings initiatives implemented in September 2007. The decrease was partially offset by an increase of \$0.3 million in personnel severance expenses, an increase of \$0.3 million in call center bonuses and an increase of \$0.2 million in health and life insurance costs.

Total salaries and employee benefits decreased by \$2.7 million, or 8.5%, to \$30.6 million during the six months ended June 30, 2008, from \$33.3 million during the six months ended June 30, 2007. The decrease was primarily the result of a decrease of \$3.1 million in salaries and related payroll taxes and benefits resulting from the reduction in our workforce, primarily attributable to our cost savings initiatives implemented in September 2007. The decrease was partially offset by an increase of \$0.3 million in call center bonuses and an increase of \$0.1 million in health and life insurance costs.

#### ***Stock-based compensation expenses***

Stock-based compensation expense remained consistent at \$1.2 million, during the three months ended June 30, 2008 and 2007.

Stock-based compensation expense increased by \$0.3 million, or 15.8%, to \$2.3 million during the six months ended June 30, 2008, from \$2.0 million for the six months ended June 30, 2007. The increase was attributable to a \$0.4 million actual versus estimated forfeiture true-up adjustment, and the result of a one-time reduction in expense in the six months ended March 31, 2007, due to change of assumptions used during that period. This true-up resulted in a reduction in stock-based compensation expense of \$0.4 million for the three months ended March 31, 2007. The increase was partially offset by a reduction in expenses as a result of fewer grants and the decreased fair value of stock options granted in recent years.

#### ***Cost of legal collections***

The cost of legal collections increased \$2.6 million, or 12.6%, to \$23.8 million during the three months ended June 30, 2008, compared to \$21.2 million during the three months ended June 30, 2007. These costs represent contingent fees paid to our nationwide network of attorneys and costs of litigation. The increase in the cost of legal collections was primarily the result of an increase of \$4.8 million, or 10.7%, in gross collections through our legal channel and upfront litigation costs. Gross legal collections amounted to \$49.2 million during the three months ended June 30, 2008, compared to \$44.4 million collected during the three months ended June 30, 2007. The cost of legal collections as a percent of gross collections through this channel, increased to 48.4% during the three months ended June 30, 2008, from 47.6% during the three months ended June 30, 2007, due to an increase in upfront court costs expensed associated with our pursuit of legal collections, an increase in costs related to counter claims, partially offset by the effect of extending the recovery period of deferred court costs and a lower overall commission rate, driven by lower bonus commissions paid to our law firms.

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The cost of legal collections increased \$5.3 million, or 13.8%, to \$44.1 million during the six months ended June 30, 2008, compared to \$38.8 million during the six months ended June 30, 2007. These costs represent contingent fees paid to our nationwide network of attorneys and costs of litigation. The increase in the cost of legal collections was primarily the result of an increase of \$10.3 million, or 12.3%, in gross collections through our legal channel and upfront litigation costs. Gross legal collections amounted to \$94.5 million during the three months ended June 30, 2008, compared to \$84.2 million collected during the six months ended June 30, 2007. The cost of legal collections as a percent of gross collections through this channel increased to 46.7% during the six months ended June 30, 2008, from 46.1% during the six months ended June 30, 2007, due to an increase in upfront court costs expensed associated with our pursuit of legal collections, an increase in costs related to counter claims, offset by the effect of extending the recovery period of deferred court costs and a lower overall commission rate, driven by lower bonus commissions paid to our law firms.

### ***Other operating expenses***

Other operating expenses decreased \$0.2 million, or 4.1%, to \$6.0 million during the three months ended June 30, 2008, from \$6.2 million during the three months ended June 30, 2007. The decrease was primarily the result of a decrease of \$0.2 million in employee moving expenses, a decrease of \$0.3 million in skip tracing expenses and a decrease of \$0.2 million in the amortization of a previously acquired deferred revenue asset. The decrease was partially offset by an increase of \$0.3 million in Ascension legal expenses and a net increase of \$0.2 million in various other operating expenses.

Other operating expenses decreased \$0.4 million, or 2.9%, to \$11.6 million during the six months ended June 30, 2008, from \$12.0 million during the six months ended June 30, 2007. The decrease was primarily the result of a decrease of \$0.5 million in employee moving expenses, a decrease of \$0.2 million in recruiting expenses, a decrease of \$0.5 million in skip tracing expenses and a decrease of \$0.4 million in the amortization of a previously acquired deferred revenue asset. The decrease was partially offset by an increase of \$0.2 million in Ascension legal expenses, an increase of \$0.8 million related to direct mail campaign expenses and a net increase of \$0.2 million in various other operating expenses.

### ***Collection agency commissions***

During the three months ended June 30, 2008, we incurred \$3.8 million in commissions to third party collection agencies, or 37.8% of the related gross collections of \$10.0 million compared to \$2.9 million in commissions, or 37.3% of the related gross collections of \$7.7 million, during the three months ended June 30, 2007. The increase in commissions was consistent with the increase in collections through this channel. The increase in the commission rate as a percentage of the related gross collections is primarily due to the mix of accounts placed with the agencies. Commissions, as a percentage of collections in this channel, vary from period to period depending on, among other things, the time from charge-off of the accounts placed with an agency. Generally, freshly charged-off accounts have a lower commission rate than accounts that have been charged off for a longer period of time.

During the six months ended June 30, 2008, we incurred \$7.8 million in commissions to third party collection agencies, or 37.3% of the related gross collections of \$21.0 million, compared to \$6.2 million in commissions, or 37.3% of the related gross collections of \$16.5 million, during the three months ended June 30, 2007. The increase in commissions was consistent with the increase in collections through this channel.

### ***General and administrative expenses***

General and administrative expenses increased \$0.4 million, or 8.2%, to \$4.6 million during the three months ended June 30, 2008, from \$4.2 million during the three months ended June 30, 2007. The increase was primarily the result of an increase of \$0.5 million in corporate legal expenses, and litigation settlement costs and an increase of \$0.4 million in various corporate insurance costs compared to the same period of the prior year, which included a \$0.6 million release of reserves in the previously self insured workers compensation plan. The increase was partially offset by a decrease of \$0.2 million in costs associated with computer system maintenance and a net decrease of \$0.3 million in expenses associated with general corporate matters.

General and administrative expenses increased \$0.5 million, or 6.3%, to \$9.0 million during the six months ended June 30, 2008, from \$8.5 million during the six months ended June 30, 2007. The increase was primarily the result of an increase of \$0.7 million in corporate legal expenses, and litigation settlement costs and an increase of \$0.4 million in various corporate insurance costs compared to the same period of the prior year, which included a \$0.6 million release of reserves in the previously self insured workers compensation plan. The increase was partially offset by a decrease of \$0.4 million in accounting and consulting service fees incurred in the prior year related to the filing of our 1999-2005 state tax returns and a decrease of \$0.2 million in costs associated with the strategic alternatives process.

[Table of Contents](#)**Depreciation and amortization**

Depreciation and amortization expense remained consistent at \$0.8 million during the three months ended June 30, 2008 and 2007. Depreciation and amortization expense decreased \$0.2 million, or 12.9%, to \$1.5 million during the six months ended June 30, 2008, from \$1.7 million during the six months ended June 30, 2007. Depreciation expense was \$1.1 million for the six months ended June 30, 2008, compared to \$1.2 million for the six months ended June 30, 2007. Amortization expense relating to intangible assets acquired in conjunction with the acquisition of Ascension was \$0.4 million for the six months ended June 30, 2008, compared to \$0.5 million for the six months ended June 30, 2007.

**Interest expense**

Total interest expense decreased \$12.4 million, or 77.5%, to \$3.6 million during the three months ended June 30, 2008, from \$16.0 million during the three months ended June 30, 2007.

Total interest expense decreased \$14.6 million, or 66.0%, to \$7.5 million during the six months ended June 30, 2008, from \$22.1 million during the six months ended June 30, 2007.

The following tables summarize our interest expense (*in thousands, except percentages*):

	For the Three Months Ended June 30,			
	2008	2007	\$ Change	% Change
Stated interest on debt obligations	\$ 3,227	\$ 2,951	\$ 276	9.4%
Amortization of loan fees and other loan costs	356	385	(29)	(7.5%)
Subtotal	3,583	3,336	247	7.4%
Contingent interest	—	888	(888)	(100.0%)
Pay-off of contingent interest	—	11,733	(11,733)	(100.0%)
Total interest expense	<u>\$ 3,583</u>	<u>\$15,957</u>	<u>\$(12,374)</u>	(77.5%)

  

	For the Six Months Ended June 30,			
	2008	2007	\$ Change	% Change
Stated interest on debt obligations	\$ 6,806	\$ 5,475	\$ 1,331	24.3%
Amortization of loan fees and other loan costs	723	781	(58)	(7.4%)
Subtotal	7,529	6,256	1,273	20.3%
Contingent interest	—	4,123	(4,123)	(100.0%)
Pay-off of contingent interest	—	11,733	(11,733)	(100.0%)
Total interest expense	<u>\$ 7,529</u>	<u>\$22,112</u>	<u>\$(14,583)</u>	(66.0%)

As of December 31, 2004, we no longer made borrowings under our Secured Financing Facility. As of December 31, 2006, we repaid in full the principal balance of our Secured Financing Facility. Prior to May 7, 2007, we shared with the lender the residual collections on purchases made under this facility, net of servicing fees paid to us. The residual collections paid to the lender were classified as contingent interest. On May 7, 2007, we entered into an agreement with the lender under our Secured Financing Facility to eliminate all future Contingent Interest payments for a one-time payment of \$16.9 million. This agreement effectively eliminated all future Contingent Interest payments and released our lender's security interests in the remaining receivables originally financed under our Secured Financing Facility. Subsequent to the second quarter of 2007, we no longer are required to pay any Contingent Interest expense under the Secured Financing Facility.

We have financed portfolio purchases subsequent to December 31, 2004 using our Revolving Credit Facility, which does not require the sharing of residual collections with the lender. See Note 7 to the unaudited condensed consolidated financial statements for a further discussion of our Revolving Credit Facility.

**Gain on repurchase of debt, net**

In April 2008, we repurchased \$5.0 million principal amount of our outstanding convertible senior notes, for a total price of \$3.5 million, plus accrued interest. This transaction left \$95.0 million principal amount of our convertible senior notes outstanding. This repurchase also resulted in a pre-tax gain of \$1.5 million, which was partially offset by a \$0.1 million write-off of the debt issuance costs related to the portions of the senior convertible notes repurchased. The net gain of \$1.4 million was recognized in our consolidated statement of operations for the three and six months ended June 30, 2008.

**Other income and expense**

During the three months ended June 30, 2008, total other income was \$0.4 million, compared to other expense of less than \$0.1 million for the three months ended June 30, 2007. The increase was primarily attributable to a \$0.3 million gain recognized in connection with early termination of a contract.

During the six months ended June 30, 2008, total other income was \$0.4 million, compared to other income of \$0.1 million for the six months ended June 30, 2007. The increase was attributable to a \$0.3 million gain recognized in connection with early termination of a contract.

**Provision for income taxes**

During the three months ending June 30, 2008, we recorded an income tax provision of \$5.0 million, reflecting an effective rate of 40.6% of pretax income. Our effective tax rate for the three months ended June 30, 2008, differed from the Federal statutory rate primarily due to the net effect of state taxes and the effect of permanent book versus tax differences. For the three months ended June 30, 2007, we recorded an income tax benefit of \$0.6 million, reflecting an effective rate of 40.3% of pretax income. Our effective tax rate for the three months ended June 30, 2007, differed from the Federal statutory rate primarily due to the net effect of state taxes, and the effect of permanent book versus tax differences. The increase in our effective tax rate was the result of the changing mix of permanent book versus tax differences relative to higher taxable income.

During the six months ended June 30, 2008, we recorded an income tax provision of \$10.0 million, reflecting an effective rate of 40.3% of pretax income. Our effective tax rate for the six months ended June 30, 2008, differed from the Federal statutory rate primarily due to the net effect of state taxes. For the six months ended June 30, 2007, we recorded an income tax provision of \$3.3 million, reflecting an effective rate of 40.8% of pretax income. Our effective tax rate for the six months ended June 30, 2007, differed from the Federal statutory rate primarily due to the net effect of state taxes. The decrease in our effective tax rate was the result of the changing mix of permanent book versus tax differences relative to taxable income. See Note 8 to the unaudited condensed consolidated financial statements for a further discussion of income taxes.

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**Supplemental Performance Data**

**Cumulative Collections to Purchase Price Multiple**

The following table summarizes our purchases and related gross collections by year of purchase (*in thousands, except multiples*):

Year of Purchase	Purchase Price <sup>1</sup>	Cumulative Collections through June 30, 2008										CCM <sup>3</sup>
		<2001	2001	2002	2003	2004	2005	2006	2007	2008	Total <sup>2</sup>	
<1999	\$ 41,117 <sup>4</sup>	\$ 88,629	\$ 22,545	\$ 15,007	\$ 7,546	\$ 4,202	\$ 2,042	\$ 1,513	\$ 989	\$ 305	\$ 142,778	3.5
1999	48,805	29,163	19,174	16,259	11,508	8,654	5,157	3,513	1,954	677	96,059	2.0
2000	6,153	5,489	7,172	4,542	4,377	2,293	1,323	1,007	566	196	26,965	4.4
2001	38,186	—	21,197	54,184	33,072	28,551	20,622	14,521	5,644	1,728	179,519	4.7
2002	61,496	—	—	48,322	70,227	62,282	45,699	33,694	14,902	4,682	279,808	4.6
2003	88,524	—	—	—	59,038	86,958	69,932	55,131	26,653	8,083	305,795	3.5
2004	101,339	—	—	—	—	39,400	79,845	54,832	34,625	11,352	220,054	2.2
2005	192,855	—	—	—	—	—	66,491	129,809	109,078	39,944	345,322	1.8
2006	142,048	—	—	—	—	—	—	42,354	92,265	41,072	175,691	1.2
2007	204,667	—	—	—	—	—	—	—	68,048	77,091	145,139	0.7
2008	100,340	—	—	—	—	—	—	—	—	21,210	21,210	0.2
<b>Total</b>	<b>\$1,025,530</b>	<b>\$123,281</b>	<b>\$70,088</b>	<b>\$138,314</b>	<b>\$185,768</b>	<b>\$232,340</b>	<b>\$291,111</b>	<b>\$336,374</b>	<b>\$354,724</b>	<b>\$206,340</b>	<b>\$1,938,340</b>	<b>1.9</b>

- <sup>1</sup> Adjusted for put-backs, account recalls, purchase price rescissions, and the impact of an acquisition in 2000. Put-backs represent accounts that are returned to the seller in accordance with the respective purchase agreement ("Put-Backs"). Recalls represents accounts that are recalled by the seller in accordance with the respective purchase agreement ("Recalls").
- <sup>2</sup> Cumulative collections from inception through June 30, 2008.
- <sup>3</sup> Cumulative Collections Multiple ("CCM") through June 30, 2008 – collections as a multiple of purchase price.
- <sup>4</sup> From inception through December 31, 1998.

**Total Estimated Collections to Purchase Price Multiple**

The following table summarizes our purchases, resulting historical gross collections, and estimated remaining gross collections by year of purchase (*in thousands, except multiples*):

	Purchase Price <sup>1</sup>	Historical Gross Collections <sup>2</sup>	Estimated Remaining Collections <sup>3,4</sup>	Total Estimated Gross Collections	Total Estimated Gross Collections to Purchase Price
<1999	\$ 41,117 <sup>5</sup>	\$ 142,778	\$ 359	\$ 143,137	3.5
1999	48,805	96,059	1,165	97,224	2.0
2000	6,153	26,965	323	27,288	4.4
2001	38,186	179,519	2,157	181,676	4.8
2002	61,496	279,808	6,558	286,366	4.7
2003	88,524	305,795	15,505	321,300	3.6
2004	101,339	220,054	40,899	260,953	2.6
2005	192,855	345,322	155,018	500,340	2.6
2006	142,048	175,691	188,905	364,596	2.6
2007	204,667	145,139	346,708	491,847	2.4
2008	100,340	21,210	231,978	253,188	2.5
<b>Total</b>	<b>\$ 1,025,530</b>	<b>\$ 1,938,340</b>	<b>\$ 989,575</b>	<b>\$ 2,927,915</b>	<b>2.9</b>

- <sup>1</sup> Adjusted for Put-Backs, Recalls, purchase price rescissions, and the impact of an acquisition in 2000.
- <sup>2</sup> Cumulative collections from inception through June 30, 2008.
- <sup>3</sup> Includes \$1.3 million in expected collections for the healthcare portfolios on cost recovery.
- <sup>4</sup> Effective January 1, 2008, we revised our UCS and BLS methodologies by extending our collection forecast from 72 months to 84 months.
- <sup>5</sup> From inception through December 31, 1998.

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### Estimated Remaining Gross Collections by Year of Purchase

The following table summarizes our estimated remaining gross collections by year of purchase (*in thousands*):

	Estimated Remaining Gross Collections by Year of Purchase								
	2008 <sup>2</sup>	2009	2010	2011	2012	2013	2014	2015	Total
<1999 <sup>1</sup>	\$ 175	\$ 184	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	\$ 359
1999 <sup>1</sup>	544	609	12	—	—	—	—	—	1,165
2000 <sup>1</sup>	147	175	1	—	—	—	—	—	323
2001 <sup>1</sup>	917	1,134	106	—	—	—	—	—	2,157
2002 <sup>1</sup>	3,195	3,245	118	—	—	—	—	—	6,558
2003	5,561	7,678	2,266	—	—	—	—	—	15,505
2004	9,911	15,822	10,364	4,802	—	—	—	—	40,899
2005	35,114	51,363	35,260	24,209	9,072	—	—	—	155,018
2006	34,771	53,333	38,953	29,811	21,787	10,250	—	—	188,905
2007	65,437	110,470	69,259	46,470	31,997	18,234	4,841	—	346,708
2008	31,127	65,354	48,542	34,140	24,584	16,516	9,851	1,864	231,978
Total	<u>\$ 186,899</u>	<u>\$ 309,367</u>	<u>\$ 204,881</u>	<u>\$ 139,432</u>	<u>\$ 87,440</u>	<u>\$ 45,000</u>	<u>\$ 14,692</u>	<u>\$ 1,864</u>	<u>\$ 989,575</u>

<sup>1</sup> Estimated remaining collections for Zero Basis Portfolios can extend beyond the 84-month accrual basis collection forecast.

<sup>2</sup> 2008 amount consists of six months data, from July 1, 2008 to December 2008.

### Unamortized Balances of Portfolios

The following table summarizes the remaining unamortized balances of our purchased receivable portfolios by year of purchase as of June 30, 2008 (*in thousands, except percentages*):

	Unamortized Balance as of June 30, 2008 <sup>1</sup>	Purchase Price <sup>2</sup>	Unamortized Balance as a Percentage of Purchase Price	Unamortized Balance as a Percentage of Total
2002	\$ 1,080	\$ 61,496	1.8%	0.3%
2003	2,976	88,524	3.4%	0.7%
2004	16,575	101,339	16.4%	4.0%
2005	69,527	192,855	36.1%	16.8%
2006	79,001	142,048	55.6%	19.1%
2007	152,669	204,667	74.6%	36.7%
2008	92,731	100,340	92.4%	22.4%
Total	<u>\$ 414,559</u>	<u>\$ 891,269</u>	<u>46.5%</u>	<u>100.0%</u>

<sup>1</sup> Includes \$1.3 million for healthcare portfolios being accounted for on the cost recovery method.

<sup>2</sup> Purchase price refers to the cash paid to a seller to acquire a portfolio less Put-Backs, plus allocation of our forward flow asset (if applicable), and less the purchase price for accounts that were sold at the time of purchase to another debt purchaser.

### Collections by Channel

During the three and six months ended June 30, 2008 and 2007, we utilized several business channels for the collection of charged-off credit card receivables and other charged-off receivables. The following table summarizes gross collections by collection channel (*in thousands*):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2008	2007	2008	2007
Collection sites	\$ 38,929	\$ 32,516	\$ 82,218	\$ 66,511
Legal collections	49,184	44,430	94,476	84,160
Collection agencies	10,009	7,686	20,970	16,503
Sales	3,633	7,972	7,847	15,269
Other	375	1,007	974	1,709
Gross collections for the period	<u>\$ 102,130</u>	<u>\$ 93,611</u>	<u>\$ 206,485</u>	<u>\$ 184,152</u>



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**External Collection Channels and Related Direct Costs**

The following tables summarize our external collection channel performance and related direct costs (*in thousands, except percentages*):

	Legal Collections				Collection Agencies			
	Three Months Ended June 30,				Three Months Ended June 30,			
	2008		2007		2008		2007	
Collections	\$49,184	100.0%	\$44,430	100.0%	\$10,009	100.0%	\$ 7,686	100.0%
Commissions	\$14,169	28.8%	\$12,964	29.1%	\$ 3,781	37.8%	\$ 2,867	37.3%
Court cost expense <sup>1</sup>	8,581	17.4%	8,029	18.1%	—	—	—	—
Other <sup>2</sup>	1,079	2.2%	166	0.4%	—	—	—	—
<b>Total Costs</b>	<b>\$23,829</b>	<b>48.4%</b>	<b>\$21,159</b>	<b>47.6%</b>	<b>\$ 3,781</b>	<b>37.8%</b>	<b>\$ 2,867</b>	<b>37.3%</b>

	Legal Collections				Collection Agencies			
	Six Months Ended June 30,				Six Months Ended June 30,			
	2008		2007		2008		2007	
Collections	\$94,476	100.0%	\$84,160	100.0%	\$20,970	100.0%	\$16,503	100.0%
Commissions	\$26,985	28.6%	\$24,847	29.5%	\$ 7,812	37.3%	\$ 6,161	37.3%
Court cost expense <sup>1</sup>	15,250	16.1%	13,562	16.1%	—	—	—	—
Other <sup>2</sup>	1,900	2.0%	371	0.5%	—	—	—	—
<b>Total Costs</b>	<b>\$44,135</b>	<b>46.7%</b>	<b>\$38,780</b>	<b>46.1%</b>	<b>\$ 7,812</b>	<b>37.3%</b>	<b>\$ 6,161</b>	<b>37.3%</b>

<sup>1</sup> In connection with our agreement with contracted attorneys, we advance certain out-of-pocket court costs. We capitalize these costs in our consolidated financial statements and provide a reserve and corresponding court cost expense for the costs that we believe will be ultimately uncollectible. This amount includes changes in our anticipated recovery rate of court costs expensed.

<sup>2</sup> Other costs consist primarily of costs related to counter claims.

**Legal Outsourcing Collections and Related Costs**

The following tables summarize our legal outsourcing collection channel performance and related direct costs (*in thousands, except percentages*):

Placement Year	Gross Collections by Year of Collection <sup>1</sup>							Total Collections
	2003	2004	2005	2006	2007	2008		
2003	\$10,750	\$27,192	\$17,212	\$ 9,566	\$ 5,561	\$ 1,779	\$ 72,060	
2004	—	\$23,455	\$37,674	\$21,676	\$12,029	\$ 3,443	\$ 98,277	
2005	—	—	\$21,694	\$40,762	\$22,152	\$ 6,309	\$ 90,917	
2006	—	—	—	\$39,395	\$82,740	\$25,989	\$ 148,124	
2007	—	—	—	—	\$41,958	\$45,864	\$ 87,822	
2008 <sup>2</sup>	—	—	—	—	—	\$ 9,549	\$ 9,549	

<sup>1</sup> Includes collections for accounts placed in our legal channel beginning January 1, 2003. We continue to collect on accounts placed in this channel prior to that date.

<sup>2</sup> 2008 amount consists of six months data, from January 1, 2008, to June 30, 2008.

Placement Year	Court Costs by Year of Collection <sup>1</sup>							Total Court Costs
	2003	2004	2005	2006	2007	2008		
2003	\$ 908	\$ 2,046	\$ 571	\$ 300	\$ 147	\$ 38	\$ 4,010	
2004	—	\$ 2,509	\$ 2,937	\$ 1,087	\$ 406	\$ 100	\$ 7,039	
2005	—	—	\$ 3,271	\$ 4,426	\$ 859	\$ 167	\$ 8,723	
2006	—	—	—	\$10,158	\$10,291	\$ 1,018	\$ 21,467	
2007	—	—	—	—	\$15,357	\$ 7,949	\$ 23,306	
2008 <sup>2</sup>	—	—	—	—	—	\$ 4,625	\$ 4,625	

<sup>1</sup> Includes court cost expense for accounts placed in our legal channel beginning January 1, 2003. We continue to incur court cost expense on accounts placed in this channel prior to that date. Court cost expense in this table is calculated based on our blended court cost expense rate.

<sup>2</sup> 2008 amount consists of six months data, from January 1, 2008, to June 30, 2008.

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### Commissions by Year of Collection<sup>1</sup>

Placement Year	2003	2004	2005	2006	2007	2008	Total Commissions
2003	\$3,574	\$8,606	\$ 5,496	\$ 2,898	\$ 1,574	\$ 504	\$ 22,652
2004	—	\$7,273	\$12,060	\$ 6,653	\$ 3,498	\$ 992	\$ 30,476
2005	—	—	\$ 6,725	\$12,108	\$ 6,364	\$ 1,798	\$ 26,995
2006	—	—	—	\$11,451	\$23,659	\$ 7,380	\$ 42,490
2007	—	—	—	—	\$11,845	\$13,066	\$ 24,911
2008 <sup>2</sup>	—	—	—	—	—	\$ 2,697	\$ 2,697

<sup>1</sup> Includes commissions for accounts placed in our legal channel beginning January 1, 2003. We continue to incur commissions on collections for accounts placed in this channel prior to that date.

<sup>2</sup> 2008 amount consists of six months data, from January 1, 2008, to June 30, 2008.

### Court Cost Expense and Commissions as a % of Gross Collections by Year of Collection

Placement Year	2003	2004	2005	2006	2007	2008	Cumulative Average
2003	41.7%	39.2%	35.2%	33.4%	31.0%	30.5%	37.0%
2004	—	41.7%	39.8%	35.7%	32.4%	31.7%	38.2%
2005	—	—	46.1%	40.6%	32.6%	31.2%	39.3%
2006	—	—	—	54.9%	41.0%	32.3%	43.2%
2007	—	—	—	—	64.8%	45.8%	54.9%
2008 <sup>1</sup>	—	—	—	—	—	76.7%	76.7%

<sup>1</sup> 2008 amount consists of six months data, from January 1, 2008, to June 30, 2008.

### Lawsuits Filed by Year<sup>1</sup>

Placement Year <sup>2</sup>	2003	2004	2005	2006	2007	2008	Total
2003	23	29	5	2	—	—	59
2004	—	59	39	11	2	—	111
2005	—	—	76	46	3	—	125
2006	—	—	—	205	105	3	313
2007	—	—	—	—	269	92	361
2008 <sup>3</sup>	—	—	—	—	—	124	124

<sup>1</sup> Represents the year the account was placed into litigation.

<sup>2</sup> Represents the year the account was placed into our legal channel.

<sup>3</sup> 2008 amount consists of six months data, from January 1, 2008, to June 30, 2008.

### Changes in Investment in Receivable Portfolios

Revenue related to our investment in receivable portfolios comprises two groups: first, revenue from those portfolios that have a remaining book value and are accounted for on the accrual basis (“Accrual Basis Portfolios”), and second, revenue from those portfolios that have fully recovered their book value Zero Basis Portfolios and, therefore, every dollar of gross collections is recorded entirely as Zero Basis Revenue. If the amount and timing of future cash collections on a pool of receivables are not reasonably estimable, we account for such portfolios on the cost recovery method (“Cost Recovery Portfolios”). No revenue is recognized on Cost Recovery Portfolios until the cost basis has been fully recovered, at which time they become Zero Basis Portfolios.

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The following tables summarize the changes in the balance of the investment in receivable portfolios and the proportion of revenue recognized as a percentage of collections (*in thousands, except percentages*):

	For the Three Months Ended June 30, 2008			
	Accrual Basis Portfolios	Cost Recovery Portfolios	Zero Basis Portfolios	Total
Balance, beginning of period	\$ 396,775	\$ 1,432	\$ —	\$ 398,207
Purchases of receivable portfolios	52,492	—	—	52,492
Gross collections <sup>1</sup>	(99,306)	(131)	(2,623)	(102,060)
Put-backs and recalls	(357)	2	—	(355)
Revenue recognized <sup>2</sup>	67,042	—	2,623	69,665
Impairment, net <sup>2</sup>	(3,390)	—	—	(3,390)
Balance, end of period	\$ 413,256	\$ 1,303	\$ —	\$ 414,559
Revenue as a percentage of collections <sup>3</sup>	67.5%	0.0%	100.0%	68.3%

	For the Three Months Ended June 30, 2007			
	Accrual Basis Portfolios	Cost Recovery Portfolios	Zero Basis Portfolios	Total
Balance, beginning of period	\$ 316,522	\$ —	\$ —	\$ 316,522
Purchases of receivable portfolios	41,137	—	—	41,137
Gross collections <sup>1</sup>	(89,426)	—	(4,048)	(93,474)
Put-backs and recalls	(621)	—	—	(621)
Revenue recognized	58,928	—	4,048	62,976
Impairment reversals, net	1,046	—	—	1,046
Balance, end of period	\$ 327,586	\$ —	\$ —	\$ 327,586
Revenue as a percentage of collections <sup>3</sup>	65.9%	0.0%	100.0%	67.4%

	For the Six Months Ended June 30, 2008			
	Accrual Basis Portfolios	Cost Recovery Portfolios	Zero Basis Portfolios	Total
Balance, beginning of period	\$ 390,564	\$ 1,645	\$ —	\$ 392,209
Purchases of receivable portfolios	100,394	—	—	100,394
Gross collections <sup>1</sup>	(200,829)	(330)	(5,181)	(206,340)
Put-backs and recalls	(2,035)	(12)	—	(2,047)
Revenue recognized <sup>2</sup>	133,887	—	5,181	139,068
Impairment, net <sup>2</sup>	(8,725)	—	—	(8,725)
Balance, end of period	\$ 413,256	\$ 1,303	\$ —	\$ 414,559
Revenue as a percentage of collections <sup>3</sup>	66.7%	0.0%	100.0%	67.4%

	For the Six Months Ended June 30, 2007			
	Accrual Basis Portfolios	Cost Recovery Portfolios	Zero Basis Portfolios	Total
Balance, beginning of period	\$ 300,348	\$ —	\$ —	\$ 300,348
Purchases of receivable portfolios	86,523	—	—	86,523
Gross collections <sup>1</sup>	(174,730)	—	(9,156)	(183,886)
Put-backs and recalls	(1,574)	—	—	(1,574)
Revenue recognized	115,756	—	9,156	124,912
Impairment reversals, net	1,263	—	—	1,263
Balance, end of period	\$ 327,586	\$ —	\$ —	\$ 327,586
Revenue as a percentage of collections <sup>3</sup>	66.2%	0.0%	100.0%	67.9%

<sup>1</sup> Does not include amounts collected on behalf of others.

<sup>2</sup> Reflects additional revenue of \$0.1 million and a lower net impairment of \$3.1 million, as a result of extending the collection curves from 72 to 84 months.

<sup>3</sup> Revenue as a percentage of collections excludes the effects of net impairment or net impairment reversals.

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As of June 30, 2008, we had \$414.6 million in investment in receivable portfolios. This balance will be amortized based upon current projections of cash collections in excess of revenue applied to the principal balance. The estimated amortization of the investment in receivable portfolio balance is as follows (in thousands):

<u>For the Years Ended December 31,</u>	<u>Amortization</u>
2008 <sup>1</sup>	\$ 58,881
2009	117,009
2010	83,241
2011	64,891
2012	48,437
2013	29,335
2014	11,102
2015	1,663
<b>Total</b>	<b>\$ 414,559</b>

<sup>1</sup> 2008 amount consists of six months data from July 1, 2008 to December 31, 2008.

### ***Analysis of Changes in Revenue***

The following tables analyze the components of the increase in revenue from our receivable portfolios for the three and six months ended June 30, 2008, compared to the three and six months ended June 30, 2007 (in thousands, except percentages):

<u>Variance Component</u>	<u>For The Three Months Ended June 30,</u>			<u>Revenue</u>
	<u>2008</u>	<u>2007</u>	<u>Change</u>	<u>Variance</u>
Average portfolio balance	\$398,680	\$307,645	\$91,035	\$ 18,055
Weighted average effective interest rate <sup>1</sup>	67.3%	79.3%	(12.0%)	\$(12,033)
Zero basis revenue	\$ 2,623	\$ 4,047		\$ (1,424)
Net (impairment) reversals	\$ (3,390)	\$ 1,046		\$ (2,344)
<b>Total variance</b>				<b>\$ 2,254</b>

<u>Variance Component</u>	<u>For The Six Months Ended June 30,</u>			<u>Revenue</u>
	<u>2008</u>	<u>2007</u>	<u>Change</u>	<u>Variance</u>
Average portfolio balance	\$396,358	\$305,119	\$91,239	\$ 35,369
Weighted average effective interest rate <sup>1</sup>	67.6%	77.5%	(10.1%)	\$(19,764)
Zero basis revenue	\$ 5,181	\$ 9,155		\$ (3,974)
Net (impairment) reversals	\$ (8,725)	\$ 1,263		\$ (7,462)
<b>Total variance</b>				<b>\$ 4,169</b>

<sup>1</sup> For accrual basis portfolios, the weighted average annualized effective interest rate is the accrual rate utilized in recognizing revenue on our accrual basis portfolios. This rate represents the monthly internal rate of return, which has been annualized utilizing the simple interest method. The monthly internal rate of return is determined based on the timing and amounts of actual cash received to date and the anticipated future cash flow projections for each pool.

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### **Purchases by Quarter**

The following table summarizes the purchases we made by quarter, and the respective purchase prices (*in thousands*):

<b>Quarter</b>	<b># of Accounts</b>	<b>Face Value</b>	<b>Purchase Price</b>	<b>Forward Flow Allocation<sup>2</sup></b>
Q1 2005	513	530,047	19,523	—
Q2 2005 <sup>1</sup>	2,773	3,675,277	121,939	—
Q3 2005	434	381,508	14,151	2,330
Q4 2005	1,568	1,326,216	39,941	1,935
Q1 2006	673	558,574	27,091	2,403
Q2 2006	837	594,190	21,262	2,118
Q3 2006	1,469	1,081,892	32,334	2,939
Q4 2006	814	1,439,826	63,600	3,184
Q1 2007	1,434	2,510,347	45,386	3,539
Q2 2007	1,042	1,341,148	41,137	2,949
Q3 2007	659	1,281,468	47,869	2,680
Q4 2007	1,204	1,768,111	74,561	2,536
Q1 2008	647	1,199,703	47,902	2,926
Q2 2008	676	1,801,902	52,492	2,635

<sup>1</sup> Purchase price for Q2 2005 includes a \$0.9 million cost adjustment associated with the finalization of the Jefferson Capital purchase price allocation.

<sup>2</sup> Allocation of the forward flow asset to the cost basis of receivable portfolio purchases.

### **Purchases by Paper Type**

The following table summarizes the types of charged-off consumer receivable portfolios we purchased for the three and six months ended June 30, 2008 and 2007 (*in thousands*):

	<b>Three Months Ended June 30,</b>		<b>Six Months Ended June 30,</b>	
	<b>2008</b>	<b>2007</b>	<b>2008</b>	<b>2007</b>
Credit card	\$ 40,165	\$ 35,666	\$ 85,445	\$ 80,261
Other	12,327	5,471	14,949	6,262
	<u>\$ 52,492</u>	<u>\$ 41,137</u>	<u>\$ 100,394</u>	<u>\$ 86,523</u>

## Liquidity and Capital Resources

### Overview

Historically, we have met our cash requirements by utilizing our cash flows from operations, bank borrowings and equity offerings. Our primary cash requirements have included the purchase of receivable portfolios, operational expenses, the payment of interest and principal on bank borrowings and tax payments.

The following table summarizes our cash flows by category for the periods presented (*in thousands*):

	Six Months Ended June 30,	
	2008	2007
Net cash provided by (used in) operating activities	\$ 33,513	\$ (9,195)
Net cash used in investing activities	\$(27,548)	\$(20,365)
Net cash (used in) provided by financing activities	\$ (5,818)	\$ 23,264

On December 31, 2004, our Secured Financing Facility expired. All of our portfolio purchases are now funded with cash or financed under our Revolving Credit Facility. Unlike our Secured Financing Facility, the Revolving Credit Facility does not require us to share with the lender the residual collections on the portfolios financed. Effective July 3, 2008, we expanded our Revolving Credit Facility from \$230.0 million to \$335.0 million. See Note 7 to the unaudited condensed consolidated financial statements for a further discussion on our Revolving Credit Facility, Secured Financing Facility and Contingent Interest.

On May 7, 2007, we entered into an agreement with the lender under our Secured Financing Facility to eliminate all future Contingent Interest payments, for the one-time payment of \$16.9 million. As a result, beginning in May 2007, we are no longer obligated to make Contingent Interest payments under this facility.

### Operating Cash Flows

Net cash provided by operating activities was \$33.5 million for the six months ended June 30, 2008, and net cash used in operating activities was \$9.2 million for the six months ended June 30, 2007. We consistently have been able to generate positive operating cash flow by maintaining our gross collections performance. Gross collections for the six months ended June 30, 2008, grew \$22.3 million, or 12.1%, to \$206.5 million, from \$184.2 million for the six months ended June 30, 2007. Operating cash outflow of \$9.2 million during the six months ended June 30, 2007, was a result of our \$16.9 million one-time payment to eliminate all future Contingent Interest payments, discussed above.

Total cash basis operating expenses were \$99.6 million for the six months ended June 30, 2008, compared to \$100.7 million for the six months ended June 30, 2007. The decrease was primarily a result of a reduction in operating expenses associated with our cost savings initiatives, partially offset by increased spending in our legal channel. Total interest payments were \$6.8 million for the six months ended June 30, 2008, and \$28.7 million for the six months ended June 30, 2007. The decrease in total interest expense was due to the elimination of Contingent Interest payments resulting from our pay-off of Contingent Interest under our Secured Financing Facility, as discussed above.

### Investing Cash Flows

Net cash used in investing activities was \$27.5 million for the six months ended June 30, 2008 and \$20.4 million for the six months ended June 30, 2007.

The cash flows used in investing activities for the six months ended June 30, 2008, are primarily related to receivable portfolio purchases of \$94.8 million (\$100.4 million of gross purchases less our forward flow allocation of \$5.6 million), offset by gross collection proceeds applied to the principal of our receivable portfolios in the amount of \$67.3 million. The cash flows used in investing activities for the six months ended June 30, 2007, primarily related to receivable portfolio purchases of \$80.0 million offset by gross collection proceeds applied to the principal of our receivable portfolios in the amount of \$59.0 million.

Capital expenditures for fixed assets acquired with internal cash flow were \$2.0 million and \$0.9 million for the six months ended June 30, 2008 and 2007, respectively.

### Financing Cash Flows

Net cash used in financing activities was \$5.8 million for the six months ended June 30, 2008 and net cash provided by financing activities was \$23.3 million for the six months ended June 30, 2007.

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The cash used in financing activities during the six months ended June 30, 2008, reflects \$17.2 million in repayments of principal, offset by \$15.0 million in borrowing under our Revolving Credit Facility and \$3.5 million used to repurchase \$5.0 million principal amount of our outstanding convertible senior notes. The cash provided by financing activities during the six months ended June 30, 2007, reflects \$27.0 million in borrowings, offset by \$4.0 million in repayments under our Revolving Credit Facility.

### **Future Contractual Cash Obligations**

The following table summarizes our future contractual cash obligations as of June 30, 2008, (*in thousands*):

	Payments Due by Period				
	Total	Less Than 1 Year	1 – 3 Years	3 – 5 Years	More Than 5 Years
Revolving credit facility	\$170,000	\$ —	\$170,000	\$ —	\$ —
3.375% convertible senior notes	95,000	—	95,000	—	—
Estimated interest payments <sup>1</sup>	30,594	14,156	16,438	—	—
Portfolio forward flow agreement <sup>2</sup>	51,344	25,672	25,672	—	—
Accrued income taxes <sup>3</sup>	3,201	3,201	—	—	—
Lease obligations	15,522	3,629	5,949	3,831	2,113
Employee agreements	537	537	—	—	—
Total contractual cash obligations	<u>\$366,198</u>	<u>\$47,195</u>	<u>\$313,059</u>	<u>\$3,831</u>	<u>\$2,113</u>

<sup>1</sup> We calculated estimated interest payments for long-term debt as follows: for the 3.375% convertible senior notes, we calculated interest based on the applicable rates and payment dates; for our revolving credit facility, we calculated the interest for the hedged portion using fixed interest rates plus a spread, and for the remaining balance that is subject to a variable interest rate, we estimated interest rates on our determination of the most likely scenarios. We expect to settle such interest payments with cash flows from operating activities.

<sup>2</sup> The portfolio forward flow agreement represents estimated payments under our five-year portfolio purchase forward flow agreement entered into on June 2, 2005. Refer to Note 10 to the unaudited condensed consolidated financial statements for further information on our purchase commitments. We expect to fund forward flow purchases, if any, with cash flows from operating activities and/or borrowings from our Revolving Credit Facility. Subsequent to June 30, 2008, we ceased forward flow purchases from Jefferson Capital Group due to a breach by Jefferson Capital and its parent, CompuCredit Corporation, of certain agreements. See Note 12, "Subsequent Events" to the unaudited condensed consolidated financial statements, for further information about our dispute with Jefferson Capital and CompuCredit.

<sup>3</sup> As of June 30, 2008, the non-current portion of our income tax liability was approximately \$13.7 million, which was not included in the total above. At this time, the settlement period for the non-current portion of our income tax liability cannot be determined. In addition, any payments related to unrecognized tax benefits would be partially offset by reductions in payments in other jurisdictions. Refer to Note 8 to the unaudited consolidated financial statements for further information on our income taxes. We expect to settle cash income tax payments with cash flows from operating activities.

Our Revolving Credit Facility has a remaining term of 1.9 years and to the extent that a balance is outstanding on our Revolving Credit Facility, it would be due in May 2010. The outstanding balance on our Revolving Credit Facility as of June 30, 2008, was \$170.0 million. Effective July 3, 2008, we expanded the capacity of our Revolving Credit Facility from \$230.0 million to \$335.0 million, which provides us with a significant amount of additional capital to fund our growth. For additional information on our debt, see Note 7 to our unaudited condensed consolidated financial statements.

We are in compliance with all covenants under our financing arrangements and, excluding the effects of the one-time payment of \$16.9 million to eliminate all future Contingent Interest payments in the second quarter of 2007 (this payment, less amounts accrued on our balance sheet, resulted in a charge of our statement of operations of \$6.9 million after the effect of income taxes), we have achieved 26 consecutive quarters of positive net income. We believe that we have sufficient liquidity to fund our operations for at least the next twelve months, given our expectation of continued positive cash flows from operations, our cash and cash equivalents of \$5.0 million as of June 30, 2008, and expanded borrowing capacity and borrowing base availability under our Revolving Credit Facility arranged subsequent to June 30, 2008.

### **Off Balance Sheet Arrangements**

We do not have any off balance sheet arrangements as defined by Item 303(a)(4) of Regulation S-K.

### **Item 3. Quantitative and Qualitative Disclosures about Market Risk**

For quantitative and qualitative disclosures about market risk affecting Encore, see Item 7A, “Quantitative and Qualitative Disclosures About Market Risk,” of our Annual Report on Form 10-K for the fiscal year ended December 31, 2007, which is incorporated herein by reference. Our exposure to market risk has not changed materially since December 31, 2007.

### **Item 4. Controls and Procedures**

#### ***Evaluation of Disclosure Controls and Procedures***

We maintain disclosure controls and procedures that are designed to ensure that information required to be disclosed in our periodic reports filed with the Securities and Exchange Commission (“SEC”) is recorded, processed, summarized and reported within the time periods specified in the rules and forms of the SEC and that such information is accumulated and communicated to our management as appropriate to allow timely decisions regarding required disclosure. In designing and evaluating the disclosure controls and procedures, our management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives and management accordingly is required to apply its judgment in evaluating the cost-benefit relationship of possible controls and procedures.

Based on their most recent evaluation, as of the end of the period covered by this Quarterly Report on Form 10-Q, our Chief Executive Officer and Chief Financial Officer have concluded our disclosure controls and procedures, as defined in Rules 13a-15(e) and 15d-15(e) of the Securities Exchange Act of 1934 (“Exchange Act”), as amended, are effective.

#### ***Changes in Internal Control over Financial Reporting***

There was no change in our internal control over financial reporting during the most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.



## PART II—OTHER INFORMATION

### Item 1. Legal Proceedings

On October 18, 2004, Timothy W. Moser, one of our former officers, filed an action in the United States District Court for the Southern District of California against us, and certain individuals, including several of our officers and directors. On February 14, 2005, we were served with an amended complaint in this action alleging defamation, intentional interference with contractual relations, breach of contract, breach of the covenant of good faith and fair dealing, intentional and negligent infliction of emotional distress and civil conspiracy arising out of certain statements in our Registration Statement on Form S-1 originally filed in September 2003 and alleged to be included in our Registration Statement on Form S-3 originally filed in May 2004. The amended complaint seeks injunctive relief, economic and punitive damages in an unspecified amount plus an award of profits allegedly earned by the defendants and alleged co-conspirators as a result of the alleged conduct, in addition to attorney's fees and costs. On May 2, 2006, the court denied our special motion to strike pursuant to California's anti-SLAPP statute, denied in part and granted in part our motion to dismiss, denied a variety of *ex parte* motions and applications filed by the plaintiff and denied the plaintiff's motion for leave to conduct discovery or file supplemental briefing. The court granted the plaintiff 30 days in which to further amend his complaint, and on June 1, 2006, the plaintiff filed a second amended complaint in which he amended his claim for negligent infliction of emotional distress. On May 25, 2006, we filed a notice of appeal of the court's order denying the anti-SLAPP motion and on June 16, 2006, we filed a motion to stay the case pending the outcome of the appeal, which was granted. Oral argument on the appeal was heard on July 17, 2008, and on July 28, 2008, the appellate court affirmed the trial court's denial of our anti-SLAPP motion. As a consequence, we will determine whether or not to seek a rehearing of the appeal. If we do not determine to seek a rehearing, the case will be returned to the district court where it will proceed from the point at which it was stayed. We believe the claims are without merit and intend to vigorously defend the action. Although the outcome of this matter cannot be predicted with certainty, we do not currently believe that this matter will have a material adverse effect on our consolidated financial position or results of operations.

On September 7, 2005, Mr. Moser filed a related action in the United States District Court for the Southern District of California against Triarc Companies, Inc. ("Triarc"), which at the time, was a significant stockholder of ours, alleging intentional interference with contractual relations and intentional infliction of emotional distress. The case arises out of the same statements made or alleged to have been made in our Registration Statements mentioned above. On January 7, 2006, Triarc was served with an amended complaint seeking injunctive relief, an order directing Triarc to issue a statement of retraction or correction of the allegedly false statements, economic and punitive damages in an unspecified amount and attorney's fees and costs. Triarc tendered the defense of this action to us, and we accepted the defense and will indemnify Triarc, pursuant to the indemnification provisions of the Registration Rights Agreements dated as of October 31, 2000 and February 21, 2002, and the Underwriting Agreements dated September 25, 2004 and January 20, 2005 to which Triarc is a party. Although the outcome of this matter cannot be predicted with certainty, we do not currently believe that this matter will have a material adverse effect on our consolidated financial position or results of operations.

Claims based on the Fair Debt Collection Practices Act ("FDCPA") and comparable state statutes may result in class action lawsuits, which can be material to us due to the remedies available under these statutes, including punitive damages. A number of cases styled as class actions have been filed against us. A class has been certified in several of these cases. Several of these cases present novel issues on which there is no legal precedent. As a result, we are unable to predict the range of possible outcomes. There are a number of other lawsuits, claims and counterclaims pending or threatened against us. In general, these lawsuits, claims or counterclaims have arisen in the ordinary course of business and involve claims for actual damages arising from alleged misconduct or improper reporting of credit information by us or our employees or agents. Although litigation is inherently uncertain, based on past experience, the information currently available and the possible availability of insurance and/or indemnification in some cases, we do not believe that the currently pending and threatened litigation or claims will have a material adverse effect on our consolidated financial position or results of operations. However, future events or circumstances, currently unknown to management, will determine whether the resolution of pending or threatened litigation or claims will ultimately have a material effect on our consolidated financial position, liquidity or results of operations in any future reporting periods.

On July 15, 2008, we gave Jefferson Capital Group and its parent Company, CompuCredit Corporation, notice of breach by Jefferson Capital and CompuCredit of the Asset Purchase and Forward Flow Agreement dated June 2, 2005, as amended, as well as a related Collection Agreement dated the same date. On July 16, 2008, we initiated arbitration as a result of the breach, pursuant to the arbitration provisions of the Agreements. We assert that the litigation initiated by the Federal Trade Commission (the "FTC") on June 11, 2008, wherein the FTC alleges that Jefferson Capital and CompuCredit have violated the FTC Act with deceptive marketing practices in selling credit cards, among other allegations, violates the Asset Purchase and Forward Flow Agreement and Collection Agreement. We seek an arbitral award that (i) Jefferson Capital and CompuCredit are in material breach of the Agreements, (ii) declares our obligations to purchase forward flow accounts under the Agreements is thereby excused or discharged, (iii) confirms

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our rights to cause Jefferson Capital to repurchase certain accounts previously sold to us under the Agreements, and other appropriate relief, including return of prepaid amounts relating to forward flow purchases, (iv) confirms our rights to indemnity by Jefferson Capital and CompuCredit and (v) awards compensatory damages, attorney fees, interest, arbitration costs and other appropriate relief.

We have just commenced the Arbitration proceedings and no Arbitrator(s) have as yet been identified. In the interim, we have ceased forward flow purchases of accounts from Jefferson Capital, the sale of bankrupt accounts to Jefferson Capital and participation in a balance transfer program with CompuCredit. In response to our Notice of Breach, Jefferson Capital and CompuCredit delivered its own Notice of Default to us alleging our breach of forward flow purchase, bankruptcy sale and balance transfer obligations.

This matter is in the early stages of development and any impact on the recoverability of our forward flow asset, currently stated at \$10.3 million, is uncertain. Our consolidated financial statements do not include any adjustment that might result from the outcome of this uncertainty.

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

This Quarterly Report on Form 10-Q contains “forward-looking statements” within the meaning of Section 27A of the Securities Act of 1933, as amended (the “Securities Act”), and Section 21E of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), which we believe are subject to certain safe harbors. Many statements, other than statements of historical facts, included or incorporated into this Quarterly Report on Form 10-Q are forward-looking statements. The words “believe,” “expect,” “anticipate,” “estimate,” “project,” “intend,” “plan,” “will,” “may,” and similar expressions often characterize forward-looking statements. These statements may include, but are not limited to, projections of collections, revenues, income or loss, estimates of capital expenditures, plans for future operations, products or services, and financing needs or plans, as well as assumptions relating to these matters. In particular, these statements may be found, among other places, under the “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and “Risk Factors” sections.

Although we believe that the expectations reflected in these forward-looking statements are reasonable, we caution you that these expectations or predictions may not prove to be correct or we may not achieve the financial results, savings or other benefits anticipated in the forward-looking statements. These forward-looking statements are necessarily estimates reflecting the best judgment of our senior management and involve a number of risks and uncertainties, some of which may be beyond our control or cannot be predicted or quantified, that could cause actual results to differ materially from those suggested by the forward-looking statements. Many factors, including but not limited to those set forth below, could cause our actual results, performance, achievements, or industry results to be very different from the results, performance or achievements expressed or implied by these forward-looking statements. Our business, financial condition or results of operations could also be materially and adversely affected by other factors besides those listed. These factors include, but are not limited to, the following:

- Recent instability in the financial markets may have an impact on our business;
- Our quarterly operating results may fluctuate and cause the prices of our common stock and convertible notes to decrease;
- We may not be able to purchase receivables at sufficiently favorable prices or terms, or at all;
- We may not be successful in acquiring and collecting on portfolios consisting of new types of receivables;
- We may not be able to collect sufficient amounts on our receivable portfolios to recover our costs and fund our operations;
- Collections on our receivable portfolios purchased from Jefferson Capital may be adversely affected by litigation brought against Jefferson Capital and its parent, CompuCredit, by the Federal Trade Commission and Federal Deposit Insurance Corporation;
- We may purchase portfolios that contain unprofitable accounts;
- The statistical model we use to project remaining cash flows from our receivable portfolios may prove to be inaccurate, which could result in reduced revenues or the recording of an impairment charge if we do not achieve the collections forecasted by our model;
- We may not be successful in recovering court costs we anticipate recovering;
- Our industry is highly competitive, and we may be unable to continue to compete successfully with businesses that may have greater resources than we have;

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- Our failure to purchase sufficient quantities of receivable portfolios may necessitate workforce reductions, which may harm our business;
- A significant portion of our portfolio purchases during any period may be concentrated with a small number of sellers;
- We may be unable to meet our future liquidity requirements;
- We may not be able to continue to satisfy the restrictive covenants in our debt agreements;
- We use estimates in our revenue recognition and our earnings will be reduced if actual results are less than estimated;
- We may incur impairment charges based on the provisions of American Institute of Certified Public Accountants Statement of Position 03-3;
- Government regulation may limit our ability to recover and enforce the collection of receivables;
- Failure to comply with government regulation could result in the suspension or termination of our ability to conduct business;
- A significant portion of our collections relies upon our success in individual lawsuits brought against consumers and ability to collect on judgments in our favor;
- We are subject to ongoing risks of litigation, including individual and class actions under consumer credit, collections, employment, securities and other laws, as well as our dispute with Jefferson Capital Group and CompuCredit Corporation;
- We may make acquisitions that prove unsuccessful or strain or divert our resources;
- We are dependent on our management team for the adoption and implementation of our strategies, and the loss of their services could have a material adverse effect on our business;
- We may not be able to hire and retain enough sufficiently trained employees to support our operations, and/or we may experience high rates of personnel turnover;
- Exposure to regulatory and economic conditions in India exposes us to risks or loss of business;
- We may not be able to manage our growth effectively;
- The failure of our technology and telecommunications systems could have an adverse effect on our operations;
- We may not be able to successfully anticipate, invest in or adopt technological advances within our industry;
- We may not be able to adequately protect the intellectual property rights upon which we rely; and
- Our results of operations may be materially adversely affected if bankruptcy filings increase or if bankruptcy or other debt collection laws change.

For more information about these risks, see the discussion under “Part I, Item 1A—Risk Factors” of our Annual Report on Form 10-K for the fiscal year ended December 31, 2007, filed with the Securities and Exchange Commission, which is incorporated herein by reference.

Forward-looking statements speak only as of the date the statements were made. We do not undertake any obligation to update or revise any forward-looking statements to reflect new information or future events, or for any other reason even if experience or future events make it clear that any expected results expressed or implied by these forward-looking statements will not be realized.

In addition, it is our policy generally not to make any specific projections as to future earnings and we do not endorse projections regarding future performance that may be made by third parties.

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

On June 4, 2008, we held our annual meeting of stockholders. At the annual meeting, J. Brandon Black, Carl C. Gregory, III, Timothy J. Hanford, George Lund, Richard A. Mandell, Willem Mesdag, John J. Oros, J. Christopher Teets and Warren Wilcox were elected to serve as directors. The votes for the election of directors are set forth below:

<u>Name of Nominee</u>	<u>Votes For</u>	<u>Votes Withheld</u>
J. Brandon Black	21,300,489	639,180
Carl C. Gregory, III	21,289,274	650,395
Timothy J. Hanford	18,950,784	2,988,885
George Lund	21,300,588	639,081
Richard A. Mandell	19,473,877	2,465,792
Willem Mesdag	21,208,462	731,207
John J. Oros	21,299,103	640,566
J. Christopher Teets	19,471,311	2,468,358
Warren Wilcox	19,543,636	2,396,033

At the annual meeting, the stockholders also approved Proposal 2, ratifying the appointment of BDO Seidman, LLP as our independent registered public accounting firm for fiscal year 2008. The votes for Proposal 2 were as follows:

<u>Votes For</u>	<u>Votes Against</u>	<u>Abstentions</u>	<u>Broker Non-votes</u>
21,899,558	39,611	500	0

**Item 6. Exhibits**

**Exhibit**

<u>Number</u>	<u>Description</u>
10.1	Lease Deed, dated as of June 19, 2008, by and between Midland Credit Management India Private Limited, Dinesh Kumar and Manmohan Gaiind, for real property located in Gurgaon, India.
10.2	Sublease, dated as of March 31, 2008, by and between Encore Capital Group, Inc. and FMT Services, Inc., for real property located in St. Cloud, Minnesota.
10.3	Multi-Tenant Net Commercial Lease, dated as of February 20, 2008, by and between Encore Capital Group, Inc. and Pranjiwan R. Lodhia and Lolita Lodhia, for real property located in Phoenix, Arizona.
10.4	Amendment No. 7, dated as of May 9, 2008, to the Credit Agreement dated as of June 7, 2005, by and among Encore Capital Group, Inc., the lenders identified on the signature pages thereto, as Lenders, and JPMorgan Chase Bank, National Association, as Administrative Agent (incorporated by reference to Exhibit 10.2 to Form 8-K filed July 7, 2008).
10.5	Amendment No. 8, dated as of July 3, 2008, to the Credit Agreement dated as of June 7, 2005, by and among Encore Capital Group, Inc., the lenders identified on the signature pages thereto, as Lenders, and JPMorgan Chase Bank, National Association, as Administrative Agent (incorporated by reference to Exhibit 10.1 to Form 8-K filed July 7, 2008).
31.1	Certification of the Principal Executive Officer pursuant to rule 13-14(a) under the Securities Exchange Act of 1934 (filed herewith).
31.2	Certification of the Principal Financial Officer pursuant to rule 13-14(a) under the Securities Exchange Act of 1934 (filed herewith).
32.1	Certification of Chief Executive Officer and Chief Financial Officer pursuant to 18 U.S.C. section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley act of 2002 (filed herewith).

**ENCORE CAPITAL GROUP, INC.**

**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

**ENCORE CAPITAL GROUP, INC.**

By: /s/ Paul Grinberg

Paul Grinberg

Executive Vice President,

Chief Financial Officer and Treasurer

Date: August 4, 2008

**EXHIBIT INDEX**

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**LEASE DEED**

This Deed of Lease made and executed on this **19th** day of **June, 2008**, by and between **1) MR. DINESH KUMAR, s/o Late Shri Prem Prakash Gaind aged 44 years, residing at B-3/6,DLF Phase- I, Gurgaon and 2) MR. MANMOHAN GAIND, s/o Late Shri Prem Prakash Gaind, aged 43 years, residing at B-3/6,DLF Phase-I, Gurgaon** (hereinafter, referred to as "**Lessors**") which expression shall mean and include their heirs, executors, successors and assigns of the One Part), AND **MIDLAND CREDIT MANAGEMENT INDIA PRIVATE LIMITED**, having its registered office at Penthouse 7,West Tower, Hotel Le Meridien, Windsor Place ,New Delhi-110001 (hereinafter, referred to as "**Lessee**") which expression shall mean and include its successors and assigns) and represented by its authorized signatory MR. MANU RIKHYE of the other Part.

**WHEREAS**

A. The Lessors are the absolute owners of and sufficiently seized and possessed of the land and industrial building situated at Plot No. 520, Udyog Vihar Industrial Area, Phase III, Gurgaon – 122015 and as more particularly described in the site plan annexed to this Lease Deed as Schedule I and delineated in red (hereinafter called "**the Demised Premises**"); and which has been allotted and conveyed to the Lessors by HSIIDC, vide Regular Letter of Allotment with Offer of Possession (N.I.D.P of November 1999), bearing No. HSIDC/EO/2001/20615-616, dated 16-03-2001. The Lessors have also obtained the Sanctioned Plan for the construction of I.T. building on the Scheduled property from DTP, HSIIDC vide Sanction Plan dated 30-08-2005 bearing No. HSIDC/IPC/IMT/05/3994.

B. On the request of the Lessee, the Lessors have agreed to grant on lease the Demised Premises measuring 29,440 sq.ft. of super built area on the following terms and conditions:

**NOW THIS DEED WITNESSETH AND IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:**

1. That in consideration of the rent hereinafter specified and of the covenants and conditions hereinafter contained and on the part of the Lessee to be paid observed and performed, the Lessors hereby leases to the Lessee, in accordance with the terms of this Deed, the Demised Premises which includes: -level one of the basement (to be built out as a cafeteria provided the sixth floor rooftop will be built out, furnished and equipped promptly at the sole cost of Lessors as a cafeteria and at no additional charge to Lessee should the use of level one of the basement as a cafeteria ever be objected to or closed down for any reason whatsoever, in which case level one of the basement shall be restored to be available for parking), second level of the basement (to be built out as a training facility), ground, first, second, third, fourth, and fifth floors (each a "Floor" and collectively the "Floors"), two Floors of which shall be fully functional and permitted for use by Lessee on a twenty-four hour, seven day a week, 365 day a year basis.
- 2.1 That the Lease of the Demised Premises shall be with effect from July 1, 2008 (hereinafter called the "Effective Date") through and including December 31, 2010 ("the Initial Term").
- 2.2 The Parties agree that the obligation of the Lessee to pay rent to the Lessors is from the Effective Date for the Initial Term as per the terms and conditions contained herein.
- 2.3 It is agreed between the parties that the Lessors shall not charge any rent from the Lessee, and the Lessee is not liable for the payment of rent for the 28th month (November 2010) & 29th month (December 2010) of the Initial Term of the this lease, and the Lessee shall occupy the Demised Premises for these 2 months on a rent free basis.
3. The Lessee shall pay to the Lessors the rent amount for the entire Demised Premises with a super area measuring 29,440 sq.ft. @Rs.20/- per sq.ft. amounting to Rs.17,75,400/- (Rupees Seventeen Lakhs Seventy Five Thousand Four Hundred Only) payable per month which is inclusive of all costs that is associated with the Demised Premises, to be paid in the following manner:
  - i) 50% of the Rent to be paid to Lessor No. 1 namely Mr. Dinesh Kumar; and



ii) The remaining 50% of the Rent to be paid to Lessor No. 2 namely Mr. Manmohan Gaind.

The rental amount is applicable from the Effective Date, on the condition that all the floors are put in operational and ready to use state by the Lessors as per clause 7(xvi). If, however if any floor is not operational and is out of use as per the said clause, the rent payable for each month shall be reduced automatically by one-sixth (1/6th) of the monthly rent set forth above. Further, the Lessors shall facilitate in making available the surface parking available for maximum number of cars.

4. The Lessee has agreed to take the Demised Premises on lease relying upon the representations, warranties and covenants of the Lessors hereunder, Lessors are authorised and entitled to enter into this Lease for the Demised Premises.
5. The Lessee with the intent that the obligations may continue throughout the Term hereby covenant with the Lessors as follows:
  - (i) The Lessee shall be entitled at no additional cost to place in, on and around the Demised Premises any signage that is permitted under applicable zoning ordinances and private restrictions, and to install satellite dishes and other communication equipment on the roof of the Demised Premises, the ownership of which shall remain that of Lessee free and clear of any claim by Lessors, and which may at Lessee's sole option be removed or abandoned, in either case at no charge to Lessee, within a period of 45 days after Lessee vacates the Demised Premises or any portion thereof.
  - (ii) The Lessee shall at its own cost be entitled to erect fittings, fixtures, wooden partitions, cabins or make any such remodeling, decorating, alterations, improvements and replacements as may be considered necessary by the Lessee, and to place and install personal property, trade fixtures, signage, equipment and other temporary installations in and upon the Demised Premises, and fasten same to thereto, the ownership of which shall remain that of Lessee free and clear of any claim by Lessors, and all of which may at Lessee's sole option be removed or abandoned, in either case at no charge to Lessee, within a period of 45 days after Lessee vacates the Demised Premises or any portion thereof.
  - (iii) Not to underlet, assign, transfer part possession or permit use either of part or whole of the Demised Premises without the prior written consent of the Lessors, except that the Lessee may assign the Lease to or permit the use of the Demised Premises or any part thereof to/by any associates or affiliates of the Lessee in which the Lessee has got interest.
  - (iv) To yield and deliver vacant possession of the Demised Premises to the Lessors on the expiry or termination of the Lease in neat, tidy and tenantable condition, normal wear and tear excepted, subject to any additions and alterations that may have been made by the Lessee.
  - (v) To abide by and comply with all laws, bye laws rules and regulation of the municipal corporation and other authorities in so far as are to be observed by a Lessee of the Demised Premises.
6. The Lessors shall indemnify, defend and hold harmless the Lessee against any legal/monetary obligations, damages, costs, expenses or liabilities arising out of, as a result of or in connection with any of Lessors's covenants or obligations under this Lease, any requirement of the Government/Local authorities or any other entity whatsoever, or in case of any dispute arising in the ownership of the premises and/or the matter of peaceful and lawful uninterrupted occupation of the Lessee of the Demised Premises till the end of the Initial Term as hereinabove agreed. This clause shall survive the expiration or termination of this Lease.
7. The Lessors further covenants with the Lessee as follows:
  - (i) To abide by and comply with all laws, bye-laws, rules and regulations of the local bodies and other relevant authorities, and it has any and all permits, consents, certificates, approvals and other permissions from all appropriate government authorities (including, without limitation, the HSIDC, the Estate Officer(s) and other fire and building code authorities) necessary for the lawful occupancy of the Demised Premises and stating a permitted purpose of use that covers Lessee's business purposes.

- (ii) To pay, other than the Service Tax/Value Added Tax as may be applicable for the lease of the Demised Premises which shall be payable solely by Lessee. All taxes, levies and charges applicable to and in respect of the Demised Premises, including the house tax, ground rent and municipal taxes, levies and other charges shall be payable by the Lessors. However, it is agreed between the parties that during the Intial Term the Lessee shall only be liable for any Service Tax/Value Added tax that may be attracted by virtue of leasing the Demised Premises from the Lessors under this Lease Deed. The Service Tax/Value Added tax at the prevailing rates prescribed by the government from time to time shall be applicable. The Lessee shall however, not be liable for any other penalties, pertaining to the facilities and/or materials provided by the Lessors within the Demised Premises, that is/may become applicable pursuant to the commencement and during the term of this Lease Deed, which shall be the sole liability of the Lessors. The Lessee's liability to pay Service Tax/Value Added Tax payable by the Lessee would be limited to full rate of applicable Service Tax which at present is 12.36%. Further any new tax which is applied on the building will be solely borne by the Lessors and whatever new tax is applied to the lease of the Demised Premises will be solely borne by the Lessee.
- (iii) To permit the Lessee at any time and from time to time, during the subsistence of the Lease to make and effect upon the Demised Premises such renovations, additions, alterations and changes as the Lessee may deem necessary, incidental or advantageous for the conduct of its business effectively which is including, but not limited to: installation of partitions, counters, name boards or logos—illuminated or otherwise—and other fixtures such as cabins, screens, shelves, racks, sun blinds, gas, electrical appliances, geysers, telephones, air-conditioning equipment, light and sanitary fittings;
- (iv) All articles, things, installations, signs, satellites, cable, fixtures and fittings installed at the Demised Premises as set forth herein shall be the absolute property of the Lessee and the Lessee shall be entitled to dismantle, remove and take away the same from time to time and when it vacates the Demised Premises on expiry or termination of the Lease or any renewal thereof. Provided that the Lessee shall, at its own cost, restore the Demised Premises to substantially the same condition in which they were at the time when the Lessee entered into occupation thereof subject to any additions and alterations made by the Lessee to the structure of the Demised Premises (which shall vest in the Lessors) and normal wear and tear excepted.
- (v) The Lessee shall have the right to use and enjoy the entrances, staircase, landings, corridors, road and passage in and outside the Demised Premises and the right of ingress to and egress from the Demised Premises so far as the same are necessary for the enjoyment of the Demised Premises by the Lessee, its customers, servants, agents, visitors and invitees.
- (vi) To allow the Lessee and its transferee to enjoy quiet and peaceful possession, use and enjoyment of the Demised Premises and utilities twenty-four hours a day, seven days a week, 365 days a year during entire period of the Lease and the renewal thereof without any interruption by the Lessors or any persons lawfully claiming either through or under or in trust for the Lessors or otherwise however.
- (vii) To keep the Demised Premises in good order and proper tenantable condition and to undertake necessary structural repairs as and when required.
- (viii) To obtain approvals, consents, permissions and authorisations of municipal and local bodies, as may be required in terms hereof.
- (ix) To assist and cooperate with Lessee in obtaining any necessary permissions from governmental and other authorities or adjoining owners and occupants for Lessee to place or construct signage in, on and around the Demised Premises as permitted hereunder, and to provide all necessary assistance for Lessee to be able to lay Optic Fiber Cable within and outside the Demised Premises and a right of way for same.
- (x) To maintain adequate and appropriate fire, comprehensive and extended coverage insurance on the Demised Premises.

- (xi) To ensure and pay for water supply to the Demised Premises according to existing arrangements in force as of the Effective Date.
  - (xii) To provide and maintain at the Demised Premises a 250 KVA sanctioned/installed and energized power load from Dakshin Haryana Bijlee Vitran Nigam Limited, and to provide and maintain at the demised premises a power backup of at least 250 KVA through generators at all times.
  - (xiii) To obtain on or before July 15, 2008, the requisite Occupation Certificate and other approvals from all appropriate government authorities (including, without limitation, the HSIDC, the Estate Officer(s) and other building code authorities) necessary for the lawful occupancy of all Floors of the Demised Premises by the Lessee, and specifically stating a permitted purpose of use that covers Lessee's business purposes.
  - (xiv) That all payments to be made by the Lessee under this Lease Deed are subject to applicable taxes that are deductible at source.
  - (xv) To obtain, requisite approvals from all other fire and safety inspection authorities for the lawful occupancy of, and complete the build-out, furnishing and equipping in strict conformance with the plans and specifications set forth in Schedule II hereto and of no lesser grade, kind, quality or condition (as determined in Lessee's reasonable discretion) as the other currently fully finished floors of the Demised Premises for functional use by Lessee of: (a) the first floor of the Demised Premises as a production floor and level one of the basement of the Demised Premises as a cafeteria (provided the sixth floor rooftop will be promptly built out, furnished and equipped at the sole cost of Lessors as a cafeteria and at no additional charge to Lessee should the use of level one of the basement as a cafeteria ever be objected to or closed down for any reason whatsoever, in which case level one of the basement shall be restored to be available for parking) ; and (b) the second floor of the Demised Premises as a production floor and , level two of the basement of the Demised Premises as a training facility.
  - (xvi) To deliver forthwith to the Lessee all written notices received from any governmental entity.
8. If the whole or any part of the Demised Premises shall at any time during the term of the lease be destroyed or damaged, due to any fire, storm, tempest, flood act of God, act of terrorism, war or any other irresistible force or the Demised Premises are rendered inaccessible due to destruction or damage as aforesaid or act of Government (condemnation or otherwise), then the Demised Premises shall be restored as expeditiously as possible or, as the case may be, the impediment to accessibility shall be removed as expeditiously as possible. If the Demised Premises cannot be rendered fit for occupation and use and for the period it is not accessible or unusable, in whole or part, by Lessee for its business purposes, the rent to be paid under the lease or a fair proportion thereof according to the nature and extent of the damage sustained shall cease and be suspended until the Demised Premises shall be rendered fit for occupation and use and/or become accessible, as the case may be. Any rent or other charges paid in advance by Lessee for any such periods shall be credited on the next ensuing payments, if any, but if no further payments are to be made, any such advance payments shall be refunded by Lessors to Lessee within a period of 4 weeks. However, upon the happening of any such event as aforesaid, the Lessee shall have the option to terminate the Lease within a period of six months after the event by giving one month's notice or payment of rent in lieu thereof. The provisions of this clause extend not only to the matters aforesaid, but also to any occurrence which is beyond Lessee's reasonable control and which renders the Demised Premises, or any appurtenance thereto, inoperable or unfit for occupancy or use, in whole or in part, for Lessee's business purposes.
- 9.1 If the Lessors shall commit a breach in the payment, observance or performance of any of the Lessors's covenants or obligation hereunder, the Lessee: (i) may give the Lessors a notice in writing of such arrears, breach or failure, as the case may be and if the Lessors does not rectify the breach or pay, observe or perform or fulfill the arrears or relevant obligation within 30 days of receipt of notice, then the Lessee may at its option forthwith terminate the Lease by giving a notice in writing to the Lessors; and/or (ii) if such breach continues for more than thirty days after notice thereof to Lessors, may without affecting any other rights and remedies it may have hereunder or otherwise undertake to cure such breach itself and deduct the cost and expense thereof from the next monthly rents payable hereunder until Lessee shall have been fully reimbursed for same, or if this Lease is terminated prior to Lessee being fully reimbursed for same any remaining amounts shall be immediately paid by Lessors to Lessee.

- 9.2 Notwithstanding anything contained in this Lease to the contrary, Lessee shall at its sole option at any time during the Initial Term be entitled to terminate the lease forthwith by giving a written notice of 90 days to the Lessors in the event Lessors fails to meet any of its obligations, in whole or in part, set forth in clause 7 (xiii).
10. If the Lessee shall be in arrears of rent payable for the Demised Premises by for more than one month from due date of payment thereof or shall otherwise commit a breach in the payment, observance or performance of any of the Lessee's obligation hereunder, the Lessors may give the Lessee a notice in writing of such arrears, breach or failure, as the case may be and if the Lessee does not rectify the breach or pay, observe or perform or fulfill the arrears or relevant obligation within thirty days of receipt of notice, then the Lessors may at its option forthwith terminate the Lease by giving a notice in writing to the Lessee.
11. Upon termination of the Lease, the Lessee shall hand over and put the Lessors in vacant possession of the Demised Premises and every part thereof subject to clauses 5 (i) and (ii) provided the Lessors shall be obliged to refund all unadjusted amounts paid by the Lessee, with immediate effect.
12. Any notice required to be given under the Lease shall be in writing and shall be served on the Lessee at the Demised Premises with a copy to its address first herein before mentioned and to the Lessors at its address first herein before mentioned. Either party may notify to the other in writing of any change in such address for services of notice upon it. The notices shall be served personally or by Registered Post.
13. The Lessors hereby agree and covenant that it shall at the request of the Lessee get this Lease duly registered with the appropriate registering authority, the costs of which shall be borne by Lessee. The Lessee shall join in the execution and registration of this Lease. All expenses including stamp duty and registration charges for this Lease Deed shall be borne by the Lessee.
14. If the Lessors at any time during the period of this Lease sells and/or transfers the Demised Premises or its leasehold rights in the Demised Premises, as a whole or in part, to any one person or more than one person then in that event the Lessee shall attorn to such transferee or transferees on the same terms and conditions as are contained herein. However, a letter shall be issued by the prospective new landlord in favour of the Lessee confirming that the terms herein agreed to shall be binding on the new landlord/s and it will also acknowledge all outstanding amounts paid by the Lessee to the Lessors whose benefit shall be transferred to the new landlord/s the same shall also apply in case of any subsequent sale or transfer of the lease-hold rights.
15. All disputes pertaining to this lease shall be referred exclusively to the competent courts in New Delhi.
16. No waiver of any breach or default of Lessee or Lessors hereunder shall be implied from any omission to take any action on account of such breach or default if such breach or default persists or is repeated, and non express waiver shall affect any breach or default other than the breach or default specified in the express waiver and then only for the time and to the extent so stated. One or more waivers by Lessors or Lessee shall not be construed as a waiver of a subsequent breach or default of the same covenant, term, condition or obligation.
17. Lessee and Lessors agree that this Deed constitutes the entire settlement between the parties pertaining to terms of lease, and the same revokes and supersedes all previous discussions, previous correspondence, prior agreements, lease deeds or any other documents between the parties concerning the subject matter hereof whether oral, written or implied. The terms of this Deed shall not be changed, altered or modified except by written amendments duly executed by the parties.

IN WITNESS WHEREOF THE PARTIES HAVE SIGNED THIS LEASE DEED ON THE DAY AND DATE AFOREMENTIONED.

For  
DINESH KUMAR

/s/ Dinesh Kumar

MANMOHAN GAIND

/s/ Manmohan Gaind

LESSORS

For  
MIDLAND CREDIT MANAGEMENT INDIA PRIVATE LIMITED

/s/ Manu Rikhye

LESSEE

Witnesses :

1. /s/ Karan Singh Joon  
(Signature)

Karan Singh Joon  
(Name)

District Court, Gurgaon  
(Address)

2. /s/ Parmod Kumar  
(Signature)

Parmod Kumar  
(Name)

R/O 360, Bhakti Nagar, Vill Daliawas, Rewari  
(Address)

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SCHEDULE 1

PROPERTY DESCRIPTION

All the piece and parcel of the land and commercial industrial building situated at Plot No. 520, Udyog Vihar Industrial Area, Phase III, Gurgaon – 122015, consisting of two levels of basement, ground, first, second, third, fourth and fifth floors, measuring in all 29,440 sq.ft., together with fixtures and fittings and exclusive surface parking spaces around the building. The property being bounded on

East by :Other property

West by :Road 30 metre wide

North by :Adjacent Plot No. 521

South by :Adjacent Plot # 519

**SUBLEASE**

This Sublease (this "Sublease") is made and entered into effective as of the 31 day of March, 2008 (the "Effective Date"), by and between FMT Services, Inc., a Nevada corporation ("Sublessor"), and Encore Capital Group, Inc., a Delaware corporation ("Sublessee").

**WITNESSETH:**

WHEREAS, by that certain Lease Agreement dated effective October 1, 2007, as amended, a copy of which is attached to this Sublease as Exhibit "A" and by this reference made a part hereof (the "Prime Lease"), Sundance III, LLC, a Minnesota limited liability company ("Lessor"), leases to Sublessor, the entire building (the "Building"), consisting of approximately 109,000 square feet (the "Leased Premises"). The Building is located on the real estate commonly known as 14 and/or 16 McLeland Road, St. Cloud, MN 56303 and legally described as Sect-09 Twp-124 Range-028, SUNDANCE COMMERCIAL DISTRICT, Lot-002 Block-001, Stearns County, Minnesota (the "Real Estate"). The Prime Lease is for a term commencing on July 1, 2008 and ending on June 30, 2013.

WHEREAS, Sublessee desires to sublease from Sublessor, and Sublessor desires to sublease to Sublessee, approximately 45,737 square feet within the Leased Premises depicted on the attached Exhibit "B" (the "Subleased Premises") upon the terms and subject to the conditions and provisions of this Sublease.

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and promises contained in this Sublease, and for other good and valuable consideration, the receipt and sufficiency of which are mutually acknowledged, Sublessor and Sublessee agree as follows:

1. Demise; Use.

(a) Sublessor subleases to Sublessee, and Sublessee subleases from Sublessor, the Subleased Premises for the Term (defined below) and upon the other terms and conditions set forth in this Sublease. Throughout the Term (defined below), Sublessee and Sublessee's employees shall have the non-exclusive right to use the parking lot and common areas on the Real Estate.

(b) The Subleased Premises shall be used and occupied by Sublessee and its employees, agents, independent contractors, and invitees solely as a call center and for other general office uses and for no other purpose. Sublessee agrees to conduct its business in a high grade and reputable manner. Sublessee shall promptly comply with all laws, ordinances and regulations affecting the Subleased Premises and promulgated by duly constituted governmental authority, including insurance company requirements affecting the cleanliness, safety, use and occupancy of the Subleased Premises. Sublessee shall not use the Subleased Premises for any purpose which increases the rate of premium cost or invalidates any policy of insurance, covering or carried on the building and the appurtenances thereof; nor conduct any auction, fire, close-out or bankruptcy sales in or about the Subleased Premises; nor obstruct the sidewalks or common areas; nor abuse walls, ceilings, partitions, floors, wood, stone, or iron work; nor maintain any equipment on the roof; nor use plumbing for any purpose other than that for which constructed; nor make or permit any noise or odor objectionable to the public or to other occupants of the Building; nor create, maintain or permit a nuisance within the Subleased Premises.

2. Term.

(a) Initial Term. The term of this Sublease shall commence on July 1, 2008 (the "Commencement Date"), and unless sooner terminated pursuant to the provisions of this Sublease, shall expire on June 15, 2013 (the "Initial Term") or on the earlier termination of the term of the Prime Lease.

(b) Option. The Initial Term may be extended, at the option of Sublessee (the "Option"), for one (1) successive period of five (5) years (the "Extended Term") provided that Sublessee is not in default under this Sublease at the time of exercise of the Option or at the expiration of the Initial Term. The Initial Term, together with the Extended Term, if any, shall be referred to in this Sublease as the "Term." Sublessee may extend the Term for the Extended Term by written notice of its exercise of the Option to Sublessor and Lessor on or before November 30, 2012 (the "Option Exercise Deadline"). It is the intention of the parties to avoid forfeiture of Sublessee's right to exercise its Option through its inadvertent or negligent failure to give notice of exercise of the Option prior to the Option Exercise Deadline. If Sublessee fails to give timely written notice of exercise of the Option, the Option shall nevertheless remain in full force and effect for a period of ten (10) business days after written notice from Sublessor, subsequent to the Option Exercise Deadline, advising Sublessee that notice of its exercise of the Option has not been received. The Extended Term shall be upon the same terms, covenants, and conditions as provided in this Sublease for the Initial Term. Any termination of this Sublease during the Initial Term or any Extended Term shall terminate all rights of any further extensions hereunder.

3. Base Rent.

(a) Sublessee shall pay to Sublessor as annual "Base Rent" for the Subleased Premises the amount of \$177,140.63, payable in equal monthly installments of \$14,761.72. Base Rent shall increase by three percent (3%) on each anniversary of the Commencement Date throughout the Term. Installments of Base Rent and Additional Rent (defined below) shall be due and payable in advance on the fifth day prior to the first day of each calendar month of the Term. All Base Rent and Additional Rent shall be paid without setoff or deduction whatsoever (except as otherwise provided herein) and shall be paid to Sublessor at its office at 16 McLeland Road, St. Cloud, Minnesota 56303, Attn: Rich Dockendorf or at such other place as Sublessor may designate by written notice to Sublessee. Base Rent and Additional Rent for partial months shall be pro rated on a per diem basis.

(b) The Base Rent rate for the Extended Term, if any, shall be based upon the Fair Market Value of the Subleased Premises in its unimproved condition (i.e. the Fair Market Value of the Subleases Premises, excluding the value of Improvements (defined below)) ("FMV") at the time of exercise of the Option, which shall be mutually agreed upon by Sublessor and Sublessee. If Sublessor and Sublessee cannot come to an agreement on the FMV, they shall select a mutually agreeable independent real estate



professional (the "Neutral") to determine the Base Rent for the first year of the Extended Term, and the fees imposed by the Neutral shall be shared equally by Sublessor and Sublessee. Base Rent for each subsequent year during the Extended Term shall increase by three percent (3%) over the Base Rent payable for the preceding year.

(c) If Sublessee continues to occupy the Subleased Premises, or any part thereof, after the expiration or termination of the Term, whether with or without the consent of Sublessor, such tenancy shall be from month-to-month and the fixed monthly rent shall be equal to one hundred twenty-five percent (125%) of the Base Rent that was due and payable for the month immediately prior to Sublessee's holding over. If Sublessee's holdover is without the consent of Sublessor, the acceptance of any rent shall not prevent Sublessor from exercising any remedy to regain immediate possession of the Subleased Premises, and in such event, Sublessee shall indemnify, defend, and hold Sublessor harmless from and against all damages, costs (including reasonable attorneys' fees), and liabilities incurred by Sublessor to Lessor, whether or not the same are foreseeable, as a result of Subtenant's failure to timely surrender the Subleased Premises. Sublessor shall provide written notice to Sublessee of any reasonably foreseeable circumstances known to Sublessor which could likely result in Sublessee's liability for consequential damages as a result of Sublessee holding over beyond the Term; provided, however, Sublessor's failure to fulfill such undertaking shall not be a defense to any such holding over or release Sublessee from any obligations under this paragraph.

4. Additional Rent; Payments; Interest.

(a) Sublessee shall pay to Sublessor Sublessee's Proportionate Share (defined below) of all (i) utilities relating to the Leased Premises as provided in Section 15 of the Prime Lease unless the same are separately metered and paid for by Lessee in accordance with Section 4 (aa) below, (ii) CAM Costs (as defined in Section 16(c) of the Prime Lease), (iii) maintenance and repair costs as provided in Section 16 (a) and (b) of the Prime Lease (amortized, if at all, as provided in the Prime Lease), and (iv) those Facility Enhancements (as defined in Section 32 of the Prime Lease) listed in the attached Exhibit E (amortized, if at all, as provided in the Prime Lease). Sublessee's Proportionate Share shall be fifty percent (50%). If Lessor shall issue to Sublessor any credit or refund in respect of any amount due pursuant to this Subsection relating to any part of the Term of this Sublease, Sublessor shall (a) provide Sublessee with a copy of the supporting documentation received by Sublessor pursuant to Section 16 (d) of the Prime Lease and (b) give to Sublessee a credit or refund equal to Sublessee's Proportionate Share of the portion of such credit or refund.

(aa) Subject to subsection (ee) below, Sublessee may at any time, by notice to Sublessor, elect to submeter the electricity or any other utility provided to the Subleased Premises. In such case, Sublessee shall, at Sublessee's expense, install and maintain any submeter and other equipment in order for such utility to be separately measured, Sublessee's charges under this Sublease for such submetered utility shall be reduced accordingly, and Sublessee shall pay directly for Sublessee's submetered utility usage. In the event that the usage of any utility by either Sublessor or Sublessee is materially disproportionate to its

Proportionate Share and such disproportionate usage will continue for a material period, either party may request a reasonable and equitable adjustment of the allocation of the charges for such utility under this Sublease. In the event that the parties are unable to resolve such issue within thirty (30) days after written request, the matter will be resolved by arbitration as hereafter provided.

(bb) Subject to Section 10(a), each party shall be solely responsible for the cost to repair all damage to the Leased Premises or the Building caused by the abuse or misuse by such party or any of its employees, agents, contractors, or invitees.

(cc) Subject to approval by Sublessor and Lessor as to the manner, method and location of installation and subsection (ee) below, Sublessee shall have the right to install, maintain and remove a generator or UPS serving the Subleased Premises.

(dd) Sublessee shall have the right to inspect and audit any CAM Costs or other charges passed through to Sublessee under this Section 4(a) in the same manner as provided in Section 16(d) of the Prime Lease.

(ee) Notwithstanding anything to the contrary in subsections (aa) and (cc) above, Subtenant's right to separate its utilities and/or install, maintain, and remove a generator or UPS serving the Subleased Premises (collectively the "Sublessee Apparatus") is conditioned upon (i) the construction, installation, maintenance and removal of the Sublessee Apparatus not interfering with Sublessor's use of the Leased Premises in Sublessor's reasonable opinion; (ii) Sublessee repairing any damage to the common areas in the Building in connection with the construction, installation, maintenance and removal of the Sublessee Apparatus; (iii) upon Sublessor's request, Sublessee shall remove at the end of the Term, at Sublessee's expense, the Sublessee Apparatus and restore the Subleased Premises and any common areas impacted by the removal of the Sublessee Apparatus; (iii) Sublessee shall reimburse Sublessor for any costs reasonably incurred by Sublessor if the Sublessee Apparatus cannot be completely "dis-entangled" from the systems currently serving the Building; and (iv) to the extent that there is not a 50% reduction in costs associated with the ongoing use of the utilities and UPS serving the Building at the time the Sublessee Apparatus is installed or thereafter, Sublessee shall pay all costs in excess of 50% of the utility charges immediately preceding installation of the Sublessee Apparatus (adjusted to the extent necessary to reflect differentials in usage by Sublessor and rate increases).

Any dispute relating to the proper amount of costs to be passed through to Sublessee under this Section 4(a) that is not resolved by the parties within thirty (30) days shall be resolved by arbitration held in a mutually agreeable location in Saint Cloud, Minnesota before a single arbitrator acceptable to both parties, which arbitration shall be in accordance with the Commercial Arbitration rules of the American Arbitration Association ("AAA"), as such rules are in effect on the date of this Sublease. Each party shall pay its own attorneys' fees and other costs connected with the presentation of such party's case, and the costs of the arbitrator and the arbitration shall be divided equally between the parties.

(b) Each amount due pursuant to Subsection 4(a) above and each other amount payable by Sublessee hereunder, unless a date for payment of such amount is provided for elsewhere in this Sublease, shall be due and payable on the later to occur of (i) the tenth day following the date on which Lessor or Sublessor has given notice to Sublessee of the amount thereof, or (ii) the fifth day prior to the date on which any such amount is due and payable under the Prime Lease.

(c) All amounts other than Base Rent payable to Sublessor under this Sublease shall be deemed to be "Additional Rent" due under this Sublease. All past due installments of Base Rent and Additional Rent shall bear interest from the date due until paid at the "Interest Rate," as defined in the Prime Lease.

5. AS-IS Condition of Subleased Premises; Maintenance.

(a) Sublessee acknowledges that Sublessee has been in possession of and occupying the Subleased Premises prior to the Effective Date and that Sublessee accepts the Subleased Premises, in their AS-IS, WHERE-IS condition, subject to all faults, and without any express or implied representation or warranty from Sublessor of any kind whatsoever. Sublessee's possession of the Subleased Premises shall be conclusive evidence against Sublessee that the Subleased Premises were in good order and satisfactory condition as of the date of this Sublease. Except as otherwise provided herein, no promise of Sublessor to alter, remodel or improve the Subleased Premises, and no representation concerning the condition of the Subleased Premises or the Building, have been made by Sublessor to Sublessee. Upon the expiration of the Term or earlier termination of this Sublease, Sublessee shall surrender the Subleased Premises to Sublessor, and any improvements, fixtures, equipment, alterations, decorations and additions in or to the Subleased Premises in the condition required by the Prime Lease, ordinary wear and tear, condemnation or casualty excepted, and Sublessee shall remove any improvements or other items if required pursuant to the Prime Lease. Notwithstanding anything to the contrary contained herein, Sublessee shall not be required to remove improvements that exist on the date of this Sublease or are hereafter consented to by Lessor or Sublessor, unless removal is specified in writing at the time such consent is given.

Upon request of Sublessee, Sublessor shall execute and deliver any real estate consent or waiver forms submitted by any vendors, lessors, chattel mortgagees, or holders of a security interest in or owners of any trade fixtures, signs, equipment, furniture or other personal property of any kind and description kept or installed in the Subleased Premises setting forth the fact that the Sublessor waives, in favor of such vendor, lessor, chattel mortgagee, or holder or owner, any lien claim, interest or other right therein of Sublessor which might otherwise be superior to that of such vendor, lessor, chattel mortgagee, owner or holder; provided that such consent or waiver form shall contain commercially reasonable terms and shall be reasonably acceptable to Sublessor. Sublessor shall further acknowledge that the property covered by such consent or waiver forms is personal property, and is not to become part of the realty no matter how affixed thereto, and that such property may be removed from the Subleased Premises by the vendor, lessor, chattel mortgagee, owner or holder at any time upon default, and in accordance with the terms of such chattel mortgage or other similar documents, free and clear of any claim or lien of Sublessor.

(b) Sublessee shall, throughout the Term, maintain the Improvements (as defined in Section 11 below) and its fixtures, equipment and personal property in the Subleased Premises in good working condition and repair. Sublessor shall, throughout the Term, maintain the Subleased Premises in good working condition and repair (reasonable wear and tear and casualty excepted) as provided in the Prime Lease (and subject to reimbursement by Sublessee of its Proportionate Share as provided in Section 4 above), including, without limitation, routine maintenance of the foundations, floors, exterior walls, roof and any other structural elements of the Subleased Premises, and the interior of the Subleased Premises. Sublessee shall keep the Subleased Premises lien free and in compliance with all applicable laws, building codes and regulations. Sublessee shall not be required to perform any alterations or improvements necessary to comply with any applicable laws, ordinances, or regulations unless such compliance shall be required by reason of (1) any alterations or improvements made by Sublessee or on behalf of Sublessee; (2) Sublessee's particular use, manner of use or occupancy of the Subleased Premises (as opposed to mere general office use in compliance with this Sublease); or (3) any breach of Sublessee's obligations under this Sublease.

6. The Prime Lease.

(a) Sublessee shall comply with all obligations of "Lessee" under the Prime Lease with respect to the Subleased Premises and Sublessee's use of the common areas;

(b) Sublessee shall not make any changes, alterations or additions in or to the Subleased Premises, except as permitted by this Sublease or as otherwise permitted by Sublessor in its reasonable discretion;

(c) If Sublessee desires to take any action and the Prime Lease would require that Sublessor obtain the consent of Lessor before undertaking any action of the same kind, Sublessee shall not undertake the same without the prior written consent of Sublessor, which consent shall not be unreasonably withheld, provided that Sublessor may condition its consent on the consent of Lessor being obtained and may require Sublessee to contact Lessor directly for such consent;

(d) All rights given to Lessor by the Prime Lease to enter the Subleased Premises shall also inure to the benefit of Sublessor and its agents and representatives with respect to the Subleased Premises;

(e) Sublessor shall also have all other rights, privileges, options, reservations and remedies granted, allowed or held by Lessor under the Prime Lease;

(f) Sublessee shall maintain insurance of the kinds and in the amounts required to be maintained by "Lessee" under the Prime Lease, and shall provide Sublessor with copies of all insurance policies, binders, and all communications received from the Sublessee's insurance companies. All policies of liability insurance shall name as additional insureds the Lessor and Sublessor and their respective officers, directors and agents;

(g) Sublessee shall not do anything or suffer or permit anything to be done which could result in a default under the Prime Lease or permit the Prime Lease to be canceled or terminated;

(h) Sublessee shall not assign, sublet, mortgage, pledge, hypothecate or otherwise transfer or permit the transfer of this Sublease or any interest of Sublessee in this Sublease, by operation of law or otherwise, or permit the use of the Subleased Premises or any part thereof by any persons other than Sublessee and Sublessee's employees without Sublessor's prior written consent, which consent may be withheld or granted at Sublessor's reasonable discretion. Notwithstanding the foregoing, Sublessee shall have the right to assign this Sublease, sublet the Subleased Premises, or otherwise transfer Sublessee's interest under the Sublease to: (i) any parent, affiliate or subsidiary entity of Sublessee, (ii) any entity resulting from a merger, spin off or split up involving Sublessee or its parent entity, if any, (iii) any person or entity acquiring substantially all of Sublessee's assets or stock, or (iv) any franchisee of Sublessee or Sublessee's parent, provided, however, that no such assignment or sublease shall release Sublessee from its obligations under this Sublease unless such release is consented to by Sublessor in writing.

(i) Neither Base Rent nor Additional Rent shall abate by reason of any damage to or destructions of the Subleased Premises, the Building, or any part thereof, unless and then only to the extent that rental and such other payments actually abate under the Prime Lease with respect to the Subleased Premises on account of such event. To the extent that Sublessor under the Prime Lease becomes entitled to a rent abatement or reduction under the terms of the Prime Lease by reason of fire, casualty, interruption of services, condemnation or otherwise, and the same results in Sublessor being fully or partially relieved of the obligation to pay rent with respect to the Subleased Premises, Sublessee shall be similarly relieved hereunder and, if Sublessee has already paid the rent in question, rebated accordingly;

(j) Sublessee shall not have any right to exercise, or require Sublessor to exercise, any option under the Prime Lease, including without limitation, any option to extend the term of the Prime Lease; provided, however, that if Sublessee exercises the Option and Sublessor does not exercise its Option under the Prime Lease, then this Sublease shall be a direct lease between Sublessee and Lessor, as described in the Consent attached to this Sublease as Exhibit "C";

(k) In the event of any conflict between the terms, conditions and provisions of the Prime Lease and of this Sublease, the terms, conditions and provisions of this Sublease shall, in all instances, govern and control;

(l) Sublessor does not assume and shall not have any of the obligations or liabilities of Lessor under the Prime Lease. Sublessor is not making the representations or warranties, if any, made by Lessor in the Prime Lease. With respect to work, services, repairs and restoration or the performance of other obligations required of Lessor under the Prime Lease, Sublessor's sole obligation with respect thereto shall be to request the same, upon written request from Sublessee, and to use reasonable efforts to obtain the same from Lessor. Sublessor shall not be liable in damages, nor shall rent abate under this Sublease, for or on account of any failure by Lessor to perform the obligations and duties imposed on it under the Prime Lease;

(m) Sublessor represents and warrants to Sublessee that the Prime Lease is unmodified and in full force and effect and that, to its knowledge, no default exists on the part of any party to the Prime Lease; and

(n) Nothing contained in this Sublease shall be construed to create privity of estate or contract between Sublessee and Lessor.

7. Default by Sublessee and Sublessor; Non-Disturbance.

(a) Upon the happening of any of the following, Sublessee shall be deemed to be in default under this Sublease, and Sublessor may exercise any and all rights and remedies available to it under this Sublease, at law or in equity, and any and all rights and remedies available to Lessor set forth in the Prime Lease:

(i) Sublessee fails to pay any Base Rent or Additional Rent within five (5) days after the date it is due, provided, however, that Sublessee shall be entitled to written notice of non-payment on the first occasion during any calendar year any payment is not timely paid and Sublessee shall not be in default under this Sublease if such sum is paid within five (5) days of written notice of non-payment from Lessor.

(ii) Sublessee fails to perform or observe any other covenant or agreement set forth in this Sublease and such failure continues for fifteen (15) days after notice thereof from Sublessor to Sublessee; or

(iii) Any other event occurs which involves Sublessee or the Subleased Premises and which would constitute a default under the Prime Lease.

(b) In the event Sublessee fails or refuses to make any payment or perform any covenant or agreement to be performed hereunder by Sublessee, Sublessor may make such payment or undertake to perform such covenant or agreement (but shall not have any obligation to Sublessee to do so). In such event, amounts so paid and amounts expended in undertaking such performance shall be Additional Rent under this Sublease, together with all costs, expenses and attorneys' fees incurred by Sublessor in connection therewith, plus interest on all such amounts at the Interest Rate.

(c) Sublessor, upon thirty (30) days prior written notice to Sublessee, may offset any payments due Sublessee pursuant to any past, present, or future contract between the parties or their affiliates, including but not limited to that certain Asset Purchase and Forward Flow Agreement dated June 2, 2005 (among Midland Funding LLC, Jefferson Capital Systems, LLC and Sublessee), against any costs, damages, expenses, claims or other liabilities actually incurred by Sublessor arising out of or related to (i) Sublessee's failure to pay rent (provided that Sublessor's offset right shall be limited to an amount equal to twelve (12) months' rent) and (ii) Sublessee's failure to repay any portion of the Amortized Cost of Improvements (defined below).

(d) Sublessor shall use its commercially reasonable efforts to obtain a subordination, non-disturbance and attornment agreement from Lessor and Lessor's mortgagee, if any, in a commercially reasonable form reasonably acceptable to Sublessee, pursuant to which Sublessor and its mortgagee, if any, agrees to recognize this Sublease and Sublessee's rights hereunder (so long as Sublessee is not in default hereunder beyond any applicable notice and cure period) in the event of a termination of the Prime Lease or foreclosure or default under any mortgage secured by the Real Estate.

8. Nonwaiver. Failure of Sublessor to declare any default or Sublessor's delay in taking any action in connection therewith shall not waive such default. No receipt of moneys by Sublessor from Sublessee after the termination in any way of the term or of Sublessee's right of possession of the Subleased Premises or after the giving of any notice shall reinstate, continue or extend the term or affect any notice given to Sublessee or any suit commenced or judgment entered prior to receipt of such monies, or waive any default by Sublessee hereunder.

9. Cumulative Rights and Remedies. All rights and remedies of Sublessor under this Sublease shall be cumulative and none shall exclude any other rights or remedies allowed by law.

10. Waiver of Claims and Indemnity.

(a) Sublessor and Sublessee and their respective officers, directors, partners, agents and employees waive any rights of recovery against the other for injury or loss due to hazards covered by its own insurance or insurance required to be maintained by them pursuant to this Sublease or the Prime Lease, other than by reason of gross negligence or willful misconduct and except in any case which would render this release and waiver void under the law. Sublessor and Sublessee intend, and hereby agree, that the risk of loss or damage to property shall be borne by the parties' respective insurance carriers, and that they shall look solely to, and seek recovery from, only their respective insurance carriers in the event a loss is sustained for which insurance is carried or is required to be carried by such parties.

(b) Sublessee agrees to indemnify, defend, and hold Sublessor harmless from any and all liability or expense (i) resulting from Sublessee's use of the Subleased Premises or the common areas related thereto, (ii) incurred in connection with Lessor's Work (defined below), and (iii) in connection with Sublessee's violations of this Sublease. Sublessor agrees to indemnify

and hold Sublessee harmless from and against any claim, loss, damage, liability or expense (i) arising out of or resulting from any Sublessor's use of the Leased Premises or the common areas related thereto, and (ii) in connection with Sublessor's violations of the Prime Lease or this Sublease.

11. Improvements. Sublessee desires to have Sublessor cause to be constructed certain improvements to the Subleased Premises described on the attached Exhibit "D" (as may be amended prior to commencement of construction) (the "Improvements"). Sublessor agrees to use reasonable efforts to cause the construction of the Improvements commencing promptly following the full execution of this Sublease and approval of the Plans and Construction Contract as described below. The cost of the Improvements shall be amortized at an annual interest rate of 8% (the "Amortized Cost of Improvements") over the Term and repaid by Sublessee as Additional Rent. If the Improvements are completed prior to the Commencement Date, the Amortized Cost of Improvements shall be amortized over a five (5) year period and Sublessee shall commence repayment of the Amortized Cost of Improvements on the first day of the first calendar month following completion of the Improvements. If Sublessee fails to pay any installment of the Amortized Cost of Improvements and such failure continues for fifteen (15) days after written notice thereof, then the entire unpaid principal balance and all accrued interest on the Amortized Cost of Improvements shall be immediately due and payable.

The Improvements shall be constructed in accordance with plans and specifications ("Plans") and a construction contract with Sun-Com Construction Services as general contractor ("Construction Contract") approved by Sublessor and Sublessee. The Construction Contract shall provide for (1) a guaranteed maximum price, (2) an open book contract (subject to audit rights), (3) competitive bidding for the major trades with at least two subcontractors (4) a one year warranty for all work and materials (and an assignment to Sublessor and Sublessee of any manufacturers warranties); (5) a construction schedule designed to complete the Improvements as soon as reasonably practicable and to minimize interference with the conduct of Sublessee's business in the Subleased Premises; (6) a punch list procedure for completion of items within thirty days after substantial completion of the work; (7) requiring approval by Sublessor and Sublessee in the form of a written change order for material changes in the work or the contract price; and (8) a provision that Sublessee shall be a third party beneficiary of the contractor's warranties. Sublessor shall not be entitled to any supervision or other fee in connection with the Improvements. Sublessee has approved the contractor who will construct the Improvements (the "Contractor"), and Sublessee agrees that Sublessor shall not be liable for any acts or omissions of the Contractor or any defects in the construction of the Improvements.

12. Brokerage Commissions. Each party represents and warrants to the other that it has had no dealings with any real estate broker or agent in connection with this Sublease, excepting only Sublessee's brokers, Irving Hughes and CresaPartners (Ann Hansen), and Sublessor's broker, CB Richard Ellis (Brian Wasserman), whose commissions (the "Brokerage Commissions") shall be paid by Sublessor in accordance with an existing written agreement entered into between them, and that it knows of no other real estate broker or agent who is or might be entitled to a commission in connection with this Sublease. Each party agrees to protect, defend, indemnify and hold the other harmless from and against any and all claims inconsistent with the foregoing representations and warranties for any



brokerage, finder's or similar fee or commission in connection with this Sublease, if such claims are based on or relate to any act of the indemnifying party which is contrary to the foregoing representations and warranties.

13. Successors and Assigns. This Sublease shall be binding upon and inure to the benefit of the successors and assigns of Sublessor and shall be binding upon and inure to the benefit of the successors of Sublessee and, to the extent any such assignment may be approved, Sublessee's assigns. In the event that Sublessor assigns its rights as Lessee under the Prime Lease, Sublessor may also assign its rights under the Sublease to Sublessor's assignee provided that Sublessor's assignee agrees to be bound by the provisions of the Sublease. Any such assignment and assumption shall release Sublessor from any liability occurring under this Sublease following such assignment and assumption.

14. Agreement. This Sublease contains all the terms, covenants, conditions and agreements between Sublessor and Sublessee relating in any manner to the rental, use and occupancy of the Subleased Premises. The terms, covenants and conditions of this Sublease cannot be altered, changed, modified or added to except by a written instrument signed by Sublessor and Sublessee.

15. Notices. Notices and demands required or permitted to be given by either party to the other shall be in writing and shall not be effective for any purpose unless the same shall be served either by personal delivery with a receipt requested, by overnight air courier service or by United States certified or registered mail, return receipt requested, postage prepaid; provided, however, that all notices of default shall be served either by personal delivery with a receipt requested or by overnight air courier service, addressed as follows:

If to Sublessor:

16 McLeland Road  
St. Cloud, MN 56303  
Attn: Rich Dockendorf

With a copy to:

c/o CompuCredit  
5 Concourse Parkway, Suite 400  
Atlanta, GA 30328  
Attn: Rohit H. Kirpalani, General Counsel

If to Sublessee:

Encore Capital Group, Inc.  
8875 Aero Drive, Suite 200  
San Diego, CA 92123  
Attn: General Counsel

With a copy to:

16 McLeland Road  
St. Cloud, MN 56303  
Attn: Site Manager

Notices and demands shall be deemed to have been given the second day following the day of mailing, if mailed, or if made by personal delivery or by overnight air courier service, then upon such delivery or attempted delivery. Either party may change its address for receipt of notices by giving written notice to the other party.

16. Authority of Sublessee, etc. Sublessee represents and warrants to Sublessor that this Sublease has been duly authorized, executed and delivered by and on behalf of Sublessee and constitutes the valid, enforceable and binding agreement of Sublessee.

17. Intentionally Omitted.

18. Mechanics' Liens. If any liens are filed against the Real Estate as a result of or in connection with services or materials provided to or for the benefit of Sublessee, if Sublessee, within ten (10) days after such filing, does not release the same of record or provide Sublessor with a bond or other security, satisfactory to Sublessor, protecting Sublessor and the Real Estate against such liens, Sublessor, without waiving its rights and remedies based upon such breach by Sublessee and without releasing Sublessee from any obligation under this Sublease, may cause such liens to be released by any means Sublessor deems proper, including, but not limited to, paying the claim giving rise to the lien or posting security to cause the discharge of the lien. In such event, Sublessee will reimburse Sublessor, as Additional Rent, for all amounts Sublessor pays (including, without limitation, reasonable attorneys' fees and costs), plus interest at the Interest Rate.

19. Termination Option. Sublessee will have the right to terminate this Sublease (the "Termination Option") effective anytime following July 1, 2011, by providing twelve (12) months prior written notice to Sublessor, provided that Sublessee is not in default under this Sublease at the time of exercise of the Termination Option or on the effective date of any such termination: provided, further, that in the event that Sublessor exercises its Termination Option pursuant to Section 34 of the Prime Lease, Sublessor shall so notify Sublessee, and Sublessee will have the right, by written notice to Sublessor given within thirty (30) days after Sublessee's receipt of Sublessor's termination notice, to exercise this Termination Option to terminate this Sublease effective as of the early termination date of the Prime Lease. A sublease termination fee shall be paid to Sublessor prior to the effective date of such early termination equal to (i) 105% of the unamortized portion of the Amortized Cost of Improvements and (ii) 105% of the unamortized portion of the Brokerage Commissions calculated, as of the early termination date, on a straight-line basis over the Initial Term.

20. Exhibits. The Exhibits attached to this Sublease are incorporated into this Sublease by this reference.

21. Examination. Submission of this instrument for examination or signature by Sublessee does not constitute a reservation of or option for the Subleased Premises or in any manner bind Sublessor, and no lease, sublease or obligation of Sublessor shall arise until this instrument is signed and delivered by Sublessor and Sublessee.

22. Validity. If any covenant, condition, provision, term or agreement of this Sublease is, to any extent, held invalid or unenforceable, the remaining portion thereof and all other covenants, conditions, provisions, terms and agreements of this Sublease, will not be affected by such holding, and will remain valid and in force to the fullest extent permitted by law.

23. Counterparts. This Sublease may be executed in one or more counterparts, each of which shall be an original but all of which together shall be deemed to constitute a single agreement. Separate signature pages may be attached to a copy of this Sublease in order to form a fully-executed document.

24. Survival. The terms of Section 7 and the parties respective indemnification obligations under this Sublease shall indefinitely survive the expiration or earlier termination of this Sublease.

25. Definitions. Except as otherwise defined herein, all capitalized terms used in this Sublease shall have the same meaning as defined in the Prime Lease.

26. Additional Terms. Notwithstanding anything to the contrary contained in this Sublease:

(a) Whenever the term "default" is used herein, the same means a default beyond any applicable notice and cure period.

(b) Sublessor agrees to pay all Rent and perform all of its obligations under the Prime Lease as and when due. Sublessor shall not agree to an amendment to the Prime Lease which might have a material and adverse effect on Sublessee's occupancy or use of the Subleased Premises unless Sublessor shall obtain Sublessee's prior written approval thereof. If Sublessor receives a written notice of default from Lessor, Sublessor shall promptly furnish a copy of the notice to Sublessee and if Sublessor does not cure such default at least two (2) business days before the expiration of the applicable cure period, Sublessee shall have the option (but not the obligation) to cure the default on behalf of Sublessor and to deduct the reasonable costs thereof from Base Rent next coming due under this Sublease.

(c) Sublessee may continue to use and display its existing signs at the Subleased Premises. Sublessor shall use commercially reasonable efforts to cause the Lessor to permit installation of such additional or replacement signs at the Subleased Premises, at Sublessee's sole cost, as reasonably requested by Sublessee from time to time.

(d) Except as otherwise provided in this Sublease to the contrary, wherever the consent, approval or permission of either Sublessor or Sublessee is required by the provisions of this Sublease, such party shall not unreasonably withhold, condition or delay such consent or approval.

IN WITNESS WHEREOF, Sublessor and Sublessee have executed this Sublease as of the Effective Date.

**SUBLESSOR**

FMT Services, Inc.

By: /s/ Rick Gilbert

Name: Rick Gilbert

Title: *Chief Operating Officer*

**SUBLESSEE**

Encore Capital Group, Inc.

By: /s/ J. Brandon Black

Name: J. Brandon Black

Title: *President and Chief Executive Officer*

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**EXHIBIT A**

**Prime Lease**

## LEASE AGREEMENT

THIS LEASE AGREEMENT, made and entered into effective as of October 1, 2007, by and between Sundance III, LLC, a Minnesota limited liability company (hereinafter called "Lessor"), and FMT Services, Inc., a Nevada corporation (hereinafter called "Lessee").

WITNESSETH, that

1. **Premises.** Lessor hereby leases to Lessee and Lessee hereby leases from Lessor the entire building (the "Building"), consisting of approximately 109,000 square feet of Rentable Area (the "Leased Premises"), which is located on the real estate commonly known as 14 and/or 16 McLeland Road, St. Cloud, MN 56303 and legally described as Sect-09 Twp-124 Range- 028, SUNDANCE COMMERCIAL DISTRICT, Lot-002 Block-001, Stearns County, Minnesota (the "Real Estate").

Throughout the Lease Term (defined below) and any extensions or renewals thereof, Lessee and Lessee's employees and customers shall have the exclusive right to use the parking lot and grounds on the Real Estate.

2. **Term.** The initial term of this Lease (the "Initial Lease Term") shall commence on the July 1, 2008. The Initial Lease Term shall continue for a period of five (5) years and expire at 11 :59 p.m. on the last day of June in the year 2013.

3. **Extended Term.** The Initial Lease Term may be extended, at the option of Lessee (the "Option"), for one (1) successive period of five (5) years (the "Extended Term"). The Initial Lease Term, together with the Extended Term, if any, shall be referred to in this Lease as the "Lease Term." Lessee may extend the Lease Term for the Extended Term by written notice of its exercise of the Option to Lessor on or before December 31, 2012 (the "Option Exercise Deadline"). It is the intention of the parties to avoid forfeiture of Lessee's right to exercise its Option through its inadvertent or negligent failure to give notice of exercise of the Option prior to the Option Exercise Deadline. If Lessee fails to give timely written notice of exercise of the Option, the Option shall nevertheless remain in full force and effect for a period of ten (10) business days after written notice from Lessor, subsequent to the Option Exercise Deadline, advising Lessee that notice of its exercise of the Option has not been received. The Extended Term shall be upon the same terms, covenants, and conditions as provided in this Lease for the Initial Term. Any termination of this Lease during the Initial Term or any Extended Term shall terminate all rights of any further extensions hereunder.

4. **Base Rent.** Lessee shall pay on the first day of each month to Lessor during the Lease Term as monthly "Base Rent" for the use and occupancy of the Leased Premises one-twelfth of the product of: (i) Three and 00/100 Dollars (\$3.00) times the number of square feet of Rentable Area of the Leased Premises during the First Lease Year, (ii) Three and 9/100 Dollars (\$3.09) times the number of square feet of Rentable Area of the Leased Premises during the Second Lease Year, (iii) Three and 18/100 Dollars (\$3.18) times the number of square feet of Rentable Area of the Leased Premises during the Third Lease Year, (iv) Three and 28/100 Dollars

(\$3.28) times the number of square feet of Rentable Area of the Leased Premises during the Fourth Lease Year, and (v) Three and  $\frac{38}{100}$  Dollars (\$3.38) times the number of square feet of Rentable Area of the Leased Premises during the Fifth Lease Year. Rent Payments are due on or before the 1<sup>st</sup> of the month in which they are due. Rent received later than the 7<sup>th</sup> of the Month will incur a late payment penalty of 1% of the total unpaid Rent and CAM Costs (defined below) (the "Late Payment Penalty"). Postage Date will be considered the Payment Date. Notwithstanding anything to the contrary in this Section 4, the Late Payment Penalty shall not be imposed on the first occasion during any calendar year any payment is not timely paid if such sum is paid within five (5) days of written notice of non-payment from Lessor.

The Base Rent rate for the Extended Term, if any, shall be based upon the Fair Market Value (FMV) of the Base Rent at the time of exercise of the Option, which shall be mutually agreed upon by Lessor and Lessee. If Lessor and Lessee cannot come to an agreement on the FMV, then they shall select a mutually agreeable independent real estate professional (the "Neutral") to determine the Base Rent for the first year of the Extended Term, and the fees imposed by the Neutral shall be shared equally by Lessor and Lessee. Base Rent for each subsequent year during the Extended Term shall increase by three percent (3%) over the Base Rent payable for the preceding year.

5. **Security Deposit.** A security deposit of the last month's Base Rent shall be due and payable upon execution of this Lease (the "Security Deposit"). Lessor shall hold the Security Deposit to secure the performance by Lessee of its obligations under this Lease. Provided that Lessee is not then in default under this Lease, the Security Deposit will be credited towards the last month's Base Rent of the Initial Lease Term, or returned to Lessee within ten (10) days after the expiration of this Lease or the earlier termination thereof.

6. **Use.** Lessee shall use the Leased Premises for general business purposes in compliance with applicable law.

7. **Alterations.** Lessee shall make no structural alterations, additions or changes in the Leased Premises without the prior written consent of Lessor, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, Lessee shall have the right without Lessor's consent (but Lessee shall notify Lessor in advance of the scope of the work it intends to perform) to perform from time to time interior, nonstructural, non-utility improvements, alterations, additions, and painting and/or decorating to the interior of the Leased Premises. Any permanent alterations or additions to the Leased Premises (but excluding all of Lessee's trade fixtures, equipment and personal property) shall remain in the Leased Premises and shall become Lessor's property at the expiration of the Lease or any earlier termination thereof.

8. **Fixtures.** Lessor agrees that all trade fixtures, signs, equipment, furniture, or other personal property of whatever kind and nature kept or installed on the Leased Premises by Lessee shall not become the property of Lessor or a part of the Leased Premises no matter how affixed to the Leased Premises, and may be removed by the Lessee at any time and from time-to-time during the entire Term of this Lease, provided, however, that any permanent capital improvements to the Building which are paid for by Lessee shall not be removed by Lessee upon the termination of this Lease, but the title to same shall revert to the Lessor. The Lessee

may remove trade fixtures, signs, equipment, furniture, or other personal property of whatever kind, provided Lessee shall repair the floors, ceilings, plumbing, electrical service, and heating system disrupted by such removal and leave the same in good working condition.

Upon request of Lessee, Lessor shall execute and deliver any real estate consent or waiver forms submitted by any vendors, lessors, chattel mortgagees, or holders of a security interest in or owners of any trade fixtures, signs, equipment, furniture or other personal property of any kind and description kept or installed in the Leased Premises setting forth the fact that the Lessor waives, in favor of such vendor, lessor, chattel mortgagee, or holder or owner, any lien, claim, interest or other right therein of Lessor which might otherwise be superior to that of such vendor, lessor, chattel mortgagee, owner or holder. Lessor shall further acknowledge that the property covered by such consent or waiver forms is personal property, and is not to become part of the realty no matter how affixed thereto, and that such property may be removed from the Leased Premises by the vendor, lessor, chattel mortgagee, owner or holder at any time upon default, and in accordance with the terms of such chattel mortgage or other similar documents, free and clear of any claim or lien of Lessor.

9. **Insurance.** Lessee shall at its own cost and expense, maintain commercial liability insurance, insuring against claims for bodily injury, death or property damage occurring in or within the Leased Premises with limits of not less than One Million Dollars (\$1,000,000.00), in respect to injury or death of one person, or any one accident and to the limit of full insurable value in respect to property damage. Such liability insurance policy shall designate Lessor and/or Lessor's Mortgagee, as requested by Lessor, as an additional insured.

Lessor shall at all times during the Term of this Lease procure and maintain "All Risk" property insurance on the Lease Premises, all improvements thereon and all of the leasehold improvements therein for the full insurable value thereof. The cost of such property insurance shall be a CAM Cost (defined below). Lessee shall at all times during the Lease Term procure and maintain at Lessee's expense, "All Risk" property insurance on all of Lessee's personal property, including removable trade fixtures, located in the Leased Premises for the full insurable value thereof.

10. **Compliance with Laws.** Lessee shall, at its own expense, comply with all of the requirements of Federal, State and Municipal authorities now in force or which may hereafter be in force pertaining to Lessee's particular use of the Leased Premises, and shall faithfully observe in said use all Municipal ordinances and State and Federal statutes now in force or which shall hereinafter be in force.

11. **Assignment and Subletting.** Lessee shall not assign or in any manner encumber this Lease, nor sublet the whole or any part of the Leased Premises without first obtaining the written consent of Lessor, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, Lessee shall have the right to assign the Lease, sublet the Premises or otherwise transfer Lessee's interest under the Lease to: (i) any parent, affiliate or subsidiary entity of Lessee, (ii) any entity resulting from a merger, spin off or split up involving Lessee or its parent entity, if any, (iii) any person or entity acquiring substantially all of Lessee's assets or stock, or (iv) any franchisee of Lessee or Lessee's parent. Lessor consents to Lessee subleasing portions of the Leased Premises to Encore Capital Group, Inc., its affiliates, successors and assigns ("Encore").



12. **Indemnification.** Lessee agrees to indemnify and hold Lessor harmless from any and all liability resulting from Lessee's use of the Leased Premises or resulting from any repairs or alterations which Lessee may make upon the Leased Premises. Lessor agrees to indemnify and hold Lessee harmless from and against any claim, loss, damage, liability or expense arising out of or resulting from any affirmative act, negligence, or omission of the Lessor or its agents, contractors, subcontractors or employees, or resulting from any repairs or alterations which Lessor may make upon the Leased Premises.

13. **Right to Enter.** Lessor, or Lessor's authorized agent or attorney, may, after reasonable notice to Lessee's manager, during normal business hours, enter upon the Leased Premises for the purpose of inspecting or maintaining the same or to make repairs, or to make such improvements in the Leased Premises or other premises in the Building as the Lessor may deem proper and there shall be no abatement of rent nor shall Lessor be liable for any loss of occupation or quiet enjoyment of the Leased Premises thereby occasioned. However, if Lessor makes repairs, alterations and improvements, and any such repairs, alterations and improvements cause Lessee to close its business for a certain period of time due to loss of business as a result of such repairs, alterations and improvements, then Lessee shall be entitled to a reasonable abatement of the Base Rent and all other amounts which Lessee is obligated to pay under this Lease for the period of time during which Lessee can not reasonably use the Leased Premises for the conduct of Lessee's business. The rights reserved by Lessor pursuant to this Section 13 shall not be exercised in such a manner so as to materially interfere with Lessee's use of the Leased Premises, and Lessor shall use reasonable efforts to coordinate such entry to avoid any such interference.

14. **Waiver of Subrogation.** Lessor and Lessee hereby release each other from and covenant that neither shall be liable to the other, the other's insurance carrier or carriers, or anyone claiming under or through the other for all liability for loss or damage whatsoever occasioned to property owned by said parties which is caused by or might be incident to or may be the result of fire or any other casualty against loss for which either party is covered by fire, extended coverage or other insurance policies, to the extent of such coverage, regardless of the cause or origin of such loss or damage, specifically including the negligence of the other party, the other's agents, employees, invitees or guests. Provided, however, that this waiver shall apply only when it will not exclude or reduce any benefits which would otherwise be payable under any policy of insurance.

15. **Utilities.** Lessee shall pay for all utilities used in the Leased Premises including, but not limited to, electricity, gas, water, and waste water and sewage disposal.

**16. Repairs and Maintenance.**

(a) Subject to subsection (b) below, Lessee agrees, throughout the Lease Term, to maintain the Leased Premises in good working condition and repair (reasonable wear and tear and Casualty (defined below) excepted), including, without limitation, all of the common areas, parking lot (including the snow removal and treatment of ice, and routine maintenance of the parking lot, excluding resurfacing and re-striping thereof), landscaping, and routine maintenance of the foundations, floors, exterior walls, roof and any other structural elements of the Building and the Leased Premises, and the interior of the Leased Premises. Unless otherwise stipulated herein, Landlord shall not be required to make any improvements to or repairs of any kind or character to the Leased Premises during the Lease Term.

(b) Lessor agrees to repair and replace (but not perform routine maintenance), as necessary, the parking lot (including resurfacing, re-striping, and replacing as reasonably necessary), foundations, floors, exterior walls, roof and all other structural elements of the Building and the Leased Premises upon the request of Lessee. Any such item shall be deemed to require replacement if the cost to repair is estimated to be at least thirty percent (30%) of the replacement cost. Lessor's costs for such repairs and replacements shall be reimbursed by Lessee pursuant to subsection (c) below, provided, however, that if the cost of any single improvement exceeds \$25,000, such expense shall be amortized over the useful life of the improvement at an interest rate of eight percent (8%) and only the amortized cost of such improvement shall be included in CAM Costs each Lease Year. Lessee, may, at Lessee's option, perform such repairs and replacements and receive reimbursement from Lessor of all costs incurred by Lessee in connection therewith within fifteen (15) days of Lessor's receipt of Lessee's invoice. Such reimbursement by Lessor shall not affect Lessee's obligations to repay such amounts in accordance with subsection (c) below.

(c) Lessee shall pay to Lessor on the first day of each of the first ten (10) calendar months (January thru October) throughout the Lease Term an amount equal to one tenth of the annual Common Area Maintenance Costs ("CAM Costs") for the Leased Premises. For purposes of this Lease, the CAM Costs for the Leased Premises shall mean (i) the real estate taxes and installments of special assessments which are payable for the Real Property, (ii) the cost of the "All Risk" property and liability insurance to be maintained by Lessor for the Leased Premises, and (iii) all reasonable costs relating to or incurred or paid by Lessor in connection with the operation, repair and maintenance of the Leased Premises.

(d) At Lessee's request, Lessor shall provide Lessee with supporting documentation for any element of the CAM Costs or any other charges passed through to Lessee under this Lease. In addition, no more than once each year, Lessee and/or Lessee's representatives shall have the right following reasonable notice to Lessor to inspect and audit Lessor's books and records pertaining to CAM Costs and any other charges passed through to Lessee under this Lease. Such inspection or audit shall take place at Lessor's principal office for the Leased Premises. In the event any such inspection or audit indicates that Lessee has overpaid any charges under this Lease, Lessor shall credit such overpayment to the next charges due Lessor under this Lease or refund to Lessee if for the final year. The provisions of this section shall survive termination or expiration of this Lease.

(e) Prior to the beginning of each calendar year, Lessor shall give Lessee notice of Lessor's estimate of the CAM Costs for the Leased Premises for the upcoming calendar year. Within sixty (60) days after the end of each calendar year, Lessor shall submit to Lessee a statement setting forth (i) the total amount of the CAM Costs for the Leased Premises that were actually paid by Lessor during the preceding calendar year, (ii) the actual amount of CAM Costs which were paid by Lessee during such preceding calendar year, and (iii) the total amount of the actual CAM Costs which should have been paid by Lessee for the preceding calendar year, such statement to provide such detail and supporting documentation reasonably requested by Lessee. Within thirty (30) days after the delivery of such statement (including any statement delivered after the expiration or termination of the Lease Term), the party in whose favor there exists a difference, if any, between (x) Lessee's CAM Costs for the Leased Premises (based on the costs actually incurred) for such calendar year, and (y) Lessee's payments of estimated CAM Costs, shall pay the amount of such difference to the other. In the case of any amount owed by Lessor hereunder prior to the expiration of the Lease Term, Lessor may at its option make payment by issuance of a rent credit.

17. **Condemnation.** If the entire Leased Premises or the Building in which the Leased Premises are located are taken by eminent domain or condemnation proceedings, this Lease shall automatically terminate as of the date of taking. In the event a portion of the Building or Leased Premises is taken by eminent domain or condemnation and such taking renders the Leased Premises unsuitable for the carrying on of Lessee's business therein, in Lessee's sole but reasonable discretion, Lessee shall have the right to terminate this Lease as of the date of such taking, provided Lessee gives written notice to Lessor within thirty (30) days after such taking. If a portion of the Building is taken by eminent domain or condemnation and this Lease is not thereby terminated, the Lessor shall, at Lessor's expense, restore the Leased Premises to as near the condition which existed immediately prior to the date of taking as reasonably possible, and the Base Rent and other costs which Lessee is obligated to pay Lessor under this Lease shall abate during such time the Leased Premises are un-tenantable or partially un-tenantable, in the proportion that the un-tenantable portion of the Leased Premises bears to the entire Leased Premises, and Base Rent shall thereafter equitably adjust to reflect the reduced size of the Leased Premises. In the event of any condemnation as aforesaid, either whole or partial, Lessee shall not be entitled to any portion of the award paid for the condemnation and Lessor is to receive the full amount of such award, Lessee hereby expressly waiving any right or claim to any portion thereof, provided, however, that Lessee shall have the right to claim and recover from the condemning authority, but not from Lessor, such compensation as may be separately awarded or recoverable by Lessee on account of any and all damage to Lessee's business by reason of the taking and for or on account of any cost or loss to which Lessee might be put in removing its furniture, fixtures, leasehold improvements and equipment.

18. **Destruction.** If the Leased Premises or Building are damaged or destroyed by fire or other casualty (each a "Casualty") so as to make the Leased Premises or any material portion of the Leased Premises un-tenantable and Casualty cannot be repaired within ninety (90) days of the date of such Casualty, Lessee shall have the right to terminate the Lease as of the date of such Casualty by giving to Lessor written notice of an intention to do so within thirty (30) days after the date of such Casualty. If such notice is not given or if the damage can be repaired within ninety (90) such days, the Lessor shall at Lessor's own expense, restore the Building

and Leased Premises to as near the condition which existed immediately prior to such Casualty, as reasonably possible, and the Base Rent and all other costs which Lessee is obligated to pay Lessor under this Lease shall abate during such time the Leased Premises are un-tenantable or partially un-tenantable, in the proportion that the un-tenantable portion of the Leased Premises bears to the entire Leased Premises

In addition, if the Casualty occurs less than two (2) years prior to the end of the Initial Term or less than two (2) years prior to the end of the Extended Term, Lessor may terminate this Lease, by written notice to Lessee, as of the Casualty if the restoration may not reasonably be completed within ninety (90) days after the Casualty. Notwithstanding the preceding sentence, if Lessor notifies Lessee of Lessor's decision to terminate this Lease in the last two (2) years prior to the end of the Initial Term, Lessor's termination notice shall void if within thirty (30) days of receipt of the termination notice Lessee notifies Landlord of Lessee's exercise of the Option. If a termination notice is not given, the Lessor shall at Lessor's own expense, restore the Building and Leased Premises to as near the condition which existed immediately prior to such Casualty, as reasonably possible, and the Base Rent and all other costs which Lessee is obligated to pay Lessor under this Lease shall abate during such time the Leased Premises are un-tenantable or partially un-tenantable, in the proportion that the un-tenantable portion of the Leased Premises bears to the entire Leased Premises; provided, however, that in the event the Leased Premises are not so restored within ninety (90) such days, Lessee may upon the expiration of said ninety (90) day period by notice to Lessor terminate this Lease as of the date of Casualty.

19. **Intentionally Omitted.**

20. **Surrender.** Upon the expiration or termination of the Lease Term, Lessee shall remove its goods and effects and those of all persons claiming under Lessee and shall quit and deliver up the Leased Premises, and all thereof, to Lessor peaceably and quietly, in as good order and condition as the same were in on the date the Lease Term commenced, reasonable wear and tear, damage by Acts of God and unforeseen causes, and loss by Casualty excepted.

21. **Holding Over.** Should Lessee continue to occupy the Leased Premises after expiration of the Lease Term or any renewal or renewals hereunder, such tenancy shall be from month to month at a Base Rent of 1.25 times the Base Rent of the previous month.

22. **Default.**

(a) Lessor hereby agrees that in case Lessee shall default in making its payments hereunder or in the observance or performance of any of Lessee's other covenants, agreements, or obligations hereunder, or if Lessee shall be adjudged bankrupt or insolvent, or if a proceeding be commenced against Lessee for the purpose of subjecting the assets of Lessee to any law relating to bankruptcy or insolvency, Lessor shall give Lessee notice of such default Lessee shall cure such default, if it consists of the failure to pay rent or make any other money payment, within ten (10) days following the giving of such notice and the Lessee shall commence to cure any other default within thirty (30) days following the giving of such notice and shall diligently proceed and complete the curing within a reasonable time. If Lessee fails to cure such default after notice as hereinabove provided for, then, in that event, the Lessor may, in

addition to rights or remedies available to Lessor by law, reenter into the Leased Premises and remove all persons and property therefrom, and at its option, terminate this Lease as to all future rights of Lessee and have, regain, repossess and enjoy the Leased Premises as in the first instance, anything herein to the contrary notwithstanding, and Lessee hereby waives the service of any notice in writing of intention to re-enter as aforesaid, and also all right of restoration to possession thereof. In case of any such termination, the Lessee will be liable for and will indemnify the Lessor against all loss of rents and other damage which Lessor may incur by reason of such termination during the residue of the Lease Term. If it is necessary for any party to retain the services of an attorney at law to enforce any of the terms, covenants or provisions hereof or to collect any sums due hereunder, the party which is in default of any of the terms, covenants and provisions hereof, or who has failed to make payment of the sums due, shall pay to the prevailing party the reasonable value of such services. Neither acceptance of rent by Lessor, with or without knowledge of default, nor failure by Lessor or Lessee to take action on account of any default hereunder or to enforce its rights hereunder shall be deemed a waiver of any default or right, and absent written notice or consent, said default shall be a continuing one.

(b) Lessor shall not exercise any remedies otherwise available to Lessor under this Lease and/or at law or in equity without having given the notices and allowed the cure periods expressly set forth in this Lease. Lessor shall in no event be entitled to accelerate rent. Lessor shall use reasonable efforts to mitigate damages resulting from any default by Lessee and, in no event, shall Lessor be entitled to double recovery of damages.

(c) Lessor shall not be deemed in default of any of its obligations hereunder unless and until Lessor shall have failed to commence performance of such obligations within thirty (30) days after notice in writing to Lessor by Lessee. In the event Lessor does not diligently proceed to cure such default upon notice, or if such default is not cured within a reasonable time, Lessee may at its option terminate this Lease or may incur any expense necessary to perform the obligation of Lessor specified in such notice and deduct such expense from the Base Rent and other charges owed to Lessor next becoming due. Notwithstanding anything to the contrary in this Section 22, in the event of an emergency, Lessee may take such actions that are reasonably necessary to protect persons or property without prior notice to Lessor.

23. **Cure.** Anything contained herein to the contrary notwithstanding, if either party shall default in the observance or performance of any of its obligations, covenants or agreements hereunder wherein the default in the observance or performance of any of its obligations, covenants or agreements hereunder wherein the default can be cured by the expenditure of money, the other party may after notice as otherwise herein provided, but without any obligation on its part, and without limiting any other remedies which it may have by reason of such default, cure the default, charge the cost thereof to the other party and the other party shall pay the same forthwith upon demand, together with interest thereon at ten (10%) percent per annum (the "Interest Rate"). In addition, if Lessor fails to reimburse Lessee for any amount for which Lessee is entitled to reimbursement under this Lease, Lessee may deduct such amount, plus interest thereon at the Interest Rate from the date incurred until the date so offset, from the next accruing amounts of Base Rent due under this Lease, provided that in no event may Tenant deduct more than 50% of any single Base Rent payment (and if the total amount available for offset exceeds 50% of one month's Base Rent, Lessee may carry forward the excess to future months, so long as Lessee never offsets more than 50% in any month).

24. **Estoppel, Certificates and Subordination.** Lessor and Lessee each agree that at any time during the Lease Term, within ten (10) business days after request by the other party, that it will execute, acknowledge and deliver to the requesting party or any prospective purchaser, assignee or mortgagee, an Estoppel Certificate in form reasonably acceptable to the requesting party.

Lessee shall, in the event any proceedings are brought for the foreclosure of or in the event of exercise of the power of sale under any mortgage made by Lessor covering the Leased Premises, pay any and all rental payments due hereunder to the purchaser upon any such foreclosure or sale and recognize such purchaser as the Lessor under this lease.

Lessee agrees that this Lease shall be subordinate to any mortgages or trust deeds now existing or that may hereafter be placed upon the Leased Premises or any part thereof and to any and all advances to be made thereunder and to the interest thereon and all renewals, refinancing, replacements and extensions thereof, but only if any such mortgagee or trustee agrees that if, by dispossession, foreclosure or otherwise, the holder thereof, or any successor in interest, shall come into possession of the Leased Premises, or shall become the owner of the Leased Premises, or take over the rights of Lessor in the Leased Premises, such holder will not disturb the possession, use or enjoyment of the Leased Premises by Lessee, its successors or permitted assigns, nor disaffirm this Lease or Lessee's rights, or estate hereunder, so long as Lessee shall attorn to the said holder and all the obligations of Lessee are fully performed in accordance with this Lease. Upon request by Lessor or any other party in interest, Lessee shall execute and furnish promptly such instruments or certificates as may be requested to carry out the provisions of this Section.

If Lessee requests, then Lessor shall use its best efforts to promptly deliver to Lessee a commercially reasonable form of recognition and non-disturbance agreement, in recordable form, executed by all parties that hold a mortgage, deed of trust or other security interest in the Shopping Center that would be superior to Lessee's leasehold interest under this Lease. Lessor shall use diligent efforts to provide Lessee with executed originals of such recognition and non-disturbance agreements.

25. **Quiet Enjoyment.** Lessor covenants that Lessee, on paying the rent and CAM Costs and performing the covenants hereof, shall at all times during the Lease Term, peaceably and quietly have, hold and possess and enjoy the Leased Premises.

26. **Signs.** Lessee may place and maintain in and about the Leased Premises such neat and appropriate signs advertising its business as it shall desire. These signs shall be constructed and placed so as to not cause damage to the Leased Premises and so as to not be a health or safety hazard. All proposed exterior signs indicating and advertising Lessee's use of the Leased Premises shall be subject to prior approval of the Lessor as to size, color, materials or construction, location, lighting and times when signs will be lit or illuminated, which approval shall not be unreasonably withheld, conditioned or delayed.

27. **Notices.** Any notice required by the terms of this Lease to be given to the other party hereto shall be deemed to be duly given if addressed to such party by registered or certified mail at the address following:

If to Lessor: Sundance III, LLC  
1090 2<sup>nd</sup> Street South  
Suite 2 A  
Sartell, MN 56377

If to Lessee: c/o CompuCredit  
5 Concourse Parkway, Suite 400  
Atlanta, GA 30328  
Attn: Rohit H. Kirpalani, General Counsel

Or such other place as may be specified in writing by the party.

28. **Heirs, Assigns, Etc.** Each provision herein shall bind and inure to the benefit of Lessor and Lessee as the case may be and to their respective heirs, executors, administrators and/or assigns and successors.

29. **Recording.** If either of the parties hereto desire to record this Lease, the Lessor and Lessee agree to execute a short form of this lease, which short form Lease Lessor will cause to be recorded in the appropriate public office for that purpose.

30. **Noncompetition.** During the Lease Term and any extensions or renewals thereof, Lessor shall not lease for use as, or permit any other space in the Building to be used for a call center or any other entity that may cause a competitive employment situation for Lessee.

31. **Tenant Improvements.** Lessor is hereby obligated to complete all Tenant Improvements requested by Lessee, and to amortize the requested Tenant Improvement costs over the Lease Term at an annual interest rate of 8%. Lessor is also authorized to make any other Improvements to the Lease Premises that may be deemed necessary by Lessor at Lessor's cost.

32. **Facility Enhancements.**

(a) Lessee intends to perform the repairs and replacements identified on the attached Exhibit B (the "Facility Enhancements"). The Facility Enhancements performed by Lessee that are estimated to cost less than \$25,000 shall be paid by Lessee without reimbursement or contribution by Lessor.

(b) The Facility Enhancements performed by Lessee that are estimated to cost \$25,000 or more (the "Amortized Facility Enhancements") shall be initially paid for by Lessee, and Lessor shall reimburse Lessee, within fifteen (15) days of Lessor's receipt of Lessee's invoice, for the cost of the Amortized Facility Enhancements performed by Lessee in accordance with Exhibit B. The Amortized Facility Enhancements shall be amortized over the periods identified on Exhibit B at an annual interest rate of eight percent (8%) and Lessee shall repay the amortized cost of the Amortized Facility Enhancements through payment of CAM Costs during each year of the Lease Term.

33. **Brokerage.** Lessor acknowledges that CBRE is acting as agent for Lessee and will be paid a Commission by the Lessor pursuant to a separate agreement executed on August 16, 2007.

34. **Termination Option.** Lessee will have the right to terminate the Lease by providing twelve (12) months prior written notice to Lessor. A Lease termination fee equal to the 105% of the unamortized Tenant Improvements and Commissions shall be paid to Lessor prior to the effective date of such early termination.

35. **Captions and Pronouns.** The captions and headings of the various Sections of this Lease have been inserted for convenience only and shall not in any manner be construed as confirming, affecting or limiting in any way the scope or intent of the provisions hereof. Whenever the context requires or permits, the singular shall include the plural, the plural shall include the singular and the masculine, feminine and neuter shall be interchangeable.

36. **Entire Agreement.** This Lease together with the Exhibits attached hereto contain the entire agreement between the parties hereto with respect to the Leased Premises and the other matters addressed by this Lease and may not be modified, altered or amended in whole or in part unless reduced in writing and signed by both parties hereto.

37. **Counterparts.** This Lease may be executed in one or more counterparts, each of which shall be an original but all of which together shall be deemed to constitute a single agreement. Separate signature pages may be attached to a copy of this Lease in order to form a fully-executed document.



**38. Contingency.** This Lease is contingent upon Assignee entering into a sublease with Encore or another party in accordance with Section 11 above (together with Encore, the "Sublessee") that irrevocably commits Sublessee to sublease a portion of the Leased Premises from Lessee (the "Contingency"). Lessee shall work diligently and in good faith to satisfy the Contingency. In the event the Contingency has not been satisfied on or before 5:00 p.m. (Central) on October 31, 2007, then Lessee may terminate this Agreement by providing written notice to Lessor on or before such date, in which case this Lease shall terminate. If Lessee does not provide its written notice of termination by 5:00 p.m. (Central) on October 31, 2007, then this Contingency shall be deemed waived and this Lease shall remain in full force and effect.

IN WITNESS WHEREOF, Lessor has executed this Lease to be effective as of the date first above written.

**LESSOR:**

Sundance III, LLC

By: /s/ Stuart N. Swenson

Name: Stuart N. Swenson

Title: President

STATE OF MINNESOTA )  
   )ss.  
 COUNTY OF Benton     )

On this 12<sup>th</sup> day of October, 2007 before me, a Notary Public with and for said County, personally appeared Stuart N. Swenson, to me personally known, who did say that Stuart N. Swenson is the President of Sundance III, LLC, the limited liability company described in and who executed the foregoing instrument and acknowledged that said instrument to be the free act and deed of said limited liability company.

/s/ Greg E. Goetz

Notary Public

My Commission Expires 1/31/2010

IN WITNESS WHEREOF, Lessee has executed this Lease to be effective as of the date first above written.

**LESSEE:**

FMT Services, Inc.

By: /s/ David M. Burton

Name: David M. Burton

Title: President

STATE OF MINNESOTA )

) ss.

COUNTY OF Hennepin )

On this 11<sup>th</sup> day of October, 2007 before me, a Notary Public, within and for said County, personally appeared David Burton, to me personally known who did say that he is the President of FMT Services, Inc., a Nevada corporation, described in and who executed the foregoing instrument and acknowledged that said instrument to be the free act and deed of said corporation.

/s/ Gayle S. Terry

Notary Public

# MULTI-TENANT NET COMMERCIAL LEASE

Dated: February 20, 2008

1. BASIC LEASE TERMS. For purposes of this Lease, the following terms have the following definitions and meanings:

(a) Landlord: PRANJIWAN R. LODHIA and LOLITA LODHIA

Landlord's Address (For Notice): 1900 OAKDALE AVENUE, SAN FRANCISCO, CA 94124 or such other place as Landlord may from time to time designate by notice to Tenant.

(b) Tenant: ENCORE CAPITAL GROUP, INC., a Delaware corporation.

Tenant's Trade Name: MIDLAND CREDIT MANAGEMENT, INC., a Kansas corporation.

Tenant's Address for Notices: 8875 AERO DRIVE, SUITE 200, SAN DIEGO, CA 92123.

(c) Premises: Address: 4302 EAST BROADWAY ROAD, PHOENIX ("City"), State of ARIZONA 85040 ("State").

The Premises consists of the Building and improvements located at the address above, as more specifically depicted on Exhibit "A". The Building contains approximately 32,611 Rentable Square Feet (subject to adjustment as provided in this Lease)

(d) Tenant's share of Common Area Operating Expenses: 52% ("Tenant Share") as determined by the pro-rata square footage of the Building as compared to the total square footage of all buildings in the Project which is 62,611 Square Feet.

(e) Initial Term: SIXTY (60) Calendar Months.

(f) Commencement Date: OCTOBER 1, 2008

(g) Expiration Date: SEPTEMBER 30, 2013

(h) Base Rent Schedule:

<u>Effective Date(s)</u>	<u>Monthly Base Rent Amount</u>
<u>OCTOBER 1, 2008 through SEPTEMBER 30, 2011</u>	<u>\$26,741.02 NNN per month</u>
<u>OCTOBER 1, 2011 through SEPTEMBER 30, 2013</u>	<u>\$27,719.35 NNN per month</u>

(i) Additional Rent-Minimum Monthly Operating Expense Charge: No minimum.

Additional Payment-Monthly Amortized Tenant Improvement Repayment: \$7,265.42 per month for the Initial Term and \$0 per month for any subsequent term, presuming that the maximum amount is being loaned on the terms set forth in Subparagraph 1 (n).

(j) Security Deposit: \$42,400.00 less any credit from the Security Deposit then remaining on the lease on the 4310 Space (defined below).

(k) Permitted Use: GENERAL OFFICE and no other use without the express written consent of Landlord.

(l) Broker(s): NONE

(m) Option to Extend: Tenant shall have two (2), five-year options to extend the lease under the terms. See Exhibit F.

(n) Tenant Improvements: Landlord will fund to Tenant and pay for \$50,000.00 in Tenant Improvement costs and fees upon execution of the Lease. If requested by Tenant, Landlord will provide and lend to Tenant additional monies up to \$350,000.00, at Tenant's election, for additional Tenant Improvement costs and fees to be repaid to Landlord over the initial five (5) year term of the Lease or sooner, at Tenant's election, at an interest rate of 9% per annum. If Tenant defaults or breaches the terms of this Lease, all monies owed to Landlord for the additional Tenant Improvements becomes immediately due and payable upon written demand. See Exhibit D.

(o) Exhibits: A through E, inclusive, which Exhibits are attached to this Lease and incorporated herein by this reference.

(p) Landlord and Tenant both acknowledge that there is an existing Lease in place between Landlord and Tenant's affiliate, Midland Credit Management, Inc. ("Midland") for approximately 62,611 square feet of space located at 4302 and 4310 East Broadway Road, Phoenix, AZ 85040 (the "4310 Space") with termination date of September 30, 2008. The 4310 Space will not be included in this Lease and Midland intends to terminate its interest in the 4310 Space at the end of its lease term. Landlord agrees to mitigate Midland's Lease obligation for this space if Landlord is able to find another tenant to take over the 4310 Space before Midland's Lease terminates. If Landlord is successful at placing a new tenant into 4310 Space before the current Lease termination on September 30, 2008, Landlord will release Midland (and Tenant, if obligated) from any remaining Lease obligations for the 4310 Space.

This Paragraph 1 represents a summary of the basic terms and definitions of this Lease. In the event of any inconsistency between the terms contained in this Paragraph 1 and any specific provision of this Lease, the terms of the more specific provision shall prevail.

## 2. PREMISES AND COMMON AREAS.

(a) Premises. Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the Premises and the Building and improvements situated thereon, upon and subject to the terms, covenants and conditions contained in this Lease to be performed by each party.

(b) Tenant's Use of Common Areas. During the Term of this Lease, Tenant shall have the nonexclusive right to use in common with all other occupants of the Project, the following common areas of the Project (collectively, the "Common Areas"): the parking facilities of the Project which serve the Building, loading and unloading areas, trash areas, roadways sidewalks, walkways, parkways, driveways, landscaped areas, and similar areas and facilities situated within the Project and appurtenant to the Building which are not reserved for the exclusive use of any Project occupants. The foregoing notwithstanding, Tenant will be entitled to the exclusive use of 142 parking spaces (53 in the back (i.e., Wood Street) parking lot and 89 surrounding the building) in accordance with Paragraph 32, at no additional cost. The Common Areas and Tenant's exclusive parking are specifically identified in Exhibit A.

(c) Landlord's Reservation of Rights. Provided Tenant's use of and access to the Premises is not interfered with in an unreasonable manner or at unreasonable times, Landlord reserves for itself and for all other owner(s) and operator(s) of the Common Areas and the balance of the Project, the right from time to time to: (i) install, use, maintain, repair, replace and relocate pipes, ducts, conduits, wires and appurtenant meters and equipment above the ceiling surfaces, below the floor surfaces and within the walls of the Building; (ii) make changes to the design and layout of the Project, including, without limitation, changes to buildings, driveways, entrances, loading and unloading areas, direction of traffic, landscaped areas and walkways, parking spaces and parking areas; and (iii) use or close temporarily the Common Areas, and/or other portions of the Project while engaged in making improvements, repairs or alterations to the Building, the Project, or any portion thereof.

3. TERM. The term of this Lease ("Term") will be for the period designated in Subparagraph 1(e), commencing on the Commencement Date, and ending on the Expiration Date. Each consecutive twelve (12) month period of the Term of this Lease, commencing on the Commencement Date, will be referred to herein as a "Lease Year".

#### 4. POSSESSION.

(a) Delivery of Possession. Tenant is already in possession of the Premises; Landlord confirms delivery of physical possession of the Premises to Tenant as of the Commencement Date.

(b) Condition of Premises. By being in possession of the Premises, Tenant will be deemed to have accepted the Premises in its "as-is" condition on the date of delivery of possession and to have acknowledged that all work to be completed by Landlord has been completed and there are no additional items needing work or repair by Landlord. Landlord will provide Tenant \$50,000.00 towards Tenant Improvements at execution of this Lease. Landlord further agrees to provide up to an additional \$350,000.00 towards Tenant Improvements at commencement of this Lease. Tenant will be entitled to elect to receive any amount up to \$350,000 (the "Financed Amount"). Tenant will repay the Financed Amount to Landlord over the life of the initial five (5) year Lease term in equal monthly payments at an interest rate of 9% per annum. The foregoing sentence notwithstanding, Tenant shall have the right to prepay all or any portion of the Financed Amount during the five (5) year Lease term. If a Tenant default occurs pursuant to Subparagraph 22 (a) and remains after the application of any notice of default and opportunity to cure, all monies owed to Landlord for the additional Tenant Improvements becomes due and payable within five (5) days after written demand. Tenant will be responsible and manage all improvement projects. Tenant acknowledges that neither Landlord nor any agent of Landlord has made any representation or warranty with respect to the Premises, the Building, the Project or any portions thereof or with respect to the suitability of same for the conduct of Tenant's business and Tenant further acknowledges that Landlord will have no obligation to construct or complete any additional buildings or improvements within the Project.

#### 5. RENT.

(a) Monthly Base Rent. Tenant agrees to pay Landlord the Monthly Base Rent for the Premises (subject to adjustment as hereinafter provided) in advance on the first day of each calendar month during the Term without prior notice or demand, except that Tenant agrees to pay the Monthly Base Rent for the first month of the Term directly to Landlord concurrently with the Commencement Date. All rent must be paid to Landlord, without any deduction or offset, in lawful money of the United States of America, at the address designated by Landlord or to such other person or at such other place as Landlord may from time to time designate in writing. The Monthly Base Rent will be adjusted during the Term of this Lease as provided in Subparagraph 1(h).

(b) Additional Rent. All amounts and charges to be paid by Tenant hereunder, including, without limitation, payments for Operating Expenses, insurance and repairs, will be considered additional rent for purposes of this Lease, and the word "rent" as used in this Lease will include all such additional rent unless the context specifically or clearly implies that only Monthly Base Rent is intended. Tenant shall pay to Landlord, in addition to and along with the rental otherwise payable hereunder, a sum equal to the aggregate of any municipal, city, county, state or federal excise, sales, use or privilege taxes legally levied or imposed, or hereafter legally levied or imposed, during the Lease term or any extension or renewal, against or on account of the amounts payable hereunder or the receipts thereof by Landlord (except state, federal or any other income taxes imposed or levied against Landlord), which shall be paid monthly with the installments of Rent as hereinabove provided.

(c) Late Payments. Any payment of Monthly Base Rent and Additional Rent received more than 5 days after the first of a month will be deemed late. Late payments of Monthly Base Rent and/or any item of Additional Rent will be subject to interest and a late charge as provided in Subparagraph 22(f) below.

## 6. OPERATING EXPENSES.

(a) Operating Expenses. Throughout the Term of this Lease, commencing at the Commencement Date, Tenant agrees to pay Landlord as Additional Rent in accordance with the terms of this Paragraph 6, Tenant's Share of Operating Expenses for the taxes and insurance for the Project and all costs and expenses for the operation, maintenance, repair, and replacement of the Project as follows: (i) any form of real property tax assessment, levy, charge, improvement bond or similar imposition of any kind or nature real estate taxes and assessments levied upon the Building and Premises imposed by any authority having the direct power to tax, including applicable State, County, City governments or any school, agricultural, lighting, drainage or other improvement or special assessment district thereof; (ii) any and all assessments under any covenants, conditions and restrictions affecting the Project; (iii) water, sewer and other utility charges (iv) management costs ("Management Costs"), including, without limitation, (A) wages and salaries (including payroll taxes and similar charges) of property management employees and (B) management office rental, supplies, materials, equipment and tools including rental of personal property directly attributable to the management of the Project, which Management Costs will in no event increase more than five percent (5%) from the immediately prior calendar year; (v) repair and maintenance of the structural portions of the buildings with the Project, including the plumbing, heating, ventilating, air-conditioning and electrical systems installed or furnished by Landlord; (vi) maintenance, costs and upkeep of all parking and other Common Areas; (vii) depreciation on a straight line basis and rental of personal property used in maintenance; (viii) gardening and landscaping; (xv) maintenance of signs (other than signs of tenants of the Project); (xvi) personal property taxes levied on or attributable to personal property used in connection with the Common Areas; (ix) reasonable accounting, audit, verification, legal and other consulting fees; and (x) costs and expenses of repairs, resurfacing, repairing, maintenance, painting, lighting, cleaning, refuse removal, security and similar items, including appropriate reserves.

Notwithstanding the foregoing paragraph, the following shall not be included as Operating Expenses: (a) interest, points and fees on debt or amortization on or for any mortgage or similar security instrument (a "Security Instrument") encumbering the Project or any portion thereof, and all principal, escrow deposits and other sums paid on or in respect to any indebtedness (whether or not secured by a Security Instrument), and all costs incurred in connection with any financing, refinancing or syndication of the Project; (b) costs of capital improvements and any other expenditures that, under generally accepted accounting principles ("GAAP"), should be capitalized, except that Operating Expenses shall include the cost during the Term, as reasonably amortized by Landlord in accordance with GAAP, of any capital improvement; (c) costs of improvements to, or alterations of, space leased to or available for lease to any tenant; (d) costs of repairing or restoring any portion of the Project damaged by a fire or other casualty, except to the extent that such costs constitute expenses (as opposed to capital expenditures) under GAAP and do not exceed the amount of the deductible under the policy of casualty insurance maintained (or required to be maintained) by Landlord, or are not covered or paid for by insurance proceeds; (e) costs of repairs, alterations or replacements required as the result of the exercise of any right of eminent domain or conveyance in lieu thereof, except to the extent that such costs constitute expenses (as opposed to capital expenditures) under GAAP and are not part of the condemnation award payable to Landlord with respect thereto; (f) costs and expenses incurred in connection with leasing space in or procuring tenants for the Project, including, without limitation, leasing commissions and advertising expenses, and legal and other professional fees; (g) court costs and legal fees incurred to enforce the obligations of tenants under leases of portions of the Project, or resulting from the violation by Landlord of the terms and conditions of any lease; (h) costs of correcting defects in the initial construction of the Project, provided that this shall not exclude the cost of normal repair and maintenance expected with respect to the construction materials and equipment installed in the Project; (i) wages, salaries, compensation and benefits of any employees above the level of property manager; and (j) fines, interest, charges, penalties, damages and other costs incurred by Landlord by reason of any default (or claim of default) or late payment by it under any lease or other contract or instrument (regardless of whether or not the payment itself is allowed to be included in Operating Expenses), including, without limitation, any legal and other professional fees paid or incurred in connection therewith.

(b) Determination of Tenant's Monthly Operating Expense Charge. Tenant's Monthly Operating Expense Charge shall be determined as provided in Subparagraph 1(i) and as adjusted in this Paragraph 6 of this Lease.

(c) Estimate Statement. Prior to the Commencement Date and on or about March 1st of each subsequent calendar year during the Term of this Lease, Landlord will deliver to Tenant a statement ("Estimate Statement") wherein Landlord will

estimate both the Operating Expenses and Tenant's Monthly Operating Expense Charge for the then current calendar year. Tenant agrees to pay Landlord, as additional rent, Tenant's estimated Monthly Operating Expense Charge each month thereafter, beginning with the next installment of rent due (but not earlier than 20 days after Tenant's receipt of such estimate), until such time as Landlord issues a revised Estimate Statement or the Estimate Statement for the succeeding calendar year; except that, concurrently with the regular monthly rent payment next due following the receipt of each such Estimate Statement (but not earlier than 20 days after Tenant's receipt of such estimate), Tenant agrees to pay Landlord an amount equal to one monthly installment of Tenant's estimated Monthly Operating Expense Charge (less any applicable Operating Expenses already paid) multiplied by the number of months from January, in the current calendar year, to the month of such rent payment next due, all months inclusive. If at any time during the Term of this Lease, but not more often than quarterly Landlord reasonably determines that Tenant's Share of Operating Expenses for the current calendar year will be greater than the amount set forth in the then current Estimate Statement, Landlord may issue a revised Estimate Statement and Tenant agrees to pay Landlord, within twenty (20) days of receipt of the revised Estimate Statement, the difference between the amount owed by Tenant under such revised Estimate Statement and the amount owed by Tenant under the original Estimate Statement for the portion of the then current calendar year which has expired. Thereafter Tenant agrees to pay Tenant's Monthly Operating Expense Charge based on such revised Estimate Statement until Tenant receives the next calendar year's Estimate Statement or a new revised Estimate Statement for the current calendar year.

(d) Actual Statement. By April 1st of each calendar year during the Term of this Lease, Landlord will also deliver to Tenant a statement ("Actual Statement") which states Tenant's Share of the actual Operating Expenses for the preceding calendar year. If the Actual Statement reveals that Tenant's Share of the actual Operating Expenses is more than the total Additional Rent paid by Tenant for Operating Expenses on account of the preceding calendar year, Tenant agrees to pay Landlord the difference in a lump sum within twenty (20) days of receipt of the Actual Statement. If the Actual Statement reveals that Tenant's Share of the actual Operating Expenses is less than the Additional Rent paid by Tenant for Operating Expenses on account of the preceding calendar year, Landlord will credit any overpayment toward the next monthly installment(s) of Tenant's Share of the Operating Expenses due under this Lease

(e) Miscellaneous. Any delay or failure by Landlord in delivering any Estimate Statement or Actual Statement pursuant to this Paragraph 6 will not constitute a waiver of its right to require an increase in rent nor will it relieve Tenant of its obligations pursuant to this Paragraph 6, except that Tenant will not be obligated to make any payments based on such Estimate Statement or Actual Statement until twenty (20) days after receipt of such Estimate Statement or Actual Statement. If Tenant does not object to any Estimate Statement or Actual Statement within sixty (60) days after Tenant receives any such statement, such statement will be deemed final and binding on Tenant. Even though the Term has expired and Tenant has vacated the Premises, when the final determination is made of Tenant's Share of the actual Operating Expenses for the year in which this Lease terminates, Tenant agrees to promptly pay any increase due over the estimated expenses paid and, conversely, any overpayment made in the event said expenses decrease shall promptly be rebated by Landlord to Tenant. Such obligation will be a continuing one which will survive the expiration or termination of this Lease for a period of one year after the Expiration Date. Prior to the expiration or sooner termination of the Lease Term and Landlord's acceptance of Tenant's surrender of the Premises, Landlord will have the right to estimate the actual Operating Expenses for the then current Lease Year and to collect from Tenant prior to Tenant's surrender of the Premises, Tenant's Share of any excess of such actual Operating Expenses over the estimated Operating Expenses paid by Tenant in such Lease Year.

f) No Limitation on Yearly Increases. Except as otherwise provided for management costs as set forth in Subparagraph 6(a), there shall be no limit on yearly increase of the Operating Expenses per year over the previous year's Operating Expenses.

7. SECURITY DEPOSIT AND CLEANING FEE. Upon Tenant's execution of this Lease, Tenant will deposit or transfer deposit from existing Lease with Landlord the Security Deposit designated in Subparagraph 1(j). The Security Deposit will be held by Landlord as security for the full and faithful performance by Tenant of all of the terms, covenants, and conditions of this Lease to be kept and performed by Tenant during the Term hereof. The Security Deposit is not, and may not be construed by Tenant to constitute, rent for the last month or any portion thereof. If Tenant defaults with respect to any provisions of this Lease set forth in Subparagraph 22(a) including, but not limited to, the provisions relating

to the payment of rent or additional rent, Landlord may (but will not be required to) after applicable notice and cure periods, use, apply or retain all or any part of the Security Deposit for the payment of any rent or any other sum in default, or for the payment of any other amount which Landlord may spend by reason of Tenant's default or to compensate Landlord for any loss or damage which Landlord may suffer by reason of Tenant's default. If any portion of the Security Deposit is so used or applied, Tenant agrees, within ten (10) days after Landlord's written demand therefore, to deposit cash with Landlord in an amount sufficient to restore the Security Deposit to its original amount and Tenant's failure to do so shall constitute a default under this Lease. Landlord is not required to keep Tenant's Security Deposit separate from its general funds, and Tenant is not entitled to interest on such Security Deposit. If Tenant is not in default at the expiration or termination of this Lease, Landlord will return the Security Deposit to Tenant. Landlord's obligations with respect to the Security Deposit are those of a debtor and not of a trustee.

#### 8. USE.

(a) Tenant's Use of the Premises. The Premises may be used for the use or uses set forth in Subparagraph 1(l) only, and Tenant will not use or permit the Premises to be used for any other purpose without the prior written consent of Landlord, which consent Landlord may not be unreasonably withheld, conditioned or delayed. Nothing in this Lease will be deemed to give Tenant any exclusive right to such use in the Project.

(b) Compliance. At Tenant's sole cost and expense, Tenant agrees to procure, maintain and hold available for Landlord's inspection, all governmental licenses and permits required for the proper and lawful conduct of Tenant's business from the Premises, if any. Tenant agrees not to use, alter or occupy the Premises or allow the Premises to be used, altered and occupied in violation of, and Tenant, at its sole cost and expense, agrees its use and occupancy of the Premises, and the use and occupancy of others in the Premises to be in compliance with: (i) any and all laws, statutes, zoning restrictions, ordinances, rules, regulations, orders and rulings now or hereafter in force and any requirements of any insurer, insurance authority or duly constituted public authority having jurisdiction over the Premises, the Building or the Project now or hereafter in force, (ii) the requirements of the Board of Fire Underwriters and any other similar body, (iii) the Certificate of Occupancy issued for the Building, and (iv) any recorded covenants, conditions and restrictions and similar regulatory agreements, if any, which affect the use, occupation or alteration of the Premises, the Building and or the Project. Tenant agrees to comply with the Rules and Regulations referenced in Paragraph 28 below. Tenant agrees not to do or permit anything to be done in or about the Premises which will in any manner obstruct or interfere with the rights of other tenants or occupants of the Project, or injure or unreasonably annoy them, or use or allow the Premises to be used for any unlawful or unreasonably objectionable purpose. Tenant agrees not to place or store any articles or materials outside of the Premises or to cause, maintain or permit any nuisance or waste in, on, under or about the Premises or elsewhere within the Project. Tenant shall not use or allow the Premises to be used for lodging, bathing or the washing of clothes.

(c) Hazardous Materials. Except for ordinary and general office supplies, such as copier toner, liquid paper, glue, ink and common household cleaning materials (some or all of which may constitute "Hazardous Materials" as defined in this Lease), Tenant agrees not to cause or permit any Hazardous Materials to be brought upon, stored, used, handled, generated, released or disposed of on, in, under or about the Premises, the Building, the Common Areas or any other portion of the Project by Tenant, its agents, employees, subtenants, assignees, licensees, contractors or invitees (collectively, "Tenant's Parties"), without the prior written consent of Landlord, which consent Landlord may withhold in its sole and absolute discretion. Upon the expiration or earlier termination of this Lease, Tenant agrees to promptly remove from the Premises, the Building and the Project, at its sole cost and expense, any and all Hazardous Materials, including any equipment or systems containing Hazardous Materials which are installed, brought upon, stored, used, generated or released upon, in, under or about the Premises, the Building and/or the Project or any portion thereof by Tenant or any of Tenant's Parties. To the fullest extent permitted by law, Tenant agrees to promptly indemnify, protect, defend and hold harmless Landlord and Landlord's partners, officers, directors, employees, agents, successors and assigns (collectively, "Landlord Indemnified Parties") from and against any and all claims, damages, judgments, suits, causes of action, losses, liabilities, penalties, fines, expenses and costs (including, without limitation, clean-up, removal, remediation and restoration costs, sums paid in settlement of claims, attorneys' fees, consultant fees and expert fees and court costs) which arise or result from the presence of Hazardous Materials on, in, under or about the Premises, the Building or any other portion of the Project and which are caused or permitted by Tenant or any of Tenant's Parties. Tenant agrees to



promptly notify Landlord of any release of Hazardous Materials in the Premises, the Building or any other portion of the Project which Tenant becomes aware of during the Term of this Lease, whether caused by Tenant or any other persons or entities. In the event of any release of Hazardous Materials caused or permitted by Tenant or any of Tenant's Parties, Landlord shall have the right, but not the obligation, to cause Tenant to immediately take all steps Landlord deems necessary or appropriate to remediate such release and prevent any similar future release to the satisfaction of Landlord and Landlord's mortgagee(s). At all times during the Term of this Lease, Landlord will have the right, but not the obligation, to enter upon the Premises to inspect, investigate, sample and/or monitor the Premises to determine if Tenant is in compliance with the terms of this Lease regarding Hazardous Materials. As used in this Lease, the term "Hazardous Materials" shall mean and include any hazardous or toxic materials, substances or wastes as now or hereafter designated under any law, statute, ordinance, rule, regulation, order or ruling of any agency of the State, the United States Government or any local governmental authority, including, without limitation, asbestos, petroleum, petroleum hydrocarbons and petroleum based products, urea formaldehyde foam insulation, polychlorinated biphenyls ("PCBs"), and freon and other chlorofluorocarbons, except for ordinary and general office supplies, such as copier toner, liquid paper, glue, ink and common household cleaning materials. The provisions of this Subparagraph 8(c) will survive the expiration or earlier termination of this Lease. Tenant shall not be responsible for any pre-existing hazardous material conditions or for any encroachment of hazardous materials from any other suites or properties during the life of this lease.

(d) Refuse and Sewage. Tenant agrees not to keep any trash, garbage, waste or other refuse on the Premises except in sanitary containers and agrees to regularly and frequently remove same from the Premises. Tenant shall keep all containers or other equipment used for storage of such materials in a clean and sanitary condition. Tenant shall properly dispose of all sanitary sewage and shall not use the sewage disposal system for the disposal of anything except sanitary sewage. Tenant shall keep the sewage disposal system free of all obstructions and in good operating condition. If the volume of Tenant's trash becomes excessive in Landlord's judgment, Landlord shall have the right to charge Tenant for additional trash disposal services and/or to require that Tenant contract directly for additional trash disposal services at Tenant's sole cost and expense.

9. NOTICES. Any notice required or permitted to be given hereunder must be in writing and may be given by personal delivery (including delivery by overnight courier or an express mailing service) or by mail, if sent by registered or certified mail. Notices to Tenant shall be sufficient if delivered to Tenant at the Tenant's Address for Notices Subparagraph 1b. Either party may specify a different address for notice purposes by written notice to the other. While Tenant is in possession of the Premises, notices to the Tenant may also be delivered to the Premises. Notice shall be deemed given when delivered (or upon refusal of acceptance of delivery), if given by personal delivery, otherwise one (1) business day following delivery to a nationally-recognized overnight courier service or three (3) business days following deposit in the United States mail.

10. BROKERS. Landlord and Tenant each represents and warrants to the other that no finder, broker or other person is entitled to any commission, fee or other compensation in connection with any of the transactions contemplated by this Lease.

#### 11. SURRENDER; HOLDING OVER.

(a) Surrender. The voluntary or other surrender of this Lease by Tenant, or a mutual cancellation thereof, shall not constitute a merger, and shall, at the option of Landlord, operate as an assignment to Landlord of any or all subleases or subtenancies. Upon the expiration or earlier termination of this Lease, Tenant agrees to peaceably surrender the Premises to Landlord broom clean and in a state of good order, repair and condition, ordinary wear and tear and casualty damage excepted, with all of Tenant's personal property and alterations removed from the Premises to the extent required under Paragraph 13 and all damage caused by such removal repaired as required by Paragraph 13. The delivery of keys to any employee of Landlord or to Landlord's agent or any employee thereof alone will not be sufficient to constitute a termination of this Lease or a surrender of the Premises.

(b) Holding Over. If Tenant holds over after the expiration or earlier termination of the Term, Landlord may, at its option, treat Tenant as a tenant at sufferance only, and such continued occupancy by Tenant shall be subject to all of the terms, covenants and conditions of this Lease, so far as applicable, including the payment of Operating Expenses, except that the Monthly Base Rent for any month or partial month during which Tenant holds over shall be equal to one hundred and

fifty percent (150%) of the Monthly Base Rent in effect under this Lease immediately prior to such holdover. Acceptance by Landlord of rent after such expiration or earlier termination will not result in a renewal of this Lease. If Tenant fails to surrender the Premises upon the expiration of this Lease in accordance with the terms of this Paragraph 11 despite demand to do so by Landlord, Tenant agrees to promptly indemnify, protect, defend and hold Landlord harmless from all claims, damages, judgments, suits, causes of action, losses, liabilities, penalties, fines, expenses and costs (including attorneys' fees and costs), including, without limitation, costs and expenses incurred by Landlord in returning the Premises to the condition in which Tenant was to surrender it and claims made by any succeeding tenant founded on or resulting from Tenant's failure to surrender the Premises. The provisions of this Subparagraph 11(b) will survive the expiration or earlier termination of this Lease

12. TAXES ON TENANT'S PROPERTY. Tenant agrees to pay before delinquency, all taxes and assessments (real, to the extent Landlord is not otherwise obligated to pay them as contemplated by Subparagraph 6(a), and personal) levied against Tenant's business operations or any personal property, improvements, alterations, trade fixtures or merchandise placed by Tenant in or about the Premises.

13. ALTERATIONS. Tenant shall not make any alterations to the Premises or any other aspect of the Project; without Landlord's prior written consent, which consent Landlord may withhold in its reasonable but subjective discretion. All permitted alterations must be performed in compliance with Landlord's standard rules and regulations regarding alterations. All alterations will become the property of Landlord and will remain upon and be surrendered with the Premises at the end of the Term of this Lease; provided however, Landlord may require Tenant to remove any unique alterations at the end of the Term of this Lease. If Tenant fails to remove such by the expiration or earlier termination of this Lease all of its personal property, or any unique alterations identified by Landlord for removal, Landlord may, at its option, treat such failure as a hold-over pursuant to Subparagraph 11(b) above, and/or Landlord may (without liability to Tenant for loss thereof) treat such personal property and or alterations as abandoned and, at Tenant's sole cost and expense and in addition to Landlord's other rights and remedies under this Lease, at law or in equity: (a) remove and store such items; and/or (b) upon ten (10) days' prior notice to Tenant, sell, discard or otherwise dispose of all or any such items at private or public sale for such price as Landlord may obtain or by other commercially reasonable means. Tenant shall be liable for all costs of disposition of Tenant's abandoned property and Landlord shall have no liability to Tenant with respect to any such abandoned property. Landlord agrees to apply the proceeds of any sale of any such property to any amounts due to Landlord under this Lease from Tenant (including Landlord's attorneys' fees and other costs incurred in the removal, storage and sale of such items), with any remainder to be paid to Tenant.

#### 14. REPAIRS.

(a) Landlord's Obligations. Landlord agrees to repair and maintain the Project common areas and the structural portions of the Building, including the foundations, bearing and exterior walls (excluding glass), sub-flooring and roof (excluding skylights), and the unexposed electrical, plumbing and sewer systems, including those portions of such systems which are outside the Premises, gutters and downspouts on the, unless such maintenance and repairs are caused in part or in whole by the act, neglect or omission of any duty by Tenant, its agents, servants, employees or invitees, in which case Tenant will pay to Landlord, as additional rent, the reasonable cost of such maintenance and repairs. The costs of maintenance and repairs performed by Landlord will be included in Operating Expenses as provided for in Subparagraph 6 (a). Except as provided in this Subparagraph 14(a), Landlord has no obligation to alter, remodel, improve, repair, decorate or paint the Premises or any part thereof. Landlord will not be liable for any failure to make any such repairs or to perform any maintenance unless such failure shall persist for an unreasonable time after written notice of the need of such repairs or maintenance is given to Landlord by Tenant, which time shall be deemed unreasonable should Landlord fail to commence repair within 30 days of such notice. Tenant will not be entitled to any abatement of rent and Landlord will not have any liability by reason of any injury to or interference with Tenant's business arising from the making of any repairs, alterations or improvements in or to any portion of the Building or the Premises or in or to fixtures, appurtenances and equipment therein. Tenant waives the right to make repairs at Landlord's expense under any law, statute, ordinance, rule, regulation, order or ruling.

(b) Tenant's Obligations. Tenant agrees to keep, maintain and preserve the Premises in a state of condition and repair consistent with the Building and, when and if needed, at Tenant's sole cost and expense, to make all repairs to the

Premises and every part thereof including, without limitation, all interior walls, storefronts, floors, ceilings, interior and exterior doors and windows and fixtures and interior plumbing and the heating, ventilating and air conditioning systems which serve the Premises, but excluding such maintenance and repairs Landlord is obligated to make herein. Any such maintenance and repairs will be performed by Landlord's contractor, or at Landlord's option, by such contractor or contractors as Tenant may choose with approval from Landlord. Tenant agrees to pay all costs and expenses incurred in such maintenance and repair in accordance with the Arizona Prompt Pay Act. If Tenant refuses or neglects to repair and maintain the Premises properly as required hereunder to the reasonable satisfaction of Landlord, Landlord, at any time following ten (10) days from the date on which Landlord makes a written demand on Tenant to effect such repair and maintenance, may enter upon the Premises and make such repairs and/or maintenance, and upon completion thereof, Tenant agrees to pay to Landlord as additional rent, Landlord's costs for making such repairs plus an amount not to exceed ten percent (10%) of such costs for overhead, within ten (10) days of receipt from Landlord of a written itemized bill therefore. Any amounts not reimbursed by Tenant within such ten (10) day period will bear interest at the Interest Rate (defined below) until paid by Tenant.

15. LIENS. Tenant agrees not to permit any mechanic's, materialmen's or other liens to be filed against all or any part of the Project, the Building or the Premises, nor against Tenant's leasehold interest in the Premises, by reason of or in connection with any repairs, alterations, improvements or other work contracted for or undertaken by Tenant or any other act or omission of Tenant or Tenant's agents, employees, contractors, licensees or invitees. At Landlord's request, Tenant agrees to provide Landlord with enforceable, conditional and final lien releases (or other evidence reasonably requested by Landlord to demonstrate protection from liens) from all persons furnishing labor and/or materials at the Premises. Landlord will have the right at all reasonable times to post on the Premises and record any notices of non-responsibility which it deems necessary for protection from such liens. If any such liens are filed, Tenant will, at its sole cost and expense, promptly cause such liens to be released of record or bonded so that it no longer affects title to the Project, the Building or the Premises. If Tenant fails to cause any such liens to be so released or bonded within twenty (20) days after Tenant's receipt of notice of the filing thereof, such failure will be deemed a material breach by Tenant under this Lease without the benefit of any additional notice or cure period described in Paragraph 22 below, and Landlord may, without waiving its rights and remedies based on such breach, and without releasing Tenant from any of its obligations, cause such liens to be released by any means it shall deem proper, including payment in satisfaction of the claims giving rise to such liens. Tenant agrees to pay to Landlord within ten (10) days after receipt of invoice from Landlord, any sum paid by Landlord to remove such liens, together with interest at the Interest Rate from the date of such payment by Landlord.

16. ENTRY BY LANDLORD. Landlord and its employees and agents will at all reasonable times have the right to enter the Premises to inspect the same, to show the Premises to prospective purchasers or tenants, to post notices of non-responsibility, and/or to repair the Premises as permitted or required by this Lease. In exercising such entry rights, Landlord will minimize, as reasonably practicable, the interference with Tenant's business, and will provide Tenant at least 72 hours notice to Tenant (except no notice will be required in the event of an emergency). Tenant may alter any lock or install any new or additional locks or bolts on any door of the Premises without Landlord's prior written consent and without providing Landlord with a key to all such locks. Except in the case of the negligence or willful misconduct of Landlord, any entry to the Premises obtained by Landlord during an emergency will not be construed or deemed to be a forcible or unlawful entry into the Premises, or an eviction of Tenant from the Premises and Landlord will not be liable to Tenant for any damages or losses resulting from any such entry.

17. UTILITIES AND SERVICES. Throughout the Term of this Lease, Tenant shall pay directly to the utility company providing such service all costs for water, gas, heat, light, power, sewer, electricity, telephone and other services metered, chargeable or provided to the Premises. Landlord will not be liable to Tenant for any failure to furnish any of the foregoing utilities and services if such failure is caused by all or any of the following: (i) accident, breakage or repairs, (ii) strikes lockouts or other labor disturbance or labor dispute of any character; (iii) governmental regulation, moratorium or other governmental action or inaction; (iv) inability despite the exercise of reasonable diligence to obtain electricity, water or fuel or (v) any other cause beyond Landlord's reasonable control. In addition, in the event of any stoppage or interruption of services or utilities, Tenant shall not be entitled to any abatement or reduction of rent (except as expressly provided in Subparagraphs 20(f) or 21(b) if such failure results from a damage or taking described therein), no eviction of Tenant will result from such failure and Tenant will not be relieved from the performance of any covenant or agreement in this Lease because of such failure. In the event of any failure, stoppage or interruption thereof, Landlord agrees to diligently attempt to resume service promptly.

## 18. INDEMNIFICATION.

(a) Except for the negligence or willful misconduct of Landlord, Landlord's management agent, and mortgagee, if any, and their respective principals, officers, agents, servants, employees, and contractors (collectively, the Landlord Parties) Tenant shall indemnify, save harmless and defend Landlord, and the Landlord Parties from and against all claims, actions, damages, liability and expense, including without limitation reasonable attorneys' fees and expenses incurred by Landlord in connection with any loss of life, personal injury or damage to property or business arising out of or in any way connected with the Premises or Tenant's operations, the condition, use, maintenance, repair, or occupancy of the Premises, or in any way arising out of the activities in the Premises, Common Areas, or other portions of the Project, of the Tenant or its sublessees or their respective agents, employees, servants, invitees, or contractors.

(b) Except for the negligence or willful misconduct of Tenant, Landlord shall indemnify, save harmless and at Tenant's option, defend Tenant and its respective principals, officers, agents, servants, employees, and contractors from and against all claims, actions damages, liability and expense, including without limitation reasonable attorneys' fees and expenses incurred by Tenant, in connection with any loss of life personal injury or damage to property or business arising out of or in any way connected with the Landlord's use or occupancy of the Common Area or Landlord's operations, conduct, acts or omissions in respect to the Project.

(c) Survival; No Release of Insurers. Tenant's indemnification obligations under Paragraph 18 will survive the expiration or earlier termination of this Lease.

## 19. INSURANCE.

(a) Tenant's Insurance. On or before the earlier to occur of (i) the Commencement Date, or (ii) the date Tenant commences any work of any type in the Premises pursuant to this Lease (which may be prior to the Commencement Date), and continuing throughout the entire Term hereof and any other period of occupancy, Tenant agrees to keep in full force and effect, at its sole cost and expense, a commercial policy of general liability and fire insurance insuring Landlord and Tenant (and if requested by Landlord, the Landlord's lender and property manager) against any liability for bodily injury, property damage (including loss of use of property) and personal injury arising out of the ownership, use, occupancy, or maintenance of the Premises. Such insurance shall be in the amount of not less than \$1,000,000 per occurrence. The limit of any such insurance shall not, however, limit the liability of Tenant hereunder. Tenant may provide this insurance under a blanket policy, provided that said insurance shall have a Landlord's protective liability endorsement attached thereto, listing Landlord and Landlord's agent(s) as additional insured. Landlord reserves the right to require any other form or forms of insurance as Tenant or Landlord or any mortgagees of Landlord may reasonably require from time to time in form, in amounts, and for insurance risks against which, a prudent tenant would protect itself, but only to the extent coverage for such risks and amounts are available in the insurance market at commercially acceptable rates. Landlord makes no representation that the limits of liability required to be carried by Tenant under the terms of this Lease are adequate to protect Tenant's interests and Tenant should obtain such additional insurance or increased liability limits as Tenant deems appropriate.

(b) Supplemental Tenant Insurance Requirements. All policies must be in a form reasonably satisfactory to Landlord and issued by an insurer admitted to do business in the State. All policies must be issued by insurers with a minimum policyholder rating of "A-" and a minimum financial rating of "VII" in the most recent version of Best's Key Rating Guide. All policies must contain a requirement to notify Landlord (and Landlord's property manager and any mortgagees or ground lessors of Landlord who are named as additional insured, if any) in writing not less than thirty (30) days prior to any material change, reduction in coverage, cancellation or other termination thereof, or within thirty (30) days in the case of non-payment of premium. Tenant agrees to deliver to Landlord, as soon as practicable after placing the required insurance, but in any event within the time frame specified in Subparagraph 19(a) above, certificate(s) of insurance and/or if required by Landlord, certified copies of each policy evidencing the existence of such insurance and Tenant's compliance with the provisions of this Paragraph 19. If any such initial or replacement policies or certificates are not

furnished within the time(s) specified herein, Landlord will have the right, but not the obligation, to obtain such insurance as Landlord deems necessary to protect Landlord's interests at Tenant's expense. Tenant's insurance must also contain a provision that the insurance afforded by such policy is primary insurance and any insurance carried by Landlord and Landlord's property manager or Landlord's mortgagees or ground lessors, if any, will be excess over and non-contributing with Tenant's insurance.

(c) Waiver of Subrogation. Tenant's property insurance shall contain a clause whereby the insurer waives all rights of recovery by way of subrogation against Landlord. Tenant shall also obtain and furnish evidence to Landlord of the waiver by Tenant's worker's compensation insurance carrier of all rights of recovery by way of subrogation against Landlord.

## 20. DAMAGE OR DESTRUCTION.

(a) Partial Destruction. If the Premises or the Building are damaged by fire or other casualty to an extent not exceeding twenty-five percent (25%) of the full replacement cost thereof, and Landlord's contractor reasonably estimates in a writing delivered to Landlord and Tenant that the damage thereto may be repaired, reconstructed or restored to substantially its condition immediately prior to such damage within one hundred eighty (180) days from the date of such casualty, and Landlord will receive insurance proceeds sufficient to cover the costs of such repairs, reconstruction and restoration (including proceeds from Tenant and/or Tenant's insurance which Tenant is required to deliver to Landlord pursuant to Subparagraph 20(d) below to cover Tenant's obligation for the costs of repair, reconstruction and restoration of any portion of the tenant improvements and any alterations for which Tenant is responsible under this Lease), then Landlord agrees to commence and proceed diligently with the work of repair, reconstruction and restoration and this Lease will continue in full force and effect.

(b) Substantial Destruction. Any damage or destruction to the Premises or the Building which Landlord is not obligated to repair pursuant to Subparagraph 20(a) above will be deemed a substantial destruction. In the event of a substantial destruction, Landlord may elect within 30 days after such casualty to either: (i) repair, reconstruct and restore the portion of the Building or the Premises damaged by such casualty, in which case this Lease will continue in full force and effect, subject to Tenant's termination right contained in Subparagraph 20(c) below; or (ii) terminate this Lease effective as of the date which is thirty (30) days after Tenant's receipt of Landlord's election to so terminate.

(c) Termination Rights. If Landlord elects to repair, reconstruct and restore pursuant to Subparagraph 20(b)(i) hereinabove, and if Landlord's contractor estimates that as a result of such damage, Tenant cannot be given reasonable use of and access to the Premises within two hundred ten (210) days after the date of such damage, then either Landlord or Tenant may terminate this Lease effective upon delivery of written notice to the other within ten (10) days after Landlord delivers notice to Tenant of its election to so repair, reconstruct or restore; provided, however, Tenant shall have no right to terminate this Lease if Landlord can relocate Tenant to other comparable Premises in the Building or the Project within ninety (90) days after the date of such damage.

(d) Tenant's Costs and Insurance Proceeds. In the event of any damage or destruction of all or any part of the Premises, Tenant agrees to immediately (i) notify Landlord thereof, and (ii) deliver to Landlord all property insurance proceeds received by Tenant with respect to any tenant improvements installed by or at the cost of Tenant and any alterations, but excluding proceeds for Tenant's furniture, fixtures, equipment and other personal property, whether or not this Lease is terminated as permitted in this Paragraph 20, and Tenant hereby assigns to Landlord all rights to receive such insurance proceeds to the extent of any balance of the Monthly Amortized Tenant Improvement Repayment then due. Upon delivery of such insurance proceeds to Landlord, the amount of such insurance proceeds will be credited against the balance of the Monthly Amortized Tenant Improvement Repayment obligation. If for any reason (including Tenant's failure to obtain required insurance), Tenant fails to receive insurance proceeds covering the full replacement cost of any tenant improvements and any alterations which are damaged, Tenant will be deemed to have self-insured the replacement cost of such items, and upon any damage or destruction thereto, Tenant agrees to immediately pay to Landlord the full replacement cost of such items, less any insurance proceeds actually received by Landlord from Landlord's or Tenant's insurance with respect to such items.

(e) Abatement of Rent. In the event of any damage, repair, reconstruction and/or restoration described in this Paragraph 20, rent will be abated or reduced, as the case may be, from the date of such casualty in proportion to the degree to which Tenant's use of the Premises is impaired during such period of repair until such use is restored. Except for abatement of rent as provided hereinabove, Tenant will not be entitled to any compensation or damages for loss of, or interference with, Tenant's business or use or access of all or any part of the Premises or for lost profits or any other consequential damages of any kind or nature, which result from any such damage, repair, reconstruction or restoration.

(f) Damage near End of Term. Landlord and Tenant shall each have the right to terminate this Lease if any damage to the Premises or the Building occurs during the last twelve (12) months of the Term of this Lease where Landlord's contractor estimates in a writing delivered to Landlord and Tenant that the repair, reconstruction or restoration of such damage cannot be completed within sixty (60) days after the date of such casualty. If either party desires to terminate this Lease under this Subparagraph (f), it shall provide written notice to the other party of such election within ten (10) days after its receipt of Landlord's contractor's repair estimates.

(g) Waiver of Termination Right. Landlord and Tenant agree that the foregoing provisions of this Paragraph 20 are to govern their respective rights and obligations in the event of any damage or destruction and supersede and are in lieu of the provisions of any applicable law, statute, ordinance, rule, regulation, order or ruling now or hereafter in force which provide remedies for damage or destruction of leased premises (including, without limitation, to the extent the Premises are located in California, the provisions of California Civil Code Section 1932, Subsection 2, and Section 1933, Subsection 4 and any successor statute or laws of a similar nature).

## 21. EMINENT DOMAIN.

(a) Substantial Taking. If the whole of the Premises, or such part thereof as shall substantially interfere with Tenant's use and occupancy of the Premises, as contemplated by this Lease, is taken for any public or quasi-public purpose by any lawful power or authority by exercise of the right of appropriation, condemnation or eminent domain, or sold to prevent such taking, either party will have the right to terminate this Lease effective as of the date possession is required to be surrendered to such authority.

(b) Partial Taking; Abatement of Rent. In the event of a taking of a portion of the Premises which does not substantially interfere with Tenant's use and occupancy of the Premises including any temporary taking of ninety (90) days or less, then, neither party will have the right to terminate this Lease and Landlord will thereafter proceed to make a functional unit of the remaining portion of the Premises (but only to the extent Landlord receives proceeds therefore from the condemning authority), and rent will be abated with respect to the part of the Premises which Tenant is deprived of on account of such taking. Notwithstanding the immediately preceding sentence to the contrary, if any part of the Building or the Project is taken (whether or not such taking substantially interferes with Tenant's use of the Premises), Landlord may terminate this Lease upon thirty (30) days' prior written notice to Tenant if Landlord also terminates the leases of the other tenants of the Building which are leasing comparably sized space for comparable lease terms.

(c) Condemnation Award. In connection with any taking of the Premises or the Building, Landlord will be entitled to receive the entire amount of any award which may be made or given in such taking or condemnation, without deduction or apportionment for any estate or interest of Tenant, it being expressly understood and agreed by Tenant that no portion of any such award will be allowed or paid to Tenant for any so-called bonus or excess value of this Lease, and such bonus or excess value will be the sole property of Landlord. Tenant agrees not to assert any claim against Landlord or the taking authority for any compensation because of such taking (including any claim for bonus or excess value of this Lease); provided, however, if any portion of the Premises is taken, Tenant will have the right to recover from the condemning authority (but not from Landlord) any compensation as may be separately awarded or recoverable by Tenant for the taking of Tenant's furniture, fixtures, equipment and other personal property within the Premises, for Tenant's relocation expenses, and for any loss of goodwill or other damage to Tenant's business by reason of such taking.

## 22. DEFAULTS AND REMEDIES.

(a) Defaults. The occurrence of any one or more of the following events will be deemed a default by Tenant:

(i) Intentionally omitted.

(ii) The failure by Tenant to make any payment of Base Rent or Additional Rent or any other payment required to be made by Tenant hereunder, as and when due, where such failure continues for a period of five (5) days after written notice thereof from Landlord to Tenant; provided, however, that any such notice will be in lieu of, and not in addition to, any notice required under applicable law (including, without limitation, to the extent the Premises are located in Arizona regarding unlawful detainer actions or any successor statute or law of a similar nature.

(iii) The failure by Tenant to observe or perform any of the express or implied covenants or provisions of this Lease to be observed or performed by Tenant, other than as specified in Subparagraph 22(a)(i) or (ii) above, where such failure continues for a period of thirty (30) days after written notice thereof from Landlord to Tenant. The provisions of any such notice will be in lieu of, and not in addition to, any notice required under applicable law (including, without limitation, to the extent the Premises are located in Arizona regarding unlawful detainer actions and any successor statute or similar law. If the nature of Tenant's default is such that more than thirty (30) days are reasonably required for its cure, then Tenant will not be deemed to be in default if Tenant, with Landlord's concurrence, commences such cure within such thirty (30) day period and thereafter diligently prosecutes such cure to completion.

(iv) (A) The making by Tenant of any general assignment for the benefit of creditors; (B) the filing by or against Tenant of a petition to have Tenant adjudged a bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy unless, in the case of a petition filed against Tenant, the same is dismissed within sixty (60) days; (C) the appointment of a trustee or receiver to take possession of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where possession is not restored to Tenant within thirty (30) days; or (D) the attachment, execution or other judicial seizure of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease where such seizure is not discharged within thirty (30) days.

(b) Landlord's Remedies: Termination. In the event of any default by Tenant, in addition to any other remedies available to Landlord at law or in equity under applicable law (including, without limitation, to the extent the Premises are located in Arizona and any successor statute or similar law), Landlord will have the immediate right and option to terminate this Lease and all rights of Tenant hereunder. If Landlord elects to terminate this Lease then, to the extent permitted under applicable law, Landlord may recover from Tenant: (i) the worth at the time of award of any unpaid rent which had been earned at the time of such termination; plus (ii) the worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rent loss that Tenant proves could have been reasonably avoided; plus (iii) the worth at the time of award of the amount by which the unpaid rent for the balance of the Term after the time of award exceeds the amount of such rent loss that Tenant proves could be reasonably avoided; plus (iv) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which, in the ordinary course of things, results therefrom including, but not limited to: attorneys' fees and costs; brokers' commissions; the costs of refurbishment, alterations, renovation and repair of the Premises, and removal (including the repair of any damage caused by such removal) and storage (or disposal) of Tenant's personal property, equipment, fixtures, alterations, the tenant improvements and any other items which Tenant is required under this Lease to remove but does not remove, as well as the unamortized value of any free rent, reduced rent, and any tenant improvement allowance or other costs or economic concessions provided, paid, granted or incurred by Landlord to the extent unpaid, pursuant to this Lease. As used in Subparagraphs 22(b) (i) and (ii) above, the "worth at the time of award" is computed by allowing interest at the Interest Rate of 10% per annum (the "Interest Rate").

(c) Landlord's Remedies; Re-Entry Rights. In the event of any default by Tenant, in addition to any other remedies available to Landlord under this Lease, at law or in equity, Landlord will also have the right, with or without terminating this Lease, to re-enter the Premises and remove all persons and property from the Premises; such property may be removed and stored in a public warehouse or elsewhere and or disposed of at the sole cost and expense of and for the account of Tenant in accordance with the provisions of Paragraph 13 of this Lease or any other procedures permitted by applicable law. No reentry or taking possession of the Premises by Landlord pursuant to this Subparagraph 22(c) will be construed as an election to terminate this Lease unless a written notice of such intention is given to Tenant or unless the termination thereof is decreed by a court of competent jurisdiction.

(d) Landlord's Remedies; Re-Letting. If Landlord does not elect to terminate this Lease, Landlord may from time to time, without terminating this Lease, either recover all rent as it becomes due or re-let the Premises or any part thereof on terms and conditions as Landlord in its sole and absolute discretion may deem advisable with the right to make alterations and repairs to the Premises in connection with such re-letting. If Landlord elects to re-let the Premises, then rents received by Landlord from such re-letting will be applied: first, to the payment of any indebtedness other than rent due hereunder from Tenant to Landlord; second, to the payment of any cost of such re-letting; third, to the payment of the cost of any alterations and repairs to the Premises incurred in connection with such re-letting; fourth, to the payment of rent due and unpaid hereunder and the residue, if any, will be held by Landlord and applied to payment of future rent as the same may become due and payable hereunder. Should that portion of such rents received from such re-letting during any month, which is applied to the payment of rent hereunder, be less than the rent payable during that month by Tenant hereunder, then Tenant agrees to pay such deficiency to Landlord immediately upon demand therefore by Landlord. Such deficiency will be calculated and paid monthly.

(e) Landlord's Remedies; Performance for Tenant. All covenants and agreements to be performed by Tenant under any of the terms of this Lease are to be performed by Tenant at Tenant's sole cost and expense and without any abatement of rent. If Tenant fails to pay any sum of money owed to any party other than Landlord, for which it is liable under this Lease, or if Tenant fails to perform any other act on its part to be performed hereunder, and such failure continues for thirty (30) days after notice thereof by Landlord, Landlord may, without waiving or releasing Tenant from its obligations, but shall not be obligated to, make any such payment or perform any such other act to be made or performed by Tenant. Tenant agrees to reimburse Landlord upon demand for all sums so paid by Landlord and all necessary incidental costs, together with interest thereon at the Interest Rate of 10% per annum, from the date of such payment by Landlord until reimbursed by Tenant. This remedy shall be in addition to any other right or remedy of Landlord set forth in this Paragraph 22

(f) Late Payment. If Tenant fails to pay any installment of rent within five (5) days of when due or if Tenant fails to make any other payment for which Tenant is obligated under this Lease within five (5) days of when due, such late amount will accrue interest at the Interest Rate of 10% per annum until such amount is paid by Tenant to Landlord. In addition, Tenant agrees to pay to Landlord concurrently with such late payment amount, as additional rent, a late charge equal to ten percent (10%) of the amount due or \$500, whichever is less, to compensate Landlord for the extra costs Landlord will incur as a result of such late payment. Landlord and Tenant agree that such late charge represents a fair and reasonable estimate of the costs that Landlord will incur by reason of any such late payment. Acceptance of any such interest and late charge will not constitute a waiver of the Tenant's default with respect to the overdue amount, or prevent Landlord from exercising any of the other rights and remedies available to Landlord. If Tenant incurs a late charge more than three (3) times in any period of twelve (12) months during the Lease Term, then, notwithstanding that Tenant cures the late payments for which such late charges are imposed, Landlord will have the right to require Tenant thereafter to pay all installments of Monthly Base Rent quarterly in advance in the form of a cashier's check throughout the remainder of the Lease Term. Any payments of any kind returned for insufficient funds will be subject to an additional handling charge of \$25.00, and thereafter, Landlord may require Tenant to pay all future payments of rent or other sums due by money order or cashier's check.

(g) Rights and Remedies Cumulative. All rights, options and remedies of Landlord contained in this Lease will be construed and held to be cumulative, and no one of them will be exclusive of the other, and Landlord shall have the right to pursue any one or all of such remedies or any other remedy or relief which may be provided by law or in equity, whether or not stated in this Lease. Nothing in this Paragraph 22 will be deemed to limit or otherwise affect Tenant's indemnification of Landlord pursuant to any provision of this Lease.

23. LANDLORD'S DEFAULT. Landlord will not be in default in the performance of any obligation required to be performed by Landlord under this Lease unless Landlord fails to perform such obligation within thirty (30) days after the receipt of written notice from Tenant specifying in detail Landlord's failure to perform; provided however, that if the nature of Landlord's obligation is such that more than thirty (30) days are required for performance, then Landlord will not be deemed in default if it commences such performance within such thirty (30) day period and thereafter diligently pursues the same to completion. Upon any default by Landlord, Tenant may exercise any of its rights provided at law or in equity, subject to the limitations on liability set forth in Paragraph 35 of this Lease.



## 24. ASSIGNMENT AND SUBLETTING

(a) Restriction on Transfer. Except as expressly provided in this Paragraph 24, Tenant will not, either voluntarily or by operation of law, assign or encumber this Lease or any interest herein or sublet the Premises or any part thereof, or permit the use or occupancy of the Premises by any party other than Tenant (any such assignment, encumbrance, sublease or the like will sometimes be referred to as a "Transfer"), without the prior written consent of Landlord, which consent Landlord will not unreasonably withhold, condition or delay. For purposes of this Paragraph 24, if Tenant is a corporation, partnership or other entity, any transfer, assignment, encumbrance or hypothecation of fifty percent (50%) or more (individually or in the aggregate) of any stock or other ownership interest in such entity, and/or any transfer or assignment of any controlling ownership or voting interest in such entity, will be deemed a Transfer and will be subject to all of the restrictions and provisions contained in this Paragraph 24; provided, however, this provision will not apply to public corporations, the stock of which is traded through a public stock exchange or over the counter system.

(b) Transfer Notice. If Tenant desires to effect a Transfer, then at least thirty (30) days prior to the date when Tenant desires the Transfer to be effective (the "Transfer Date"), Tenant agrees to give Landlord a notice (the "Transfer Notice"), stating the name, address and business of the proposed assignee, sublessee or other transferee (sometimes referred to hereinafter as "Transferee"), reasonable information (including references) concerning the character, ownership, and financial condition of the proposed Transferee, the Transfer Date, any ownership or commercial relationship between Tenant and the proposed Transferee, and the consideration and all other material terms and conditions of the proposed Transfer, all in such detail as Landlord may reasonably require.

(c) Landlord's Options. Within fifteen (15) days of Landlord's receipt of any Transfer Notice, and any additional information requested by Landlord concerning the proposed Transferee's financial responsibility, Landlord will notify Tenant of its election to do one of the following: (i) consent to the proposed Transfer subject to such reasonable conditions as Landlord may impose in providing such consent; (ii) refuse such consent, which refusal shall be on reasonable grounds; or (iii) terminate this Lease as to all or such portion of the Premises which is proposed to be sublet or assigned and recapture all or such portion of the Premises for re-letting by Landlord.

(d) Additional Conditions. A condition to Landlord's consent to any Transfer of this Lease will be the delivery to Landlord of a true copy of the fully executed instrument of assignment, sublease, transfer or hypothecation, in form and substance reasonably satisfactory to Landlord. Tenant agrees to pay to Landlord, as additional rent, all sums and other consideration payable to and for the benefit of Tenant by the assignee or sublessee in excess of the rent payable under this Lease for the same period and portion of the Premises. In calculating excess rent or other consideration which may be payable to Landlord under this paragraph, Tenant will be entitled to deduct commercially reasonable third party brokerage commissions and attorneys' fees and other amounts reasonably and actually expended by Tenant in connection with such assignment or subletting if acceptable written evidence of such expenditures is provided to Landlord. No Transfer will release Tenant of Tenant's obligations under this Lease or alter the primary liability of Tenant to pay the rent and to perform all other obligations to be performed by Tenant hereunder. Landlord may require that any Transferee remit directly to Landlord on a monthly basis, all moneys due Tenant by said Transferee. Consent by Landlord to one Transfer will not be deemed consent to any subsequent Transfer. In the event of default by any Transferee of Tenant or any successor of Tenant in the performance of any of the terms hereof, Landlord may proceed directly against Tenant without the necessity of exhausting remedies against such Transferee or successor. If Tenant effects a Transfer or requests the consent of Landlord to any Transfer (whether or not such Transfer is consummated), then, upon demand, Tenant agrees to pay Landlord a nonrefundable administrative fee of not more than Five Hundred Dollars (\$500.00), plus Landlord's reasonable attorneys' fees.

25. SUBORDINATION. Provided that Tenant's right to possession of the Premises will not be disturbed as long as Tenant is not in default under this Lease, without the necessity of any additional document being executed by Tenant for the purpose of effecting a subordination, and at the election of Landlord or any mortgagee or beneficiary with a deed of trust encumbering the Building and/or the Project, or any lessor of a ground or underlying lease with respect to the Building,

this Lease will be subject and subordinate at all times to: (i) all ground leases or underlying leases which may now exist or hereafter be executed affecting the Building; and (ii) the lien of any mortgage or deed of trust which may now exist or hereafter be executed for which the Building, the Project or any leases thereof, or Landlord's interest and estate in any of said items, is specified as security. Notwithstanding the foregoing, Landlord reserves the right to subordinate any such ground leases or underlying leases or any such liens to this Lease. If any such ground lease or underlying lease terminates for any reason or any such mortgage or deed of trust is foreclosed or a conveyance in lieu of foreclosure is made for any reason, at the election of Landlord's successor in interest, Tenant agrees to attorn to and become the tenant of such successor in which event. Tenant hereby waives its rights under any law which gives or purports to give Tenant any right to terminate or otherwise adversely affect this Lease and the obligations of Tenant hereunder in the event of any such foreclosure proceeding or sale. Tenant covenants and agrees to execute and deliver, upon demand by Landlord and in the form reasonably required by Landlord, any additional documents evidencing the priority or subordination of this Lease and Tenant's attornment agreement with respect to any such ground lease or underlying leases or the lien of any such mortgage or deed of trust. If Tenant fails to sign and return any such documents within ten (10) days of receipt, Tenant will be in default hereunder.

26. ESTOPPEL CERTIFICATE. Within ten (10) days following any written request which Landlord may make from time to time, Tenant agrees to execute and deliver to Landlord an Estoppel certificate, in Landlord's standard form or as may reasonably be required by Landlord's lender. Landlord and Tenant intend that any statement delivered pursuant to this Paragraph 26 may be relied upon by any mortgagee, beneficiary, purchaser or prospective purchaser of the Building or any interest therein. Tenant's failure to deliver such statement within such time will be conclusive upon Tenant (i) that this Lease is in full force and effect, without modification except as may be represented by Landlord, (ii) that there are no uncured defaults in Landlord's performance, and (iii) that not more than one (1) month's rent has been paid in advance. Without limiting the foregoing, if Tenant fails to deliver any such statement within such ten (10) day period, Landlord may deliver to Tenant an additional request for such statement and Tenant's failure to deliver such statement to Landlord within ten (10) days after delivery of such additional request will constitute a default under this Lease. Tenant agrees to indemnify and protect Landlord from and against any and all claims, damages, losses, liabilities and expenses (including attorneys' fees and costs) attributable to any failure by Tenant to timely deliver any such Estoppel certificate to Landlord as required by this Paragraph 26.

27. BUILDING PLANNING. Intentionally omitted.

28. RULES AND REGULATIONS. Tenant agrees to faithfully observe and comply with the "Rules and Regulations," a copy of which is attached hereto and incorporated herein by this reference as Exhibit "C and all reasonable and nondiscriminatory modifications thereof and additions thereto from time to time put into effect by Landlord. Landlord will not be responsible to Tenant for the violation or non-performance by any other tenant or occupant of the Building of any of the Rules and Regulations.

29. MODIFICATION AND CURE RIGHTS OF LANDLORD'S MORTGAGEES AND LESSORS. Tenant, within ten (10) days after request therefore, agrees to execute any reasonable amendments to this Lease which may be requested by any lender or ground lessor of the Project, provided any such amendments do not increase the obligations of Tenant under this Lease or adversely affect the leasehold estate created by this Lease. In the event of any default on the part of Landlord, Tenant will give notice by registered or certified mail to any beneficiary of a deed of trust or mortgage covering the Premises or ground lessor of Landlord whose address has been furnished to Tenant, and Tenant agrees to offer such beneficiary, mortgagee or ground lessor a reasonable opportunity to cure the default (including with respect to any such beneficiary or mortgagee, time to obtain possession of the Premises, subject to this Lease and Tenant's rights hereunder, by power of sale or a judicial foreclosure, if such should prove necessary to effect a cure).

30. DEFINITION OF LANDLORD. The term "Landlord," as used in this Lease, so far as covenants or obligations on the part of Landlord are concerned, means and includes only the owner or owners, at the time in question, of the fee title of the Premises or the lessees under any ground lease, if any. In the event of any transfer, assignment or other conveyance or transfers of any such title (other than a transfer for security purposes only), Landlord herein named (and in case of any subsequent transfers or conveyances, the then grantor) will be automatically relieved from and after the date of such transfer, assignment or conveyance of all liability as respects the performance of any covenants or obligations on the part

of Landlord contained in this Lease thereafter to be performed, so long as Landlord returns the Security Deposit to Tenant and the transferee assumes in writing all such covenants and obligations of Landlord arising after the date of such transfer. Landlord and Landlord's transferees and assignees have the absolute right to transfer all or any portion of their respective title and interest in the Project, the Building, the Premises and or this Lease without the consent of Tenant, and such transfer or subsequent transfer will not be deemed a violation on Landlord's part of any of the terms and conditions of this Lease.

31. **WAIVER.** The waiver by either party of any breach of any term, covenant or condition herein contained will not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition herein contained, nor will any custom or practice which may develop between the parties in the administration of the terms hereof be deemed a waiver of or in any way affect the right of either party to insist upon performance in strict accordance with said terms. The subsequent acceptance of rent or any other payment hereunder by Landlord will not be deemed to be a waiver of any preceding breach by Tenant of any term, covenant or condition of this Lease, other than the failure of Tenant to pay the particular rent so accepted, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such rent. No acceptance by Landlord of a lesser sum than the Base Rent and Additional Rent or other sum then due will be deemed to be other than on account of the earliest installment of such rent or other amount due, nor will any endorsement or statement on any check or any letter accompanying any check be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such installment or other amount or pursue any other remedy provided in this Lease. The consent or approval of Landlord to or of any act by Tenant requiring Landlord's consent or approval will not be deemed to waive or render unnecessary Landlord's consent or approval to or of any subsequent similar acts by Tenant.

32. **PARKING.** So long as this Lease is in effect and provided Tenant is not in default hereunder, Landlord grants to Tenant, Tenant's visitors and guests an exclusive license to use the parking areas which serve the Building subject to the terms and conditions of this Paragraph 32 and the Rules and Regulations regarding parking contained in Exhibit "E" attached hereto. Tenant's parking areas are restricted to the areas marked on Exhibit "E". Tenant will not use or allow any of Tenant's employees or guests to use any parking spaces which have been specifically assigned by Landlord to other tenants or occupants or for other uses such as visitor parking or which have been designated by any governmental entity as being restricted to certain uses. Landlord may assign any unreserved and unassigned parking spaces and/or make all or any portion of such spaces reserved, if Landlord reasonably determines that it is necessary for orderly and efficient parking or for any other reasonable reason. Tenant agrees to cause its employees, subtenants, assignees, contractors, suppliers, customers and invitees to comply with the Rules and Regulations. Landlord reserves the right from time to time to modify and/or adopt such other reasonable and non-discriminatory rules and regulations for the parking facilities as it deems reasonably necessary for the operation of the parking facilities.

33. **FORCE MAJEURE.** If either Landlord or Tenant is delayed, hindered in or prevented from the performance of any act required under this Lease by reason of strikes, lock-outs, labor troubles, inability to procure standard materials, failure of power, restrictive governmental laws, regulations or orders or governmental action or inaction (including failure, refusal or delay in issuing permits, approvals and/or authorizations which is not the result of the action or inaction of the party claiming such delay) riots, civil unrest or insurrection, war, fire, earthquake, flood or other natural disaster, unusual and unforeseeable delay which results from an interruption of any public utilities (e.g., electricity, gas, water, telephone) or other unusual and unforeseeable delay not within the reasonable control of the party delayed in performing work or doing acts required under the provisions of this Lease, then performance of such act will be excused for the period of the delay and the period for the performance of any such act will be extended for a period equivalent to the period of such delay. The provisions of this Paragraph 33 will not operate to excuse Tenant from prompt payment of rent or any other payments required under the provisions of this Lease.

34. **SIGNS.** Landlord will designate the location on the Premises, if any, for one or more Tenant identification sign(s). Tenant has no right to install Tenant identification signs in any other location in, on or about the Premises or the Project and will not display or erect any other signs, displays or other advertising materials that are visible from the exterior of the Building or from within the Building in any interior or exterior common areas. The size, design, color and other physical aspects of any and all permitted sign(s) will be subject to (i) Landlord's written approval prior to installation, which

approval may be withheld in Landlord's discretion, (ii) any covenants, conditions or restrictions and sign criteria governing the Project, and (iii) any applicable municipal or governmental permits and approvals. Tenant will be solely responsible for all costs for installation, maintenance, repair and removal of any Tenant identification sign(s). If Tenant fails to remove Tenant's sign(s) upon termination of this Lease and repair any damage caused by such removal, Landlord may do so at Tenant's sole cost and expense. Tenant agrees to reimburse Landlord for all costs incurred by Landlord to effect any installation, maintenance or removal on Tenant's account, which amount will be deemed additional rent, and may include, without limitation, all sums disbursed, incurred or deposited by Landlord including Landlord's costs, expenses and actual attorneys' fees with interest thereon at the Interest Rate from the date of Landlord's demand until paid by Tenant. Any sign rights granted to Tenant under this Lease are personal to Tenant and may not be assigned, transferred or otherwise conveyed to any assignee or subtenant of Tenant without Landlord's prior written consent, which consent Landlord may withhold in its sole and absolute discretion. Landlord hereby consents to the location, size, color, design and other physical aspects of Tenant's existing signs.

35. **LIMITATION ON LIABILITY.** In consideration of the benefits accruing hereunder, Tenant on behalf of itself and all successors and assigns of Tenant covenants and agrees that, in the event of any actual or alleged failure, breach or default hereunder by Landlord: Tenant's recourse against Landlord for monetary damages will be limited to Landlord's interest in the Building including, subject to the prior rights of any Mortgagee, Landlord's interest in the rents of the Building and any insurance proceeds payable to Landlord.

36. **FINANCIAL STATEMENTS.** Prior to the execution of this Lease by Landlord and at any time during the Term of this Lease upon the occurrence of a default under this Lease, Tenant agrees to provide Landlord with a current balance sheet for Tenant and any guarantors of Tenant. Such statements are to be prepared in accordance with generally accepted accounting principles and, if such is the normal practice of Tenant, audited by an independent certified public accountant.

37. **QUIET ENJOYMENT.** Landlord covenants and agrees with Tenant that upon Tenant paying the rent required under this Lease and paying all other charges and performing all of the covenants and provisions on Tenant's part to be observed and performed under this Lease, Tenant may peaceably and quietly have, hold and enjoy the Premises in accordance with this Lease.

38. **MISCELLANEOUS.**

(a) **Conflict of Laws.** This Lease shall be governed by and construed solely pursuant to the laws of the State of Arizona, without giving effect to choice of law principles hereunder.

(b) **Successors and Assigns.** Except as otherwise provided in this Lease, all of the covenants, conditions and provisions of this Lease shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns.

(c) **Professional Fees and Costs.** If either Landlord or Tenant should bring suit against the other with respect to this Lease, then all costs and expenses, including without limitation, actual professional fees and costs such as appraisers', accountants' and attorneys' fees and costs, incurred by the party which prevails in such action, whether by final judgment or out of court settlement, shall be paid by the other party, which obligation on the part of the other party shall be deemed to have accrued on the date of the commencement of such action and shall be enforceable whether or not the action is prosecuted to judgment. As used herein, attorneys' fees and costs shall include, without limitation, attorneys' fees, costs and expenses incurred in connection with any (i) post judgment motions; (ii) contempt proceedings; (iii) garnishment, levy and debtor and third party examination; (iv) discovery; and (v) bankruptcy litigation. Tenant agrees to pay all collection agency fees and attorneys' fees charged to Landlord in connection with any late payment or non-payment of rent or any other amounts due under this Lease including, without limitation, a fee of \$150.00 for the preparation of any demand for delinquent rent or any notice to pay rent or quit.

(d) **Terms and Headings.** The words "Landlord" and "Tenant" as used herein shall include the plural as well as the singular. Words used in any gender include other genders. The paragraph headings of this Lease are not a part of this Lease and shall have no effect upon the construction or interpretation of any part hereof.

(e) Time. Time is of the essence with respect to the performance of every provision of this Lease in which time of performance is a factor.

(f) Prior Agreement; Amendments. This Lease constitutes and is intended by the parties to be a final, complete and exclusive statement of their entire agreement with respect to the subject matter of this Lease. This Lease supersedes any and all prior and contemporaneous agreements and understandings of any kind relating to the subject matter of this Lease. There are no other agreements, understandings, representations, warranties, or statements, either oral or in written form, concerning the subject matter of this Lease. No alteration, modification, amendment or interpretation of this Lease shall be binding on the parties unless contained in a writing which is signed by both parties.

(g) Severability. The provisions of this Lease shall be considered severable such that if any provision or part of this Lease is ever held to be invalid, void or illegal under any law or ruling, all remaining provisions of this Lease shall remain in full force and effect to the maximum extent permitted by law.

(h) Recording. Neither Landlord nor Tenant shall record this Lease or a short form memorandum thereof without the consent of the other.

(i) Counterparts. This Lease may be executed in one or more counterparts, each of which shall constitute an original and all of which shall be one and the same agreement.

(j) Nondisclosure of Lease Terms. Tenant acknowledges and agrees that the terms of this Lease are confidential and constitute proprietary information of Landlord. Disclosure of the terms could adversely affect the ability of Landlord to negotiate other leases and impair Landlord's relationship with other tenants. Accordingly, Tenant agrees that it, and its partners, officers, directors, employees, agents and attorneys, shall not intentionally and voluntarily disclose the terms and conditions of this Lease to any newspaper or other publication or any other tenant or apparent prospective tenant of the Building or other portion of the Project, or real estate agent, either directly or indirectly, without the prior written consent of Landlord, provided, however, that Tenant may disclose the terms pursuant to Landlord's request for an Estoppel certificate, a subordination agreement or to prospective subtenants or assignees under this Lease.

(k) Non-Discrimination. Tenant acknowledges and agrees that there shall be no discrimination against, or segregation of, any person, group of persons, or entity on the basis of race, color, creed, religion, age, sex, marital status, national origin, or ancestry in the leasing, subleasing, transferring, assignment, occupancy, tenure, use, or enjoyment of the Premises, or any portion thereof.

(l) Waiver of Jury Trial. Owner and Tenant waive any right to trial by jury in any action or proceeding based upon, or related to, the subject matter of this Lease. This waiver is knowingly, intentionally, and voluntarily made by Tenant, and Tenant acknowledges that neither Owner nor any person acting on behalf of Owner has made any representation of fact to induce this waiver of trial by jury or in any way to modify or nullify its effect.

### 39. EXECUTION OF LEASE.

(a) Joint and Several Obligations. If more than one person executes this Lease as Tenant, their execution of this Lease will constitute their covenant and agreement that (i) each of them is jointly and severally liable for the keeping, observing and performing of all of the terms, covenants, conditions, provisions and agreements of this Lease to be kept, observed and performed by Tenant, and (ii) the term "Tenant" as used in this Lease means and includes each of them jointly and severally. The act of or notice from, or notice or refund to, or the signature of any one or more of them, with respect to the tenancy of this Lease, including, but not limited to, any renewal, extension, expiration, termination or modification of this Lease, will be binding upon each and all of the persons executing this Lease as Tenant with the same force and effect as if each and all of them had so acted or so given or received such notice or refund or so signed.

(b) Tenant as Corporation or Partnership. If Tenant executes this Lease as a corporation or partnership, then Tenant and the persons executing this Lease on behalf of Tenant represent and warrant that such entity is duly qualified and in good

standing to do business in Arizona and that the individuals executing this Lease on Tenant's behalf are duly authorized to execute and deliver this Lease on its behalf, and in the case of a corporation, in accordance with a duly adopted resolution of the board of directors of Tenant, a copy of which is to be delivered to Landlord on execution hereof, if requested by Landlord, and in accordance with the by-laws of Tenant, and, in the case of a partnership, in accordance with the partnership agreement and the most current amendments thereto, if any, copies of which are to be delivered to Landlord on execution hereof, if requested by Landlord, and that this Lease is binding upon Tenant in accordance with its terms.

(c) Examination of Lease. Submission of this instrument by Landlord to Tenant for examination or signature by Tenant does not constitute a reservation of or option for lease, and it is not effective as a lease or otherwise until execution by and delivery to both Landlord and Tenant.

40. CONTINUOUS OPERATION.

[Intentionally omitted].

41. OPERATING HOURS.

Tenant's business will be operated only during its normal business hours and days of the week. It is agreed, however, that the foregoing provision shall be subject to any governmental regulations to which Tenant may be subject concerning the hours of operation of Tenant's business.

42. OPTION TO EXTEND TERM: Tenant will have the option to extend the Term of this Lease for two (2), five-year periods (the "Extended Term"). See Exhibit F.

43. HVAC MAINTENANCE

Tenant shall maintain the HVAC on a ninety day service agreement.

IN WITNESS WHEREOF, the parties have caused this Lease to be duly executed by their duly authorized representatives as of the date first above written.

**LANDLORD:**

By: /s/ Pranjivan R. Lodhia  
Pranjivan R. Lodhia

By: /s/ Lolita Lodhia  
Lolita Lodhia

Dated: April 16, 2008

**TENANT:**

ENCORE CAPITAL GROUP, INC., a Delaware corporation

By: /s/ Paul Grinberg  
Paul Grinberg, EVP and CFO

Dated: \_\_\_\_\_

## CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER

I, J. Brandon Black, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Encore Capital Group, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons fulfilling the equivalent functions):
  - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 4, 2008

By: /s/ J. Brandon Black

J. Brandon Black  
President and Chief Executive Officer

## CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER

I, Paul Grinberg, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Encore Capital Group, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons fulfilling the equivalent functions):
  - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 4, 2008

By: /s/ Paul Grinberg

Paul Grinberg  
Executive Vice President, Chief Financial  
Officer and Treasurer



**ENCORE CAPITAL GROUP, INC.**  
**CERTIFICATION OF CHIEF EXECUTIVE OFFICER AND CHIEF FINANCIAL OFFICER**  
**PURSUANT TO 18 U.S.C. SECTION 1350,**  
**AS ADOPTED PURSUANT TO**  
**SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report of Encore Capital Group, Inc. (the "Company") on Form 10-Q for the period ended June 30, 2008 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), each of the undersigned certifies, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to the best of his knowledge:

- (1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the consolidated financial condition and results of operations of the Company.

/s/ J. Brandon Black

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J. Brandon Black  
*President and Chief Executive Officer*

August 4, 2008

/s/ Paul Grinberg

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Paul Grinberg  
*Executive Vice President, Chief  
Financial Officer and Treasurer*

August 4, 2008