

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, DC 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of report (Date of earliest event reported): September 30, 2005

**ENCORE CAPITAL GROUP, INC.**

(Exact Name of Registrant as Specified in Charter)

**Delaware**  
(State or Other Jurisdiction  
of Incorporation)

**000-26489**  
(Commission File  
Number)

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

**8875 Aero Drive, Suite 200, San Diego, California**  
(Address of Principal Executive Offices)

**92123**  
(Zip Code)

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

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

**Item 1.01 Entry into a Material Definitive Agreement.**

On September 13, 2005, Encore Capital Group, Inc. (the "Company") entered into a Purchase Agreement (the "Purchase Agreement") by and among J.P. Morgan Securities Inc. and Morgan Stanley & Co. Incorporated (the "Initial Purchasers") relating to its offering of \$90,000,000 aggregate principal amount of 3.375% Convertible Senior Notes due September 19, 2010 (the "Notes"). The Notes were issued pursuant to an Indenture dated September 19, 2005 (the "Indenture") between the Company and JP Morgan Chase Bank, N.A., as Trustee (the "Trustee"). In accordance with the terms of the Purchase Agreement, the Initial Purchasers had a 30 day option to purchase up to an additional \$10,000,000 principal amount of Notes solely to cover overallocments (the "Overallocation Option"). A copy of the Purchase Agreement is attached as Exhibit 1.1 to the Form 8-K filed on September 19, 2005, and is incorporated herein by reference.

Pursuant to the Purchase Agreement, on September 30, 2005, the Initial Purchasers notified the Company that they were exercising the Overallocation Option. In connection with the exercise of the Overallocation Option, on September 30, 2005 the Company also entered into a Convertible Note Hedge Confirmation (the "Hedge Confirmations") and a Warrant Confirmation (the "Warrant Confirmations") (the Hedge Confirmations together with the Warrant Confirmations, the "Call Spread Agreements") with each of JPMorgan Chase Bank, National Association, an affiliate of J.P. Morgan Securities Inc., and Morgan Stanley International Limited, an affiliate of Morgan Stanley & Co. Incorporated (each such affiliate, the "Dealers"). The Call Spread Agreements will have the impact of increasing the effective conversion price of the Notes from the Company's perspective from \$22.34 per share of the Company's common stock to at least \$29.0388 per share.

Under the Hedge Confirmations, upon the conversion of Notes pursuant to their terms, the Dealers are required, subject to the conditions therein, to deliver to the Company the number of shares of the Company's common stock that the Company is obligated to deliver to the holders of the Notes with respect to the conversion, calculated exclusive of shares deliverable by the Company by reason of any additional (or "make whole") premium relating to the Notes or by reason of any election by the Company to unilaterally increase the conversion rate pursuant to the Indenture. The Hedge Confirmations expire at the close of trading on September 19, 2010, which is the maturity date of the Notes, although the Dealers will have ongoing obligations with respect to Notes properly converted on or prior to that date of which the Dealers has been timely notified.

See Item 3.02 of this Current Report on Form 8-K for a description of the Warrant Confirmations and the warrants issued pursuant thereto. Copies of the Hedge Confirmations and the Warrant Confirmations are attached hereto as Exhibits 10.1, 10.2, 10.3, and 10.4, and are incorporated herein by reference.

**Item 3.02 Unregistered Sales of Equity Securities.**

As discussed above, concurrent with the exercising of the Overallotment Option, the Company purchased from each of the Dealers, a convertible note hedge at a combined cost to be determined by the Calculation Agent pursuant to the Hedge Confirmations. The Company also sold to the Dealers warrants to purchase an aggregate of 358,142 shares of our common stock and received net proceeds from the sale to be determined by the Calculation Agent pursuant to the Warrant Confirmations, bringing the total number of shares of common stock subject to warrants sold pursuant to all warrant confirmations entered into in connection with the offering of the Notes and the exercise of the Overallotment Option (including the warrant confirmations disclosed in the Company's Form 8-K filed on September 19, 2005), to 3,984,334.

The warrants issued under the Warrant Confirmations have a strike price of \$29.0388 per share. The warrants expire on November 19, 2010. The warrants are exercisable at any time prior to the expiration date, subject to certain conditions. If the warrants are exercised, the Company will deliver to the Dealers net shares of our common stock in an amount based on the excess of the then current market price of our common stock over the strike price of the warrants.

We issued and sold the warrants to the Dealers in transactions 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.

**Item 8.01 Other Events.**

On October 6, 2005, Company publicly announced the closing of the issuance of Notes in connection with the exercise of the Overallotment Option. A copy of the press release announcing the closing is furnished as Exhibit 99.1 and incorporated herein solely for purposes of Item 8.01. The information furnished pursuant to Item 8.01 of this Current Report on Form 8-K, including the exhibit, shall not be deemed "filed" for the purposes of Section 18 of the Securities Exchange Act of 1934 or otherwise subject to the liabilities under that Section. Furthermore, the information furnished pursuant to Item 8.01 of this Current Report on Form 8-K, including the exhibit, shall not be deemed to be incorporated by reference into the filings of Encore Capital Group, Inc. under the Securities Act of 1933.

**Item 9.01 Financial Statements and Exhibits.**

<u>Exhibit No.</u>	<u>Description</u>
10.1	Convertible Note Hedge Confirmation, dated as of September 30, 2005, by and between Encore Capital Group, Inc. and JPMorgan Chase Bank, National Association, an affiliate of J.P. Morgan Securities Inc.
10.2	Warrant Confirmation, dated as of September 30, 2005, by and between Encore Capital Group, Inc. and JPMorgan Chase Bank, National Association, an affiliate of J.P. Morgan Securities Inc.
10.3	Convertible Note Hedge Confirmation, dated as of September 30, 2005, by and between Encore Capital Group, Inc. and Morgan Stanley International Limited, an affiliate of Morgan Stanley & Co. Incorporated.
10.4	Warrant Confirmation, dated as of September 30, 2005, by and between Encore Capital Group, Inc. and Morgan Stanley International Limited, an affiliate of Morgan Stanley & Co. Incorporated.
99.1	Press Release dated October 6, 2005 — Encore Capital Group Announces Exercise of \$10 Million Overallotment Option on Convertible Senior Notes.

**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.

Date: October 6, 2005

By /s/ Paul Grinberg  
Paul Grinberg  
Executive Vice President,  
Chief Financial Officer and Treasurer

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## Exhibit Index

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**JPMorgan Chase Bank, National Association**

P.O. Box 161  
60 Victoria Embankment  
London EC4Y 0JP  
England

September 30, 2005

To: **Encore Capital Group, Inc.**

8875 Aero Drive, Suite 200  
San Diego, CA 92123  
Attention: Paul Grinberg  
Telephone No.: (858) 309-6957  
Facsimile No.: (858) 309-6977

Re: Call Option Transaction

Reference:

The purpose of this letter agreement is to confirm the terms and conditions of the Transaction entered into between **JPMorgan Chase Bank, N.A., London Branch**, and **Encore Capital Group, Inc.**, a Delaware corporation ("**Counterparty**"), on the Trade Date specified below (the "**Transaction**"). This letter agreement constitutes a "Confirmation" as referred to in the ISDA Master Agreement specified below. This Confirmation shall replace any previous letter and serve as the final documentation for this Transaction.

The definitions and provisions contained in the 1996 ISDA Equity Derivatives Definitions (the "**Equity Definitions**"), as published by the International Swaps and Derivatives Association, Inc., are incorporated into this Confirmation. In the event of any inconsistency between the Equity Definitions and this Confirmation, this Confirmation shall govern. Certain defined terms used herein have the meanings assigned to them in the Offering Memorandum dated September 13, 2005 (the "**Offering Memorandum**") relating to the USD 90,000,000 principal amount of Senior Convertible Notes due September 19, 2010, (the "**Initial Convertible Notes**") and each USD 1,000 principal amount of Initial Convertible Notes, an "**Initial Convertible Note**") and additional USD 10,000,000 principal amount of Senior Convertible Notes due September 19, 2010 issued pursuant an over-allotment option granted by the Counterparty to the Initial Purchasers of the Initial Convertible Notes ("**Additional Convertible Notes**") and each USD 1,000 principal amount of Additional Convertible Notes, an "**Additional Convertible Note**" and each and together with the Initial Convertible Notes, the "**Convertible Notes**" and each USD 1,000 principal amount of Convertible Notes, a "**Convertible Note**"), all issued by the Counterparty pursuant to an Indenture dated as of September 19, 2005 (the "**Indenture**") between Counterparty and JPMorgan Trust Company, N.A., as trustee. In the event of any inconsistency between the terms defined in the Offering Memorandum and this Confirmation, the Confirmation shall govern. In addition, the parties hereto have agreed that the Premium Payment Date with respect to this Transaction shall be the closing date for the issuance of the Additional Notes pursuant to the Purchase Agreement (the "**Purchase Agreement**") dated as of September 13, 2005 among the Counterparty and J.P. Morgan Securities Inc. and Morgan Stanley & Co. Incorporated, as representatives of the Initial Purchasers parties thereto.

Each party is hereby advised, and each such party acknowledges, that the other party has engaged in, or refrained from engaging in, substantial financial transactions and has taken other material actions in reliance upon the parties' entry into the Transaction to which this Confirmation relates on the terms and conditions set forth below.

1. This Confirmation evidences a complete and binding agreement between JPMorgan and the Counterparty as to the terms of the Transaction to which this Confirmation relates. This Confirmation shall supplement, form a part of, and be subject to an agreement in the form of the 2002 ISDA Master Agreement (the "**Agreement**") as if JPMorgan and the Counterparty had executed an agreement in such form (but without any Schedule except for the election of (i) the laws of the State of New York as the governing law and (ii) United States dollars as the Termination Currency) on the Trade Date. In the event of any inconsistency between provisions of that Agreement and this Confirmation, this Confirmation will prevail for the purpose of the Transaction to which this Confirmation relates. The parties hereby

agree that no Transaction other than the Transaction to which this Confirmation relates shall be governed by the Agreement.

2. The terms of the particular Transaction to which this Confirmation relates are as follows:

General Terms:

Trade Date:	September 30, 2005
Option Style:	“Modified American”, as set forth under “Exercise and Valuation” below
Option Type:	Call
Buyer:	Counterparty
Seller:	JPMorgan
Shares:	The common stock of Counterparty, par value USD 0.01 per Share (Exchange symbol “ <b>ECPG</b> ”)
Number of Options:	5,000. For the avoidance of doubt, the Number of Options shall be reduced by any Options exercised by Counterparty. In no event will the Number of Options be less than zero.
Option Entitlement:	As of any date, a number equal to the Conversion Rate as of such date (as defined in the Indenture, but without regard to any adjustments to the Conversion Rate pursuant to Section 15.01(d) or to Section 15.04(h) of the Indenture), for each Convertible Note.
Strike Price:	USD 22.3375
Premium:	The amount specified as such by the Calculation Agent in accordance with Premium Determination provisions below.
Premium Payment Date:	Second Currency Business Day immediately following the last day of the Hedging Period.
Premium Determination:	Beginning on the Trade Date, JPMorgan or an affiliate of JPMorgan shall effect, for the account of JPMorgan, transactions in the Shares to establish its initial hedge of the price and market risk undertaken by JPMorgan with respect to this Transaction, as well as the amount of the Premium payable by the Counterparty to JPMorgan with respect to this Transaction (the dates on which such transactions are effected being collectively referred to as the “ <b>Hedging Period</b> ”) and shall within one Currency Business Day from the last day of the Hedging Period notify the Counterparty of the amount of the Premium.
Exchange:	NASDAQ National Market
Related Exchange(s):	The principal exchange(s) for options contracts or futures contracts, if any, with respect to the Shares

Exercise and Valuation:

Exercise Period:	Notwithstanding the Equity Definitions, the Exercise Period shall be, in respect of the Exercise Options (as defined below), each period commencing on the date a Notice of Conversion is
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submitted to Counterparty by a holder of Convertible Notes to and including the Exchange Business Day following such date; *provided, however*, that if Net Share Settlement is the Settlement Method, then notwithstanding the Equity Definitions, the Exercise Period shall be, in respect of the Exercise Options, each period commencing on the date a Notice of Conversion is submitted to the Counterparty by a holder of Convertible Notes to and including the Exchange Business Day immediately preceding the first day of the Cash Settlement Averaging Period; *provided further* that if Net Share Settlement is the Settlement Method, then in respect of Exercise Options relating to the Convertible Notes tendered for conversion on or following the twenty-third scheduled Exchange Business Day preceding the maturity date of the Convertible Notes, the final day of the Exercise Period shall be the maturity date for the Convertible Notes. For the avoidance of doubt, only a number of options equal to the Exercise Options shall be exercisable hereunder, and only during the Exercise Period for such Exercise Options.

Exercise Options:

In respect of any Exercise Period, a number of Options, as specified in Counterparty's notice of exercise, no greater than the lesser of (i) the remaining Number of Options as of the relevant Exercise Date and (ii) the number of Convertible Notes surrendered to Counterparty for conversion. Notwithstanding the foregoing, for any Exercise Period beginning on and following the twenty-third scheduled Exchange Business Day prior to the maturity date of the Convertible Notes, the Exercise Options, in respect of Convertible Notes surrendered for conversion, shall be equal to the lesser of (i) the number of Convertible Notes surrendered to the Counterparty for conversion in respect of such Exercise Period *divided* by two (2) and (ii) the result of the following formula:

$$CN_C \times \left( \frac{NO}{CN_O} \right)$$

where,

$CN_C$  = The number of Convertible Notes surrendered to Counterparty for conversion in respect of such Exercise Period;

$NO$  = The Number of Options remaining (without giving effect to any exercise of Options for such Exercise Period); and

$CN_O$  = The number of Convertible Notes outstanding (without giving effect to any conversion of Convertible Notes for such Exercise Period).

*provided that:*

(i) for the purposes of calculating the Exercise Options under the Confirmation between the parties with respect to the Initial Convertible Notes (the "**Initial Confirmation**"), the "Convertible Notes surrendered to Counterparty for conversion" and the "Convertible Notes outstanding" shall refer only to the Initial Convertible Notes with respect to the Initial Confirmation;



(ii) for the purposes of calculating the Exercise Options hereunder, the “Convertible Notes surrendered to Counterparty for conversion” and the “Convertible Notes outstanding” shall refer only to the Additional Convertible Notes with respect to this Confirmation;

(iii) in no event shall the aggregate number of Options exercised under the Initial Confirmation exceed 45,000 (subject to any adjustments thereunder);

(iv) in no event shall the aggregate number of Options exercised hereunder exceed 5,000 (subject to any adjustments hereunder);

(v) for the purpose of clauses (i) through (iv), (1) the Convertible Notes surrendered to Counterparty for conversion shall be deemed surrendered in respect of the Initial Convertible Notes with respect to the Initial Confirmation until the aggregate number of the Convertible Notes surrendered equals the number of the Initial Convertible Notes, and (2) only thereafter be deemed surrendered in respect of the Additional Convertible Notes with respect to this Confirmation. Accordingly, until the aggregate number of Convertible Notes surrendered to Counterparty for conversion exceeds the number of the Initial Convertible Notes, the number of Convertible Notes surrendered in respect of the Additional Convertible Notes with respect to this Confirmation shall be zero and no Option could be exercised under this Confirmation.

Expiration Time:

The Valuation Time

Expiration Date:

With respect to any Exercise Options, the earlier of the maturity date of the Convertible Notes and the final day of the Exercise Period in respect of such Exercise Options.

Multiple Exercise:

Applicable, as described under Exercise Options above.

Automatic Exercise:

Applicable; and means that, in respect of an Exercise Period, a number of Options not previously exercised hereunder equal to the Exercise Options shall be deemed to be exercised on the Expiration Date for the Exercise Period relating to such Exercise Options; *provided* that such Options shall be deemed exercised only to the extent that Counterparty has provided a Notice of Exercise to JPMorgan.

Notice of Exercise:

Notwithstanding anything to the contrary in the Equity Definitions, in order to exercise any Options, the Counterparty shall, on or prior to the last day of the Exercise Period, provide JPMorgan with a notice containing (i) the number of such Options and (ii) the Settlement Date; *provided* that if Net Share Settlement is the Settlement Method, the Counterparty must provide in such notice, in addition to the number of Options being exercised and the Settlement Date, the first day of the Cash Settlement Averaging Period; *provided further* that if Net Share Settlement is the Settlement Method, then with respect to any Exercise Options relating to Convertible Notes tendered for conversion on or following the twenty-third Exchange Business Day preceding the maturity date of the Convertible Notes, such notice may be given on or prior to the Expiration Date for such Exercise Options and need only specify the number of such Exercise Options.

Valuation Time: At the close of trading of the regular trading session on the Exchange

Market Disruption Event: Section 4.3(a)(ii) is hereby amended by replacing the phrase “during the one-half hour period that ends at the relevant Valuation Time” with the phrase “prior to 1.00 p.m. on such Exchange Business Day of an aggregate one half hour period”.

Settlement Terms:

Settlement Method: Physical Settlement; *provided* that if the Counterparty notifies the Trustee and the holders of Convertible Notes of its obtaining the shareholder consent with respect to the Convertible Notes in accordance with Section 15.02 of the Indenture and at the same time delivers notification of such shareholders’ consent to JPMorgan, then Net Share Settlement will apply.

Physical Settlement: If applicable then, notwithstanding Section 6.1 of the Equity Definitions, the Counterparty shall pay to JPMorgan, on the earlier of the Settlement Date and the maturity date for the Convertible Notes, the amount equal to the product of (i) the Strike Price, (ii) the Number of Options being exercised or deemed exercised on such date and (iii) the Option Entitlement, and JPMorgan shall, on the relevant Settlement Date, deliver Shares to the Counterparty; *provided further* that if and to the extent Counterparty is required to deliver cash in lieu of fractional Shares (or any fractional Shares) with respect to the settlement of Convertible Notes, the Calculation Agent shall adjust the settlement terms hereunder to account for delivery by JPMorgan to Counterparty of such cash or fractional Shares in the amount of such required delivery obligation.

Settlement Date: For any Exercise Options relating to the conversion of Convertible Notes, the settlement date for Shares to be delivered under such Convertible Notes under the terms of the Indenture.

Net Share Settlement: If applicable, JPMorgan will deliver to the Counterparty, on the Settlement Date, a number of Shares equal to the Net Shares in respect of an Option exercise.

Net Shares: In respect of any Option exercised or deemed exercised, for each Option, a number of Shares equal to (i) the Option Entitlement *multiplied* by (ii) the sum of the quotients, for each Valid Day during the Cash Settlement Averaging Period for such Option, of (A) the Relevant Price on such Valid Day less the Strike Price, *divided* by (B) the Relevant Price on such Valid Day, *divided* by (iii) 20; *provided* that if, with respect to clause (A) of this provision, on any Valid Day in the Cash Settlement Averaging Period for any Exercise Options relating to a Notice of Exercise delivered to JPMorgan prior to the twenty-third scheduled Exchange Business Day prior to the maturity date for the Convertible Notes, the Relevant Price on such Valid Day is less than the Strike Price, the Net Shares for such Valid Day shall be deemed to be zero. In no event will the Net Shares be less than zero.

JPMorgan will deliver cash in lieu of any fractional Shares valued at the Relevant Price on the last Valid Day of the relevant Cash Settlement Averaging Period.

Valid Day:	An Exchange Business Day on which the Exchange is open for trading during its regular trading session and there is no Market Disruption Event with respect to the Shares.
Relevant Price:	In respect of any Option exercised or deemed exercised, the per Share volume-weighted average price for each of the 20 consecutive Valid Days during the Cash Settlement Averaging Period as displayed under the heading “Bloomberg VWAP” on Bloomberg page ECPG <equity> AQR (or any successor thereto) in respect of the period from 9:30 a.m. to 4:00 p.m. (New York City time) on such Valid Day (or if such volume-weighted average price is unavailable, the market value of one Share on such Valid Day, as determined by the Calculation Agent using a volume-weighted method).
Cash Settlement Averaging Period:	For any Exercise Options relating to the conversion of Convertible Notes, (x) if the Counterparty has, prior to the twenty-third scheduled Exchange Business Day preceding the maturity date of the Convertible Notes, delivered a Notice of Exercise to JPMorgan with respect to such Exercise Options, or the Counterparty has on such twenty-third scheduled Exchange Business Day preceding the maturity date of the Convertible Notes delivered a Notice of Exercise relating to the Notice of Conversion submitted on the immediately preceding Exchange Business Day with respect to such Exercise Options, the twenty (20) consecutive Valid Days commencing on and including the second Exchange Business Day following the delivery by the Counterparty of the Notice of Exercise or Notice of Conversion, as applicable, or (y) if the Counterparty has not delivered a Notice of Exercise with respect to such Exercise Options prior to the twenty-third scheduled Exchange Business Day preceding the maturity date of the Convertible Notes, the twenty (20) consecutive Valid Days commencing on the first Exchange Business Day following the maturity date for the Convertible Notes.
Other Applicable Provisions:	If Net Share Settlement is the Settlement Method, the provisions of Sections 6.6, 6.7, 6.8, 6.9 and 6.10 of the Equity Definitions will be applicable, except that all references in such provisions to “Physically-Settled” shall be read as references to “Net Share Settled”. “Net Share Settled” in relation to any Option means that Net Share Settlement is applicable to that Option.
Failure to Deliver:	Applicable

### 3. Additional Terms applicable to the Transaction:

Adjustments applicable to the Transaction:

Potential Adjustment Events: Notwithstanding Section 9.1(e) of the Equity Definitions, a “Potential Adjustment Event” means any occurrence of any event or condition, as set forth in Section 15.04 of the Indenture that would result in an adjustment to the Conversion Rate of the Convertible Notes; *provided* that in no event shall there be any adjustment hereunder as a result of an adjustment to the Conversion Rate pursuant to Section 15.01(d) or to Section 15.04(h) of the Indenture.

Method of Adjustment: Calculation Agent Adjustment, and means that, notwithstanding Section 9.1(c) of the Equity Definitions, upon any adjustment to the Conversion Rate of the Convertible Notes pursuant to the Indenture (other than Section 15.01(d) or Section 15.04(h) of the Indenture), the Calculation Agent will make a corresponding adjustment to any one or more of the Strike Price, Number of Options, the Option Entitlement and any other variable relevant to the exercise, settlement or payment for the Transaction.

Extraordinary Events applicable to the Transaction:

Merger Events: Notwithstanding Section 9.2(a) of the Equity Definitions, a “Merger Event” means the occurrence of any event or condition set forth in Section 15.06 of the Indenture.

Consequence of Merger Events: Notwithstanding Section 9.3 of the Equity Definitions, upon the occurrence of a Merger Event, the Calculation Agent shall make a corresponding adjustment in respect of any adjustment under the Indenture to any one or more of the nature of the Shares, Strike Price, Number of Options, the Option Entitlement and any other variable relevant to the exercise, settlement or payment for the Transaction; *provided, however* that such adjustment shall be made without regard to any adjustment to the Conversion Rate for the issuance of additional shares as set forth in Section 15.01(d) of the Indenture.

Additional Termination Events: If an event of default with respect to Counterparty shall occur under the terms of the Convertible Notes as set forth in Section 7.01 of the Indenture, then such event shall constitute an Additional Termination Event applicable to this Transaction and, with respect to such event (i) Counterparty shall be deemed to be the sole Affected Party and the Transaction shall be the sole affected transaction and (ii) JPMorgan shall be the party entitled to designate an Early Termination Date pursuant to Section 6(b) of the Agreement.

4. Calculation Agent: JPMorgan

5. Account Details:

(a) Account for payments to Counterparty:

JPMorgan Chase Bank  
ABA# 122100024  
Acct: Encore Capital Group, Inc. Operating  
Acct No.: 656436870

Account for delivery of Shares to Counterparty:

To come under separate cover

(b) Account for payments to JPMorgan:

JPMorgan Chase Bank, N.A., New York  
ABA: 021 000 021  
Favour: JPMorgan Chase Bank, N.A. – London  
A/C: 0010962009 CHASUS33

Account for delivery of Shares to JPMorgan:

DTC 060

6. Offices:

The Office of Counterparty for the Transaction is: Inapplicable, Counterparty is not a Multibranch Party.

The Office of JPMorgan for the Transaction is: New York

JPMorgan Chase Bank, National Association  
London Branch  
P.O. Box 161  
60 Victoria Embankment  
London EC4Y 0JP  
England

7. Notices: For purposes of this Confirmation:

(a) Address for notices or communications to Counterparty:

Encore Capital Group, Inc.  
8875 Aero Drive, Suite 200  
San Diego, CA 92123  
Attention: George Brooker  
Telephone No.: (858) 309-6957  
Facsimile No.: (858) 309-6977

(b) Address for notices or communications to JPMorgan:

JPMorgan Chase Bank, N.A.  
277 Park Avenue, 11<sup>th</sup> Floor  
New York, NY 10172  
Attention: Nathan Lulek  
EDG Corporate Marketing  
Telephone No.: (212) 622-2262  
Facsimile No.: (212) 622-8091

8. Representations and Warranties of Counterparty

The representations and warranties of the Counterparty set forth in Section 3 of the Agreement and in Section 4 of the Purchase Agreement are true and correct and are hereby deemed to be repeated to JPMorgan as if set forth herein. The Counterparty hereby further represents and warrants to JPMorgan that:

- (a) The Counterparty has all necessary corporate power and authority to execute, deliver and perform its obligations in respect of this Transaction; such execution, delivery and performance have been duly authorized by all necessary corporate action on the Counterparty's part; and this Confirmation has been duly and validly executed and delivered by the Counterparty and constitutes its valid and binding obligation, enforceable against the Counterparty in accordance with its terms, subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and similar laws affecting creditors' rights and remedies generally, and subject, as to enforceability, to general principles of equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity) and except that rights to indemnification and contribution thereunder may be limited by federal or state securities laws or public policy relating thereto.
- (b) Neither the execution and delivery of this Confirmation nor the incurrence or performance of obligations of the Counterparty hereunder will conflict with or result in a breach of the certificate of incorporation or by-laws (or any equivalent documents) of the Counterparty, or any applicable law or regulation, or any order, writ, injunction or decree of any court or governmental authority or agency, or any agreement or instrument to which the Counterparty or any of its subsidiaries is a party or by which the Counterparty or any of its subsidiaries is bound or to which the Counterparty

or any of its subsidiaries is subject, or constitute a default under, or result in the creation of any lien under, any such agreement or instrument, or breach or constitute a default under any agreements and contracts of the Counterparty or its significant subsidiaries filed as exhibits to the Counterparty's Annual Report on Form 10-K for the year ended December 31, 2004, incorporated by reference in the Offering Memorandum.

- (c) No consent, approval, authorization, or order of, or filing with, any governmental agency or body or any court is required in connection with the execution, delivery or performance by the Counterparty of this Confirmation, except such as have been obtained or made and such as may be required under the Securities Act of 1933, as amended (the "**Securities Act**") or state securities laws.
- (d) It is an "eligible contract participant" (as such term is defined in Section 1(a)(12) of the Commodity Exchange Act, as amended (the "**CEA**") because one or more of the following is true:

The Counterparty is a corporation, partnership, proprietorship, organization, trust or other entity and:

- (A) the Counterparty has total assets in excess of USD 10,000,000;
  - (B) the obligations of Counterparty hereunder are guaranteed, or otherwise supported by a letter of credit or keepwell, support or other agreement, by an entity of the type described in Section 1a(12)(A)(i) through (iv), 1a(12)(A)(v)(I), 1a(12)(A)(vii) or 1a(12)(C) of the CEA; or
  - (C) the Counterparty has a net worth in excess of USD 1,000,000 and has entered into this Agreement in connection with the conduct of Counterparty's business or to manage the risk associated with an asset or liability owned or incurred or reasonably likely to be owned or incurred by Counterparty in the conduct of Counterparty's business.
- (e) Each of it and its affiliates is not, on the date hereof, in possession of any material non-public information with respect to Counterparty; *provided* that the Counterparty shall be deemed to repeat the representation contained in this Section 8(e) on each day during the Hedging Period.
  - (f) Counterparty hereby represents and warrants to JPMorgan that it is an "accredited investor" (as such term is defined in Section 2(15)(ii) of the Securities Act).
  - (g) Counterparty hereby represents and warrants to JPMorgan that Counterparty's financial condition is such that it has no need for liquidity with respect to its investment in the Transaction and no need to dispose of any portion thereof to satisfy any existing or contemplated undertaking or indebtedness.
  - (h) Counterparty hereby represents and warrants to JPMorgan that Counterparty's investments in respect of the Transaction, which it understands are not readily marketable, are not disproportionate to its net worth, and it is able to bear any loss in connection with the Transaction, including the loss of its entire investment in the Transaction.
  - (i) Counterparty hereby agrees and acknowledges that the Transaction has not been registered with the Securities and Exchange Commission or any state securities commission and that the Options are being written by JPMorgan to Counterparty in reliance upon exemptions from any such registration requirements. Counterparty acknowledges that all Options acquired from JPMorgan will be acquired for investment purposes only and not for the purpose of any resale or other transfer except in compliance with the requirements of the Securities Act. Counterparty will not sell or otherwise transfer any Options acquired from JPMorgan or any interest therein except in compliance with the requirements of the Securities Act and any subsequent offer or sale of the Options will be solely for Counterparty's account and not as part of a distribution that would be in violation of the Securities Act.

- (j) Counterparty hereby represents and warrants to JPMorgan that it understands no obligations of JPMorgan to it hereunder will be entitled to the benefit of deposit insurance and that such obligations will not be guaranteed by any affiliate of JPMorgan or any governmental agency.
- (k) Counterparty hereby represents and warrants to JPMorgan that it is capable of assessing the merits of and understanding (on its own behalf or through independent professional advice), and understands and accepts, the terms, conditions and risks of the Transaction.

9. Other Provisions:

- (a) Opinions. The Counterparty shall deliver to JPMorgan an opinion of counsel, dated as of the Premium Payment Date, with respect to the matters set forth in Sections 8(a) through (d) of this Confirmation.
- (b) No Reliance, etc. Each party represents that (i) it is entering into the Transaction evidenced hereby as principal (and not as agent or in any other capacity); (ii) neither the other party nor any of its agents are acting as a fiduciary for it; (iii) it is not relying upon any representations except those expressly set forth in the Agreement or this Confirmation; (iv) it has not relied on the other party for any legal, regulatory, tax, business, investment, financial, and accounting advice, and it has made its own investment, hedging, and trading decisions based upon its own judgment and not upon any view expressed by the other party or any of its agents; and (v) it is entering into this Transaction with a full understanding of the terms, conditions and risks thereof and it is capable of and willing to assume those risks.
- (c) Share De-listing Event. If at any time during the period from and including the Trade Date, to and including the Expiration Date, the Shares cease to be listed or quoted on the Exchange (a “**Share De-listing**”) for any reason (other than a Merger Event as a result of which the shares of common stock underlying the Options are listed or quoted on The New York Stock Exchange, The American Stock Exchange or the NASDAQ National Market (or their respective successors) (the “**Successor Exchange**”) and are not immediately re-listed or quoted as of the date of such de-listing on the Successor Exchange, then Cancellation and Payment (as defined in Section 9.6 of the Equity Definitions treating the “**Announcement Date**” as the date of first public announcement that the Share De-Listing will occur and the “**Merger Date**” as the date of the Share De-Listing) shall apply, and the date of the de-listing shall be deemed the date of termination for purposes of calculating any payment due from one party to the other in connection with the cancellation of this Transaction. If the Shares are immediately re-listed on a Successor Exchange upon their de-listing from the Exchange, this Transaction shall continue in full force and effect, provided that the Successor Exchange shall be deemed to be the Exchange for all purposes hereunder. In addition, the Calculation Agent shall make any adjustments it deems necessary to the terms of the Transaction in accordance with Calculation Agent Adjustment method as defined under Section 9.1(c) of the Equity Definitions.
- (d) Repurchase Notices. Counterparty shall, on any day on which Counterparty effects any repurchase of Shares, promptly give JPMorgan a written notice of such repurchase (a “**Repurchase Notice**”) on such day if following such repurchase, the number of outstanding Shares on such day, subject to any adjustments provided herein, is (i) less than 21.3 million or (ii) more than 1 million less than the number of Shares included in the immediately preceding Repurchase Notice. Counterparty agrees to indemnify and hold harmless JPMorgan and its affiliates and their respective officers, directors, employees, affiliates, advisors, agents and controlling persons (each, an “**Indemnified Person**”) from and against any and all losses (including losses relating to JPMorgan’s hedging activities as a consequence of becoming, or of the risk of becoming, a Section 16 “insider”, including without limitation, any forbearance from hedging activities or cessation of hedging activities and any losses in connection therewith with respect to this Transaction), claims, damages, judgments, liabilities and expenses (including reasonable attorney’s fees), joint or several, which an Indemnified Person may become subject to, as a result of Counterparty’s failure to provide JPMorgan with a Repurchase Notice on the day and in the manner specified in this Section 9(d), and to reimburse, within 30 days, upon written request, each of such Indemnified Persons for any reasonable legal or other expenses incurred in connection with investigating, preparing for, providing testimony or other evidence in connection with or defending any of the foregoing. If any suit, action, proceeding (including any

governmental or regulatory investigation), claim or demand shall be brought or asserted against the Indemnified Person, such Indemnified Person shall promptly notify the Counterparty in writing, and the Counterparty, upon request of the Indemnified Person, shall retain counsel reasonably satisfactory to the Indemnified Person to represent the Indemnified Person and any others the Counterparty may designate in such proceeding and shall pay the fees and expenses of such counsel related to such proceeding. Counterparty shall not be liable for any settlement of any proceeding effected without its written consent, but if settled with such consent or if there be a final judgment for the plaintiff, Counterparty agrees to indemnify any Indemnified Person from and against any loss or liability by reason of such settlement or judgment. Counterparty shall not, without the prior written consent of the Indemnified Person, effect any settlement of any pending or threatened proceeding in respect of which any Indemnified Person is or could have been a party and indemnity could have been sought hereunder by such Indemnified Person, unless such settlement includes an unconditional release of such Indemnified Person from all liability on claims that are the subject matter of such proceeding on terms reasonably satisfactory to such Indemnified Person. If the indemnification provided for in this paragraph (d) is unavailable to an Indemnified Person or insufficient in respect of any losses, claims, damages or liabilities referred to therein, then Counterparty under such paragraph, in lieu of indemnifying such Indemnified Person thereunder, shall contribute to the amount paid or payable by such Indemnified Person as a result of such losses, claims, damages or liabilities. The remedies provided for in this paragraph (d) are not exclusive and shall not limit any rights or remedies which may otherwise be available to any Indemnified Party at law or in equity. The indemnity and contribution agreements contained in this paragraph (d) shall remain operative and in full force and effect regardless of the termination of this Transaction.

- (e) Regulation M. The Counterparty was not on the Trade Date and is not on the date hereof engaged in a distribution, as such term is used in Regulation M under the Securities Exchange Act of 1934, as amended (“**Exchange Act**”), of any securities of Counterparty, other than a distribution meeting the requirements of the exception set forth in sections 101(b)(10) and 102(b)(7) of Regulation M. The Counterparty shall not, until the fifth Exchange Business Day immediately following the last date of the Hedging Period, engage in any such distribution.
- (f) Rule 10b-18. Neither the Counterparty nor any of its affiliates has purchased any Shares in purchases of blocks (as contemplated by Rule 10b-18 under the Exchange Act) during each of the four calendar weeks preceding the date hereof and the Counterparty further covenants and agrees that neither it or any of its affiliates will purchase any Shares prior to the last day of the Hedging Period.
- (g) No Manipulation. The Counterparty is not entering into this Transaction to create actual or apparent trading activity in the Shares (or any security convertible into or exchangeable for the Shares) or to raise or depress or otherwise manipulate the price of the Shares (or any security convertible into or exchangeable for the Shares).
- (h) Number of Repurchased Shares. Counterparty represents that it could have purchased Shares, in an amount equal to the product of the Number of Options and the Option Entitlement, on the Exchange or otherwise, in compliance with applicable law, its organizational documents and any orders, decrees, contractual agreements binding upon Counterparty, on the Trade Date.
- (i) Board Authorization. Each of this Transaction and the issuance of the Additional Convertible Notes was approved by its board of directors and publicly announced, solely for the purposes stated in such board resolution and public disclosure and, prior to any exercise of Options hereunder, Counterparty’s board of directors will have duly authorized any repurchase of Shares pursuant to this Transaction. Counterparty further represents that there is no internal policy, whether written or oral, of Counterparty that would prohibit Counterparty from entering into any aspect of this Transaction, including, but not limited to, the purchases of Shares to be made pursuant hereto.
- (j) Transfer or Assignment. Neither party may transfer any of its rights or obligations under this Transaction without the prior written consent of the non-transferring party; *provided* that if, as determined at JPMorgan’s/MSIL’s sole discretion, its “beneficial ownership” (within the meaning of Section 16 of the Exchange Act and rules promulgated thereunder) exceeds 8% of



Counterparty's outstanding Shares, JPMorgan may transfer or assign a number of Options sufficient to reduce such "beneficial ownership" to 7.5% to any third party with a rating for its long term, unsecured and unsubordinated indebtedness of A+ or better by Standard and Poor's Rating Group, Inc. or its successor ("**S&P**"), or A1 or better by Moody's Investor Service, Inc. ("**Moody's**") or, if either S&P or Moody's ceases to rate such debt, at least an equivalent rating or better by a substitute agency rating mutually agreed by Counterparty and JPMorgan. If, in the discretion of JPMorgan, JPMorgan is unable to effect such transfer or assignment after its commercially reasonable efforts on pricing terms reasonably acceptable to JPMorgan and within a time period reasonably acceptable to JPMorgan, JPMorgan may designate any Exchange Business Day as an Early Termination Date with respect to a portion (the "**Terminated Portion**") of this Transaction, such that its "beneficial ownership" following such partial termination will be equal to or less than 8%. In the event that JPMorgan so designates an Early Termination Date with respect to a portion of this Transaction, a payment shall be made pursuant to Section 6 of the Agreement as if (i) an Early Termination Date had been designated in respect of a Transaction having terms identical to this Transaction and a Number of Options equal to the Terminated Portion, (ii) the Counterparty shall be the sole Affected Party with respect to such partial termination and (iii) such Transaction shall be the only Terminated Transaction. Notwithstanding any other provision in this Confirmation to the contrary requiring or allowing JPMorgan to purchase, sell, receive or deliver any shares or other securities to or from Counterparty, JPMorgan may designate any of its affiliates to purchase, sell, receive or deliver such shares or other securities and otherwise to perform JPMorgan's obligations in respect of this Transaction and any such designee may assume such obligations. JPMorgan shall be discharged of its obligations to Counterparty to the extent of any such performance.

- (k) **Staggered Settlement.** JPMorgan may, by notice to Counterparty on or prior to any Settlement Date (a "**Nominal Settlement Date**"), elect to deliver the Shares on two or more dates (each, a "**Staggered Settlement Date**") as follows:
- (a) in such notice, JPMorgan will specify to Counterparty the related Staggered Settlement Dates (the first of which will be such Nominal Settlement Date and the last of which will be no later than the twentieth (20<sup>th</sup>) Exchange Business Day following such Nominal Settlement Date) and the number of Shares that it will deliver on each Staggered Settlement Date on a payment versus delivery basis;
  - (b) the aggregate number of Shares that JPMorgan will deliver to Counterparty hereunder on all such Staggered Settlement Dates will equal the number of Shares that JPMorgan would otherwise be required to deliver on such Nominal Settlement Date; and
  - (c) if the Net Share Settlement terms set forth above were to apply on the Nominal Settlement Date, then the Net Share Settlement terms will apply on each Staggered Settlement Date, except that the Net Shares will be allocated among such Staggered Settlement Dates as specified by JPMorgan in the notice referred to in clause (a) above.
- (l) **Damages.** Neither party shall be liable under Section 6.10 of the Equity Definitions for special, indirect or consequential damages, even if informed of the possibility thereof.
- (m) **Early Unwind.** In the event the sale of Convertible Notes is not consummated with the initial purchasers for any reason by the close of business in New York on the Premium Payment Date (or such later date as agreed upon by the parties) (such date, or any later date as agreed upon being the "**Early Unwind Date**"), this Transaction shall automatically terminate (the "**Early Unwind**"), on the Early Unwind Date and (i) the Transaction and all of the respective rights and obligations of JPMorgan and Counterparty under the Transaction shall be cancelled and terminated and (ii) each party shall be released and discharged by the other party from and agrees not to make any claim against the other party with respect to any obligations or liabilities of the other party arising out of and to be performed in connection with the Transaction either prior to or after the Early Unwind Date; *provided* that Counterparty shall purchase from JPMorgan on the Early Unwind Date all shares purchased by JPMorgan or one or more of its affiliates and reimburse JPMorgan for any costs or expenses (including market losses) relating to the unwinding of its hedging activities in connection with the Transaction (including any loss or cost incurred as a result of its terminating, liquidating, obtaining or reestablishing any hedge or related trading position). The amount of any

such reimbursement shall be determined by JPMorgan in its sole good faith discretion. JPMorgan shall notify Counterparty of such amount and Counterparty shall pay such amount in immediately available funds on the Early Unwind Date. JPMorgan and Counterparty represent and acknowledge to the other that, subject to the proviso included in this Section, upon an Early Unwind, all obligations with respect to the Transaction shall be deemed fully and finally discharged.

- (n) Role of Agent. Each party agrees and acknowledges that J.P. Morgan Securities Inc., an affiliate of JPMorgan (“JPMSI”), has acted solely as agent and not as principal with respect to this Transaction and (ii) JPMSI has no obligation or liability, by way of guaranty, endorsement or otherwise, in any manner in respect of this Transaction (including, if applicable, in respect of the settlement thereof). Each party agrees it will look solely to the other party (or any guarantor in respect thereof) for performance of such other party’s obligations under this Transaction.
- (o) Additional Provisions.
- (i) Section 9.6(a)(ii) of the Equity Definitions is hereby amended by (1) deleting from the third line thereof the word “or” after the word “official” and inserting a comma therefor, and (2) deleting the period at the end of subsection (ii) thereof and inserting the following words therefor “ or (C) at JPMorgan’s option, the occurrence of any of the events specified in Section 5(a)(vii) (1) through (9) of the ISDA Master Agreement with respect to that Issuer.”
- (ii) Notwithstanding Section 9.7 of the Equity Definitions, everything in the first paragraph of Section 9.7(b) of the Equity Definitions after the words “Calculation Agent” in the third line through the remainder of such Section 9.7 shall be deleted and replaced with the following:
- “based on an amount representing the Calculation Agent’s determination of the fair value to Buyer of an option with terms that would preserve for Buyer the economic equivalent of any payment or delivery (assuming satisfaction of each applicable condition precedent) by the parties in respect of the relevant Transaction that would have been required after that date but for the occurrence of the Merger Event or the De-Listing Event, as the case may be.”
- (iii) Notwithstanding anything to the contrary in this Confirmation, upon the occurrence of any event resulting in an adjustment to the Conversion Rate as set forth in Section 15.01(d) of the Indenture in respect of any Convertible Notes surrendered for conversion, the delivery of a Notice of Conversion to the Counterparty relating to such Convertible Notes shall constitute an Additional Termination Event hereunder with respect to the number of Exercise Options corresponding to the number of Additional Convertible Notes included in such Notice of Conversion, as determined by the Calculation Agent in its sole discretion. Upon receipt of such Notice of Conversion, the Counterparty shall promptly forward such notice to JPMorgan and upon receipt of the Counterparty’s notice, JPMorgan shall, in its sole discretion, designate any Exchange Business Day as an Early Termination Date with respect to all or a portion of this Transaction corresponding to such number of Exercise Options. As a result of the occurrence of a Termination Event described in this clause (iii), any payment hereunder shall be calculated pursuant to Section 6 of the Agreement; *provided* that (i) for the purposes of such calculation, the Counterparty shall be the sole Affected Party with respect to such termination, (ii) in case of a partial termination, an Early Termination Date shall be designated in respect of a Transaction having terms identical to this Transaction and a Number of Options equal to the terminated portion and such Transaction shall be the only Terminated Transaction, and (iii) if any amount hereunder is payable by JPMorgan to the Counterparty, such payment shall be satisfied solely by delivery by JPMorgan to the Counterparty of a number of Shares equal to such amount calculated pursuant to Section 6 as above divided by a price per Share determined by the Calculation Agent; *provided* further that in no event shall such number of Shares deliverable on such early termination by JPMorgan to the Counterparty be greater than the number of Shares underlying the Additional Convertible Notes to which the Notice of Conversion described in the first sentence of this clause (iii) relates *plus* the number of additional Shares resulting from any adjustment set forth in Section 15.01(d) of the Indenture deliverable with respect of such Additional Convertible Notes *minus* the number of Shares equal in value to the USD 1,000 principal amount of Additional Convertible Notes to which such Notice of Conversion relates, as determined by the Calculation Agent in its sole discretion.

- (p) *Setoff*. In addition to and without limiting any rights of set-off that a party hereto may have as a matter of law, pursuant to contract or otherwise, upon the occurrence of an Early Termination Date, JPMorgan shall have the right to set off any obligation that it may have to Counterparty under this Confirmation, including without limitation any obligation to make any payment of cash or delivery of Shares to Counterparty, against any obligation the Counterparty may have to JPMorgan under any other agreement between JPMorgan and Counterparty relating to Shares (each such contract or agreement, a “**Separate Agreement**”), including without limitation any obligation to make a payment of cash or a delivery of Shares or any other property or securities. For this purpose, JPMorgan shall be entitled to convert any obligation (or the relevant portion of such obligation) denominated in one currency into another currency at the rate of exchange at which it would be able to purchase the relevant amount of such currency, and to convert any obligation to deliver any non-cash property into an obligation to deliver cash in an amount calculated by reference to the market value of such property as of the Early Termination Date, as determined by the Calculation Agent in its sole discretion; *provided* that in the case of a set-off of any obligation to release or deliver assets against any right to receive fungible assets, such obligation and right shall be set off in kind and; *provided further* that in determining the value of any obligation to deliver Shares, the value at any time of such obligation shall be determined by reference to the market value of the Shares at such time, as determined in good faith by the Calculation Agent. If an obligation is unascertained at the time of any such set-off, the Calculation Agent may in good faith estimate the amount or value of such obligation, in which case set-off will be effected in respect of that estimate, and the relevant party shall account to the other party at the time such obligation or right is ascertained.
- (q) *Alternative Calculations and Payment on Early Termination and on Certain Extraordinary Events*. If in respect of this Transaction, an amount is payable by JPMorgan to Counterparty (i) pursuant to Section 9.7 of the Equity Definitions or (ii) pursuant to Section 6(d)(ii) of the Agreement (a “**Payment Obligation**”), the Counterparty may request JPMorgan to satisfy any such Payment Obligation by the Share Termination Alternative (as defined below) (except that the Counterparty shall not make such an election in the event of a Merger Event, in each case, in which the consideration to be paid to holders of Shares consists solely of cash, or an Event of Default in which Counterparty is the Defaulting Party or a Termination Event in which the Counterparty is the Affected Party, other than an Event of Default of the type described in Section 5(a)(iii), (v), (vi), (vii) or (viii) of the Agreement or a Termination Event of the type described in Section 5(b)(i), (ii), (iii), (iv), (v) or (vi) of the Agreement in each case that resulted from an event or events outside Counterparty’s control) and shall give irrevocable telephonic notice to JPMorgan, confirmed in writing within one Currency Business Day, no later than 12:00 p.m. New York local time on the Merger Date, the date of the occurrence of the Early Termination Date, as applicable; *provided* that if the Counterparty does not validly request JPMorgan to satisfy its Payment Obligation by the Share Termination Alternative, JPMorgan shall have the right, in its sole discretion, to satisfy its Payment Obligation by the Share Termination Alternative, notwithstanding Counterparty’s election to the contrary. In calculating any amounts under Section 6(e) of the Agreement, notwithstanding anything to the contrary in the Agreement, (1) separate amounts shall be calculated as set forth in Section 6(e) with respect to (i) this Transaction and (ii) all other Transactions, and (2) such separate amounts shall be payable pursuant to Section 6(d)(ii) of the Agreement.

Share Termination Alternative: Applicable and means that JPMorgan shall deliver to Counterparty the Share Termination Delivery Property on the date when the Payment Obligation would otherwise be due pursuant to Section 9.7 of the Equity Definitions or Section 6(d)(ii) and 6(e) of the Agreement, as applicable (the “**Share Termination Payment Date**”), in satisfaction of the Payment Obligation in the manner reasonably requested by Counterparty free of payment.

Share Termination Delivery Property: A number of Share Termination Delivery Units, as calculated by the Calculation Agent, equal to the Payment Obligation *divided* by the Share Termination Unit Price. The Calculation Agent shall

adjust the Share Termination Delivery Property by replacing any fractional portion of a security therein with an amount of cash equal to the value of such fractional security based on the values used to calculate the Share Termination Unit Price.

Share Termination Unit Price:

The value to JPMorgan of property contained in one Share Termination Delivery Unit on the date such Share Termination Delivery Units are to be delivered as Share Termination Delivery Property, as determined by the Calculation Agent in its discretion by commercially reasonable means and notified by the Calculation Agent to JPMorgan at the time of notification of the Payment Obligation.

Share Termination Delivery Unit:

One Share or, if a Merger Event has occurred and a corresponding adjustment to this Transaction has been made, a unit consisting of the number or amount of each type of property received by a holder of one Share (without consideration of any requirement to pay cash or other consideration in lieu of fractional amounts of any securities) in such Merger Event, as determined by the Calculation Agent.

Failure to Deliver:

Applicable

Other applicable provisions:

If this Transaction is to be Share Termination Settled, the provisions of Sections 6.6, 6.7, 6.8, 6.9 and 6.10 (as modified above) of the Equity Definitions will be applicable, except that all references in such provisions to “Physically-Settled” shall be read as references to “Share Termination Settled” and all references to “Shares” shall be read as references to “Share Termination Delivery Units”. “Share Termination Settled” in relation to this Transaction means that Share Termination Settlement is applicable to this Transaction.

- (r) Governing Law. New York law (without reference to choice of law doctrine).
- (s) Waiver of Jury Trial. Each party waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect of any suit, action or proceeding relating to this Transaction. Each party (i) certifies that no representative, agent or attorney of either party has represented, expressly or otherwise, that such other party would not, in the event of such a suit, action or proceeding, seek to enforce the foregoing waiver and (ii) acknowledges that it and the other party have been induced to enter into this Transaction, as applicable, by, among other things, the mutual waivers and certifications provided herein.
- (t) Right to Extend. JPMorgan may extend any Settlement Date or any other date of delivery by JPMorgan, with respect to some or all of the Options hereunder, if JPMorgan determines, in its discretion, that such extension is reasonably necessary to enable JPMorgan to effect purchases of Shares in connection with its hedging activity hereunder in a manner that would, if JPMorgan were Counterparty or an affiliated purchaser of Counterparty, be in compliance with applicable legal and regulatory requirements.
- (u) Registration. Counterparty hereby agrees that if, in the good faith reasonable judgment of JPMorgan, the Shares acquired by JPMorgan for the purpose of hedging its obligations pursuant to this Transaction would be in the hands of JPMorgan subject to any applicable restrictions with respect to any registration or qualification requirement or prospectus delivery requirement for such Shares pursuant to any applicable federal or state securities law (including, without limitation, any

such requirement arising under Section 5 of the Securities Act as a result of such Shares being “restricted securities”, as such term is defined in Rule 144 under the Securities Act, or as a result of the sale of such Shares being subject to paragraph (c) of Rule 145 under the Securities Act) (such Shares, “**Restricted Shares**”), then delivery of such Restricted Shares shall be effected pursuant to either clause (i) or (ii) below at the election of Counterparty, unless waived by JPMorgan. If the Counterparty elects a Private Placement Settlement or Registered Settlement for any Restricted Shares then the procedures in clause (i) or clause (ii) below shall apply for such Restricted Shares. The Calculation Agent shall make reasonable adjustments to settlement terms and provisions under this Confirmation to reflect a Private Placements or Registered Settlements for such Restricted Shares to be sold hereunder.

- (i) If the Counterparty elects to satisfy its obligations under this Section 9(u) pursuant to this clause (i) (a “**Private Placement Settlement**”), then Counterparty shall use its reasonable best efforts to enable JPMorgan to sell such Restricted Shares in accordance with the customary private placement procedures with respect to such Restricted Shares reasonably acceptable to JPMorgan; *provided* that the Counterparty may not elect a Private Placement Settlement if, on the date of its election, it has taken, or caused to be taken, any action that would make unavailable either the exemption pursuant to Section 4(2) of the Securities Act for the sale by the Counterparty to JPMorgan (or any affiliate designated by JPMorgan) of the Restricted Shares or the exemption pursuant to Section 4(1) or Section 4(3) of the Securities Act for resales of the Restricted Shares by JPMorgan (or any such affiliate of JPMorgan). The Private Placement Settlement of such Restricted Shares shall include customary representations, covenants, blue sky and other governmental filings and/or registrations, indemnities to JPMorgan, due diligence rights (for JPMorgan or any designated buyer of the Restricted Shares by JPMorgan), opinions and certificates, and such other documentation as is customary for private placement agreements, all reasonably acceptable to JPMorgan. In the case of a Private Placement Settlement, JPMorgan shall determine the appropriate discounts applicable to such Restricted Shares in a commercially reasonable manner and appropriately adjust the amount of such Restricted Shares to be sold by JPMorgan hereunder. Notwithstanding the Agreement or this Confirmation, the date of delivery of such Restricted Shares shall be the Exchange Business Day following notice by JPMorgan to the Counterparty, of such applicable discount and the number of Restricted Shares to be sold pursuant to this clause (i).
- (ii) If the Counterparty elects to satisfy its obligations under this Section 9(u) pursuant to this clause (ii) (a “**Registration Settlement**”), then the Counterparty shall promptly (but in any event no later than the beginning of the Resale Period) file and use its reasonable best efforts to make effective under the Securities Act a registration statement or supplement or amend an outstanding registration statement in form and substance reasonably satisfactory to JPMorgan, to cover the resale of such Restricted Shares in accordance with customary resale registration procedures, including covenants, conditions, representations, underwriting discounts (if applicable), commissions (if applicable), indemnities, due diligence rights, opinions and certificates, and such other documentation as is customary for equity resale underwriting agreements, all reasonably acceptable to JPMorgan. If JPMorgan, in its sole reasonable discretion, is not satisfied with such procedures and documentation Private Placement Settlement shall apply. If JPMorgan is satisfied with such procedures and documentation, it shall sell the Restricted Shares pursuant to such registration statement during a period (the “**Resale Period**”) commencing on the Exchange Business Day following the date the Counterparty elects to satisfy its obligation under this Section 9(u) and ending on the earliest of (i) the Exchange Business Day on which JPMorgan completes the sale of all Restricted Shares, (ii) the date upon which all Restricted Shares have been sold or transferred pursuant to Rule 144 (or similar provisions then in force) or Rule 145(d)(1) or (2) (or any similar provision then in force) under the Securities Act and (iii) the date upon which all Restricted Shares may be sold or transferred by a non-affiliate pursuant to Rule 144(k) (or any similar provision then in force) or Rule 145(d)(3) (or any similar provision then in force) under the Securities Act.

- (iii) Without limiting the generality of the foregoing, Counterparty agrees that any Restricted Shares held by JPMorgan, (i) may be transferred by and among JPMorgan and its affiliates and Counterparty shall effect such transfer without any further action by JPMorgan and (ii) if applicable, after the minimum “holding period” within the meaning of Rule 144(d) under the Securities Act has elapsed after any Settlement Date for such Restricted Shares, Counterparty shall promptly remove, or cause the transfer agent for such Restricted Shares to remove, any legends referring to any such restrictions or requirements from such Restricted Shares upon delivery by JPMorgan (or such affiliate of JPMorgan) to Counterparty or such transfer agent of seller’s and broker’s representation letters customarily delivered by JPMorgan in connection with resales of restricted securities pursuant to Rule 144 under the Securities Act, without any further requirement for the delivery of any certificate, consent, agreement, opinion of counsel, notice or any other document, any transfer tax stamps or payment of any other amount or any other action by JPMorgan (or such affiliate of JPMorgan).

If the Private Placement Settlement or the Registration Settlement shall not be effected as set forth in clauses (i) or (ii), as applicable, then failure to effect such Private Placement Settlement or such Registration Settlement shall constitute an Event of Default with respect to which Counterparty shall be the Defaulting Party.



Please confirm that the foregoing correctly sets forth the terms of our agreement by executing this Confirmation and returning it to EDG Confirmation Group, J.P. Morgan Securities Inc., 277 Park Avenue, 11th Floor, New York, NY 10172-3401, or by fax on 212 622 8519.

Very truly yours,

**J.P. Morgan Securities Inc., as agent for  
JPMorgan Chase Bank, National Association**

By: /s/ James F. Smith

Authorized Signatory

Name: James F. Smith

VP/EDG

Accepted and confirmed  
as of the Trade Date:

**ENCORE CAPITAL GROUP, INC.**

By: /s/ Paul Grinberg

Authorized Signatory

Name: Paul Grinberg



**JPMorgan Chase Bank, National Association**

P.O. Box 161  
60 Victoria Embankment  
London EC4Y 0JP  
England

September 30, 2005

**To: Encore Capital Group, Inc.**

8875 Aero Drive, Suite 200  
San Diego, CA 92123  
Attention: Paul Grinberg  
TelephoneNo.: (858) 309-6957  
FacsimileNo.: (858) 309-6977

Re: Warrants

Reference:

The purpose of this letter agreement is to confirm the terms and conditions of the Warrants issued by **Encore Capital Group, Inc.**, a Delaware corporation (the "**Company**"), to **JPMorgan Chase Bank, N.A., London Branch** ("**JPMorgan**"), on the Trade Date specified below (the "**Transaction**"). This letter agreement constitutes a "Confirmation" as referred to in the ISDA Master Agreement specified below. This Confirmation shall replace any previous letter and serve as the final documentation for this Transaction.

The definitions and provisions contained in the 1996 ISDA Equity Derivatives Definitions (the "**Equity Definitions**"), as published by the International Swaps and Derivatives Association, Inc., are incorporated into this Confirmation. In the event of any inconsistency between the Equity Definitions and this Confirmation, this Confirmation shall govern. This Transaction shall be deemed to be a Share Option Transaction within the meaning set forth in the Equity Definitions.

Each party is hereby advised, and each such party acknowledges, that the other party has engaged in, or refrained from engaging in, substantial financial transactions and has taken other material actions in reliance upon the parties' entry into the Transaction to which this Confirmation relates on the terms and conditions set forth below.

1. This Confirmation evidences a complete and binding agreement between JPMorgan and the Company as to the terms of the Transaction to which this Confirmation relates. This Confirmation shall supplement, form a part of, and be subject to an agreement in the form of the 2002 ISDA Master Agreement (the "**Agreement**") as if JPMorgan and the Company had executed an agreement in such form (but without any Schedule except for the election of the laws of the State of New York as the governing law and United States dollars as the Termination Currency) on the Trade Date. In the event of any inconsistency between provisions of that Agreement and this Confirmation, this Confirmation will prevail for the purpose of the Transaction to which this Confirmation relates. The parties hereby agree that no Transaction other than the Transaction to which this Confirmation relates shall be governed by the Agreement.

2. The terms of the particular Transaction to which this Confirmation relates are as follows:

General Terms:

Trade Date:	September 30, 2005
Warrants:	Equity call warrants, each giving the holder the right to purchase one Share at the Strike Price, subject to the Settlement Terms set



forth below. For the purposes of the Equity Definitions, each reference to a Warrant shall be deemed to be a reference to a Call Option.

Warrant Style: American, subject to the definition of the Exercise Period below

Buyer: JPMorgan

Seller: Company

Shares: The common stock of Company, par value USD 0.01 per Share (Exchange symbol "ECPG")

Number of Warrants: 179,071, subject to adjustments provided herein. For the avoidance of doubt, the Number of Warrants shall be reduced by any Warrants exercised by JPMorgan. In no event will the Number of Warrants be less than zero.

Daily Number of Warrants: For any day, the Number of Warrants not previously exercised as of such day, *divided* by the remaining number of Expiration Dates (including such day) and rounded down to the nearest whole number to account for any fractional Daily Number of Warrants.

Warrant Entitlement: One Share per Warrant

Multiple Exercise: Applicable

Minimum Number of Warrants: 1

Maximum Number of Warrants: 179,071

Strike Price: USD 29.0388

Premium: The amount specified as such by the Calculation Agent in accordance with Premium Determination provisions below.

Premium Payment Date: Second Currency Business Day immediately following the last day of the Hedging Period.

Premium Determination: Beginning on the Trade Date, JPMorgan or an affiliate of JPMorgan shall effect, for the account of JPMorgan, transactions in the Shares to establish its initial hedge of the price and market risk undertaken by JPMorgan with respect to this Transaction, as well as the amount of the Premium payable by JPMorgan to the Company with respect to this Transaction (the dates on which such transactions are effected being collectively referred to as the "**Hedging Period**") and shall within one Currency Business Day from the last day of the Hedging Period notify the Company of the amount of the Premium.

Exchange: NASDAQ National Market

Related Exchange(s): The principal exchange(s) for options contracts or futures contracts, if any, with respect to the Shares

Exercise and Valuation:

Exercise Period:	As specified in Section 3.1 of the Equity Definitions; <i>provided, however</i> that the Warrants shall not be exercisable on any Exchange Business Day during the period beginning on September 14, 2010 and ending on September 24, 2010 (such period, the “ <b>Blackout Period</b> ”). For the avoidance of doubt, except for any Exchange Business Day during the Blackout Period and subject to the definition of the Expiration Dates, the Warrants will be exercisable on any Exchange Business Day during the period beginning on the Trade Date and ending on the final Expiration Date.
Expiration Time:	The Valuation Time
Expiration Dates:	<p>Each scheduled Exchange Business Day in the period beginning on and including the First Expiration Date and ending on and including the 89<sup>th</sup> Exchange Business Day following the First Expiration Date shall be an “Expiration Date” for a number of Warrants equal to the Daily Number of Warrants on such date.</p> <p>Notwithstanding the foregoing and anything to the contrary in the Equity Definitions:</p> <ul style="list-style-type: none"><li>(i) if the First Expiration Date occurs prior to the Blackout Period, then each of the Exchange Business Days in the Blackout Period shall not be an Expiration Date hereunder and such day shall not be subject to clause (ii) of this definition; and</li><li>(ii) if a Market Disruption Event occurs on any Expiration Date (including the First Expiration Date), the Calculation Agent may reduce the Daily Number of Warrants for which such day shall be an Expiration Date and may designate an Exchange Business Day or a number of Exchange Business Days as the Expiration Date(s) for the remaining Daily Number of Warrants or a portion thereof for the original Expiration Date; <i>provided</i> that if such Expiration Date has not occurred pursuant to this clause as of the eighth Exchange Business Day following the last Expiration Date under this Transaction, the Calculation Agent shall have the right to declare such Exchange Business Day to be the final Expiration Date and the Calculation Agent shall determine its good faith estimate of the value for the Shares as of the Valuation Time on that eighth Exchange Business Day or on any subsequent Exchange Business Day, as the Calculation Agent shall determine in its sole discretion.</li></ul>
First Expiration Date:	Subject to Market Disruption Event below, the earlier of (i) November 19, 2010 (or if such day is not an Exchange Business Day, the next succeeding Exchange Business Day) and (ii) an Exchange Business Day designated as such by JPMorgan and occurring during the period commencing on July 16, 2010 and ending on November 19, 2010, but excluding any Exchange Business Date during the Blackout Period.
Automatic Exercise:	Applicable; and means that, unless all Warrants have been previously exercised hereunder, a number of Warrants for each

Market Disruption Event:	Expiration Date equal to the Daily Number of Warrants (as adjusted pursuant to the terms hereof) for such Expiration Date will be deemed to be automatically exercised.  Section 4.3(a)(ii) is hereby amended by adding after the words “or Share Basket Transaction” in the first line thereof a phrase “a failure by the Exchange or Related Exchange to open for trading during its regular trading session or” and replacing the phrase “during the one-half hour period that ends at the relevant Valuation Time” with the phrase “at any time during the regular trading session on the Exchange or any Related Exchange, without regard to after hours or any other trading outside of the regular trading session hours”.
Valuation applicable to each Warrant:	
Valuation Time:	At the close of trading of the regular trading session on the Exchange; <i>provided</i> that if the principal trading session is extended, the Calculation Agent shall determine the Valuation Time in its reasonable discretion.
Valuation Date:	Each Exercise Date. Notwithstanding anything to the contrary in the Equity Definitions, if there is a Market Disruption Event on any Valuation Date, then the Calculation Agent shall determine the Settlement Price for such Valuation Date on the basis of its good faith estimate of the market value for the relevant Shares on such Valuation Date.
Settlement Terms applicable to the Transaction:	
Method of Settlement:	Net Share Settlement; and means that, on each Settlement Date, Company shall deliver to JPMorgan, the Share Delivery Quantity of Shares for such Settlement Date to the account specified hereto free of payment through the Clearance System.
Share Delivery Quantity:	For any Settlement Date, a number of Shares, as calculated by the Calculation Agent, equal to the Net Share Settlement Amount for such Settlement Date <i>divided by</i> the Settlement Price on the Valuation Date in respect of such Settlement Date, <i>plus</i> cash in lieu of any fractional shares (based on such Settlement Price).
Net Share Settlement Amount:	For any Settlement Date, an amount equal to the product of (i) the Number of Warrants being exercised on the relevant Exercise Date (or in the case of any exercise (including any Automatic Exercise) on an Expiration Date, the Daily Number of Warrants for such Expiration Date), (ii) the Strike Price Differential for such Settlement Date and (iii) the Warrant Entitlement. For the avoidance of doubt, if any Warrants are exercised prior to the First Expiration Date, the Calculation Agent will proportionately adjust each Daily Number of Warrants to reflect such exercise.
Strike Price Differential:	(a) If the Settlement Price for any Valuation Date is greater than the Strike Price, an amount equal to the excess of such Settlement Price over the Strike Price; or (b) If such Settlement Price is less than or equal to the Strike Price, zero.

Settlement Price:	For any Valuation Date, the per Share volume-weighted average prices for such Valuation Date as displayed under the heading “Bloomberg VWAP” on Bloomberg page ECPG <equity> AQR (or any successor thereto) in respect of the period from 9:30 a.m. to 4:00 p.m. (New York City time) on such Valuation Date (or if such volume-weighted average price is unavailable, the market value of one Share on such Valuation Date, as determined by the Calculation Agent).
Settlement Date:	For any Exercise Date, the date defined as such in Section 6.2 of the Equity Definitions, subject to Section 9(q) hereof.
Failure to Deliver:	Inapplicable
Other Applicable Provisions:	The provisions of Sections 6.6, 6.7, 6.8, 6.9 and 6.10 of the Equity Definitions will be applicable, except that all references in such provisions to “Physically-Settled” shall be read as references to “Net Share Settled”. “Net Share Settled” in relation to any Warrant means that Net Share Settlement is applicable to that Warrant.
 3. Additional Terms applicable to the Transaction:	
Adjustments applicable to the Warrants:	
Method of Adjustment:	Calculation Agent Adjustment. For avoidance of doubt, in making any adjustments under the Equity Definitions, the Calculation Agent may adjust the Strike Price, the Number of Warrants, the Daily Number of Warrants and the Warrant Entitlement. Notwithstanding the foregoing, any cash dividends or distributions, whether or not extraordinary, shall be governed by Section 9(l) of this Confirmation and not by Section 9.1(c) of the Equity Definitions.
 Extraordinary Events applicable to the Transaction:	
Consequence of Merger Events	
(a) Share-for-Share:	Alternative Obligation; <i>provided</i> that the Calculation Agent will determine if the Merger Event affects the theoretical value of the Transaction and if so JPMorgan in its sole discretion may elect to make adjustments to the Strike Price and any other term necessary to reflect the characteristics (including volatility, dividend practice, borrow cost, policy and liquidity) of the New Shares. Notwithstanding the foregoing, Cancellation and Payment shall apply in the event the New Shares are not publicly traded on a United States national securities exchange or quoted on the NASDAQ National Market.
(b) Share-for-Other:	Cancellation and Payment
(c) Share-for-Combined:	Cancellation and Payment
Nationalization or Insolvency:	Cancellation and Payment

4. Calculation Agent: JPMorgan

5. Account Details:

- (a) Account for payments to Company:  
JPMorgan Chase Bank  
ABA# 122100024  
Acct: Encore Capital Group, Inc. Operating  
Acct No.: 656436870  
Account for delivery of Shares to Company:  
To come under separate cover
- (b) Account for payments to JPMorgan:  
JPMorgan Chase Bank, N.A., New York  
ABA: 021 000 021  
Favour: JPMorgan Chase Bank, N.A. – London  
A/C: 0010962009 CHASUS33  
Account for delivery of Shares to JPMorgan:  
DTC 060

6. Offices:

The Office of Company for the Transaction is: Inapplicable, Company is not a Multibranch Party.

The Office of JPMorgan for the Transaction is: New York

JPMorgan Chase Bank, N.A.  
London Branch  
P.O. Box 161  
60 Victoria Embankment  
London EC4Y 0JP  
England

7. Notices: For purposes of this Confirmation:

- (a) Address for notices or communications to Company:  
Encore Capital Group, Inc.  
8875 Aero Drive, Suite 200  
San Diego, CA 92123  
Attention: George Brooker  
Telephone No.: (858) 309-6957  
Facsimile No.: (858) 309-6977
- (b) Address for notices or communications to JPMorgan:  
JPMorgan Chase Bank, N.A.  
277 Park Avenue, 11<sup>th</sup> Floor  
New York, NY 10172  
Attention: Nathan Lulek  
EDG Corporate Marketing  
Telephone No.: (212) 622-2262  
Facsimile No.: (212) 622-8091

## 8. Representations and Warranties of the Company

The representations and warranties of the Company set forth in Section 3 of the Agreement and Section 4 of the Purchase Agreement (the “**Purchase Agreement**”) dated as of September 13, 2005 between the Company and J.P. Morgan Securities Inc. and Morgan Stanley & Co. Incorporated, as representatives of the Initial Purchasers parties thereto, are true and correct and are hereby deemed to be repeated to JPMorgan as if set forth herein. The Company hereby further represents and warrants to JPMorgan that:

- (a) The Company has all necessary corporate power and authority to execute, deliver and perform its obligations in respect of this Transaction; such execution, delivery and performance have been duly authorized by all necessary corporate action on the Company’s part; and this Confirmation has been duly and validly executed and delivered by the Company and constitutes its valid and binding obligation, enforceable against the Company in accordance with its terms, subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and similar laws affecting creditors’ rights and remedies generally, and subject, as to enforceability, to general principles of equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity) and except that rights to indemnification and contribution hereunder may be limited by federal or state securities laws or public policy relating thereto.
- (b) Neither the execution and delivery of this Confirmation nor the incurrence or performance of obligations of the Company hereunder will conflict with or result in a breach of the certificate of incorporation or by-laws (or any equivalent documents) of the Company, or any applicable law or regulation, or any order, writ, injunction or decree of any court or governmental authority or agency, or any agreement or instrument to which the Company or any of its subsidiaries is a party or by which the Company or any of its subsidiaries is bound or to which the Company or any of its subsidiaries is subject, or constitute a default under, or result in the creation of any lien under, any such agreement or instrument, or breach or constitute a default under any agreements and contracts of the Company or its significant subsidiaries filed as exhibits to the Company’s Annual Report on Form 10-K for the year ended December 31, 2004, as updated by any subsequent filings.
- (c) No consent, approval, authorization, or order of, or filing with, any governmental agency or body or any court is required in connection with the execution, delivery or performance by the Company of this Confirmation, except such as have been obtained or made and such as may be required under the Securities Act of 1933, as amended (the “**Securities Act**”), or state securities laws.
- (d) The Shares of the Company initially issuable upon exercise of the Warrant by the net share settlement method (the “**Warrant Shares**”) have been reserved for issuance by all required corporate action of the Company. The Warrant Shares have been duly authorized and, when delivered against payment therefor (which may include Net Share Settlement in lieu of cash) and otherwise as contemplated by the terms of the Warrant following the exercise of the Warrant in accordance with the terms and conditions of the Warrant, will be validly issued, fully-paid and non-assessable, and the issuance of the Warrant Shares will not be subject to any preemptive or similar rights.
- (e) The Company is an “eligible contract participant” (as such term is defined in Section 1(a)(12) of the Commodity Exchange Act, as amended (the “**CEA**”) because one or more of the following is true:

The Company is a corporation, partnership, proprietorship, organization, trust or other entity and:

- (A) the Company has total assets in excess of USD 10,000,000;

- (B) the obligations of Company hereunder are guaranteed, or otherwise supported by a letter of credit or keepwell, support or other agreement, by an entity of the type described in Section 1a(12)(A)(i) through (iv), 1a(12)(A)(v)(I), 1a(12)(A)(vii) or 1a(12)(C) of the CEA; or
- (C) the Company has a net worth in excess of USD 1,000,000 and has entered into this Agreement in connection with the conduct of Company's business or to manage the risk associated with an asset or liability owned or incurred or reasonably likely to be owned or incurred by Company in the conduct of Company's business.
- (f) The Company and each of its affiliates is not, on the date hereof, in possession of any material non-public information with respect to Company; *provided* that the Company shall be deemed to repeat the representations contained in this Section 8(f) on each day during the Hedging Period.
- (g) Company hereby represents and warrants to JPMorgan that it is an "accredited investor" (as such term is defined in Section 2(15)(ii) of the Securities Act).
- (h) Company hereby represents and warrants to JPMorgan that Company's liabilities in respect of the Transaction are not disproportionate to its net worth.
- (i) Company hereby agrees and acknowledges that the Transaction has not been registered with the Securities and Exchange Commission or any state securities commission and that the Warrants are being sold to JPMorgan by the Company in reliance upon exemptions from any such registration requirements.
- (j) Company hereby represents and warrants to JPMorgan that it is capable of assessing the merits of and understanding (on its own behalf or through independent professional advice), and understands and accepts, the terms, conditions and risks of the Transaction.

9. Other Provisions:

- (a) Opinions. The Company shall deliver an opinion of counsel, dated as of the Premium Payment Date, to JPMorgan with respect to the matters set forth in Sections 8(a) through (e) of this Confirmation.
- (b) No Reliance, etc. Each party represents that (i) it is entering into the Transaction evidenced hereby as principal (and not as agent or in any other capacity); (ii) neither the other party or parties nor any of its or their agents are acting as a fiduciary for it; (iii) it is not relying upon any representations except those expressly set forth in the Agreement or this Confirmation; (iv) it has not relied on the other party or parties for any legal, regulatory, tax, business, investment, financial, and accounting advice, and it has made its own investment, hedging, and trading decisions based upon its own judgment and not upon any view expressed by the other party or parties or any of its or their agents; and (v) it is entering into this Transaction with a full understanding of the terms, conditions and risks thereof and it is capable of and willing to assume those risks.
- (c) Share De-listing Event. If at any time during the period from and including the Trade Date, to and including the final Valuation Date, the Shares cease to be listed or quoted on the Exchange for any reason (other than a Merger Event as a result of which all of the property underlying the Warrants consists of shares of common stock that are listed or quoted on The New York Stock Exchange, The American Stock Exchange or the NASDAQ National Market (or their respective successors) (the "**Successor Exchange**")) and are not immediately re-listed or quoted as of the date of such de-listing on the Successor Exchange (a "**Share De-listing**"), then Cancellation and Payment (as defined in Section 9.6 of the Equity Definitions treating the "**Announcement Date**")

as the date of first public announcement that the Share De-Listing will occur and the “**Merger Date**” as the date of the Share De-Listing) shall apply, and the date of the de-listing shall be deemed the date of termination for purposes of calculating any payment due from one party to any of the others in connection with the cancellation of this Transaction. If the Shares are immediately re-listed on a Successor Exchange upon their de-listing from the Exchange, this Transaction shall continue in full force and effect, provided that the Successor Exchange shall be deemed to be the Exchange for all purposes hereunder. In addition, the Calculation Agent shall make any adjustments it deems necessary to the terms of the Transaction in accordance with Calculation Agent Adjustment method as defined under Section 9.1(c) of the Equity Definitions.

- (d) Repurchase Notices. Company shall, on any day on which Company effects any repurchase of Shares, promptly give JPMorgan a written notice of such repurchase (a “**Repurchase Notice**”) on such day if following such repurchase, the number of outstanding Shares on such day, subject to any adjustments provided herein, is (i) less than 21.3 million or (ii) more than 1 million less than the number of Shares included in the immediately preceding Repurchase Notice. Company agrees to indemnify and hold harmless JPMorgan and its affiliates and their respective officers, directors, employees, affiliates, advisors, agents and controlling persons (each, an “**Indemnified Person**”) from and against any and all losses (including losses relating to JPMorgan’s hedging activities as a consequence of becoming, or of the risk of becoming, a Section 16 “insider”, including without limitation, any forbearance from hedging activities or cessation of hedging activities and any losses in connection therewith with respect to this Transaction), claims, damages, judgments, liabilities and expenses (including reasonable attorney’s fees), joint or several, which an Indemnified Person actually may become subject to, as a result of Company’s failure to provide JPMorgan with a Repurchase Notice on the day and in the manner specified in this Section 9(d), and to reimburse, within 30 days, upon written request, each of such Indemnified Persons for any reasonable legal or other expenses incurred in connection with investigating, preparing for, providing testimony or other evidence in connection with or defending any of the foregoing. If any suit, action, proceeding (including any governmental or regulatory investigation), claim or demand shall be brought or asserted against the Indemnified Person, such Indemnified Person shall promptly notify the Company in writing, and the Company, upon request of the Indemnified Person, shall retain counsel reasonably satisfactory to the Indemnified Person to represent the Indemnified Person and any others the Company may designate in such proceeding and shall pay the fees and expenses of such counsel related to such proceeding. Company shall not be liable for any settlement of any proceeding effected without its written consent, but if settled with such consent or if there be a final judgment for the plaintiff, Company agrees to indemnify any Indemnified Person from and against any loss or liability by reason of such settlement or judgment. Company shall not, without the prior written consent of the Indemnified Person, effect any settlement of any pending or threatened proceeding in respect of which any Indemnified Person is or could have been a party and indemnity could have been sought hereunder by such Indemnified Person, unless such settlement includes an unconditional release of such Indemnified Person from all liability on claims that are the subject matter of such proceeding on terms reasonably satisfactory to such Indemnified Person. If the indemnification provided for in this paragraph (d) is unavailable to an Indemnified Person or insufficient in respect of any losses, claims, damages or liabilities referred to therein, then Company under such paragraph, in lieu of indemnifying such Indemnified Person thereunder, shall contribute to the amount paid or payable by such Indemnified Person as a result of such losses, claims, damages or liabilities. The remedies provided for in this paragraph (d) are not exclusive and shall not limit any rights or remedies which may otherwise be available to any Indemnified Person at law or in equity. The indemnity and contribution agreements contained in this paragraph (d) shall remain operative and in full force and effect regardless of the termination of this Transaction.
- (e) Regulation M. The Company was not on the Trade Date and is not on the date hereof engaged in a distribution, as such term is used in Regulation M under the Securities Exchange Act of 1934, as amended (“**Exchange Act**”), of any securities of Company, other than a distribution meeting the requirements of the exception set forth in sections 101(b)(10) and 102(b)(7) of Regulation M. The



Company shall not, until the fifth Exchange Business Day immediately following the last day of the Hedging Period, engage in any such distribution.

- (f) Rule 10b-18. Neither the Company nor any of its affiliates has purchased any Shares in purchases of blocks (as contemplated by Rule 10b-18 under the Exchange Act) during each of the four calendar weeks preceding the date hereof and the Company further covenants and agrees that neither it or any of its affiliates will purchase any Shares prior to the last day of the Hedging Period.
- (g) No Manipulation. The Company is not entering into this Transaction to create actual or apparent trading activity in the Shares (or any security convertible into or exchangeable for the Shares) or to raise or depress or otherwise manipulate the price of the Shares (or any security convertible into or exchangeable for the Shares).
- (h) Board Authorization. Company represents that it is entering into the Transaction, solely for the purposes stated in the board resolution authorizing this Transaction and in its public disclosure. Company further represents that there is no internal policy, whether written or oral, of Company that would prohibit Company from entering into any aspect of this Transaction, including, but not limited to, the issuance of Shares to be made pursuant hereto.
- (i) Transfer or Assignment. Company may not transfer any of its rights or obligations under this Transaction without the prior written consent of JPMorgan. JPMorgan may transfer or assign all or any portion of its rights or obligations under this Transaction without consent of the Company. If JPMorgan, in its sole discretion, determines that its “beneficial ownership” (within the meaning of Section 16 of the Exchange Act and rules promulgated thereunder) exceeds 8% or more of the Company’s outstanding Shares and, in its sole discretion, JPMorgan is unable after its commercially reasonable efforts to effect a transfer or assignment on pricing terms and in a time period reasonably acceptable to JPMorgan that would reduce its “beneficial ownership” to 7.5%, JPMorgan may designate any Exchange Business Day as an Early Termination Date with respect to a portion (the “**Terminated Portion**”) of this Transaction, such that the its “beneficial ownership” following such partial termination will be equal to or less than 8%. In the event that JPMorgan so designates an Early Termination Date with respect to a portion of this Transaction, a payment shall be made pursuant to Section 6 of the Agreement as if (i) an Early Termination Date had been designated in respect of a Transaction having terms identical to this Transaction and a Number of Warrants equal to the Terminated Portion, (ii) the Company shall be the sole Affected Party with respect to such partial termination and (iii) such Transaction shall be the only Terminated Transaction. For the avoidance of doubt, if JPMorgan assigns or terminates any Warrants hereunder, each Daily Number of Warrants not previously settled shall be reduced proportionally, as calculated by the Calculation Agent. Notwithstanding any other provision in this Confirmation to the contrary requiring or allowing JPMorgan to purchase, sell, receive or deliver any shares or other securities to or from Company, JPMorgan may designate any of its affiliates to purchase, sell, receive or deliver such shares or other securities and otherwise to perform JPMorgan’s obligations in respect of this Transaction and any such designee may assume such obligations. JPMorgan shall be discharged of its obligations to Company to the extent of any such performance.
- (j) Damages. Neither party shall be liable under Section 6.10 of the Equity Definitions for special, indirect or consequential damages, even if informed of the possibility thereof.
- (k) Early Unwind. In the event the sale of Convertible Notes is not consummated with the initial purchasers for any reason by the close of business in New York on the Premium Payment Date (or such later date as agreed upon by the parties) (such date or any later date as agreed upon being the “**Early Unwind Date**”), this Transaction shall automatically terminate (the “**Early Unwind**”), on the Early Unwind Date and (i) the Transaction and all of the respective rights and obligations of JPMorgan and Company under the Transaction shall be cancelled and terminated and (ii) each party shall be released and discharged by the other party from and agrees not to make any claim against the other party with respect to any obligations or liabilities of the other party arising out of

and to be performed in connection with the Transaction either prior to or after the Early Unwind Date; *provided* that Company shall reimburse JPMorgan for any costs or expenses (including market losses) relating to the unwinding of its hedging activities in connection with the Transaction (including any loss or cost incurred as a result of its terminating, liquidating, obtaining or reestablishing any hedge or related trading position). The amount of any such reimbursement shall be determined by JPMorgan in its sole good faith discretion. JPMorgan shall notify Company of such amount and the Company shall pay such amount in immediately available funds on the Early Unwind Date. JPMorgan and the Company represent and acknowledge to the other that, subject to the proviso included in this Section, upon an Early Unwind, all obligations with respect to the Transaction shall be deemed fully and finally discharged.

- (l) Dividends. If at any time during the period from and including the Trade Date, to but excluding the Expiration Date, an ex-dividend date for a cash dividend occurs with respect to the Shares (an “**Ex-Dividend Date**”), and that dividend is greater than the Regular Dividend on a per Share basis then the Calculation Agent will adjust the Strike Price, the Number of Warrants, the Daily Number of Warrants and the Warrant Entitlement to preserve the fair value of the Warrant to JPMorgan after taking into account such dividend. “**Regular Dividend**” shall mean USD 0.00 per Share per quarter.
- (m) Role of Agent. Each party agrees and acknowledges that J.P. Morgan Securities Inc., an affiliate of JPMorgan (“**JPMSI**”), has acted solely as agent and not as principal with respect to this Transaction and (ii) JPMSI has no obligation or liability, by way of guaranty, endorsement or otherwise, in any manner in respect of this Transaction (including, if applicable, in respect of the settlement thereof). Each party agrees it will look solely to the other party (or any guarantor in respect thereof) for performance of such other party’s obligations under this Transaction.
- (n) Additional Provisions.
- (i) The first paragraph of Section 9.1(c) of the Equity Definitions is hereby amended to read as follows: (c) ‘If “Calculation Agent Adjustment” is specified as the method of adjustment in the Confirmation of a Share Option Transaction, then following the declaration by the Issuer of the terms of any Potential Adjustment Event, the Calculation Agent will determine whether such Potential Adjustment Event has a material effect on the theoretical value of the relevant Shares or Warrants and, if so, will (i) make appropriate adjustment(s), if any, to any one or more of:’ and, the sentence immediately preceding Section 9.1(c)(ii) is hereby amended by deleting the words “diluting or concentrative”.
- (ii) Section 9.1(e)(vi) of the Equity Definitions is hereby amended by deleting the words “other similar” between “any” and “event”; deleting the words “diluting or concentrative” and replacing them with “material”; and adding the following words at the end of the sentence “or Warrants”.
- (iii) Section 9.6(a)(ii) of the Equity Definitions is hereby amended by (1) deleting from the third line thereof the word “or” after the word “official” and inserting a comma therefor, and (2) deleting the period at the end of subsection (ii) thereof and inserting the following words therefor “ or (C) at JPMorgan’s option, the occurrence of any of the events specified in Section 5(a)(vii) (1) through (9) of the ISDA Master Agreement with respect to that Issuer.”
- (iv) Notwithstanding Section 9.7 of the Equity Definitions, everything in the first paragraph of Section 9.7(b) of the Equity Definitions after the words “Calculation Agent” in the third line through the remainder of such Section 9.7 shall be deleted and replaced with the following:  
“based on an amount representing the Calculation Agent’s determination of the fair value to Buyer of an option with terms that would preserve for Buyer the economic equivalent of any payment or delivery (assuming satisfaction of each applicable condition precedent) by the parties in respect of the relevant Transaction that would have been required after that date but for the occurrence of the Merger Event, Nationalization, Insolvency or De-Listing Event, as the case may be.”

(v) Upon the occurrence of each of the following events, JPMorgan shall have the right to designate such event an Additional Termination Event hereunder:

(1) Any “person” or “group” within the meaning of Section 13(d) of the Exchange Act other than the Company, any of its subsidiaries or its employee benefit plans, files a Schedule TO or any schedule, form or report under the Exchange Act disclosing that such person or group has become the direct or indirect ultimate “beneficial owner”, as defined in Rule 13d-3 under the Exchange Act, of the common equity of the Company representing more than 50% of the voting power of such common equity; and

(2) Any sale, lease or other transfer in one transaction or a series of transactions of all or substantially all of the consolidated assets of the Company and its subsidiaries, taken as a whole, to any person other than one of its subsidiaries.

- (o) No Collateral or Setoff. Notwithstanding any provision of the Agreement or any other agreement between the parties to the contrary, the obligations of the Company hereunder are not secured by any collateral. Obligations under this Transaction shall not be set off by the Company against any other obligations of the parties, whether arising under the Agreement, this Confirmation, under any other agreement between the parties hereto, by operation of law or otherwise. Any provision in the Agreement with respect to the satisfaction of the Company’s payment obligations to the extent of JPMorgan’s payment obligations to the Company in the same currency and in the same Transaction (including, without limitation Section 2(c) thereof) shall not apply to the Company and, for the avoidance of doubt, the Company shall fully satisfy such payment obligations notwithstanding any payment obligation to the Company by JPMorgan in the same currency and in the same Transaction. In calculating any amounts under Section 6(e) of the Agreement, notwithstanding anything to the contrary in the Agreement, (1) separate amounts shall be calculated as set forth in such Section 6(e) with respect to (a) this Transaction and (b) all other Transactions, and (2) such separate amounts shall be payable pursuant to Section 6(d)(ii) of the Agreement.
- (p) Alternative Calculations and Payment on Early Termination and on Certain Extraordinary Events. If, in respect of this Transaction, an amount is payable by the Company to JPMorgan, (i) pursuant to Section 9.7 of the Equity Definitions (except in the event of a Nationalization or Insolvency or a Merger Event, in each case, in which the consideration to be paid to holders of Shares consists solely of cash) or (ii) pursuant to Section 6(d)(ii) of the Agreement (except in the event of an Event of Default in which Company is the Defaulting Party or a Termination Event in which Company is the Affected Party, other than an Event of Default of the type described in Section 5(a)(iii), (v), (vi), (vii) or (viii) of the Agreement or a Termination Event of the type described in Section 5(b)(i), (ii), (iii), (iv), (v) or (vi) of the Agreement in each case that resulted from an event or events outside Company’s control) (a “**Payment Obligation**”), Company may, in its sole discretion, satisfy any such Payment Obligation by the Share Termination Alternative (as defined below) and shall give irrevocable telephonic notice to JPMorgan, confirmed in writing within one Currency Business Day, no later than 12:00 p.m. New York local time on the Merger Date, the date of the occurrence of the Nationalization or Insolvency, or Early Termination Date, as applicable; *provided* that if the Company does not validly elect to satisfy its Payment Obligation by the Share Termination Alternative, JPMorgan shall have the right to require the Company to satisfy its Payment Obligation by the Share Termination Alternative, notwithstanding Company’s election to the contrary. Notwithstanding the foregoing, Company’s or JPMorgan’s right to elect satisfaction of a Payment Obligation in the Share Termination Alternative as set forth in this clause shall only apply to Transactions under this Confirmation and, notwithstanding anything to the contrary in the Agreement, (1) separate amounts shall be calculated with respect to (a) Transactions hereunder and (b) all other Transactions under the Agreement, and (2) such separate amounts shall be payable pursuant to Section 6(d)(ii) of the Agreement, subject to, in the case of clause (a), Company’s Share Termination Alternative right hereunder.

Share Termination Alternative:	Applicable and means that Company shall deliver to JPMorgan the Share Termination Delivery Property on the date (the “ <b>Share Termination Payment Date</b> ”) when the Payment Obligation would otherwise be due, subject to paragraph (q)(i) below, in satisfaction, subject to paragraph (q)(ii) below, of the Payment Obligation in the manner reasonably requested by JPMorgan free of payment.
Share Termination Delivery Property:	A number of Share Termination Delivery Units, as calculated by the Calculation Agent, equal to the Payment Obligation divided by the Share Termination Unit Price. The Calculation Agent shall adjust the Share Termination Delivery Property by replacing any fractional portion of a security therein with an amount of cash equal to the value of such fractional security based on the values used to calculate the Share Termination Unit Price.
Share Termination Unit Price:	The value to JPMorgan of property contained in one Share Termination Delivery Unit on the date such Share Termination Delivery Units are to be delivered as Share Termination Delivery Property, as determined by the Calculation Agent in its discretion by commercially reasonable means and notified by the Calculation Agent to Company at the time of notification of the Payment Obligation. In the case of a Private Placement of Share Termination Delivery Units that are Restricted Shares (as defined below) as set forth in paragraph (q)(i) below, the Share Termination Unit Price shall be determined by the discounted price applicable to such Share Termination Delivery Units. In the case of a Registered Settlement of Share Termination Delivery Units that are Restricted Shares (as defined below) as set forth in paragraph (q)(ii) below, the Share Termination Unit Price shall be the Settlement Price on the Merger Date, the date of the occurrence of the Nationalization or Insolvency, or Early Termination Date, as applicable.
Share Termination Delivery Unit:	In the case of a Termination Event or Event of Default, one Share or, in the case of Nationalization or Insolvency or a Merger Event, a unit consisting of the number or amount of each type of property received by a holder of one Share (without consideration of any requirement to pay cash or other consideration in lieu of fractional amounts of any securities) in such Nationalization or Insolvency or such Merger Event. If such Merger Event involves a choice of consideration to be received by holders, such holder shall be deemed to have elected to receive the maximum possible amount of cash.
Failure to Deliver:	Inapplicable

Other applicable provisions:

If this Transaction is to be Share Termination Settled, the provisions of Sections 6.6, 6.7, 6.8, 6.9 and 6.10 (as modified above) of the Equity Definitions will be applicable, except that all references in such provisions to “Physically-Settled” shall be read as references to “Share Termination Settled” and all references to “Shares” shall be read as references to “Share Termination Delivery Units”. “Share Termination Settled” in relation to this Transaction means that Share Termination Settlement is applicable to this Transaction.

- (q) Registration/Private Placement Procedures. If, in the reasonable opinion of JPMorgan, following any delivery of Shares or Share Termination Delivery Property to JPMorgan hereunder, such Shares or Share Termination Delivery Property would be in the hands of JPMorgan subject to any applicable restrictions with respect to any registration or qualification requirement or prospectus delivery requirement for such Shares or Share Termination Delivery Property pursuant to any applicable federal or state securities law (including, without limitation, any such requirement arising under Section 5 of the Securities Act as a result of such Shares or Share Termination Delivery Property being “restricted securities”, as such term is defined in Rule 144 under the Securities Act, or as a result of the sale of such Shares or Share Termination Delivery Property being subject to paragraph (c) of Rule 145 under the Securities Act) (such Shares or Share Termination Delivery Property, “**Restricted Shares**”), then delivery of such Restricted Shares shall be effected pursuant to either clause (i) or (ii) below at the election of Company, unless waived by JPMorgan. Notwithstanding the foregoing, solely in respect of any Daily Number of Warrants exercised or deemed exercised on any Expiration Date, the Company shall elect, prior to the first Settlement Date for the first Expiration Date, a Private Placement Settlement or Registered Settlement for all deliveries of Restricted Shares for all such Expiration Dates which election shall be applicable to all Settlement Dates for such Daily Number of Warrants and the procedures in clause (i) or clause (ii) below shall apply for such delivered Restricted Shares commencing after the final Settlement Date for such Daily Number of Warrants. The Calculation Agent shall make reasonable adjustments to settlement terms and provisions under this Confirmation to reflect a Private Placements or Registered Settlements for such Restricted Shares delivered hereunder.
- (i) If the Company elects to settle the Transaction pursuant to this clause (i) (a “**Private Placement Settlement**”), then delivery of Restricted Shares by the Company shall be effected in customary private placement procedures with respect to such Restricted Shares reasonably acceptable to JPMorgan; *provided* that the Company may not elect a Private Placement Settlement if, on the date of its election, it has taken, or caused to be taken, any action that would make unavailable either the exemption pursuant to Section 4(2) of the Securities Act for the sale by the Company to JPMorgan (or any affiliate designated by JPMorgan) of the Restricted Shares or the exemption pursuant to Section 4(1) or Section 4(3) of the Securities Act for resales of the Restricted Shares by JPMorgan (or any such affiliate of JPMorgan). The Private Placement Settlement of such Restricted Shares shall include customary representations, covenants, blue sky and other governmental filings and/or registrations, indemnities to JPMorgan, due diligence rights (for JPMorgan or any designated buyer of the Restricted Shares by JPMorgan), opinions and certificates, and such other documentation as is customary for private placement agreements, all reasonably acceptable to JPMorgan. In the case of a Private Placement Settlement, JPMorgan shall determine the appropriate discount to the Share Termination Unit Price (in the case of settlement of Share Termination Delivery Units pursuant to paragraph (q) above) or any Settlement Price (in the case of settlement of Shares pursuant to Section 2 above) applicable to such Restricted Shares in a commercially reasonable manner and appropriately adjust the amount of such Restricted Shares to be delivered to JPMorgan hereunder; *provided* that in no event such number shall be greater than 12,500,000 (the

“**Maximum Amount**”). Notwithstanding the Agreement or this Confirmation, the date of delivery of such Restricted Shares shall be the Exchange Business Day following notice by JPMorgan to the Company, of such applicable discount and the number of Restricted Shares to be delivered pursuant to this clause (i). For the avoidance of doubt, delivery of Restricted Shares shall be due as set forth in the previous sentence and not be due on the Share Termination Payment Date (in the case of settlement of Share Termination Delivery Units pursuant to paragraph (p) above) or on the Settlement Date for such Restricted Shares (in the case of settlement of Shares pursuant to Section 2 above).

In the event the Company shall not have delivered the full number of Restricted Shares otherwise applicable as a result of the proviso above relating to the Maximum Amount (such deficit, the “**Deficit Restricted Shares**”), the Company shall be continually obligated to deliver, from time to time until the full number of Deficit Restricted Shares have been delivered pursuant to this paragraph, Restricted Shares when, and to the extent, that (i) Shares are repurchased, acquired or otherwise received by the Company or any of its subsidiaries after the Trade Date (whether or not in exchange for cash, fair value or any other consideration), (ii) authorized and unissued Shares reserved for issuance in respect of other transactions prior to such date which prior to such Settlement Date become no longer so reserved and (iii) the Company additionally authorizes but does not issue unissued Shares that are not reserved for other transactions. The Company shall immediately notify JPMorgan of the occurrence of any of the foregoing events (including the number of Shares subject to clause (i), (ii) or (iii) and the corresponding number of Restricted Shares to be delivered) and promptly deliver such Restricted Shares thereafter.

In the event of a Private Placement, the Net Share Settlement Amount or the Payment Obligation, respectively, shall be deemed to be the Net Share Settlement Amount or the Payment Obligation, respectively, plus an additional amount (determined from time to time by the Calculation Agent in its commercially reasonable judgment) attributable to interest that would be earned on such Net Share Settlement Amount or the Payment Obligation, respectively, (increased on a daily basis to reflect the accrual of such interest and reduced from time to time by the amount of net proceeds received by JPMorgan as provided herein) at a rate equal to the open Federal Funds Rate plus the Spread for the period from, and including, such Settlement Date or the date on which the Payment Obligation is due, respectively, to, but excluding, the related date on which all the Restricted Shares have been sold and calculated on an Actual/360 basis. The foregoing provision shall be without prejudice to JPMorgan’s rights under the Agreement (including, without limitation, Sections 5 and 6 thereof).

As used in this Section 9(p)(i), “**Spread**” means, with respect to any Net Share Settlement Amount or Payment Obligation, respectively, the credit spread over the applicable overnight rate that would be imposed if JPMorgan were to extend credit to Company in an amount equal to such Net Share Settlement Amount, all as determined by the Calculation Agent using its commercially reasonable judgment as of the related Settlement Date or the date on which the Payment Obligation is due, respectively. Commercial reasonableness shall take into consideration all factors deemed relevant by the Calculation Agent, which are expected to include, among other things, the credit quality of the Company (and any relevant affiliates) in the then-prevailing market and the credit spread of similar companies in the relevant industry and other companies having a substantially similar credit quality.

- (ii) If the Company elects to settle the Transaction pursuant to this clause (ii) (a “**Registration Settlement**”), then the Company shall promptly (but in any event no later than the beginning of the Resale Period) file and use its reasonable best efforts to make effective under the Securities Act a registration statement or supplement or amend an

outstanding registration statement in form and substance reasonably satisfactory to JPMorgan, to cover the resale of such Restricted Shares in accordance with customary resale registration procedures, including covenants, conditions, representations, underwriting discounts (if applicable), commissions (if applicable), indemnities due diligence rights, opinions and certificates, and such other documentation as is customary for equity resale underwriting agreements, all reasonably acceptable to JPMorgan. If JPMorgan, in its sole reasonable discretion, is not satisfied with such procedures and documentation Private Placement Settlement shall apply. If JPMorgan is satisfied with such procedures and documentation, it shall sell the Restricted Shares pursuant to such registration statement during a period (the “**Resale Period**”) commencing on the Exchange Business Day following delivery of such Restricted Shares (which, for the avoidance of doubt, shall be (x) any Settlement Date in the case of an exercise of Warrants prior to the first Expiration Date pursuant to Section 2 above, (y) the Share Termination Payment Date in case of settlement of Share Termination Delivery Units pursuant to paragraph (q) above or (z) the Settlement Date in respect of the final Expiration Date for all Daily Number of Warrants) and ending on the earliest of (i) the Exchange Business Day on which JPMorgan completes the sale of all Restricted Shares or, in the case of settlement of Share Termination Delivery Units, a sufficient number of Restricted Shares so that the realized net proceeds of such sales exceed the Payment Obligation (as defined above), (ii) the date upon which all Restricted Shares have been sold or transferred pursuant to Rule 144 (or similar provisions then in force) or Rule 145(d)(1) or (2) (or any similar provision then in force) under the Securities Act and (iii) the date upon which all Restricted Shares may be sold or transferred by a non-affiliate pursuant to Rule 144(k) (or any similar provision then in force) or Rule 145(d)(3) (or any similar provision then in force) under the Securities Act. If the Payment Obligation exceeds the realized net proceeds from such resale, Company shall transfer to JPMorgan by the open of the regular trading session on the Exchange on the Exchange Trading Day immediately following the last day of the Resale Period the amount of such excess (the “**Additional Amount**”) in cash or in a number of Shares (“**Make-whole Shares**”) in an amount that, based on the Settlement Price on the last day of the Resale Period (as if such day was the “Valuation Date” for purposes of computing such Settlement Price), has a dollar value equal to the Additional Amount. The Resale Period shall continue to enable the sale of the Make-whole Shares. If Company elects to pay the Additional Amount in Shares, the requirements and provisions for Registration Settlement shall apply. This provision shall be applied successively until the Additional Amount is equal to zero. In no event shall the Company pursuant to this clause (ii) deliver a number of Restricted Shares greater than the Maximum Amount.

- (iii) Without limiting the generality of the foregoing, Company agrees that any Restricted Shares delivered to JPMorgan, as purchaser of such Restricted Shares, (i) may be transferred by and among JPMorgan and its affiliates and Company shall effect such transfer without any further action by JPMorgan and (ii) after the minimum “holding period” within the meaning of Rule 144(d) under the Securities Act has elapsed after any Settlement Date for such Restricted Shares, Company shall promptly remove, or cause the transfer agent for such Restricted Shares to remove, any legends referring to any such restrictions or requirements from such Restricted Shares upon delivery by JPMorgan (or such affiliate of JPMorgan) to Company or such transfer agent of seller’s and broker’s representation letters customarily delivered by JPMorgan in connection with resales of restricted securities pursuant to Rule 144 under the Securities Act, without any further requirement for the delivery of any certificate, consent, agreement, opinion of counsel, notice or any other document, any transfer tax stamps or payment of any other amount or any other action by JPMorgan (or such affiliate of JPMorgan).

If the Private Placement Settlement or the Registration Settlement shall not be effected as set forth in clauses (i) or (ii), as applicable, then failure to effect such Private Placement Settlement or such

Registration Settlement shall constitute an Event of Default with respect to which Company shall be the Defaulting Party.

- (r) Limit on Beneficial Ownership. Notwithstanding any other provisions hereof, JPMorgan may not exercise any Warrant hereunder, and Automatic Exercise shall not apply with respect thereto, to the extent (but only to the extent) that such receipt would result in JPMorgan directly or indirectly beneficially owning (as such term is defined for purposes of Section 13(d) of the Exchange Act) at any time in excess of 9.0% of the outstanding Shares. Any purported delivery hereunder shall be void and have no effect to the extent (but only to the extent) that such delivery would result in JPMorgan directly or indirectly so beneficially owning in excess of 9.0% of the outstanding Shares. If any delivery owed to JPMorgan hereunder is not made, in whole or in part, as a result of this provision, the Company's obligation to make such delivery shall not be extinguished and the Company shall make such delivery as promptly as practicable after, but in no event later than one Business Day after, JPMorgan gives notice to the Company that such delivery would not result in JPMorgan directly or indirectly so beneficially owning in excess of 9.0% of the outstanding Shares.
- (s) Share Deliveries. The Company acknowledges and agrees that, to the extent the holder of this Warrant is not then an affiliate and has not been an affiliate for 90 days (it being understood that JPMorgan will not be considered an affiliate under this Section 9(s) solely by reason of its receipt of Shares pursuant to this Transaction), and otherwise satisfies all holding period and other requirements of Rule 144 of the Securities Act applicable to it, any delivery of Shares or Share Termination Property hereunder at any time after 2 years from the Trade Date shall be eligible for resale under Rule 144(k) of the Securities Act and the Company agrees to promptly remove, or cause the transfer agent for such Shares or Share Termination Property, to remove, any legends referring to any restrictions on resale under the Securities Act from the Shares or Share Termination Property. The Company further agrees, for any delivery of Shares or Share Termination Property hereunder at any time after 1 year from the Trade Date but within 2 years of the Trade Date, to the extent the holder of this Warrant then satisfies the holding period and other requirements of Rule 144 of the Securities Act, to promptly remove, or cause the transfer agent for such Restricted Share to remove, any legends referring to any such restrictions or requirements from such Restricted Shares. Such Restricted Shares will be de-legended upon delivery by JPMorgan (or such affiliate of JPMorgan) to the Company or such transfer agent of customary seller's and broker's representation letters in connection with resales of restricted securities pursuant to Rule 144 of the Securities Act, without any further requirement for the delivery of any certificate, consent, agreement, opinion of counsel, notice or any other document, any transfer tax stamps or payment of any other amount or any other action by JPMorgan (or such affiliate of JPMorgan). The Company further agrees that any delivery of Shares or Share Termination Delivery Property prior to the date that is 1 year from the Trade Date, may be transferred by and among JPMorgan and its affiliates and the Company shall effect such transfer without any further action by JPMorgan. Notwithstanding anything to the contrary herein, the Company agrees that any delivery of Shares or Share Termination Delivery Property shall be effected by book-entry transfer through the facilities of DTC, or any successor depository, if at the time of delivery, such class of Shares or class of Share Termination Delivery Property is in book-entry form at DTC or such successor depository. Notwithstanding anything to the contrary herein, to the extent the provisions of Rule 144 of the Securities Act or any successor rule are amended, or the applicable interpretation thereof by the Securities and Exchange Commission or any court change after the Trade Date, the agreements of the Company herein shall be deemed modified to the extent necessary, in the opinion of outside counsel of the Company, to comply with Rule 144 of the Securities Act, including Rule 144(k) as in effect at the time of delivery of the relevant Shares or Share Termination Property.
- (t) Hedging Disruption Event. The occurrence of a Hedging Disruption Event will constitute an Additional Termination Event under the Agreement permitting JPMorgan to terminate the Transaction, with the Company as the sole Affected Party and the Transaction as the sole Affected Transaction; *provided that*, for the avoidance of doubt, in calculating any payments hereunder



pursuant to Section 6(e) of the Agreement, JPMorgan shall assume the borrow cost equal to zero (0).

“Hedging Disruption Event” means with respect to JPMorgan, as determined in its reasonable discretion, the inability or impracticality, due to market illiquidity, illegality, lack of hedging transactions or credit worthy market participants or other similar events, to establish, re-establish or maintain any transactions necessary or advisable to hedge, directly or indirectly, the equity price risk of entering into and performing under the Transaction on terms including costs reasonable to JPMorgan or an affiliate in its reasonable discretion, including the event that at any time JPMorgan reasonably concludes that it or any of its affiliates are unable to establish, re-establish or maintain a full hedge of its position in respect of the Transaction through share borrowing arrangements on terms including costs deemed reasonable to JPMorgan in its reasonable discretion. For the avoidance of doubt, the parties hereto agree that if (i) JPMorgan reasonably determines that it is unable to borrow Shares to hedge its exposure with respect to the Transaction at a stock loan rebate rate equal to or in excess of the Federal Funds Rate *minus* 150 basis points; or (ii) the prevailing stock loan rebate rate for the Shares, as determined by the Calculation Agent, is less than the Federal Funds Rate *minus* 150 basis points, an Additional Termination Event under the Agreement shall occur with the Company as the sole Affected Party and the Transaction as the sole Affected Transaction.

“Federal Funds Rate” means, for any day, the rate set forth for such day opposite the caption “Federal funds”, as such rate is displayed on the page FedsOpen <Index><GO> on the Bloomberg Professional Service or any successor page; *provided* that if no rate appears for any day on such page, the rate for the immediately preceding day for which a rate does so appear shall be used for such day.

- (u) Governing Law. New York law (without reference to choice of law doctrine).
- (v) Waiver of Jury Trial. Each party waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect of any suit, action or proceeding relating to this Transaction. Each party (i) certifies that no representative, agent or attorney of the other party has represented, expressly or otherwise, that such other party would not, in the event of such a suit, action or proceeding, seek to enforce the foregoing waiver and (ii) acknowledges that it and the other party have been induced to enter into this Transaction, as applicable, by, among other things, the mutual waivers and certifications provided herein.



Please confirm that the foregoing correctly sets forth the terms of our agreement by executing this Confirmation and returning it to EDG Confirmation Group, J.P. Morgan Securities Inc., 277 Park Avenue, 11th Floor, New York, NY 10172-3401, or by fax on **212 622 8519**.

Very truly yours,

**J.P. Morgan Securities Inc., as agent for JPMorgan Chase  
Bank, National Association**

By: /s/ James F. Smith  
Authorized Signatory  
Name: James F. Smith  
VP/EDG

Accepted and confirmed  
as of the Trade Date:

**ENCORE CAPITAL GROUP, INC.**

By: /s/ Paul Grinberg  
Authorized Signatory  
Name: Paul Grinberg



Morgan Stanley & Co. International Limited  
c/o Morgan Stanley Bank  
One New York Plaza  
NY, NY 10036-8293

**Morgan Stanley & Co. International Limited**  
**c/o Morgan Stanley Bank, as agent**  
One New York Plaza  
New York, NY 10036-8293

September 30, 2005

To: **Encore Capital Group, Inc.**  
8875 Aero Drive, Suite 200  
San Diego, CA 92123  
Attention: Paul Grinberg  
Telephone No.: (858) 309-6957  
Facsimile No.: (858) 309-6977

Re: Call Option Transaction

Reference:

The purpose of this letter agreement is to confirm the terms and conditions of the Transaction entered into between **Morgan Stanley & Co. International Limited** (“**MSIL**”), by **Morgan Stanley Bank** (“**MSB**”), as agent, and **Encore Capital Group, Inc.**, a Delaware corporation (“**Counterparty**”), on the Trade Date specified below (the “**Transaction**”). This letter agreement constitutes a “Confirmation” as referred to in the ISDA Master Agreement specified below. This Confirmation shall replace any previous letter and serve as the final documentation for this Transaction.

The definitions and provisions contained in the 1996 ISDA Equity Derivatives Definitions (the “**Equity Definitions**”), as published by the International Swaps and Derivatives Association, Inc., are incorporated into this Confirmation. In the event of any inconsistency between the Equity Definitions and this Confirmation, this Confirmation shall govern. Certain defined terms used herein have the meanings assigned to them in the Offering Memorandum dated September 13, 2005 (the “**Offering Memorandum**”) relating to the USD 90,000,000 principal amount of Senior Convertible Notes due September 19, 2010, (the “**Initial Convertible Notes**” and each USD 1,000 principal amount of Initial Convertible Notes, an “**Initial Convertible Note**”) and additional USD 10,000,000 principal amount of Senior Convertible Notes due September 19, 2010 issued pursuant an over-allotment option granted by the Counterparty to the Initial Purchasers of the Initial Convertible Notes (“**Additional Convertible Notes**” and each USD 1,000 principal amount of Additional Convertible Notes, an “**Additional Convertible Note**” and each and together with the Initial Convertible Notes, the “**Convertible Notes**” and each USD 1,000 principal amount of Convertible Notes, a “**Convertible Note**”), all issued by the Counterparty pursuant to an Indenture dated as of September 19, 2005 (the “**Indenture**”) between Counterparty and JPMorgan Trust Company, N.A., as trustee. In the event of any inconsistency between the terms defined in the Offering Memorandum and this Confirmation, the Confirmation shall govern. In addition, the parties hereto have agreed that the Premium Payment Date with respect to this Transaction shall be the closing date for the issuance of the Additional Notes pursuant to the Purchase Agreement (the “**Purchase Agreement**”) dated as of September 13, 2005 among the Counterparty and J.P. Morgan Securities Inc. and Morgan Stanley & Co. Incorporated, as representatives of the Initial Purchasers parties thereto.

Each party is hereby advised, and each such party acknowledges, that the other party has engaged in, or refrained from engaging in, substantial financial transactions and has taken other material actions in reliance upon the parties’ entry into the Transaction to which this Confirmation relates on the terms and conditions set forth below.

1. This Confirmation evidences a complete and binding agreement between MSIL and the Counterparty as to the terms of the Transaction to which this Confirmation relates. This Confirmation shall supplement, form a part of, and be subject to an agreement in the form of the 2002 ISDA Master Agreement (the “**Agreement**”) as if MSIL and the Counterparty had executed an agreement in such form (but without any Schedule except for the election of (i) the laws of the State of New York as the governing law and (ii) United States dollars as the Termination Currency) on the

Trade Date. In the event of any inconsistency between provisions of that Agreement and this Confirmation, this Confirmation will prevail for the purpose of the Transaction to which this Confirmation relates. The parties hereby agree that no Transaction other than the Transaction to which this Confirmation relates shall be governed by the Agreement.

2. The terms of the particular Transaction to which this Confirmation relates are as follows:

General Terms:

Trade Date:	September 30, 2005
Option Style:	“Modified American”, as set forth under “Exercise and Valuation” below
Option Type:	Call
Buyer:	Counterparty
Seller:	MSIL
Shares:	The common stock of Counterparty, par value USD 0.01 per Share (Exchange symbol “ <b>ECPG</b> ”)
Number of Options:	5,000. For the avoidance of doubt, the Number of Options shall be reduced by any Options exercised by Counterparty. In no event will the Number of Options be less than zero.
Option Entitlement:	As of any date, a number equal to the Conversion Rate as of such date (as defined in the Indenture, but without regard to any adjustments to the Conversion Rate pursuant to Section 15.01(d) or to Section 15.04(h) of the Indenture), for each Convertible Note.
Strike Price:	USD 22.3375
Premium:	The amount specified as such by the Calculation Agent in accordance with Premium Determination provisions below.
Premium Payment Date:	Second Currency Business Day immediately following the last day of the Hedging Period.
Premium Determination:	Beginning on the Trade Date, MSIL or an affiliate of MSIL shall effect, for the account of MSIL, transactions in the Shares to establish its initial hedge of the price and market risk undertaken by MSIL with respect to this Transaction, as well as the amount of the Premium payable by the Counterparty to MSIL with respect to this Transaction (the dates on which such transactions are effected being collectively referred to as the “ <b>Hedging Period</b> ”) and shall within one Currency Business Day from the last day of the Hedging Period notify the Counterparty of the amount of the Premium.
Exchange:	NASDAQ National Market
Related Exchange(s):	The principal exchange(s) for options contracts or futures contracts, if any, with respect to the Shares

Exercise Period:

Notwithstanding the Equity Definitions, the Exercise Period shall be, in respect of the Exercise Options (as defined below), each period commencing on the date a Notice of Conversion is submitted to Counterparty by a holder of Convertible Notes to and including the Exchange Business Day following such date; *provided, however*, that if Net Share Settlement is the Settlement Method, then notwithstanding the Equity Definitions, the Exercise Period shall be, in respect of the Exercise Options, each period commencing on the date a Notice of Conversion is submitted to the Counterparty by a holder of Convertible Notes to and including the Exchange Business Day immediately preceding the first day of the Cash Settlement Averaging Period; *provided further* that if Net Share Settlement is the Settlement Method, then in respect of Exercise Options relating to the Convertible Notes tendered for conversion on or following the twenty-third scheduled Exchange Business Day preceding the maturity date of the Convertible Notes, the final day of the Exercise Period shall be the maturity date for the Convertible Notes. For the avoidance of doubt, only a number of options equal to the Exercise Options shall be exercisable hereunder, and only during the Exercise Period for such Exercise Options.

Exercise Options:

In respect of any Exercise Period, a number of Options, as specified in Counterparty's notice of exercise, no greater than the lesser of (i) the remaining Number of Options as of the relevant Exercise Date and (ii) the number of Convertible Notes surrendered to Counterparty for conversion. Notwithstanding the foregoing, for any Exercise Period beginning on and following the twenty-third scheduled Exchange Business Day prior to the maturity date of the Convertible Notes, the Exercise Options, in respect of Convertible Notes surrendered for conversion, shall be equal to the lesser of (i) the number of Convertible Notes surrendered to the Counterparty for conversion in respect of such Exercise Period *divided* by two (2) and (ii) the result of the following formula:

$$CN_C \times \left( \frac{NO}{CN_O} \right)$$

where,

- CN<sub>C</sub> = The number of Convertible Notes surrendered to Counterparty for conversion in respect of such Exercise Period;
- NO = The Number of Options remaining (without giving effect to any exercise of Options for such Exercise Period); and
- CN<sub>O</sub> = The number of Convertible Notes outstanding (without giving effect to any conversion of Convertible Notes for such Exercise Period).

*provided that:*

- (i) for the purposes of calculating the Exercise Options under the Confirmation between the parties with respect to the Initial

Convertible Notes (the “**Initial Confirmation**”), the “Convertible Notes surrendered to Counterparty for conversion” and the “Convertible Notes outstanding” shall refer only to the Initial Convertible Notes with respect to the Initial Confirmation;

(ii) for the purposes of calculating the Exercise Options hereunder, the “Convertible Notes surrendered to Counterparty for conversion” and the “Convertible Notes outstanding” shall refer only to the Additional Convertible Notes with respect to this Confirmation;

(iii) in no event shall the aggregate number of Options exercised under the Initial Confirmation exceed 45,000 (subject to any adjustments thereunder);

(iv) in no event shall the aggregate number of Options exercised hereunder exceed 5,000 (subject to any adjustments hereunder);

(v) for the purpose of clauses (i) through (iv), (1) the Convertible Notes surrendered to Counterparty for conversion shall be deemed surrendered in respect of the Initial Convertible Notes with respect to the Initial Confirmation until the aggregate number of the Convertible Notes surrendered equals the number of the Initial Convertible Notes, and (2) only thereafter be deemed surrendered in respect of the Additional Convertible Notes with respect to this Confirmation. Accordingly, until the aggregate number of Convertible Notes surrendered to Counterparty for conversion exceeds the number of the Initial Convertible Notes, the number of Convertible Notes surrendered in respect of the Additional Convertible Notes with respect to this Confirmation shall be zero and no Option could be exercised under this Confirmation.

Expiration Time:

The Valuation Time

Expiration Date:

With respect to any Exercise Options, the earlier of the maturity date of the Convertible Notes and the final day of the Exercise Period in respect of such Exercise Options.

Multiple Exercise:

Applicable, as described under Exercise Options above.

Automatic Exercise:

Applicable; and means that, in respect of an Exercise Period, a number of Options not previously exercised hereunder equal to the Exercise Options shall be deemed to be exercised on the Expiration Date for the Exercise Period relating to such Exercise Options; *provided* that such Options shall be deemed exercised only to the extent that Counterparty has provided a Notice of Exercise to MSIL.

Notice of Exercise:

Notwithstanding anything to the contrary in the Equity Definitions, in order to exercise any Options, the Counterparty shall, on or prior to the last day of the Exercise Period, provide MSIL with a notice containing (i) the number of such Options and (ii) the Settlement Date; *provided* that if Net Share Settlement is the Settlement Method, the Counterparty must provide in such notice, in addition to the number of Options being exercised and the Settlement Date, the first day of the Cash Settlement Averaging Period; *provided further* that if Net Share Settlement is the Settlement Method, then with respect to any Exercise Options

relating to Convertible Notes tendered for conversion on or following the twenty-third Exchange Business Day preceding the maturity date of the Convertible Notes, such notice may be given on or prior to the Expiration Date for such Exercise Options and need only specify the number of such Exercise Options.

Valuation Time:

At the close of trading of the regular trading session on the Exchange

Market Disruption Event:

Section 4.3(a)(ii) is hereby amended by replacing the phrase “during the one-half hour period that ends at the relevant Valuation Time” with the phrase “prior to 1.00 p.m. on such Exchange Business Day of an aggregate one half hour period”.

Settlement Terms:

Settlement Method:

Physical Settlement; *provided* that if the Counterparty notifies the Trustee and the holders of Convertible Notes of its obtaining the shareholder consent with respect to the Convertible Notes in accordance with Section 15.02 of the Indenture and at the same time delivers notification of such shareholders’ consent to MSIL, then Net Share Settlement will apply.

Physical Settlement:

If applicable then, notwithstanding Section 6.1 of the Equity Definitions, the Counterparty shall pay to MSIL, on the earlier of the Settlement Date and the maturity date for the Convertible Notes, the amount equal to the product of (i) the Strike Price, (ii) the Number of Options being exercised or deemed exercised on such date and (iii) the Option Entitlement, and MSIL shall, on the relevant Settlement Date, deliver Shares to the Counterparty; *provided further* that if and to the extent Counterparty is required to deliver cash in lieu of fractional Shares (or any fractional Shares) with respect to the settlement of Convertible Notes, the Calculation Agent shall adjust the settlement terms hereunder to account for delivery by MSIL to Counterparty of such cash or fractional Shares in the amount of such required delivery obligation.

Settlement Date:

For any Exercise Options relating to the conversion of Convertible Notes, the settlement date for Shares to be delivered under such Convertible Notes under the terms of the Indenture.

Net Share Settlement:

If applicable, MSIL will deliver to the Counterparty, on the Settlement Date, a number of Shares equal to the Net Shares in respect of an Option exercise.

Net Shares:

In respect of any Option exercised or deemed exercised, for each Option, a number of Shares equal to (i) the Option Entitlement *multiplied* by (ii) the sum of the quotients, for each Valid Day during the Cash Settlement Averaging Period for such Option, of (A) the Relevant Price on such Valid Day *less* the Strike Price, *divided* by (B) the Relevant Price on such Valid Day, *divided* by (iii) 20; *provided* that if, with respect to clause (A) of this provision, on any Valid Day in the Cash Settlement Averaging Period for any Exercise Options relating to a Notice of Exercise delivered to MSIL prior to the twenty-third scheduled Exchange Business Day prior to the maturity date for the Convertible Notes, the Relevant Price on such Valid Day is less than the Strike Price,

the Net Shares for such Valid Day shall be deemed to be zero. In no event will the Net Shares be less than zero.

MSIL will deliver cash in lieu of any fractional Shares valued at the Relevant Price on the last Valid Day of the relevant Cash Settlement Averaging Period.

Valid Day:

An Exchange Business Day on which the Exchange is open for trading during its regular trading session and there is no Market Disruption Event with respect to the Shares.

Relevant Price:

In respect of any Option exercised or deemed exercised, the per Share volume-weighted average price for each of the 20 consecutive Valid Days during the Cash Settlement Averaging Period as displayed under the heading "Bloomberg VWAP" on Bloomberg page ECPG <equity> AQR (or any successor thereto) in respect of the period from 9:30 a.m. to 4:00 p.m. (New York City time) on such Valid Day (or if such volume-weighted average price is unavailable, the market value of one Share on such Valid Day, as determined by the Calculation Agent using a volume-weighted method).

Cash Settlement Averaging Period:

For any Exercise Options relating to the conversion of Convertible Notes, (x) if the Counterparty has, prior to the twenty-third scheduled Exchange Business Day preceding the maturity date of the Convertible Notes, delivered a Notice of Exercise to MSIL with respect to such Exercise Options, or the Counterparty has on such twenty-third scheduled Exchange Business Day preceding the maturity date of the Convertible Notes delivered a Notice of Exercise relating to the Notice of Conversion submitted on the immediately preceding Exchange Business Day with respect to such Exercise Options, the twenty (20) consecutive Valid Days commencing on and including the second Exchange Business Day following the delivery by the Counterparty of the Notice of Exercise or Notice of Conversion, as applicable, or (y) if the Counterparty has not delivered a Notice of Exercise with respect to such Exercise Options prior to the twenty-third scheduled Exchange Business Day preceding the maturity date of the Convertible Notes, the twenty (20) consecutive Valid Days commencing on the first Exchange Business Day following the maturity date for the Convertible Notes.

Other Applicable Provisions:

If Net Share Settlement is the Settlement Method, the provisions of Sections 6.6, 6.7, 6.8, 6.9 and 6.10 of the Equity Definitions will be applicable, except that all references in such provisions to "Physically-Settled" shall be read as references to "Net Share Settled". "Net Share Settled" in relation to any Option means that Net Share Settlement is applicable to that Option.

Failure to Deliver:

Applicable

### 3. Additional Terms applicable to the Transaction:

Adjustments applicable to the Transaction:

Potential Adjustment Events:

Notwithstanding Section 9.1(e) of the Equity Definitions, a "Potential Adjustment Event" means any occurrence of any event or



condition, as set forth in Section 15.04 of the Indenture that would result in an adjustment to the Conversion Rate of the Convertible Notes; *provided* that in no event shall there be any adjustment hereunder as a result of an adjustment to the Conversion Rate pursuant to Section 15.01(d) or to Section 15.04(h) of the Indenture.

Method of Adjustment:

Calculation Agent Adjustment, and means that, notwithstanding Section 9.1(c) of the Equity Definitions, upon any adjustment to the Conversion Rate of the Convertible Notes pursuant to the Indenture (other than Section 15.01(d) or Section 15.04(h) of the Indenture), the Calculation Agent will make a corresponding adjustment to any one or more of the Strike Price, Number of Options, the Option Entitlement and any other variable relevant to the exercise, settlement or payment for the Transaction.

Extraordinary Events applicable to the Transaction:

Merger Events:

Notwithstanding Section 9.2(a) of the Equity Definitions, a "Merger Event" means the occurrence of any event or condition set forth in Section 15.06 of the Indenture.

Consequence of Merger Events:

Notwithstanding Section 9.3 of the Equity Definitions, upon the occurrence of a Merger Event, the Calculation Agent shall make a corresponding adjustment in respect of any adjustment under the Indenture to any one or more of the nature of the Shares, Strike Price, Number of Options, the Option Entitlement and any other variable relevant to the exercise, settlement or payment for the Transaction; *provided, however* that such adjustment shall be made without regard to any adjustment to the Conversion Rate for the issuance of additional shares as set forth in Section 15.01(d) of the Indenture.

Additional Termination Events:

If an event of default with respect to Counterparty shall occur under the terms of the Convertible Notes as set forth in Section 7.01 of the Indenture, then such event shall constitute an Additional Termination Event applicable to this Transaction and, with respect to such event (i) Counterparty shall be deemed to be the sole Affected Party and the Transaction shall be the sole affected transaction and (ii) MSIL shall be the party entitled to designate an Early Termination Date pursuant to Section 6(b) of the Agreement.

4. Calculation Agent:

MSIL

5. Account Details:

(a) Account for payments to Counterparty:

JPMorgan Chase Bank

ABA# 122100024

Acct: Encore Capital Group, Inc. Operating

Account No.: 656436870

Account for delivery of Shares to Counterparty:

To come under separate cover

- (b) Account for payments to MSIL:  
Citibank N.A.  
ABA # 021-000-089  
A/C Morgan Stanley Bank  
A/C # 30440939  
For further credit to Customer Account 033AC0022  
Account for delivery of Shares to MSIL:  
DTC 050

6. Offices:

The Office of Counterparty for the Transaction is: Inapplicable, Counterparty is not a Multibranch Party.

The Office of MSIL for the Transaction is: New York

Morgan Stanley & Co. International Limited  
c/o Morgan Stanley Bank  
One New York Plaza  
4th Floor  
New York, NY 10004

7. Notices: For purposes of this Confirmation:

- (a) Address for notices or communications to Counterparty:

Encore Capital Group, Inc.  
8875 Aero Drive, Suite 200  
San Diego, CA 92123  
Attention: George Brooker  
Telephone No.: (858) 309-6957  
Facsimile No.: (858) 309-6977

- (b) Address for notices or communications to MSIL:

Morgan Stanley & Co. International Limited  
c/o Morgan Stanley Bank, as agent  
c/o Morgan Stanley  
One New York Plaza  
4th Floor  
New York, NY 10004  
attn: Fred Gonfiantini  
Telephone Number: 212-276-2427  
Fax Number: 212-507-0724

with a copy to:

Legal Department  
Morgan Stanley & Co. Incorporated  
1585 Broadway  
38th Floor  
New York, New York 10036  
attn: Anthony Cicia  
Telephone Number: 212-761-3452  
Fax Number: 212-507-4338

## 8. Representations and Warranties of Counterparty

The representations and warranties of the Counterparty set forth in Section 3 of the Agreement and in Section 4 of the Purchase Agreement are true and correct and are hereby deemed to be repeated to MSIL as if set forth herein. The Counterparty hereby further represents and warrants to MSIL that:

- (a) The Counterparty has all necessary corporate power and authority to execute, deliver and perform its obligations in respect of this Transaction; such execution, delivery and performance have been duly authorized by all necessary corporate action on the Counterparty's part; and this Confirmation has been duly and validly executed and delivered by the Counterparty and constitutes its valid and binding obligation, enforceable against the Counterparty in accordance with its terms, subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and similar laws affecting creditors' rights and remedies generally, and subject, as to enforceability, to general principles of equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity) and except that rights to indemnification and contribution thereunder may be limited by federal or state securities laws or public policy relating thereto.
- (b) Neither the execution and delivery of this Confirmation nor the incurrence or performance of obligations of the Counterparty hereunder will conflict with or result in a breach of the certificate of incorporation or by-laws (or any equivalent documents) of the Counterparty, or any applicable law or regulation, or any order, writ, injunction or decree of any court or governmental authority or agency, or any agreement or instrument to which the Counterparty or any of its subsidiaries is a party or by which the Counterparty or any of its subsidiaries is bound or to which the Counterparty or any of its subsidiaries is subject, or constitute a default under, or result in the creation of any lien under, any such agreement or instrument, or breach or constitute a default under any agreements and contracts of the Counterparty or its significant subsidiaries filed as exhibits to the Counterparty's Annual Report on Form 10-K for the year ended December 31, 2004, incorporated by reference in the Offering Memorandum.
- (c) No consent, approval, authorization, or order of, or filing with, any governmental agency or body or any court is required in connection with the execution, delivery or performance by the Counterparty of this Confirmation, except such as have been obtained or made and such as may be required under the Securities Act of 1933, as amended (the "**Securities Act**") or state securities laws.
- (d) It is an "eligible contract participant" (as such term is defined in Section 1(a)(12) of the Commodity Exchange Act, as amended (the "**CEA**") because one or more of the following is true:

The Counterparty is a corporation, partnership, proprietorship, organization, trust or other entity and:

- (A) the Counterparty has total assets in excess of USD 10,000,000;
  - (B) the obligations of Counterparty hereunder are guaranteed, or otherwise supported by a letter of credit or keepwell, support or other agreement, by an entity of the type described in Section 1a(12)(A)(i) through (iv), 1a(12)(A)(v)(I), 1a(12)(A)(vii) or 1a(12)(C) of the CEA; or
  - (C) the Counterparty has a net worth in excess of USD 1,000,000 and has entered into this Agreement in connection with the conduct of Counterparty's business or to manage the risk associated with an asset or liability owned or incurred or reasonably likely to be owned or incurred by Counterparty in the conduct of Counterparty's business.
- (e) Each of it and its affiliates is not, on the date hereof, in possession of any material non-public information with respect to Counterparty; *provided* that the Counterparty shall be deemed to repeat the representation contained in this Section 8(e) on each day during the Hedging Period.

- (f) Counterparty hereby represents and warrants to MSIL that it is an “accredited investor” (as such term is defined in Section 2(15)(ii) of the Securities Act).
- (g) Counterparty hereby represents and warrants to MSIL that Counterparty’s financial condition is such that it has no need for liquidity with respect to its investment in the Transaction and no need to dispose of any portion thereof to satisfy any existing or contemplated undertaking or indebtedness.
- (h) Counterparty hereby represents and warrants to MSIL that Counterparty’s investments in respect of the Transaction, which it understands are not readily marketable, are not disproportionate to its net worth, and it is able to bear any loss in connection with the Transaction, including the loss of its entire investment in the Transaction.
- (i) Counterparty hereby agrees and acknowledges that the Transaction has not been registered with the Securities and Exchange Commission or any state securities commission and that the Options are being written by MSIL to Counterparty in reliance upon exemptions from any such registration requirements. Counterparty acknowledges that all Options acquired from MSIL will be acquired for investment purposes only and not for the purpose of any resale or other transfer except in compliance with the requirements of the Securities Act. Counterparty will not sell or otherwise transfer any Options acquired from MSIL or any interest therein except in compliance with the requirements of the Securities Act and any subsequent offer or sale of the Options will be solely for Counterparty’s account and not as part of a distribution that would be in violation of the Securities Act.
- (j) Counterparty hereby represents and warrants to MSIL that it understands no obligations of MSIL to it hereunder will be entitled to the benefit of deposit insurance and that such obligations will not be guaranteed by any affiliate of MSIL or any governmental agency.
- (k) Counterparty hereby represents and warrants to MSIL that it is capable of assessing the merits of and understanding (on its own behalf or through independent professional advice), and understands and accepts, the terms, conditions and risks of the Transaction.

9. Other Provisions:

- (a) Opinions. The Counterparty shall deliver to MSIL an opinion of counsel, dated as of the Premium Payment Date, with respect to the matters set forth in Sections 8(a) through (d) of this Confirmation.
- (b) No Reliance, etc. Each party represents that (i) it is entering into the Transaction evidenced hereby as principal (and not as agent or in any other capacity); (ii) neither the other party nor any of its agents are acting as a fiduciary for it; (iii) it is not relying upon any representations except those expressly set forth in the Agreement or this Confirmation; (iv) it has not relied on the other party for any legal, regulatory, tax, business, investment, financial, and accounting advice, and it has made its own investment, hedging, and trading decisions based upon its own judgment and not upon any view expressed by the other party or any of its agents; and (v) it is entering into this Transaction with a full understanding of the terms, conditions and risks thereof and it is capable of and willing to assume those risks.
- (c) Share De-listing Event. If at any time during the period from and including the Trade Date, to and including the Expiration Date, the Shares cease to be listed or quoted on the Exchange (a “**Share De-listing**”) for any reason (other than a Merger Event as a result of which the shares of common stock underlying the Options are listed or quoted on The New York Stock Exchange, The American Stock Exchange or the NASDAQ National Market (or their respective successors) (the “**Successor Exchange**”)) and are not immediately re-listed or quoted as of the date of such de-listing on the Successor Exchange, then Cancellation and Payment (as defined in Section 9.6 of the Equity Definitions treating the “**Announcement Date**” as the date of first public announcement that the Share De-Listing will occur and the “**Merger Date**” as the date of the Share De-Listing) shall apply, and the date of the de-listing shall be deemed the date of termination for purposes of calculating any payment due from one party to the other in connection

with the cancellation of this Transaction. If the Shares are immediately re-listed on a Successor Exchange upon their de-listing from the Exchange, this Transaction shall continue in full force and effect, provided that the Successor Exchange shall be deemed to be the Exchange for all purposes hereunder. In addition, the Calculation Agent shall make any adjustments it deems necessary to the terms of the Transaction in accordance with Calculation Agent Adjustment method as defined under Section 9.1(c) of the Equity Definitions.

- (d) Repurchase Notices. Counterparty shall, on any day on which Counterparty effects any repurchase of Shares, promptly give MSIL a written notice of such repurchase (a “**Repurchase Notice**”) on such day if following such repurchase, the number of outstanding Shares on such day, subject to any adjustments provided herein, is (i) less than 21.3 million or (ii) more than 1 million less than the number of Shares included in the immediately preceding Repurchase Notice. Counterparty agrees to indemnify and hold harmless MSIL and its affiliates and their respective officers, directors, employees, affiliates, advisors, agents and controlling persons (each, an “**Indemnified Person**”) from and against any and all losses (including losses relating to MSIL’s hedging activities as a consequence of becoming, or of the risk of becoming, a Section 16 “insider”, including without limitation, any forbearance from hedging activities or cessation of hedging activities and any losses in connection therewith with respect to this Transaction), claims, damages, judgments, liabilities and expenses (including reasonable attorney’s fees), joint or several, which an Indemnified Person may become subject to, as a result of Counterparty’s failure to provide MSIL with a Repurchase Notice on the day and in the manner specified in this Section 9(d), and to reimburse, within 30 days, upon written request, each of such Indemnified Persons for any reasonable legal or other expenses incurred in connection with investigating, preparing for, providing testimony or other evidence in connection with or defending any of the foregoing. If any suit, action, proceeding (including any governmental or regulatory investigation), claim or demand shall be brought or asserted against the Indemnified Person, such Indemnified Person shall promptly notify the Counterparty in writing, and the Counterparty, upon request of the Indemnified Person, shall retain counsel reasonably satisfactory to the Indemnified Person to represent the Indemnified Person and any others the Counterparty may designate in such proceeding and shall pay the fees and expenses of such counsel related to such proceeding. Counterparty shall not be liable for any settlement of any proceeding effected without its written consent, but if settled with such consent or if there be a final judgment for the plaintiff, Counterparty agrees to indemnify any Indemnified Person from and against any loss or liability by reason of such settlement or judgment. Counterparty shall not, without the prior written consent of the Indemnified Person, effect any settlement of any pending or threatened proceeding in respect of which any Indemnified Person is or could have been a party and indemnity could have been sought hereunder by such Indemnified Person, unless such settlement includes an unconditional release of such Indemnified Person from all liability on claims that are the subject matter of such proceeding on terms reasonably satisfactory to such Indemnified Person. If the indemnification provided for in this paragraph (d) is unavailable to an Indemnified Person or insufficient in respect of any losses, claims, damages or liabilities referred to therein, then Counterparty under such paragraph, in lieu of indemnifying such Indemnified Person thereunder, shall contribute to the amount paid or payable by such Indemnified Person as a result of such losses, claims, damages or liabilities. The remedies provided for in this paragraph (d) are not exclusive and shall not limit any rights or remedies which may otherwise be available to any Indemnified Party at law or in equity. The indemnity and contribution agreements contained in this paragraph (d) shall remain operative and in full force and effect regardless of the termination of this Transaction.
- (e) Regulation M. The Counterparty was not on the Trade Date and is not on the date hereof engaged in a distribution, as such term is used in Regulation M under the Securities Exchange Act of 1934, as amended (“**Exchange Act**”), of any securities of Counterparty, other than a distribution meeting the requirements of the exception set forth in sections 101(b)(10) and 102(b)(7) of Regulation M. The Counterparty shall not, until the fifth Exchange Business Day immediately following the last date of the Hedging Period, engage in any such distribution.
- (f) Rule 10b-18. Neither the Counterparty nor any of its affiliates has purchased any Shares in purchases of blocks (as contemplated by Rule 10b-18 under the Exchange Act) during each of the four calendar weeks preceding the date hereof and the Counterparty further covenants and agrees

that neither it or any of its affiliates will purchase any Shares prior to the last day of the Hedging Period.

- (g) No Manipulation. The Counterparty is not entering into this Transaction to create actual or apparent trading activity in the Shares (or any security convertible into or exchangeable for the Shares) or to raise or depress or otherwise manipulate the price of the Shares (or any security convertible into or exchangeable for the Shares).
- (h) Number of Repurchased Shares. Counterparty represents that it could have purchased Shares, in an amount equal to the product of the Number of Options and the Option Entitlement, on the Exchange or otherwise, in compliance with applicable law, its organizational documents and any orders, decrees, contractual agreements binding upon Counterparty, on the Trade Date.
- (i) Board Authorization. Each of this Transaction and the issuance of the Additional Convertible Notes was approved by its board of directors and publicly announced, solely for the purposes stated in such board resolution and public disclosure and, prior to any exercise of Options hereunder, Counterparty's board of directors will have duly authorized any repurchase of Shares pursuant to this Transaction. Counterparty further represents that there is no internal policy, whether written or oral, of Counterparty that would prohibit Counterparty from entering into any aspect of this Transaction, including, but not limited to, the purchases of Shares to be made pursuant hereto.
- (j) Transfer or Assignment. Neither party may transfer any of its rights or obligations under this Transaction without the prior written consent of the non-transferring party; *provided* that if, as determined at JPMorgan's/MSIL's sole discretion, its "beneficial ownership" (within the meaning of Section 16 of the Exchange Act and rules promulgated thereunder) exceeds 8% of Counterparty's outstanding Shares, MSIL may transfer or assign a number of Options sufficient to reduce such "beneficial ownership" to 7.5% to any third party with a rating for its long term, unsecured and unsubordinated indebtedness of A+ or better by Standard and Poor's Rating Group, Inc. or its successor ("**S&P**"), or A1 or better by Moody's Investor Service, Inc. ("**Moody's**") or, if either S&P or Moody's ceases to rate such debt, at least an equivalent rating or better by a substitute agency rating mutually agreed by Counterparty and MSIL. If, in the discretion of MSIL, MSIL is unable to effect such transfer or assignment after its commercially reasonable efforts on pricing terms reasonably acceptable to MSIL and within a time period reasonably acceptable to MSIL, MSIL may designate any Exchange Business Day as an Early Termination Date with respect to a portion (the "**Terminated Portion**") of this Transaction, such that its "beneficial ownership" following such partial termination will be equal to or less than 8%. In the event that MSIL so designates an Early Termination Date with respect to a portion of this Transaction, a payment shall be made pursuant to Section 6 of the Agreement as if (i) an Early Termination Date had been designated in respect of a Transaction having terms identical to this Transaction and a Number of Options equal to the Terminated Portion, (ii) the Counterparty shall be the sole Affected Party with respect to such partial termination and (iii) such Transaction shall be the only Terminated Transaction. Notwithstanding any other provision in this Confirmation to the contrary requiring or allowing MSIL to purchase, sell, receive or deliver any shares or other securities to or from Counterparty, MSIL may designate any of its affiliates to purchase, sell, receive or deliver such shares or other securities and otherwise to perform MSIL's obligations in respect of this Transaction and any such designee may assume such obligations. MSIL shall be discharged of its obligations to Counterparty to the extent of any such performance.
- (k) Staggered Settlement. MSIL may, by notice to Counterparty on or prior to any Settlement Date (a "**Nominal Settlement Date**"), elect to deliver the Shares on two or more dates (each, a "**Staggered Settlement Date**") as follows:
  - (a) in such notice, MSIL will specify to Counterparty the related Staggered Settlement Dates (the first of which will be such Nominal Settlement Date and the last of which will be no later than the twentieth (20<sup>th</sup>) Exchange Business Day following such Nominal Settlement Date) and the number of Shares that it will deliver on each Staggered Settlement Date on a payment versus delivery basis;

- (b) the aggregate number of Shares that MSIL will deliver to Counterparty hereunder on all such Staggered Settlement Dates will equal the number of Shares that MSIL would otherwise be required to deliver on such Nominal Settlement Date; and
- (c) if the Net Share Settlement terms set forth above were to apply on the Nominal Settlement Date, then the Net Share Settlement terms will apply on each Staggered Settlement Date, except that the Net Shares will be allocated among such Staggered Settlement Dates as specified by MSIL in the notice referred to in clause (a) above.
- (l) Damages. Neither party shall be liable under Section 6.10 of the Equity Definitions for special, indirect or consequential damages, even if informed of the possibility thereof.
- (m) Early Unwind. In the event the sale of Convertible Notes is not consummated with the initial purchasers for any reason by the close of business in New York on the Premium Payment Date (or such later date as agreed upon by the parties) (such date, or any later date as agreed upon being the “**Early Unwind Date**”), this Transaction shall automatically terminate (the “**Early Unwind**”), on the Early Unwind Date and (i) the Transaction and all of the respective rights and obligations of MSIL and Counterparty under the Transaction shall be cancelled and terminated and (ii) each party shall be released and discharged by the other party from and agrees not to make any claim against the other party with respect to any obligations or liabilities of the other party arising out of and to be performed in connection with the Transaction either prior to or after the Early Unwind Date; *provided* that Counterparty shall purchase from MSIL on the Early Unwind Date all shares purchased by MSIL or one or more of its affiliates and reimburse MSIL for any costs or expenses (including market losses) relating to the unwinding of its hedging activities in connection with the Transaction (including any loss or cost incurred as a result of its terminating, liquidating, obtaining or reestablishing any hedge or related trading position). The amount of any such reimbursement shall be determined by MSIL in its sole good faith discretion. MSIL shall notify Counterparty of such amount and Counterparty shall pay such amount in immediately available funds on the Early Unwind Date. MSIL and Counterparty represent and acknowledge to the other that, subject to the proviso included in this Section, upon an Early Unwind, all obligations with respect to the Transaction shall be deemed fully and finally discharged.
- (n) Role of Agent. Each party agrees and acknowledges that MSB is acting as agent for both parties but does not guarantee the performance of MSIL. MSIL is not a member of the Securities Investor Protection Corporation. Neither MSIL nor Counterparty shall contact the other with respect to any matter relating to the Transaction without the direct involvement of MSB, (ii) MSB, MSIL and Counterparty each hereby acknowledges that any transactions by MSIL or MSB in the Shares will be undertaken by MSIL or MSB, as the case may, as principal for its own account; and (iii) all of the actions to be taken by MSIL and MSB in connection with the Transaction shall be taken by MSIL or MSB independently and without any advance or subsequent consultation with the Counterparty; and (iv) MSB is hereby authorized to act as agent for Counterparty only to the extent required to satisfy the requirements of Rule 15a-6 under the Exchange Act in respect of the Options described hereunder.
- (o) Additional Provisions.
- (i) Section 9.6(a)(ii) of the Equity Definitions is hereby amended by (1) deleting from the third line thereof the word “or” after the word “official” and inserting a comma therefor, and (2) deleting the period at the end of subsection (ii) thereof and inserting the following words therefor “ or (C) at MSIL’s option, the occurrence of any of the events specified in Section 5(a)(vii) (1) through (9) of the ISDA Master Agreement with respect to that Issuer.”
- (ii) Notwithstanding Section 9.7 of the Equity Definitions, everything in the first paragraph of Section 9.7(b) of the Equity Definitions after the words “Calculation Agent” in the third line through the remainder of such Section 9.7 shall be deleted and replaced with the following:  
“based on an amount representing the Calculation Agent’s determination of the fair value to Buyer of an option with terms that would preserve for Buyer the economic equivalent of any payment or delivery (assuming satisfaction of each applicable condition precedent) by the parties in respect of

the relevant Transaction that would have been required after that date but for the occurrence of the Merger Event or the De-Listing Event, as the case may be.”

(iii) Notwithstanding anything to the contrary in this Confirmation, upon the occurrence of any event resulting in an adjustment to the Conversion Rate as set forth in Section 15.01(d) of the Indenture in respect of any Convertible Notes surrendered for conversion, the delivery of a Notice of Conversion to the Counterparty relating to such Convertible Notes shall constitute an Additional Termination Event hereunder with respect to the number of Exercise Options corresponding to the number of Additional Convertible Notes included in such Notice of Conversion, as determined by the Calculation Agent in its sole discretion. Upon receipt of such Notice of Conversion, the Counterparty shall promptly forward such notice to MSIL and upon receipt of the Counterparty’s notice, MSIL shall, in its sole discretion, designate any Exchange Business Day as an Early Termination Date with respect to all or a portion of this Transaction corresponding to such number of Exercise Options. As a result of the occurrence of a Termination Event described in this clause (iii), any payment hereunder shall be calculated pursuant to Section 6 of the Agreement; *provided* that (i) for the purposes of such calculation, the Counterparty shall be the sole Affected Party with respect to such termination, (ii) in case of a partial termination, an Early Termination Date shall be designated in respect of a Transaction having terms identical to this Transaction and a Number of Options equal to the terminated portion and such Transaction shall be the only Terminated Transaction, and (iii) if any amount hereunder is payable by MSIL to the Counterparty, such payment shall be satisfied solely by delivery by MSIL to the Counterparty of a number of Shares equal to such amount calculated pursuant to Section 6 as above divided by a price per Share determined by the Calculation Agent; *provided* further that in no event shall such number of Shares deliverable on such early termination by MSIL to the Counterparty be greater than the number of Shares underlying the Additional Convertible Notes to which the Notice of Conversion described in the first sentence of this clause (iii) relates *plus* the number of additional Shares resulting from any adjustment set forth in Section 15.01(d) of the Indenture deliverable with respect of such Additional Convertible Notes *minus* the number of Shares equal in value to the USD 1,000 principal amount of Additional Convertible Notes to which such Notice of Conversion relates, as determined by the Calculation Agent in its sole discretion.

- (p) *Setoff*. In addition to and without limiting any rights of set-off that a party hereto may have as a matter of law, pursuant to contract or otherwise, upon the occurrence of an Early Termination Date, MSIL shall have the right to set off any obligation that it may have to Counterparty under this Confirmation, including without limitation any obligation to make any payment of cash or delivery of Shares to Counterparty, against any obligation the Counterparty may have to MSIL under any other agreement between MSIL and Counterparty relating to Shares (each such contract or agreement, a “**Separate Agreement**”), including without limitation any obligation to make a payment of cash or a delivery of Shares or any other property or securities. For this purpose, MSIL shall be entitled to convert any obligation (or the relevant portion of such obligation) denominated in one currency into another currency at the rate of exchange at which it would be able to purchase the relevant amount of such currency, and to convert any obligation to deliver any non-cash property into an obligation to deliver cash in an amount calculated by reference to the market value of such property as of the Early Termination Date, as determined by the Calculation Agent in its sole discretion; *provided* that in the case of a set-off of any obligation to release or deliver assets against any right to receive fungible assets, such obligation and right shall be set off in kind and; *provided further* that in determining the value of any obligation to deliver Shares, the value at any time of such obligation shall be determined by reference to the market value of the Shares at such time, as determined in good faith by the Calculation Agent. If an obligation is unascertained at the time of any such set-off, the Calculation Agent may in good faith estimate the amount or value of such obligation, in which case set-off will be effected in respect of that estimate, and the relevant party shall account to the other party at the time such obligation or right is ascertained.
- (q) *Alternative Calculations and Payment on Early Termination and on Certain Extraordinary Events*. If in respect of this Transaction, an amount is payable by MSIL to Counterparty (i) pursuant to Section 9.7 of the Equity Definitions or (ii) pursuant to Section 6(d)(ii) of the Agreement (a “**Payment Obligation**”), the Counterparty may request MSIL to satisfy any such Payment Obligation by the Share Termination Alternative (as defined below) (except that the Counterparty shall not make such an election in the event of a Merger Event, in each case, in



which the consideration to be paid to holders of Shares consists solely of cash, or an Event of Default in which Counterparty is the Defaulting Party or a Termination Event in which the Counterparty is the Affected Party, other than an Event of Default of the type described in Section 5(a)(iii), (v), (vi), (vii) or (viii) of the Agreement or a Termination Event of the type described in Section 5(b)(i), (ii), (iii), (iv), (v) or (vi) of the Agreement in each case that resulted from an event or events outside Counterparty's control) and shall give irrevocable telephonic notice to MSIL, confirmed in writing within one Currency Business Day, no later than 12:00 p.m. New York local time on the Merger Date, the date of the occurrence of the Early Termination Date, as applicable; *provided* that if the Counterparty does not validly request MSIL to satisfy its Payment Obligation by the Share Termination Alternative, MSIL shall have the right, in its sole discretion, to satisfy its Payment Obligation by the Share Termination Alternative, notwithstanding Counterparty's election to the contrary. In calculating any amounts under Section 6(e) of the Agreement, notwithstanding anything to the contrary in the Agreement, (1) separate amounts shall be calculated as set forth in Section 6(e) with respect to (i) this Transaction and (ii) all other Transactions, and (2) such separate amounts shall be payable pursuant to Section 6(d)(ii) of the Agreement.

Share Termination Alternative: Applicable and means that MSIL shall deliver to Counterparty the Share Termination Delivery Property on the date when the Payment Obligation would otherwise be due pursuant to Section 9.7 of the Equity Definitions or Section 6(d)(ii) and 6(e) of the Agreement, as applicable (the "**Share Termination Payment Date**"), in satisfaction of the Payment Obligation in the manner reasonably requested by Counterparty free of payment.

Share Termination Delivery Property: A number of Share Termination Delivery Units, as calculated by the Calculation Agent, equal to the Payment Obligation *divided* by the Share Termination Unit Price. The Calculation Agent shall adjust the Share Termination Delivery Property by replacing any fractional portion of a security therein with an amount of cash equal to the value of such fractional security based on the values used to calculate the Share Termination Unit Price.

Share Termination Unit Price: The value to MSIL of property contained in one Share Termination Delivery Unit on the date such Share Termination Delivery Units are to be delivered as Share Termination Delivery Property, as determined by the Calculation Agent in its discretion by commercially reasonable means and notified by the Calculation Agent to MSIL at the time of notification of the Payment Obligation.

Share Termination Delivery Unit: One Share or, if a Merger Event has occurred and a corresponding adjustment to this Transaction has been made, a unit consisting of the number or amount of each type of property received by a holder of one Share (without consideration of any requirement to pay cash or other consideration in lieu of fractional amounts of any securities) in such Merger Event, as determined by the Calculation Agent.

Failure to Deliver: Applicable

Other applicable provisions:

If this Transaction is to be Share Termination Settled, the provisions of Sections 6.6, 6.7, 6.8, 6.9 and 6.10 (as modified above) of the Equity Definitions will be applicable, except that all references in such provisions to “Physically-Settled” shall be read as references to “Share Termination Settled” and all references to “Shares” shall be read as references to “Share Termination Delivery Units”. “Share Termination Settled” in relation to this Transaction means that Share Termination Settlement is applicable to this Transaction.

- (r) Governing Law. New York law (without reference to choice of law doctrine).
- (s) Waiver of Jury Trial. Each party waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect of any suit, action or proceeding relating to this Transaction. Each party (i) certifies that no representative, agent or attorney of either party has represented, expressly or otherwise, that such other party would not, in the event of such a suit, action or proceeding, seek to enforce the foregoing waiver and (ii) acknowledges that it and the other party have been induced to enter into this Transaction, as applicable, by, among other things, the mutual waivers and certifications provided herein.
- (t) Right to Extend. MSIL may extend any Settlement Date or any other date of delivery by MSIL, with respect to some or all of the Options hereunder, if MSIL determines, in its discretion, that such extension is reasonably necessary to enable MSIL to effect purchases of Shares in connection with its hedging activity hereunder in a manner that would, if MSIL were Counterparty or an affiliated purchaser of Counterparty, be in compliance with applicable legal and regulatory requirements.
- (u) Registration. Counterparty hereby agrees that if, in the good faith reasonable judgment of MSIL, the Shares acquired by MSIL for the purpose of hedging its obligations pursuant to this Transaction would be in the hands of MSIL subject to any applicable restrictions with respect to any registration or qualification requirement or prospectus delivery requirement for such Shares pursuant to any applicable federal or state securities law (including, without limitation, any such requirement arising under Section 5 of the Securities Act as a result of such Shares being “restricted securities”, as such term is defined in Rule 144 under the Securities Act, or as a result of the sale of such Shares being subject to paragraph (c) of Rule 145 under the Securities Act) (such Shares, “**Restricted Shares**”), then delivery of such Restricted Shares shall be effected pursuant to either clause (i) or (ii) below at the election of Counterparty, unless waived by MSIL. If the Counterparty elects a Private Placement Settlement or Registered Settlement for any Restricted Shares then the procedures in clause (i) or clause (ii) below shall apply for such Restricted Shares. The Calculation Agent shall make reasonable adjustments to settlement terms and provisions under this Confirmation to reflect a Private Placements or Registered Settlements for such Restricted Shares to be sold hereunder.
  - (i) If the Counterparty elects to satisfy its obligations under this Section 9(u) pursuant to this clause (i) (a “**Private Placement Settlement**”), then Counterparty shall use its reasonable best efforts to enable MSIL to sell such Restricted Shares in accordance with the customary private placement procedures with respect to such Restricted Shares reasonably acceptable to MSIL; *provided* that the Counterparty may not elect a Private Placement Settlement if, on the date of its election, it has taken, or caused to be taken, any action that would make unavailable either the exemption pursuant to Section 4(2) of the Securities Act for the sale by the Counterparty to MSIL (or any affiliate designated by MSIL) of the Restricted Shares or the exemption pursuant to Section 4(1) or Section 4(3) of the Securities Act for resales of the Restricted Shares by MSIL (or any such affiliate of MSIL). The Private Placement Settlement of such Restricted Shares shall include customary representations, covenants, blue sky and other governmental filings and/or registrations, indemnities to MSIL, due diligence rights (for MSIL or any designated buyer of the Restricted Shares by MSIL), opinions and certificates, and such other

documentation as is customary for private placement agreements, all reasonably acceptable to MSIL. In the case of a Private Placement Settlement, MSIL shall determine the appropriate discounts applicable to such Restricted Shares in a commercially reasonable manner and appropriately adjust the amount of such Restricted Shares to be sold by MSIL hereunder. Notwithstanding the Agreement or this Confirmation, the date of delivery of such Restricted Shares shall be the Exchange Business Day following notice by MSIL to the Counterparty, of such applicable discount and the number of Restricted Shares to be sold pursuant to this clause (i).

- (ii) If the Counterparty elects to satisfy its obligations under this Section 9(u) pursuant to this clause (ii) (a “**Registration Settlement**”), then the Counterparty shall promptly (but in any event no later than the beginning of the Resale Period) file and use its reasonable best efforts to make effective under the Securities Act a registration statement or supplement or amend an outstanding registration statement in form and substance reasonably satisfactory to MSIL, to cover the resale of such Restricted Shares in accordance with customary resale registration procedures, including covenants, conditions, representations, underwriting discounts (if applicable), commissions (if applicable), indemnities, due diligence rights, opinions and certificates, and such other documentation as is customary for equity resale underwriting agreements, all reasonably acceptable to MSIL. If MSIL, in its sole reasonable discretion, is not satisfied with such procedures and documentation Private Placement Settlement shall apply. If MSIL is satisfied with such procedures and documentation, it shall sell the Restricted Shares pursuant to such registration statement during a period (the “**Resale Period**”) commencing on the Exchange Business Day following the date the Counterparty elects to satisfy its obligation under this Section 9(u) and ending on the earliest of (i) the Exchange Business Day on which MSIL completes the sale of all Restricted Shares, (ii) the date upon which all Restricted Shares have been sold or transferred pursuant to Rule 144 (or similar provisions then in force) or Rule 145(d)(1) or (2) (or any similar provision then in force) under the Securities Act and (iii) the date upon which all Restricted Shares may be sold or transferred by a non-affiliate pursuant to Rule 144(k) (or any similar provision then in force) or Rule 145(d)(3) (or any similar provision then in force) under the Securities Act.
- (iii) Without limiting the generality of the foregoing, Counterparty agrees that any Restricted Shares held by MSIL, (i) may be transferred by and among MSIL and its affiliates and Counterparty shall effect such transfer without any further action by MSIL and (ii) if applicable, after the minimum “holding period” within the meaning of Rule 144(d) under the Securities Act has elapsed after any Settlement Date for such Restricted Shares, Counterparty shall promptly remove, or cause the transfer agent for such Restricted Shares to remove, any legends referring to any such restrictions or requirements from such Restricted Shares upon delivery by MSIL (or such affiliate of MSIL) to Counterparty or such transfer agent of seller’s and broker’s representation letters customarily delivered by MSIL in connection with resales of restricted securities pursuant to Rule 144 under the Securities Act, without any further requirement for the delivery of any certificate, consent, agreement, opinion of counsel, notice or any other document, any transfer tax stamps or payment of any other amount or any other action by MSIL (or such affiliate of MSIL).

If the Private Placement Settlement or the Registration Settlement shall not be effected as set forth in clauses (i) or (ii), as applicable, then failure to effect such Private Placement Settlement or such Registration Settlement shall constitute an Event of Default with respect to which Counterparty shall be the Defaulting Party.

Please confirm that the foregoing correctly sets forth the terms of our agreement by executing this Confirmation and returning it by facsimile to the address provided in the Notices section of this Confirmation, or by facsimile to the number provided on the attached facsimile cover page.

Very truly yours,

**Morgan Stanley & Co. International Limited**

By: /s/ Nicholas Herne

Authorized Signatory

Name: Nicholas Herne

Managing Director

**Morgan Stanley Bank, as agent**

By: /s/ Richard B. Felix

Authorized Signatory

Name:

Accepted and confirmed  
as of the Trade Date:

**ENCORE CAPITAL GROUP, INC.**

By: /s/ Paul Grinberg

Authorized Signatory

Name: Paul Grinberg



*Morgan Stanley & Co. International Limited  
c/o Morgan Stanley Bank  
One New York Plaza  
NY, NY 10036-8293*

**Morgan Stanley & Co. International Limited**  
**c/o Morgan Stanley Bank, as agent**  
One New York Plaza  
New York, NY 10036-8293

September 30, 2005

To: **Encore Capital Group, Inc.**  
8875 Aero Drive, Suite 200  
San Diego, CA 92123  
Attention: Paul Grinberg  
Telephone No.: (858) 309-6957  
Facsimile No.: (858) 309-6977

Re: Warrants

Reference:

The purpose of this letter agreement is to confirm the terms and conditions of the Warrants issued by **Encore Capital Group, Inc.**, a Delaware corporation (the "**Company**"), to **Morgan Stanley & Co. International Limited** ("**MSIL**"), represented by **Morgan Stanley Bank** ("**MSB**"), as its agent, on the Trade Date specified below (the "**Transaction**"). This letter agreement constitutes a "Confirmation" as referred to in the ISDA Master Agreement specified below. This Confirmation shall replace any previous letter and serve as the final documentation for this Transaction.

The definitions and provisions contained in the 1996 ISDA Equity Derivatives Definitions (the "**Equity Definitions**"), as published by the International Swaps and Derivatives Association, Inc., are incorporated into this Confirmation. In the event of any inconsistency between the Equity Definitions and this Confirmation, this Confirmation shall govern. This Transaction shall be deemed to be a Share Option Transaction within the meaning set forth in the Equity Definitions.

Each party is hereby advised, and each such party acknowledges, that the other party has engaged in, or refrained from engaging in, substantial financial transactions and has taken other material actions in reliance upon the parties' entry into the Transaction to which this Confirmation relates on the terms and conditions set forth below.

1. This Confirmation evidences a complete and binding agreement between MSIL and the Company as to the terms of the Transaction to which this Confirmation relates. This Confirmation shall supplement, form a part of, and be subject to an agreement in the form of the 2002 ISDA Master Agreement (the "**Agreement**") as if MSIL and the Company had executed an agreement in such form (but without any Schedule except for the election of the laws of the State of New York as the governing law and United States dollars as the Termination Currency) on the Trade Date. In the event of any inconsistency between provisions of that Agreement and this Confirmation, this Confirmation will prevail for the purpose of the Transaction to which this Confirmation relates. The parties hereby agree that no Transaction other than the Transaction to which this Confirmation relates shall be governed by the Agreement.

2. The terms of the particular Transaction to which this Confirmation relates are as follows:

General Terms:

Trade Date:	September 30, 2005
Warrants:	Equity call warrants, each giving the holder the right to purchase one Share at the Strike Price, subject to the Settlement Terms set forth below. For the purposes of the Equity Definitions, each reference to a Warrant shall be deemed to be a reference to a Call Option.
Warrant Style:	American, subject to the definition of the Exercise Period below
Buyer:	MSIL
Seller:	Company
Shares:	The common stock of Company, par value USD 0.01 per Share (Exchange symbol "ECPG")
Number of Warrants:	179,071, subject to adjustments provided herein. For the avoidance of doubt, the Number of Warrants shall be reduced by any Warrants exercised by MSIL. In no event will the Number of Warrants be less than zero.
Daily Number of Warrants:	For any day, the Number of Warrants not previously exercised as of such day, <i>divided</i> by the remaining number of Expiration Dates (including such day) and rounded down to the nearest whole number to account for any fractional Daily Number of Warrants.
Warrant Entitlement:	One Share per Warrant
Multiple Exercise:	Applicable
Minimum Number of Warrants:	1
Maximum Number of Warrants:	179,071
Strike Price:	USD 29.0388
Premium:	The amount specified as such by the Calculation Agent in accordance with Premium Determination provisions below.
Premium Payment Date:	Second Currency Business Day immediately following the last day of the Hedging Period.
Premium Determination:	Beginning on the Trade Date, MSIL or an affiliate of MSIL shall effect, for the account of MSIL, transactions in the Shares to establish its initial hedge of the price and market risk undertaken by MSIL with respect to this Transaction, as well as the amount of the Premium payable by MSIL to the Company with respect to this Transaction (the dates on which such transactions are effected being collectively referred to as the " <b>Hedging Period</b> ") and shall within one Currency Business Day from the last day of the Hedging Period notify the Company of the amount of the Premium.
Exchange:	NASDAQ National Market
Related Exchange(s):	The principal exchange(s) for options contracts or futures contracts, if any, with respect to the Shares

Exercise and Valuation:

Exercise Period:	As specified in Section 3.1 of the Equity Definitions; <i>provided, however</i> that the Warrants shall not be exercisable on any Exchange Business Day during the period beginning on September 14, 2010 and ending on September 24, 2010 (such period, the “ <b>Blackout Period</b> ”). For the avoidance of doubt, except for any Exchange Business Day during the Blackout Period and subject to the definition of the Expiration Dates, the Warrants will be exercisable on any Exchange Business Day during the period beginning on the Trade Date and ending on the final Expiration Date.
Expiration Time:	The Valuation Time
Expiration Dates:	<p>Each scheduled Exchange Business Day in the period beginning on and including the First Expiration Date and ending on and including the 89<sup>th</sup> Exchange Business Day following the First Expiration Date shall be an “Expiration Date” for a number of Warrants equal to the Daily Number of Warrants on such date.</p> <p>Notwithstanding the foregoing and anything to the contrary in the Equity Definitions:</p> <ul style="list-style-type: none"><li>(i) if the First Expiration Date occurs prior to the Blackout Period, then each of the Exchange Business Days in the Blackout Period shall not be an Expiration Date hereunder and such day shall not be subject to clause (ii) of this definition; and</li><li>(ii) if a Market Disruption Event occurs on any Expiration Date (including the First Expiration Date), the Calculation Agent may reduce the Daily Number of Warrants for which such day shall be an Expiration Date and may designate an Exchange Business Day or a number of Exchange Business Days as the Expiration Date(s) for the remaining Daily Number of Warrants or a portion thereof for the original Expiration Date; <i>provided</i> that if such Expiration Date has not occurred pursuant to this clause as of the eighth Exchange Business Day following the last Expiration Date under this Transaction, the Calculation Agent shall have the right to declare such Exchange Business Day to be the final Expiration Date and the Calculation Agent shall determine its good faith estimate of the value for the Shares as of the Valuation Time on that eighth Exchange Business Day or on any subsequent Exchange Business Day, as the Calculation Agent shall determine in its sole discretion.</li></ul>
First Expiration Date:	Subject to Market Disruption Event below, the earlier of (i) November 19, 2010 (or if such day is not an Exchange Business Day, the next succeeding Exchange Business Day) and (ii) an Exchange Business Day designated as such by MSIL and occurring during the period commencing on July 16, 2010 and ending on November 19, 2010, but excluding any Exchange Business Date during the Blackout Period.

Automatic Exercise:	Applicable; and means that, unless all Warrants have been previously exercised hereunder, a number of Warrants for each Expiration Date equal to the Daily Number of Warrants (as adjusted pursuant to the terms hereof) for such Expiration Date will be deemed to be automatically exercised.
Market Disruption Event:	Section 4.3(a)(ii) is hereby amended by adding after the words “or Share Basket Transaction” in the first line thereof a phrase “a failure by the Exchange or Related Exchange to open for trading during its regular trading session or” and replacing the phrase “during the one-half hour period that ends at the relevant Valuation Time” with the phrase “at any time during the regular trading session on the Exchange or any Related Exchange, without regard to after hours or any other trading outside of the regular trading session hours”.
Valuation applicable to each Warrant:	
Valuation Time:	At the close of trading of the regular trading session on the Exchange; <i>provided</i> that if the principal trading session is extended, the Calculation Agent shall determine the Valuation Time in its reasonable discretion.
Valuation Date:	Each Exercise Date. Notwithstanding anything to the contrary in the Equity Definitions, if there is a Market Disruption Event on any Valuation Date, then the Calculation Agent shall determine the Settlement Price for such Valuation Date on the basis of its good faith estimate of the market value for the relevant Shares on such Valuation Date.
Settlement Terms applicable to the Transaction:	
Method of Settlement:	Net Share Settlement; and means that, on each Settlement Date, Company shall deliver to MSIL, the Share Delivery Quantity of Shares for such Settlement Date to the account specified hereto free of payment through the Clearance System.
Share Delivery Quantity:	For any Settlement Date, a number of Shares, as calculated by the Calculation Agent, equal to the Net Share Settlement Amount for such Settlement Date <i>divided by</i> the Settlement Price on the Valuation Date in respect of such Settlement Date, <i>plus</i> cash in lieu of any fractional shares (based on such Settlement Price).
Net Share Settlement Amount:	For any Settlement Date, an amount equal to the product of (i) the Number of Warrants being exercised on the relevant Exercise Date (or in the case of any exercise (including any Automatic Exercise) on an Expiration Date, the Daily Number of Warrants for such Expiration Date), (ii) the Strike Price Differential for such Settlement Date and (iii) the Warrant Entitlement. For the avoidance of doubt, if any Warrants are exercised prior to the First Expiration Date, the Calculation Agent will proportionately adjust each Daily Number of Warrants to reflect such exercise.
Strike Price Differential:	(a) If the Settlement Price for any Valuation Date is greater than the Strike Price, an amount equal to the excess of such Settlement Price over the Strike Price; or



Settlement Price:	(b) If such Settlement Price is less than or equal to the Strike Price, zero.  For any Valuation Date, the per Share volume-weighted average prices for such Valuation Date as displayed under the heading "Bloomberg VWAP" on Bloomberg page ECPG <equity> AQR (or any successor thereto) in respect of the period from 9:30 a.m. to 4:00 p.m. (New York City time) on such Valuation Date (or if such volume-weighted average price is unavailable, the market value of one Share on such Valuation Date, as determined by the Calculation Agent).
Settlement Date:	For any Exercise Date, the date defined as such in Section 6.2 of the Equity Definitions, subject to Section 9(q) hereof.
Failure to Deliver:	Inapplicable
Other Applicable Provisions:	The provisions of Sections 6.6, 6.7, 6.8, 6.9 and 6.10 of the Equity Definitions will be applicable, except that all references in such provisions to "Physically-Settled" shall be read as references to "Net Share Settled". "Net Share Settled" in relation to any Warrant means that Net Share Settlement is applicable to that Warrant.

3. Additional Terms applicable to the Transaction:

Adjustments applicable to the Warrants:

Method of Adjustment:

Calculation Agent Adjustment. For avoidance of doubt, in making any adjustments under the Equity Definitions, the Calculation Agent may adjust the Strike Price, the Number of Warrants, the Daily Number of Warrants and the Warrant Entitlement. Notwithstanding the foregoing, any cash dividends or distributions, whether or not extraordinary, shall be governed by Section 9(l) of this Confirmation and not by Section 9.1(c) of the Equity Definitions.

Extraordinary Events applicable to the Transaction:

Consequence of Merger Events

(a) Share-for-Share:

Alternative Obligation; *provided* that the Calculation Agent will determine if the Merger Event affects the theoretical value of the Transaction and if so MSIL in its sole discretion may elect to make adjustments to the Strike Price and any other term necessary to reflect the characteristics (including volatility, dividend practice, borrow cost, policy and liquidity) of the New Shares. Notwithstanding the foregoing, Cancellation and Payment shall apply in the event the New Shares are not publicly traded on a United States national securities exchange or quoted on the NASDAQ National Market.

(b) Share-for-Other:

Cancellation and Payment

(c) Share-for-Combined:

Cancellation and Payment

Nationalization or Insolvency:

Cancellation and Payment

4. Calculation Agent:

MSIL

5. Account Details:

(a) Account for payments to Company:

JPMorgan Chase Bank  
ABA# 122100024  
Acct: Encore Capital Group, Inc. Operating  
Acct No.: 656436870

Account for delivery of Shares to Company:

To come under separate cover

(b) Account for payments to MSIL:

Citibank N.A.  
ABA # 021-000-089  
A/C Morgan Stanley Bank  
A/C # 30440939  
For further credit to Customer Account 033AC0022

Account for delivery of Shares to MSIL:

DTC 050

6. Offices:

The Office of Company for the Transaction is: Inapplicable, Company is not a Multibranch Party.

The Office of MSIL for the Transaction is: New York

Morgan Stanley & Co. International Limited  
c/o Morgan Stanley Bank  
One New York Plaza  
4th Floor  
New York, NY 10004

7. Notices: For purposes of this Confirmation:

(a) Address for notices or communications to Company:

Encore Capital Group, Inc.  
8875 Aero Drive, Suite 200  
San Diego, CA 92123  
Attention: George Brooker  
Telephone No.: (858) 309-6957  
Facsimile No.: (858) 309-6977

(b) Address for notices or communications to MSIL:

Morgan Stanley & Co. International Limited  
c/o Morgan Stanley Bank, as agent  
c/o Morgan Stanley  
One New York Plaza  
4th Floor  
New York, NY 10004  
attn: Fred Gonfiantini  
Telephone Number: 212-276-2427  
Fax Number: 212-507-0724

with a copy to:

Legal Department  
Morgan Stanley & Co. Incorporated  
1585 Broadway  
38th Floor  
New York, New York 10036  
attn: Anthony Cicia  
Telephone Number: 212-761-3452  
Fax Number: 212-507-4338

8. Representations and Warranties of the Company

The representations and warranties of the Company set forth in Section 3 of the Agreement and Section 4 of the Purchase Agreement (the “**Purchase Agreement**”) dated as of September 13, 2005 between the Company and J.P. Morgan Securities Inc. and Morgan Stanley & Co. Incorporated, as representatives of the Initial Purchasers parties thereto, are true and correct and are hereby deemed to be repeated to MSIL as if set forth herein. The Company hereby further represents and warrants to MSIL that:

- (a) The Company has all necessary corporate power and authority to execute, deliver and perform its obligations in respect of this Transaction; such execution, delivery and performance have been duly authorized by all necessary corporate action on the Company’s part; and this Confirmation has been duly and validly executed and delivered by the Company and constitutes its valid and binding obligation, enforceable against the Company in accordance with its terms, subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and similar laws affecting creditors’ rights and remedies generally, and subject, as to enforceability, to general principles of equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity) and except that rights to indemnification and contribution hereunder may be limited by federal or state securities laws or public policy relating thereto.
- (b) Neither the execution and delivery of this Confirmation nor the incurrence or performance of obligations of the Company hereunder will conflict with or result in a breach of the certificate of incorporation or by-laws (or any equivalent documents) of the Company, or any applicable law or regulation, or any order, writ, injunction or decree of any court or governmental authority or agency, or any agreement or instrument to which the Company or any of its subsidiaries is a party or by which the Company or any of its subsidiaries is bound or to which the Company or any of its subsidiaries is subject, or constitute a default under, or result in the creation of any lien under, any such agreement or instrument, or breach or constitute a default under any agreements and contracts of the Company or its significant subsidiaries filed as exhibits to the Company’s Annual Report on Form 10-K for the year ended December 31, 2004, as updated by any subsequent filings.
- (c) No consent, approval, authorization, or order of, or filing with, any governmental agency or body or any court is required in connection with the execution, delivery or performance by the Company of this Confirmation, except such as have been obtained or made and such as may be

required under the Securities Act of 1933, as amended (the “**Securities Act**”), or state securities laws.

- (d) The Shares of the Company initially issuable upon exercise of the Warrant by the net share settlement method (the “**Warrant Shares**”) have been reserved for issuance by all required corporate action of the Company. The Warrant Shares have been duly authorized and, when delivered against payment therefor (which may include Net Share Settlement in lieu of cash) and otherwise as contemplated by the terms of the Warrant following the exercise of the Warrant in accordance with the terms and conditions of the Warrant, will be validly issued, fully-paid and non-assessable, and the issuance of the Warrant Shares will not be subject to any preemptive or similar rights.
- (e) The Company is an “eligible contract participant” (as such term is defined in Section 1(a)(12) of the Commodity Exchange Act, as amended (the “**CEA**”) because one or more of the following is true:
  - The Company is a corporation, partnership, proprietorship, organization, trust or other entity and:
    - (A) the Company has total assets in excess of USD 10,000,000;
    - (B) the obligations of Company hereunder are guaranteed, or otherwise supported by a letter of credit or keepwell, support or other agreement, by an entity of the type described in Section 1a(12)(A)(i) through (iv), 1a(12)(A)(v)(I), 1a(12)(A)(vii) or 1a(12)(C) of the CEA; or
    - (C) the Company has a net worth in excess of USD 1,000,000 and has entered into this Agreement in connection with the conduct of Company’s business or to manage the risk associated with an asset or liability owned or incurred or reasonably likely to be owned or incurred by Company in the conduct of Company’s business.
  - (f) The Company and each of its affiliates is not, on the date hereof, in possession of any material non-public information with respect to Company; *provided* that the Company shall be deemed to repeat the representations contained in this Section 8(f) on each day during the Hedging Period.
  - (g) Company hereby represents and warrants to MSIL that it is an “accredited investor” (as such term is defined in Section 2(15)(ii) of the Securities Act).
  - (h) Company hereby represents and warrants to MSIL that Company’s liabilities in respect of the Transaction are not disproportionate to its net worth.
  - (i) Company hereby agrees and acknowledges that the Transaction has not been registered with the Securities and Exchange Commission or any state securities commission and that the Warrants are being sold to MSIL by the Company in reliance upon exemptions from any such registration requirements.
  - (j) Company hereby represents and warrants to MSIL that it is capable of assessing the merits of and understanding (on its own behalf or through independent professional advice), and understands and accepts, the terms, conditions and risks of the Transaction.

9. Other Provisions:

- (a) Opinions. The Company shall deliver an opinion of counsel, dated as of the Premium Payment Date, to MSIL with respect to the matters set forth in Sections 8(a) through (e) of this Confirmation.

- (b) No Reliance, etc. Each party represents that (i) it is entering into the Transaction evidenced hereby as principal (and not as agent or in any other capacity); (ii) neither the other party or parties nor any of its or their agents are acting as a fiduciary for it; (iii) it is not relying upon any representations except those expressly set forth in the Agreement or this Confirmation; (iv) it has not relied on the other party or parties for any legal, regulatory, tax, business, investment, financial, and accounting advice, and it has made its own investment, hedging, and trading decisions based upon its own judgment and not upon any view expressed by the other party or parties or any of its or their agents; and (v) it is entering into this Transaction with a full understanding of the terms, conditions and risks thereof and it is capable of and willing to assume those risks.
- (c) Share De-listing Event. If at any time during the period from and including the Trade Date, to and including the final Valuation Date, the Shares cease to be listed or quoted on the Exchange for any reason (other than a Merger Event as a result of which all of the property underlying the Warrants consists of shares of common stock that are listed or quoted on The New York Stock Exchange, The American Stock Exchange or the NASDAQ National Market (or their respective successors) (the “**Successor Exchange**”)) and are not immediately re-listed or quoted as of the date of such de-listing on the Successor Exchange (a “**Share De-listing**”), then Cancellation and Payment (as defined in Section 9.6 of the Equity Definitions treating the “**Announcement Date**” as the date of first public announcement that the Share De-Listing will occur and the “**Merger Date**” as the date of the Share De-Listing) shall apply, and the date of the de-listing shall be deemed the date of termination for purposes of calculating any payment due from one party to any of the others in connection with the cancellation of this Transaction. If the Shares are immediately re-listed on a Successor Exchange upon their de-listing from the Exchange, this Transaction shall continue in full force and effect, provided that the Successor Exchange shall be deemed to be the Exchange for all purposes hereunder. In addition, the Calculation Agent shall make any adjustments it deems necessary to the terms of the Transaction in accordance with Calculation Agent Adjustment method as defined under Section 9.1(c) of the Equity Definitions.
- (d) Repurchase Notices. Company shall, on any day on which Company effects any repurchase of Shares, promptly give MSIL a written notice of such repurchase (a “**Repurchase Notice**”) on such day if following such repurchase, the number of outstanding Shares on such day, subject to any adjustments provided herein, is (i) less than 21.3 million or (ii) more than 1 million less than the number of Shares included in the immediately preceding Repurchase Notice. Company agrees to indemnify and hold harmless MSIL and its affiliates and their respective officers, directors, employees, affiliates, advisors, agents and controlling persons (each, an “**Indemnified Person**”) from and against any and all losses (including losses relating to MSIL’s hedging activities as a consequence of becoming, or of the risk of becoming, a Section 16 “insider”, including without limitation, any forbearance from hedging activities or cessation of hedging activities and any losses in connection therewith with respect to this Transaction), claims, damages, judgments, liabilities and expenses (including reasonable attorney’s fees), joint or several, which an Indemnified Person actually may become subject to, as a result of Company’s failure to provide MSIL with a Repurchase Notice on the day and in the manner specified in this Section 9(d), and to reimburse, within 30 days, upon written request, each of such Indemnified Persons for any reasonable legal or other expenses incurred in connection with investigating, preparing for, providing testimony or other evidence in connection with or defending any of the foregoing. If any suit, action, proceeding (including any governmental or regulatory investigation), claim or demand shall be brought or asserted against the Indemnified Person, such Indemnified Person shall promptly notify the Company in writing, and the Company, upon request of the Indemnified Person, shall retain counsel reasonably satisfactory to the Indemnified Person to represent the Indemnified Person and any others the Company may designate in such proceeding and shall pay the fees and expenses of such counsel related to such proceeding. Company shall not be liable for any settlement of any proceeding effected without its written consent, but if settled with such consent or if there be a final judgment for the plaintiff, Company agrees to indemnify any Indemnified Person from and against any loss or liability by reason of such settlement or judgment. Company shall not, without the prior written consent of the Indemnified Person, effect

any settlement of any pending or threatened proceeding in respect of which any Indemnified Person is or could have been a party and indemnity could have been sought hereunder by such Indemnified Person, unless such settlement includes an unconditional release of such Indemnified Person from all liability on claims that are the subject matter of such proceeding on terms reasonably satisfactory to such Indemnified Person. If the indemnification provided for in this paragraph (d) is unavailable to an Indemnified Person or insufficient in respect of any losses, claims, damages or liabilities referred to therein, then Company under such paragraph, in lieu of indemnifying such Indemnified Person thereunder, shall contribute to the amount paid or payable by such Indemnified Person as a result of such losses, claims, damages or liabilities. The remedies provided for in this paragraph (d) are not exclusive and shall not limit any rights or remedies which may otherwise be available to any Indemnified Person at law or in equity. The indemnity and contribution agreements contained in this paragraph (d) shall remain operative and in full force and effect regardless of the termination of this Transaction.

- (e) Regulation M. The Company was not on the Trade Date and is not on the date hereof engaged in a distribution, as such term is used in Regulation M under the Securities Exchange Act of 1934, as amended (“**Exchange Act**”), of any securities of Company, other than a distribution meeting the requirements of the exception set forth in sections 101(b)(10) and 102(b)(7) of Regulation M. The Company shall not, until the fifth Exchange Business Day immediately following the last day of the Hedging Period, engage in any such distribution.
- (f) Rule 10b-18. Neither the Company nor any of its affiliates has purchased any Shares in purchases of blocks (as contemplated by Rule 10b-18 under the Exchange Act) during each of the four calendar weeks preceding the date hereof and the Company further covenants and agrees that neither it or any of its affiliates will purchase any Shares prior to the last day of the Hedging Period.
- (g) No Manipulation. The Company is not entering into this Transaction to create actual or apparent trading activity in the Shares (or any security convertible into or exchangeable for the Shares) or to raise or depress or otherwise manipulate the price of the Shares (or any security convertible into or exchangeable for the Shares).
- (h) Board Authorization. Company represents that it is entering into the Transaction, solely for the purposes stated in the board resolution authorizing this Transaction and in its public disclosure. Company further represents that there is no internal policy, whether written or oral, of Company that would prohibit Company from entering into any aspect of this Transaction, including, but not limited to, the issuance of Shares to be made pursuant hereto.
- (i) Transfer or Assignment. Company may not transfer any of its rights or obligations under this Transaction without the prior written consent of MSIL. MSIL may transfer or assign all or any portion of its rights or obligations under this Transaction without consent of the Company. If MSIL, in its sole discretion, determines that its “beneficial ownership” (within the meaning of Section 16 of the Exchange Act and rules promulgated thereunder) exceeds 8% or more of the Company’s outstanding Shares and, in its sole discretion, MSIL is unable after its commercially reasonable efforts to effect a transfer or assignment on pricing terms and in a time period reasonably acceptable to MSIL that would reduce its “beneficial ownership” to 7.5%, MSIL may designate any Exchange Business Day as an Early Termination Date with respect to a portion (the “**Terminated Portion**”) of this Transaction, such that the its “beneficial ownership” following such partial termination will be equal to or less than 8%. In the event that MSIL so designates an Early Termination Date with respect to a portion of this Transaction, a payment shall be made pursuant to Section 6 of the Agreement as if (i) an Early Termination Date had been designated in respect of a Transaction having terms identical to this Transaction and a Number of Warrants equal to the Terminated Portion, (ii) the Company shall be the sole Affected Party with respect to such partial termination and (iii) such Transaction shall be the only Terminated Transaction. For the avoidance of doubt, if MSIL assigns or terminates any Warrants hereunder, each Daily Number of Warrants not previously settled shall be reduced proportionally, as calculated by the Calculation Agent. Notwithstanding any other provision in this Confirmation to the contrary

requiring or allowing MSIL to purchase, sell, receive or deliver any shares or other securities to or from Company, MSIL may designate any of its affiliates to purchase, sell, receive or deliver such shares or other securities and otherwise to perform MSIL's obligations in respect of this Transaction and any such designee may assume such obligations. MSIL shall be discharged of its obligations to Company to the extent of any such performance.

- (j) Damages. Neither party shall be liable under Section 6.10 of the Equity Definitions for special, indirect or consequential damages, even if informed of the possibility thereof.
- (k) Early Unwind. In the event the sale of Convertible Notes is not consummated with the initial purchasers for any reason by the close of business in New York on the Premium Payment Date (or such later date as agreed upon by the parties) (such date, or any later date as agreed upon being the "**Early Unwind Date**"), this Transaction shall automatically terminate (the "**Early Unwind**"), on the Early Unwind Date and (i) the Transaction and all of the respective rights and obligations of MSIL and Company under the Transaction shall be cancelled and terminated and (ii) each party shall be released and discharged by the other party from and agrees not to make any claim against the other party with respect to any obligations or liabilities of the other party arising out of and to be performed in connection with the Transaction either prior to or after the Early Unwind Date; *provided* that Company shall reimburse MSIL for any costs or expenses (including market losses) relating to the unwinding of its hedging activities in connection with the Transaction (including any loss or cost incurred as a result of its terminating, liquidating, obtaining or reestablishing any hedge or related trading position). The amount of any such reimbursement shall be determined by MSIL in its sole good faith discretion. MSIL shall notify Company of such amount and the Company shall pay such amount in immediately available funds on the Early Unwind Date. MSIL and the Company represent and acknowledge to the other that, subject to the proviso included in this Section, upon an Early Unwind, all obligations with respect to the Transaction shall be deemed fully and finally discharged.
- (l) Dividends. If at any time during the period from and including the Trade Date, to but excluding the Expiration Date, an ex-dividend date for a cash dividend occurs with respect to the Shares (an "**Ex-Dividend Date**"), and that dividend is greater than the Regular Dividend on a per Share basis then the Calculation Agent will adjust the Strike Price, the Number of Warrants, the Daily Number of Warrants and the Warrant Entitlement to preserve the fair value of the Warrant to MSIL after taking into account such dividend. "**Regular Dividend**" shall mean USD 0.00 per Share per quarter.
- (m) Role of Agent. Each party agrees and acknowledges that MSB is acting as agent for both parties but does not guarantee the performance of MSIL. MSIL is not a member of the Securities Investor Protection Corporation. Neither MSIL nor Company shall contact the other with respect to any matter relating to the Transaction without the direct involvement of MSB, (ii) MSB, MSIL and Company each hereby acknowledges that any transactions by MSIL or MSB in the Shares will be undertaken by MSIL or MSB, as the case may, as principal for its own account; and (iii) all of the actions to be taken by MSIL and MSB in connection with the Transaction, including but not limited to any exercise of any Warrants, shall be taken by MSIL or MSB independently and without any advance or subsequent consultation with the Company; and (iv) MSB is hereby authorized to act as agent for Company only to the extent required to satisfy the requirements of Rule 15a-6 under the Exchange Act in respect of the Warrants described hereunder.
- (n) Additional Provisions.
  - (i) The first paragraph of Section 9.1(c) of the Equity Definitions is hereby amended to read as follows: (c) 'If "Calculation Agent Adjustment" is specified as the method of adjustment in the Confirmation of a Share Option Transaction, then following the declaration by the Issuer of the terms of any Potential Adjustment Event, the Calculation Agent will determine whether such Potential Adjustment Event has a material effect on the theoretical value of the relevant Shares or Warrants and, if so, will (i) make appropriate adjustment(s), if any, to any one or more of: and,

the sentence immediately preceding Section 9.1(c)(ii) is hereby amended by deleting the words “diluting or concentrative”.

(ii) Section 9.1(e)(vi) of the Equity Definitions is hereby amended by deleting the words “other similar” between “any” and “event”; deleting the words “diluting or concentrative” and replacing them with “material”; and adding the following words at the end of the sentence “or Warrants”.

(iii) Section 9.6(a)(ii) of the Equity Definitions is hereby amended by (1) deleting from the third line thereof the word “or” after the word “official” and inserting a comma therefor, and (2) deleting the period at the end of subsection (ii) thereof and inserting the following words therefor “ or (C) at MSIL’s option, the occurrence of any of the events specified in Section 5(a)(vii) (1) through (9) of the ISDA Master Agreement with respect to that Issuer.”

(iv) Notwithstanding Section 9.7 of the Equity Definitions, everything in the first paragraph of Section 9.7(b) of the Equity Definitions after the words “Calculation Agent” in the third line through the remainder of such Section 9.7 shall be deleted and replaced with the following:

“based on an amount representing the Calculation Agent’s determination of the fair value to Buyer of an option with terms that would preserve for Buyer the economic equivalent of any payment or delivery (assuming satisfaction of each applicable condition precedent) by the parties in respect of the relevant Transaction that would have been required after that date but for the occurrence of the Merger Event, Nationalization, Insolvency or De-Listing Event, as the case may be.”

(v) Upon the occurrence of each of the following events, MSIL shall have the right to designate such event an Additional Termination Event hereunder:

(1) Any “person” or “group” within the meaning of Section 13(d) of the Exchange Act other than the Company, any of its subsidiaries or its employee benefit plans, files a Schedule TO or any schedule, form or report under the Exchange Act disclosing that such person or group has become the direct or indirect ultimate “beneficial owner”, as defined in Rule 13d-3 under the Exchange Act, of the common equity of the Company representing more than 50% of the voting power of such common equity; and

(2) Any sale, lease or other transfer in one transaction or a series of transactions of all or substantially all of the consolidated assets of the Company and its subsidiaries, taken as a whole, to any person other than one of its subsidiaries.

(o) No Collateral or Setoff. Notwithstanding any provision of the Agreement or any other agreement between the parties to the contrary, the obligations of the Company hereunder are not secured by any collateral. Obligations under this Transaction shall not be set off by the Company against any other obligations of the parties, whether arising under the Agreement, this Confirmation, under any other agreement between the parties hereto, by operation of law or otherwise. Any provision in the Agreement with respect to the satisfaction of the Company’s payment obligations to the extent of MSIL’s payment obligations to the Company in the same currency and in the same Transaction (including, without limitation Section 2(c) thereof) shall not apply to the Company and, for the avoidance of doubt, the Company shall fully satisfy such payment obligations notwithstanding any payment obligation to the Company by MSIL in the same currency and in the same Transaction. In calculating any amounts under Section 6(e) of the Agreement, notwithstanding anything to the contrary in the Agreement, (1) separate amounts shall be calculated as set forth in such Section 6(e) with respect to (a) this Transaction and (b) all other Transactions, and (2) such separate amounts shall be payable pursuant to Section 6(d)(ii) of the Agreement.

(p) Alternative Calculations and Payment on Early Termination and on Certain Extraordinary Events. If, in respect of this Transaction, an amount is payable by the Company to MSIL, (i) pursuant to Section 9.7 of the Equity Definitions (except in the event of a Nationalization or



Insolvency or a Merger Event, in each case, in which the consideration to be paid to holders of Shares consists solely of cash) or (ii) pursuant to Section 6(d)(ii) of the Agreement (except in the event of an Event of Default in which Company is the Defaulting Party or a Termination Event in which Company is the Affected Party, other than an Event of Default of the type described in Section 5(a)(iii), (v), (vi), (vii) or (viii) of the Agreement or a Termination Event of the type described in Section 5(b)(i), (ii), (iii), (iv), (v) or (vi) of the Agreement in each case that resulted from an event or events outside Company's control) (a "**Payment Obligation**"), Company may, in its sole discretion, satisfy any such Payment Obligation by the Share Termination Alternative (as defined below) and shall give irrevocable telephonic notice to MSIL, confirmed in writing within one Currency Business Day, no later than 12:00 p.m. New York local time on the Merger Date, the date of the occurrence of the Nationalization or Insolvency, or Early Termination Date, as applicable; *provided* that if the Company does not validly elect to satisfy its Payment Obligation by the Share Termination Alternative, MSIL shall have the right to require the Company to satisfy its Payment Obligation by the Share Termination Alternative, notwithstanding Company's election to the contrary. Notwithstanding the foregoing, Company's or MSIL's right to elect satisfaction of a Payment Obligation in the Share Termination Alternative as set forth in this clause shall only apply to Transactions under this Confirmation and, notwithstanding anything to the contrary in the Agreement, (1) separate amounts shall be calculated with respect to (a) Transactions hereunder and (b) all other Transactions under the Agreement, and (2) such separate amounts shall be payable pursuant to Section 6(d)(ii) of the Agreement, subject to, in the case of clause (a), Company's Share Termination Alternative right hereunder.

Share Termination Alternative:

Applicable and means that Company shall deliver to MSIL the Share Termination Delivery Property on the date (the "**Share Termination Payment Date**") when the Payment Obligation would otherwise be due, subject to paragraph (q)(i) below, in satisfaction, subject to paragraph (q)(ii) below, of the Payment Obligation in the manner reasonably requested by MSIL free of payment.

Share Termination Delivery Property:

A number of Share Termination Delivery Units, as calculated by the Calculation Agent, equal to the Payment Obligation divided by the Share Termination Unit Price. The Calculation Agent shall adjust the Share Termination Delivery Property by replacing any fractional portion of a security therein with an amount of cash equal to the value of such fractional security based on the values used to calculate the Share Termination Unit Price.

Share Termination Unit Price:

The value to MSIL of property contained in one Share Termination Delivery Unit on the date such Share Termination Delivery Units are to be delivered as Share Termination Delivery Property, as determined by the Calculation Agent in its discretion by commercially reasonable means and notified by the Calculation Agent to Company at the time of notification of the Payment Obligation. In the case of a Private Placement of Share Termination Delivery Units that are Restricted Shares (as defined below) as set forth in paragraph (q)(i) below, the Share Termination Unit Price shall be determined by the discounted price applicable to such Share Termination Delivery Units. In the case of a Registered Settlement of Share Termination Delivery

Units that are Restricted Shares (as defined below) as set forth in paragraph (q)(ii) below, the Share Termination Unit Price shall be the Settlement Price on the Merger Date, the date of the occurrence of the Nationalization or Insolvency, or Early Termination Date, as applicable.

Share Termination Delivery Unit:

In the case of a Termination Event or Event of Default, one Share or, in the case of Nationalization or Insolvency or a Merger Event, a unit consisting of the number or amount of each type of property received by a holder of one Share (without consideration of any requirement to pay cash or other consideration in lieu of fractional amounts of any securities) in such Nationalization or Insolvency or such Merger Event. If such Merger Event involves a choice of consideration to be received by holders, such holder shall be deemed to have elected to receive the maximum possible amount of cash.

Failure to Deliver:

Inapplicable

Other applicable provisions:

If this Transaction is to be Share Termination Settled, the provisions of Sections 6.6, 6.7, 6.8, 6.9 and 6.10 (as modified above) of the Equity Definitions will be applicable, except that all references in such provisions to "Physically-Settled" shall be read as references to "Share Termination Settled" and all references to "Shares" shall be read as references to "Share Termination Delivery Units". "Share Termination Settled" in relation to this Transaction means that Share Termination Settlement is applicable to this Transaction.

- (q) Registration/Private Placement Procedures. If, in the reasonable opinion of MSIL, following any delivery of Shares or Share Termination Delivery Property to MSIL hereunder, such Shares or Share Termination Delivery Property would be in the hands of MSIL subject to any applicable restrictions with respect to any registration or qualification requirement or prospectus delivery requirement for such Shares or Share Termination Delivery Property pursuant to any applicable federal or state securities law (including, without limitation, any such requirement arising under Section 5 of the Securities Act as a result of such Shares or Share Termination Delivery Property being "restricted securities", as such term is defined in Rule 144 under the Securities Act, or as a result of the sale of such Shares or Share Termination Delivery Property being subject to paragraph (c) of Rule 145 under the Securities Act) (such Shares or Share Termination Delivery Property, "**Restricted Shares**"), then delivery of such Restricted Shares shall be effected pursuant to either clause (i) or (ii) below at the election of Company, unless waived by MSIL. Notwithstanding the foregoing, solely in respect of any Daily Number of Warrants exercised or deemed exercised on any Expiration Date, the Company shall elect, prior to the first Settlement Date for the first Expiration Date, a Private Placement Settlement or Registered Settlement for all deliveries of Restricted Shares for all such Expiration Dates which election shall be applicable to all Settlement Dates for such Daily Number of Warrants and the procedures in clause (i) or clause (ii) below shall apply for such delivered Restricted Shares commencing after the final Settlement Date for such Daily Number of Warrants. The Calculation Agent shall make reasonable adjustments to settlement terms and provisions under this Confirmation to reflect a Private Placements or Registered Settlements for such Restricted Shares delivered hereunder.

- (i) If the Company elects to settle the Transaction pursuant to this clause (i) (a “**Private Placement Settlement**”), then delivery of Restricted Shares by the Company shall be effected in customary private placement procedures with respect to such Restricted Shares reasonably acceptable to MSIL; *provided* that the Company may not elect a Private Placement Settlement if, on the date of its election, it has taken, or caused to be taken, any action that would make unavailable either the exemption pursuant to Section 4(2) of the Securities Act for the sale by the Company to MSIL (or any affiliate designated by MSIL) of the Restricted Shares or the exemption pursuant to Section 4(1) or Section 4(3) of the Securities Act for resales of the Restricted Shares by MSIL (or any such affiliate of MSIL). The Private Placement Settlement of such Restricted Shares shall include customary representations, covenants, blue sky and other governmental filings and/or registrations, indemnities to MSIL, due diligence rights (for MSIL or any designated buyer of the Restricted Shares by MSIL), opinions and certificates, and such other documentation as is customary for private placement agreements, all reasonably acceptable to MSIL. In the case of a Private Placement Settlement, MSIL shall determine the appropriate discount to the Share Termination Unit Price (in the case of settlement of Share Termination Delivery Units pursuant to paragraph (q) above) or any Settlement Price (in the case of settlement of Shares pursuant to Section 2 above) applicable to such Restricted Shares in a commercially reasonable manner and appropriately adjust the amount of such Restricted Shares to be delivered to MSIL hereunder; *provided* that in no event such number shall be greater than 12,500,000 (the “**Maximum Amount**”). Notwithstanding the Agreement or this Confirmation, the date of delivery of such Restricted Shares shall be the Exchange Business Day following notice by MSIL to the Company, of such applicable discount and the number of Restricted Shares to be delivered pursuant to this clause (i). For the avoidance of doubt, delivery of Restricted Shares shall be due as set forth in the previous sentence and not be due on the Share Termination Payment Date (in the case of settlement of Share Termination Delivery Units pursuant to paragraph (p) above) or on the Settlement Date for such Restricted Shares (in the case of settlement of Shares pursuant to Section 2 above).
- In the event the Company shall not have delivered the full number of Restricted Shares otherwise applicable as a result of the proviso above relating to the Maximum Amount (such deficit, the “**Deficit Restricted Shares**”), the Company shall be continually obligated to deliver, from time to time until the full number of Deficit Restricted Shares have been delivered pursuant to this paragraph, Restricted Shares when, and to the extent, that (i) Shares are repurchased, acquired or otherwise received by the Company or any of its subsidiaries after the Trade Date (whether or not in exchange for cash, fair value or any other consideration), (ii) authorized and unissued Shares reserved for issuance in respect of other transactions prior to such date which prior to such Settlement Date become no longer so reserved and (iii) the Company additionally authorizes but does not issue unissued Shares that are not reserved for other transactions. The Company shall immediately notify MSIL of the occurrence of any of the foregoing events (including the number of Shares subject to clause (i), (ii) or (iii) and the corresponding number of Restricted Shares to be delivered) and promptly deliver such Restricted Shares thereafter.
- In the event of a Private Placement, the Net Share Settlement Amount or the Payment Obligation, respectively, shall be deemed to be the Net Share Settlement Amount or the Payment Obligation, respectively, plus an additional amount (determined from time to time by the Calculation Agent in its commercially reasonable judgment) attributable to interest that would be earned on such Net Share Settlement Amount or the Payment Obligation, respectively, (increased on a daily basis to reflect the accrual of such interest and reduced from time to time by the amount of net proceeds received by MSIL as provided herein) at a rate equal to the open Federal Funds Rate plus the Spread for the period from, and including, such Settlement Date or the date on which the Payment

Obligation is due, respectively, to, but excluding, the related date on which all the Restricted Shares have been sold and calculated on an Actual/360 basis. The foregoing provision shall be without prejudice to MSIL's rights under the Agreement (including, without limitation, Sections 5 and 6 thereof).

As used in this Section 9(p)(i), "**Spread**" means, with respect to any Net Share Settlement Amount or Payment Obligation, respectively, the credit spread over the applicable overnight rate that would be imposed if MSIL were to extend credit to Company in an amount equal to such Net Share Settlement Amount, all as determined by the Calculation Agent using its commercially reasonable judgment as of the related Settlement Date or the date on which the Payment Obligation is due, respectively. Commercial reasonableness shall take into consideration all factors deemed relevant by the Calculation Agent, which are expected to include, among other things, the credit quality of the Company (and any relevant affiliates) in the then-prevailing market and the credit spread of similar companies in the relevant industry and other companies having a substantially similar credit quality.

- (ii) If the Company elects to settle the Transaction pursuant to this clause (ii) (a "**Registration Settlement**"), then the Company shall promptly (but in any event no later than the beginning of the Resale Period) file and use its reasonable best efforts to make effective under the Securities Act a registration statement or supplement or amend an outstanding registration statement in form and substance reasonably satisfactory to MSIL, to cover the resale of such Restricted Shares in accordance with customary resale registration procedures, including covenants, conditions, representations, underwriting discounts (if applicable), commissions (if applicable), indemnities due diligence rights, opinions and certificates, and such other documentation as is customary for equity resale underwriting agreements, all reasonably acceptable to MSIL. If MSIL, in its sole reasonable discretion, is not satisfied with such procedures and documentation Private Placement Settlement shall apply. If MSIL is satisfied with such procedures and documentation, it shall sell the Restricted Shares pursuant to such registration statement during a period (the "**Resale Period**") commencing on the Exchange Business Day following delivery of such Restricted Shares (which, for the avoidance of doubt, shall be (x) any Settlement Date in the case of an exercise of Warrants prior to the first Expiration Date pursuant to Section 2 above, (y) the Share Termination Payment Date in case of settlement of Share Termination Delivery Units pursuant to paragraph (q) above or (z) the Settlement Date in respect of the final Expiration Date for all Daily Number of Warrants) and ending on the earliest of (i) the Exchange Business Day on which MSIL completes the sale of all Restricted Shares or, in the case of settlement of Share Termination Delivery Units, a sufficient number of Restricted Shares so that the realized net proceeds of such sales exceed the Payment Obligation (as defined above), (ii) the date upon which all Restricted Shares have been sold or transferred pursuant to Rule 144 (or similar provisions then in force) or Rule 145(d)(1) or (2) (or any similar provision then in force) under the Securities Act and (iii) the date upon which all Restricted Shares may be sold or transferred by a non-affiliate pursuant to Rule 144(k) (or any similar provision then in force) or Rule 145(d)(3) (or any similar provision then in force) under the Securities Act. If the Payment Obligation exceeds the realized net proceeds from such resale, Company shall transfer to MSIL by the open of the regular trading session on the Exchange on the Exchange Trading Day immediately following the last day of the Resale Period the amount of such excess (the "**Additional Amount**") in cash or in a number of Shares ("**Make-whole Shares**") in an amount that, based on the Settlement Price on the last day of the Resale Period (as if such day was the "Valuation Date" for purposes of computing such Settlement Price), has a dollar value equal to the Additional Amount. The Resale Period shall continue to enable the sale of the Make-whole Shares. If Company elects to pay the Additional Amount in Shares, the requirements and provisions for Registration Settlement shall apply. This provision shall be applied successively until the Additional Amount is equal to zero. In no event shall the

Company pursuant to this clause (ii) deliver a number of Restricted Shares greater than the Maximum Amount.

- (iii) Without limiting the generality of the foregoing, Company agrees that any Restricted Shares delivered to MSIL, as purchaser of such Restricted Shares, (i) may be transferred by and among MSIL and its affiliates and Company shall effect such transfer without any further action by MSIL and (ii) after the minimum “holding period” within the meaning of Rule 144(d) under the Securities Act has elapsed after any Settlement Date for such Restricted Shares, Company shall promptly remove, or cause the transfer agent for such Restricted Shares to remove, any legends referring to any such restrictions or requirements from such Restricted Shares upon delivery by MSIL (or such affiliate of MSIL) to Company or such transfer agent of seller’s and broker’s representation letters customarily delivered by MSIL in connection with resales of restricted securities pursuant to Rule 144 under the Securities Act, without any further requirement for the delivery of any certificate, consent, agreement, opinion of counsel, notice or any other document, any transfer tax stamps or payment of any other amount or any other action by MSIL (or such affiliate of MSIL).

If the Private Placement Settlement or the Registration Settlement shall not be effected as set forth in clauses (i) or (ii), as applicable, then failure to effect such Private Placement Settlement or such Registration Settlement shall constitute an Event of Default with respect to which Company shall be the Defaulting Party.

- (r) Limit on Beneficial Ownership. Notwithstanding any other provisions hereof, MSIL may not exercise any Warrant hereunder, and Automatic Exercise shall not apply with respect thereto, to the extent (but only to the extent) that such receipt would result in MSIL directly or indirectly beneficially owning (as such term is defined for purposes of Section 13(d) of the Exchange Act) at any time in excess of 9.0% of the outstanding Shares. Any purported delivery hereunder shall be void and have no effect to the extent (but only to the extent) that such delivery would result in MSIL directly or indirectly so beneficially owning in excess of 9.0% of the outstanding Shares. If any delivery owed to MSIL hereunder is not made, in whole or in part, as a result of this provision, the Company’s obligation to make such delivery shall not be extinguished and the Company shall make such delivery as promptly as practicable after, but in no event later than one Business Day after, MSIL gives notice to the Company that such delivery would not result in MSIL directly or indirectly so beneficially owning in excess of 9.0% of the outstanding Shares.
- (s) Share Deliveries. The Company acknowledges and agrees that, to the extent the holder of this Warrant is not then an affiliate and has not been an affiliate for 90 days (it being understood that MSIL will not be considered an affiliate under this Section 9(s) solely by reason of its receipt of Shares pursuant to this Transaction), and otherwise satisfies all holding period and other requirements of Rule 144 of the Securities Act applicable to it, any delivery of Shares or Share Termination Property hereunder at any time after 2 years from the Trade Date shall be eligible for resale under Rule 144(k) of the Securities Act and the Company agrees to promptly remove, or cause the transfer agent for such Shares or Share Termination Property, to remove, any legends referring to any restrictions on resale under the Securities Act from the Shares or Share Termination Property. The Company further agrees, for any delivery of Shares or Share Termination Property hereunder at any time after 1 year from the Trade Date but within 2 years of the Trade Date, to the to the extent the holder of this Warrant then satisfies the holding period and other requirements of Rule 144 of the Securities Act, to promptly remove, or cause the transfer agent for such Restricted Share to remove, any legends referring to any such restrictions or requirements from such Restricted Shares. Such Restricted Shares will be de-legended upon delivery by MSIL (or such affiliate of MSIL) to the Company or such transfer agent of customary seller’s and broker’s representation letters in connection with resales of restricted securities pursuant to Rule 144 of the Securities Act, without any further requirement for the delivery of any certificate, consent, agreement, opinion of counsel, notice or any other document, any transfer tax stamps or payment of any other amount or any other action by MSIL (or such affiliate of MSIL).

The Company further agrees that any delivery of Shares or Share Termination Delivery Property prior to the date that is 1 year from the Trade Date, may be transferred by and among MSIL and its affiliates and the Company shall effect such transfer without any further action by MSIL. Notwithstanding anything to the contrary herein, the Company agrees that any delivery of Shares or Share Termination Delivery Property shall be effected by book-entry transfer through the facilities of DTC, or any successor depository, if at the time of delivery, such class of Shares or class of Share Termination Delivery Property is in book-entry form at DTC or such successor depository. Notwithstanding anything to the contrary herein, to the extent the provisions of Rule 144 of the Securities Act or any successor rule are amended, or the applicable interpretation thereof by the Securities and Exchange Commission or any court change after the Trade Date, the agreements of the Company herein shall be deemed modified to the extent necessary, in the opinion of outside counsel of the Company, to comply with Rule 144 of the Securities Act, including Rule 144(k) as in effect at the time of delivery of the relevant Shares or Share Termination Property.

- (t) Hedging Disruption Event. The occurrence of a Hedging Disruption Event will constitute an Additional Termination Event under the Agreement permitting MSIL to terminate the Transaction, with the Company as the sole Affected Party and the Transaction as the sole Affected Transaction; provided that, for the avoidance of doubt, in calculating any payments hereunder pursuant to Section 6(e) of the Agreement, MSIL shall assume the borrow cost equal to zero (0).

“Hedging Disruption Event” means with respect to MSIL, as determined in its reasonable discretion, the inability or impracticality, due to market illiquidity, illegality, lack of hedging transactions or credit worthy market participants or other similar events, to establish, re-establish or maintain any transactions necessary or advisable to hedge, directly or indirectly, the equity price risk of entering into and performing under the Transaction on terms including costs reasonable to MSIL or an affiliate in its reasonable discretion, including the event that at any time MSIL reasonably concludes that it or any of its affiliates are unable to establish, re-establish or maintain a full hedge of its position in respect of the Transaction through share borrowing arrangements on terms including costs deemed reasonable to MSIL in its reasonable discretion. For the avoidance of doubt, the parties hereto agree that if (i) MSIL reasonably determines that it is unable to borrow Shares to hedge its exposure with respect to the Transaction at a stock loan rebate rate equal to or in excess of the Federal Funds Rate *minus* 150 basis points; or (ii) the prevailing stock loan rebate rate for the Shares, as determined by the Calculation Agent, is less than the Federal Funds Rate *minus* 150 basis points, an Additional Termination Event under the Agreement shall occur with the Company as the sole Affected Party and the Transaction as the sole Affected Transaction.

“Federal Funds Rate” means, for any day, the rate set forth for such day opposite the caption “Federal funds”, as such rate is displayed on the page FedsOpen <Index><GO> on the Bloomberg Professional Service or any successor page; provided that if no rate appears for any day on such page, the rate for the immediately preceding day for which a rate does so appear shall be used for such day.

- (u) Governing Law. New York law (without reference to choice of law doctrine).
- (v) Waiver of Jury Trial. Each party waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect of any suit, action or proceeding relating to this Transaction. Each party (i) certifies that no representative, agent or attorney of the other party has represented, expressly or otherwise, that such other party would not, in the event of such a suit, action or proceeding, seek to enforce the foregoing waiver and (ii) acknowledges that it and the other party have been induced to enter into this Transaction, as applicable, by, among other things, the mutual waivers and certifications provided herein.

Please confirm that the foregoing correctly sets forth the terms of our agreement by executing this Confirmation and returning it by facsimile to the address provided in the Notices section of this Confirmation, or by facsimile to the number provided on the attached facsimile cover page.

Very truly yours,

**Morgan Stanley & Co. International Limited**

By: /s/ Nicholas Herne

Authorized Signatory

Name: Nicholas Herne

Managing Director

**Morgan Stanley Bank, as agent**

By: /s/ Richard B. Felix

Authorized Signatory

Name:

Accepted and confirmed  
as of the Trade Date:

**ENCORE CAPITAL GROUP, INC.**

By: /s/ Paul Grinberg

Authorized Signatory

Name: Paul Grinberg



FOR IMMEDIATE RELEASE

**Encore Capital Group Announces Exercise of \$10 Million  
Overallotment Option on Convertible Senior Notes Offering**

**San Diego, CA, October 6, 2005** – Encore Capital Group, Inc. (Nasdaq: ECPG), a leading consumer accounts receivable management firm, today announced that the initial purchasers of its previously announced offering of \$90 million aggregate principal amount of 3.375% convertible senior notes due 2010 have exercised in full their overallotment option to purchase \$10 million of additional notes. This brings the total amount of the notes issued to \$100 million. The issuance of the additional notes closed yesterday.

The convertible notes will pay interest semiannually in arrears through maturity at an annual rate of 3.375%. The notes will not be redeemable by the Company prior to maturity. The notes will be convertible beginning on March 19, 2010 or earlier upon the occurrence of certain events into shares of the Company's common stock at an initial conversion rate of 44.7678 shares per \$1,000 principal amount of notes (an initial conversion price of approximately \$22.34 per share). If the Company obtains the required approval of its stockholders, the notes will be convertible into a combination of cash and common stock. In general, following stockholder approval of what is commonly referred to as a "net share settlement" feature, the holder of each note will receive, upon conversion, cash equal to the lesser of the principal amount of the note or the conversion value of the note and common stock of Encore Capital Group for any conversion value in excess of such principal amount. The Company's Board has authorized that a stockholder special meeting be held to seek the approval of such "net share settlement" feature as soon as practicable. The Company filed a preliminary proxy statement with the Securities and Exchange Commission on September 30, 2005 with respect to this stockholder special meeting.

As with the original \$90 million offering, the Company has entered into convertible note hedge and warrant option transactions in respect of Encore Capital Group common stock with affiliates of the initial purchasers of the notes. These transactions will reduce the potential dilution upon future conversion of the additional notes in connection with the overallotment option by providing Encore Capital Group with the option, subject to certain exceptions, to acquire shares from the initial purchasers for delivery upon settlement of conversions of such additional notes, which offsets the delivery of newly issued shares. This has the economic effect to the Company of increasing the conversion price of the notes to approximately \$29.04 per share, representing a 62.5 percent conversion premium to the per share closing price on the date the original issuance of the notes was priced.

The parties to such transactions have advised Encore Capital Group that they have entered into additional hedging transactions in connection with the convertible note hedge and warrant transactions by purchasing shares of Encore Capital Group. In addition, the initial purchasers may continue to purchase and may sell shares of Encore Capital Group common stock or enter



into other derivatives in secondary market transactions following the closing of the additional notes in connection with the overallotment option (including during the cash settlement averaging period relating to such notes, if any).

The Company used the total net proceeds from the offering (i) to repay \$81.2 million of the amount outstanding under its \$200 million revolving credit facility and (ii) to pay the approximately \$15.8 million net cost of the convertible note hedge and warrant transaction relating to the total \$100 million amount of the notes issued. The Company will continue to have access to all undrawn amounts in the revolving credit facility for portfolio purchases, selective acquisitions and other general corporate purposes, subject to the underlying covenants and restrictions.

The convertible senior notes and the underlying shares of common stock have not been registered under the Securities Act of 1933, as amended, or any state securities laws, and may not be offered or sold in the United States or to U.S. persons absent registration or an applicable exemption from the registration requirements.

This press release shall not constitute an offer to sell or a solicitation of an offer to buy any securities, nor shall there be any sale of securities in any state or jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such state or jurisdiction.

#### **Additional Information Related to the Offering and Where to Find It**

The Company has filed a preliminary proxy statement relating to seeking stockholder approval for the “net share settlement” feature (discussed above) in connection with the convertible senior notes offering. Such preliminary proxy statement was filed on September 30th. The definitive proxy statement will be mailed to the stockholders of the Company. Investors and stockholders of the Company are urged to read the definitive proxy statement when it becomes available before making any decisions related to the Company’s common stock or the convertible senior notes, including investment or voting decisions, because such definitive proxy statement will contain important information about the offering discussed in this press release. The definitive proxy statement (when it becomes available) and any other documents filed by the Company with the SEC, may be obtained free of charge at the SEC’s web site at [www.sec.gov](http://www.sec.gov).

#### **Forward Looking Statements**

*The statements in this press release that are not historical facts, including, most importantly, those statements preceded by, or that include, the words “may,” “believe,” “projects,” “expects,” “anticipates” or the negation thereof, or similar expressions, constitute “forward-looking statements” within the meaning of the Private Securities Litigation Reform Act of 1995 (the “Reform Act”). These statements may include, but are not limited to, the issuance of the convertible senior notes, as well as assumptions relating to the offering. For all “forward-looking statements,” the Company claims the protection of the safe harbor for forward-looking statements contained in the Reform Act. Such forward-looking statements involve risks, uncertainties and other factors which may cause actual results, performance or achievements of*

*the Company and our subsidiaries to be materially different from any future results, performance or achievements expressed or implied by such forward-looking statements.*

CONTACT:

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