

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 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): June 2, 2005

**Encore Capital Group, Inc.**

(Exact Name of Registrant as Specified in its Charter)

Delaware  
(State or other jurisdiction of  
incorporation or organization)

000-26489  
(Commission File Number)

48-1090909  
(I.R.S Employer  
Identification No.)

8875 Aero Drive, Suite 200  
San Diego, California 92123  
(Address of Principal Executive Offices) (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 (see General Instruction A.2. below):

- 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.**

*Asset Purchase and Forward Flow Agreement with Jefferson Capital*

Encore Capital Group, Inc. entered into an asset purchase and forward flow agreement (the "Purchase Agreement"), effective as of June 2, 2005, to acquire certain assets, including receivables portfolios, from Jefferson Capital Systems, LLC ("Jefferson Capital"), a subsidiary of CompuCredit Corporation. The Purchase Agreement and related Acknowledgement Agreement are attached hereto as Exhibits 10.1 and 10.2, respectively. Additional information regarding the Jefferson Capital transaction is provided in Item 2.01 below, which information is incorporated by reference into this Item 1.01.

*JPMorgan Chase Credit Facility*

On June 7, 2005, Encore entered into a new senior secured revolving credit facility with JPMorgan Chase Bank, N.A., who will act as administrative agent. JPMorgan is initially the sole lender under this facility, which will be syndicated following the closing. The revolving credit facility replaces Encore's existing \$75.0 million senior secured credit facility with JPMorgan. Proceeds from this credit facility will be utilized for the purpose of financing the transaction with Jefferson Capital, purchasing portfolios of receivables and for working capital needs.

The new credit facility has a maturity date of June 7, 2008 and bears interest at a floating rate equal to, at Encore's option, either: (a) reserve adjusted LIBOR plus a spread that ranges from 200 to 325 basis points, depending on Encore's leverage; or (b) the higher of (1) the federal funds rate then in effect plus a spread of 50 basis points and (2) the prime rate then in effect plus a spread that ranges from 0 to 50 basis points. The applicable margin will be adjusted quarterly based on a pricing grid that takes into account certain financial covenants related to the Company's balance sheet and results of operations. The new credit facility is secured by all assets of the Company, except for the assets of the Company's wholly-owned subsidiary, MRC Receivables Corporation, in which the Company's former secured lender has a first priority security interest. The new facility also requires the Company to pay certain fees and expenses to the lender in connection with the related commitment letter and the credit facility.

The new credit facility provides for an aggregate revolving commitment of \$150.0 million, subject to borrowing base availability, with \$5 million sub-limits for swingline loans and letters of credit. Encore may request an increase in the amount of the revolving credit commitments to \$200.0 million upon satisfying certain conditions, including acceptance of such increase by existing or replacement lenders under the facility that agree to increase their commitments.

The terms of the credit facility includes certain restrictions and covenants, which limit, among other things, the payment of dividends, and the incurrence of additional indebtedness and liens. The terms also require compliance with financial covenants requiring maintenance of specified ratios of liabilities to EBITDA, liabilities to tangible net worth and EBIT to interest expense. Subject to certain exceptions, the dividend restriction referred to above generally provides that Encore will not during any fiscal year make distributions with respect to common stock or other equity interests in an aggregate amount in excess of 20% of consolidated net income for such period.

The credit agreement specifies a number of events of default (some of which are subject to applicable cure periods), including, among others, the failure to make payments when due, noncompliance with covenants and defaults under other agreements or instruments of indebtedness. Upon the occurrence of an event of default, as defined, the lenders may terminate the senior credit facility and declare all amounts outstanding to be immediately due and payable.

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The foregoing description of the JPMorgan credit facility does not purport to be complete and is qualified in its entirety by reference to the complete text of the credit agreement and related loan documents, which are filed as exhibits to this report and incorporated herein by reference.

#### **Item 2.01 Completion of Acquisition or Disposition of Assets.**

On June 7, 2005, Encore, through its subsidiaries, completed the acquisition of the following assets pursuant to the terms of the Purchase Agreement, for a total purchase price of approximately \$142.8 million in cash:

- a portfolio of charged-off consumer credit card debt with a face value of approximately \$2.9 billion;
- an agreement to purchase an additional \$3.25 billion in face value of fresh, credit card charge-offs from Jefferson Capital over the next five years at a fixed price; and
- a new collection site in St. Cloud, Minnesota with approximately 120 employees, most of whom are collection staff.

In addition, Encore's subsidiary Midland Credit Management, Inc. will extend its existing agreement to sell Chapter 13 bankruptcies to Jefferson Capital for an additional two years and commit to provide Jefferson Capital with a prescribed number of accounts on a monthly basis for its balance transfer program.

#### **Item 2.03 Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.**

The information provided in Item 1.01 above is incorporated herein by reference.

#### **Item 7.01 Regulation FD**

Encore issued a press release regarding the acquisition discussed in Item 2.01 above, which is furnished as Exhibit 99.1 hereto.

The information provided in this Current Report on Form 8-K pursuant to Item 7.01, 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 provided in this Current Report on Form 8-K pursuant to Item 7.01, 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.

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#### **Explanatory Note Regarding Exhibits**

Investors should not rely on or assume the accuracy of representations and warranties in negotiated agreements that have been publicly filed because such representations and warranties may be subject to exceptions and qualifications contained in separate disclosure schedules, because such representations may represent the parties' risk allocation in the particular transaction, because such representations may be qualified by materiality standards that differ from what may be viewed as material for securities law purposes or because such representations may no longer continue to be true as of any given date.

#### **Item 9.01 Financial Statements and Exhibits.**

##### **(a) Financial Statements of Businesses Acquired.**

The financial statements that are required to be filed pursuant to this item will be filed by amendment not later than 71 days following the due date of this report.

##### **(b) Pro Forma Financial Information.**

The pro forma financial information that is required to be filed pursuant to this item will be filed by amendment not later than 71 days following the due date of this report.

##### **(c) The following exhibits are filed herewith:**

- 10.1 Asset Purchase and Forward Flow Agreement dated as of June 2, 2005 among Jefferson Capital Systems, LLC, Midland Funding LLC and Encore Capital Group, Inc.

- 10.2 Acknowledgement Agreement dated as of June 7, 2005 between CompuCredit Corporation and Midland Funding LLC
- 10.3 Credit Agreement dated as of June 7, 2005 among Encore Capital Group, Inc., the Lenders from time to time parties thereto and JPMorgan Chase Bank, N.A. as Administrative Agent (the "Credit Agreement")
- 10.4 Pledge and Security Agreement dated as of June 7, 2005, with respect to the Credit Agreement
- 10.5 Guaranty dated as of June 7, 2005, with respect to the Credit Agreement
- 99.1 Press release dated June 7, 2005

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### SIGNATURE

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 hereunto duly authorized.

Date: June 8, 2005

**ENCORE CAPITAL GROUP, INC.**

/s/ Paul Grinberg

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Paul Grinberg  
Executive Vice President,  
Chief Financial Officer and Treasurer

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### EXHIBIT INDEX

<i>Exhibit</i>	<i>Description</i>
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99.1	Press release dated June 7, 2005

## ASSET PURCHASE AND FORWARD FLOW AGREEMENT

AMONG

JEFFERSON CAPITAL SYSTEMS, LLC, "SELLER,"

MIDLAND FUNDING LLC, "BUYER"

AND

ENCORE CAPITAL GROUP, INC.

## ASSET PURCHASE AND FORWARD FLOW AGREEMENT

This Asset Purchase and Forward Flow Agreement (the "Agreement") is entered into as of June 2, 2005, by and among Jefferson Capital Systems, LLC, as the seller ("Seller"), Midland Funding LLC, as the buyer ("Buyer"), and, solely with respect to the guaranty set forth on the signature page hereto, Encore Capital Group, Inc.

## RECITALS:

WHEREAS, Seller desires to sell all of its rights, title and interest in certain charged off accounts and their related receivables to Buyer which accounts were previously purchased from CompuCredit Corporation ("CCRT"), its Affiliates (as defined below) or its joint venture partners;

WHEREAS, Buyer desires to purchase all of Seller's rights, title and interest in such charged off accounts, all on the terms and conditions hereinafter set forth;

WHEREAS, as a condition to entering into this Agreement and Buyer's purchase of such charged off accounts, Buyer (or one of its Affiliates) and Seller have agreed to enter into several other agreements, including an Acknowledgement Agreement (as defined below), an Escrow Agreement (as defined below), a Transition Services Agreement (as defined below), a Balance Transfer Agreement (as defined below), and a Bankruptcy Receivable Purchase Agreement (as defined below).

WHEREAS, the initial Account Purchase (as defined below) will consist of a purchase by Buyer of Accounts (as defined below) currently owned by Seller, as more particularly identified in the Account Purchase Computer File (as defined below); and

WHEREAS, Buyer shall also purchase certain Eligible Forward Flow Accounts (as defined below) owned by Seller that Seller acquires from CCRT, its Affiliates or its joint venture partners which originate from certain portfolios that are either owned or serviced by CCRT as of May 6, 2005.

NOW THEREFORE, in consideration of the foregoing recitals and the mutual covenants and agreements of the parties hereinafter set forth, and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Definitions.**
    - 1.1 "**Account**" means each Credit Card Account (including all receivables under and all servicing rights with respect to such Account) which has been charged off by the credit issuer or grantor for accounting purposes and which were no more than 270 days delinquent at charge off, and included within the Account Purchase Computer File or Forward Flow Computer File, as applicable, and that originated from certain portfolios, as described on that certain schedule delivered to Buyer on the date of this Agreement and identified in the Account Purchase Computer File, that are either owned or serviced by CCRT as of May 6, 2005.
    - 1.2 "**Account Documents**" means any application, agreement, billing statement, notice, correspondence, affidavit or other document relating to an Account to the extent in Seller's or its Affiliates' possession including, but not limited to, the card member agreements and disclosure statements applicable to each Account.
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- 1.3 "**Account Purchase**" means the purchase by Buyer from Seller of those certain Accounts listed in the Account Purchase Computer File, the total Cut-off Claim Amount of which equals as of the Cut-off Date, approximately \$2.9 billion consisting of the active Accounts (approximately \$1.7 billion) and the NFE Accounts (approximately \$1.2 billion), which amounts are subject to adjustment between the Cut-off Date and the Closing to reflect Accounts that have become NFE Accounts prior to the Cut-off Date and identified as such in the Account Purchase Computer File.
  - 1.4 "**Account Purchase Closing Date**" means the date on which all conditions precedent to Closing set forth in Paragraph 4.1 have been satisfied or deemed satisfied, but in no event later than June 10, 2005.
  - 1.5 "**Account Purchase Computer File**" means that certain computer file (File Name: Account Purchase Computer File) that (i) lists all of the active and NFE Accounts to be included in the Account Purchase minus the Accounts which have been paid in full, settled in full or where the Debtor has received and accepted a Majestic balance transfer offer (whether or not an initial payment has been made), in each case, prior to the Account Purchase Closing Date, (ii) with regard to active Accounts, includes the data fields described in Exhibit A-1 attached hereto and, to the

extent available, the information to populate such data fields and (iii) with regard to NFE Accounts, the data fields described in Exhibit A-3 attached hereto and, to the extent available, the information to populate such data fields.

- 1.6 "**Account Purchase Putback Factor**" means the percentage set forth on Schedule 1.6.
- 1.7 "**Acknowledgement Agreement**" means that certain Acknowledgement Agreement of even date herewith made and entered into by CCRT, an Affiliate of Seller, in favor of Buyer and its Affiliates.
- 1.8 "**Affiliate**" means, with respect to any person, corporation or entity, any other person, corporation or entity that directly or indirectly controls, is controlled by or is under common control with such person, corporation or entity. For the purposes of this definition, "control" shall mean the power to direct the management and policies of a person, directly or indirectly, whether through the ownership of voting, securities, by contract or otherwise; and the terms "common control" and "controlled" have meanings correlative to the foregoing.
- 1.9 "**Balance Transfer Agreement**" means that certain Amended and Restated Collection Agreement between Buyer (or one of its Affiliates) and Seller to be delivered at the Closing.
- 1.10 "**Bankruptcy Receivable Purchase Agreement**" means that certain Second Amendment to Bankruptcy Receivable Purchase Agreement between Seller and Buyer (or one of its Affiliates) to be delivered at the Closing.
- 1.11 "**Blanket Settlement**" means any offer to settle an Account for less than the total outstanding balance of such account mailed (whether contained in a letter, monthly billing statement, or any other regularly scheduled mailing) to five percent (5%) or more of the Accounts or obligors included in any Computer File rather than a negotiated offer relating to a single account/obligor, provided that Seller shall not use the 5% exception systematically to develop or test collection and/or settlement strategies.

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- 1.12 "**Business Day**" means each day other than Saturday, Sunday or any day on which banking institutions in the State of New York are authorized or obligated by law, executive order or governmental decree to be closed.
- 1.13 "**Charge off Reversal**" means a qualifying payment on an Account that reverses the charge off of such Account in accordance with CCRT's, its Affiliates' or its joint venture partners then current practices; provided that no reversal may occur more than thirty-five (35) days after the date such account was charged-off.
- 1.14 "**Closing**" means the closing of the Account Purchase.
- 1.15 "**Closing Date**" means (i) with respect to the Account Purchase, the Account Purchase Closing Date, and (ii) with respect to each Forward Flow Transfer, a date that Seller gives Buyer at least three Business Days notice and that is no later than ten (10) days after the applicable Cut-off Date.
- 1.16 "**Computer File**" means the Account Purchase Computer File or any Forward Flow Computer File.
- 1.17 "**Credit Card Account**" means an unsecured, open-ended line of credit accessible or previously accessible by credit cards bearing the name and logo of Visa, U.S.A., Inc. or MasterCard International Incorporated.
- 1.18 "**Cut-off Claim Amount**" means, to Seller's actual knowledge, the outstanding amount of an Account as of the Cut-off Date, which amount includes interest, fees or other assessments incurred through the date of charge off.
- 1.19 "**Cut-off Date**" means (i) with respect to the Account Purchase, the date on which the Account Purchase Computer File is created by Seller, which date is the close of business on May 31, 2005, and (ii) with respect to a Forward Flow Transfer, the close of business on the date on which a Forward Flow Computer File is created by Seller, which date shall occur up to the last Business Day of the month next succeeding the month in which the Accounts were charged off. For example, Accounts charging off in the month of March will have a Cut-off Date which is on or before the last Business Day in April.
- 1.20 "**Debtor**" means, with respect to any Account, the obligor or obligors obligated to make payments with respect to such Account, including any guarantor thereof, but excluding any merchant.
- 1.21 "**Eligible Forward Flow Account**" means, for any Forward Flow Transfer, each Account for which none of the criteria set forth in Paragraph 3.1 (a) — (i) are true and correct with respect to such Account, as of the applicable Closing Date, except for any such Account(s) where a Debtor's Charge off Reversal occurs prior to the applicable Closing Date.
- 1.22 "**Escrow Agreement**" means that certain escrow agreement between Buyer and Seller to be delivered at the Closing.
- 1.23 "**First Payment Default**" means any Credit Card Account for which the Debtor does not make one minimum payment after the date such account was originated.

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- 1.24 "**Forward Flow Computer File**" means with respect to each Forward Flow Transfer, computer information on file or other electronic medium, provided or to be provided by Seller to Buyer on or prior to each Closing Date (other than the Account Purchase Closing Date) that (i) lists each Account being sold on such Closing Date and the related Cut-off Claim Amounts, and (ii) includes the data fields described in Exhibit A-2 attached hereto and, to the extent available, the information to populate such data fields.

- 1.25 "**Forward Flow Price Percentage**" means the percentage set forth on Schedule 1.25.
- 1.26 "**Forward Flow Transfer**" shall mean each transfer of Accounts sold pursuant to this Agreement subsequent to the Account Purchase.
- 1.27 "**Forward Flow Transfer Payment**" means, with respect to each Forward Flow Transfer, the amount equal to the Forward Flow Price Percentage multiplied by the aggregate Cut-off Claim Amount for such Accounts.
- 1.28 "**Ineligible Forward Flow Account**" has the meaning set forth in Paragraph 3.1.
- 1.29 "**Ineligible Purchased Account**" has the meaning set forth in Paragraph 3.2.
- 1.30 "**Minimum Asset Quality Requirements**" means, for each Forward Flow Transfer of Eligible Forward Flow Accounts pursuant to Paragraph 2.2: (i) the number of Accounts with First Payment Defaults shall not exceed five percent of total charge offs; (ii) the number of Accounts that charge off within the first year of origination shall not exceed 29 percent; (iii) at least one percent of Accounts shall have paid within 90 days of the date of charge-off; (iv) the average Cut-off Claim Amount of Accounts shall range between \$1,000 and \$2,500; and (v) the concentration of Accounts in Texas, Florida, North Carolina, South Carolina and Nevada shall not exceed ten percent in any one such state, or twenty-five percent in the aggregate.
- 1.31 "**NFE Account**" means "no further efforts" Accounts which are identified as such in the Account Purchase Computer File.
- 1.32 "**Non-Conforming Forward Flow Account**" means, with respect to any Forward Flow Transfer, an Account or Accounts the inclusion of which in such Forward Flow Transfer would cause such Forward Flow Transfer to not satisfy the Minimum Asset Quality Requirements.
- 1.33 "**Originating Creditor**" means the entities or institutions from which Seller originally purchased the Accounts, which may or may not be the original creditor or grantor.
- 1.34 "**Purchase Price**" means \$142,813,854.
- 1.35 "**Term**" means, unless this Agreement is terminated by the parties earlier pursuant to Paragraph 2.2(h), the period from the date of this Agreement to the earlier of (i) a date sixty (60) months after the date of this Agreement, and (ii) the date on which the sum of (A) the aggregate Cut-off Claim Amount of all Accounts (1) sold to and retained by Buyer under Forward Flow Transfers, or (2) offered by Seller and not purchased by Buyer pursuant to the terms of Paragraph 2.2(d); plus (B) the Shortfall or Bi-Monthly Shortfall, as applicable, for which the associated Shortfall Adjustment payment or Bi-Monthly Shortfall Adjustment payment, as applicable, is paid to Buyer and, with respect to the Shortfall Adjustment, to the extent not subsequently reversed pursuant to the terms of Paragraph 2.4(c)(iii); plus (C) the amount of any Balance Transfer Adjustment pursuant to Paragraph 2.2(i) (and not voided by the terms of Paragraph 2.2(j)), in the aggregate equals or exceeds \$3.25 billion.

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- 1.36 "**Term Agreement**" means an agreement substantially in the form of Exhibit B to this Agreement.
- 1.37 "**Term Year**" means each period from June 1 to and including May 31 during the Term.
- 1.38 "**Transition Services Agreement**" means that certain Transition Services Agreement between an Affiliate of Buyer and Seller to be delivered at the Closing pursuant to which Seller has agreed to provide certain services to Buyer (or its Affiliates) and the parties have designated certain individuals whose employment with Seller (or its Affiliate) shall terminate and who shall receive offers of employment from an Affiliate of Buyer.
- 1.39 "**UCC**" means Uniform Commercial Code as in effect in Georgia.
- 1.40 "**UCC Financing Statement**" means any UCC financing statement, in the form of Exhibit C attached hereto, that may be filed with respect to the Accounts.
- 1.41 "**Wire Transfer Account**" means an account designated in writing by a party hereto, from time to time, for wire transfer of certain funds to the other party.
2. **Sale and Purchase of Assets.**
- 2.1 **Account Purchase.**
- a) **Transfer.** Upon the terms and subject to the conditions set forth herein, at the Closing, Seller shall sell, convey, transfer and assign to Buyer, and Buyer shall purchase and accept such conveyance, transfer and assignment from Seller, without recourse except as provided herein, the Accounts included in the Account Purchase.
- b) **Credits.** Buyer shall be entitled to any credit resulting from the posting or receipt by Seller or an Originating Creditor of any payments or other credits on any Account transferred pursuant to the Account Purchase after the Cut-off Date and shall receive the net of such amounts from the Cut-off Date through and including the Account Purchase Closing Date after deduction, with respect to each such Account, of (i) any fees properly payable pursuant to the Collection Services Agreements with respect to such Account or (ii) if such Account was worked internally by Seller, a fee equal to thirty percent (30%) of such payments or other credits. If a payment is made to any party or any other person or entity after the Account Purchase Closing Date and Seller or its predecessor in interest should come into full possession of said payment, Seller shall, within forty (40) days after such receipt, forward to Buyer the amount so received. Seller

- c) **Assignment of Agency Agreements.** At the Closing, Seller shall deliver an assignment and assumption substantially in the form of Exhibit D attached hereto assigning all of its rights, title and interest in or to each of the Collection Services Agreements set forth on Schedule 2.1(c) hereto. At the Closing, an Affiliate of Buyer shall assume all of Seller's liabilities and obligations under such agreements which arise on or after the Account Purchase Closing Date; provided that all liabilities and obligations of Seller arising under such agreements before the Account Purchase Closing Date shall remain the obligations and liabilities of Seller.
- d) **Closing.** At the Closing and solely with respect to the Accounts included in the Account Purchase, (i) Seller shall deliver an assignment, in substantially the form of Exhibit E attached hereto (an "Assignment of Accounts"), transferring to Buyer all of Seller's right, title and interest in and to such Accounts, (ii) to the extent required by Buyer, Seller shall authorize Buyer, at Buyer's cost, to complete and file a UCC Financing Statement, and (iii) Seller shall deliver to Buyer all electronic drafts with respect to all paying Accounts, any post-charge off collector notes, and such other information as set forth in Exhibits A-1 and A-3.

## 2.2 **Forward Flow Transfers.**

- a) **Purchases and Sales.** Upon the terms and conditions set forth herein, on each Closing Date (other than the Account Purchase Closing Date), Seller shall sell, convey, transfer and assign to Buyer, and Buyer shall purchase and accept such conveyance, transfer and assignment from Seller, without recourse except as provided herein, the Eligible Forward Flow Accounts listed on the applicable Forward Flow Computer File for such Closing Date. Each such Forward Flow Computer File shall be sent to Buyer on or before the last Business Day of the month in which the applicable Cut-off Date occurred.
- b) **Volume Requirements.** The minimum Cut-off Claim Amount of Eligible Forward Flow Accounts to be sold each Term Year by Seller pursuant to this Agreement is \$600 million (the "Yearly Minimum"), and Buyer only shall be required to purchase Eligible Forward Flow Accounts with an aggregate Cut-off Claim Amount of \$660 million per Term Year (the "Yearly Requirement"). The sole remedy for a failure by Seller to deliver the Yearly Minimum shall be the obligation to pay Shortfall Adjustments pursuant to Paragraph 2.4(c).
- c) **Right of First Refusal.** In each Term Year that Seller shall be able to offer to other purchasers the Eligible Forward Flow Accounts with an aggregate Cut-off Claim Amount in excess of the Yearly Requirement (the "Excess Eligible Accounts"), Seller shall conduct an auction to sell such Excess Eligible Accounts. In connection with any such auction, Seller shall (contemporaneously with its initial offering) provide to Buyer a due diligence file containing any Excess Eligible Accounts. Immediately after the close of such auction, Seller shall give Buyer notice of the highest bid price (the "Market Price") for the Excess Eligible Accounts. Buyer shall have a right of first refusal to purchase the Excess Eligible Accounts at the Market Price. Buyer shall (i) notify Seller of its intent to exercise its right of first refusal within one (1) Business Day after receipt of notice of the Market Price, and (ii) pay the Market Price to Seller within ten (10) Business Days of notifying Seller of its intent to exercise its right of first refusal. If Buyer fails to so notify Seller or pay the Market Price, in each case within the applicable time period, Seller may sell the Excess Eligible Accounts to the highest bidder in the auction at the Market Price. If Buyer refuses to purchase at the Market Price and Seller fails or is otherwise unable to close the sale of such accounts to the Market Price bidder, then Buyer shall have the right to purchase, at its election, the Excess Eligible Accounts at the Forward Flow Price Percentage.

- d) **Treatment of Excess Eligible Accounts.** Excess Eligible Accounts offered by Seller in any Term Year pursuant to Paragraph 2.2(c) in excess of \$660 million up to and including \$800 million shall apply toward the \$3.25 billion commitment of Seller for purposes of determining the expiration of the Term regardless of whether such Accounts are purchased by Buyer, and any Excess Eligible Accounts offered by Seller in any Term Year in excess of \$800 million that are not purchased by Buyer shall not apply towards the \$3.25 billion commitment of Seller for purposes of determining the expiration of the Term.
- e) **Non-Conforming Forward Flow Accounts.** Seller, on a random basis, shall withdraw from the pool of all Non-Conforming Forward Flow Accounts, the Accounts required to maintain the Minimum Asset Quality Requirements of any Forward Flow Transfer. To the extent Non-Conforming Forward Flow Accounts exist, Seller will offer such accounts for sale to Buyer on the same terms and conditions applicable to any purchases of an Eligible Forward Flow Account pursuant to this Agreement. Buyer shall have the option to purchase such Non-Conforming Forward Flow Accounts, which purchases shall apply to the Yearly Minimum for the applicable Term Year and the \$3.25 billion commitment of Seller for purposes of determining the Term.
- f) **Closing Documents.** On each Closing Date (other than the Account Purchase Closing Date) and solely with respect to the Accounts transferred at such Closing Date, (i) Buyer and Seller will enter into a Term Agreement, in substantially the form of Exhibit B attached hereto, confirming the sale and acceptance of such Accounts, as identified by Seller in the applicable Forward Flow Computer File, (ii) upon receipt of the applicable Forward Flow Transfer Payment, Seller will deliver an Assignment of Accounts, transferring to Buyer all of Seller's right, title and interest in and to such Accounts, and (iii) to the extent required by Buyer, Seller shall authorize Buyer, at Buyer's cost, to complete and file a UCC Financing Statement.
- g) **Credits.** Buyer shall be entitled to any credit resulting from the posting or receipt by Seller or an Originating Creditor of any payments or other credits on any Accounts transferred pursuant to a Forward Flow Transfer after purchase of such Accounts by Seller. If a payment is made to any party or any other person or entity after such applicable Cut-off Date and Seller or its predecessor in interest should come into full possession of said payment, Seller shall, within forty (40) days after receipt, forward to Buyer the amount paid. Seller hereby authorizes Buyer to endorse, in Seller's name, and to negotiate or deposit to any bank account maintained by Buyer, any instrument

- h) Termination of Agreement.** Notwithstanding anything herein to the contrary, Buyer, in addition to any other rights and remedies it may have against Seller, may cancel and terminate this Agreement if Seller fails to correct or cure any material breach hereunder after 30 days' prior written notice of such breach from Buyer. Notwithstanding anything herein to the contrary, Seller, in addition to any other rights and remedies it may have against Buyer, may cancel and terminate this Agreement if Buyer fails to correct or cure any material breach of (i) Paragraph 6.3, to the extent such breach has a material adverse effect on Seller's or its Affiliates' account origination business, or (ii) Paragraph 2.4(a) or (b), in each case after 30 days' prior written notice of such breach from Seller. The termination of this Agreement shall be without prejudice to any rights or obligations of the parties accruing prior to such termination. In addition, the provisions of Paragraphs 3, 7 and 11.19 and any obligations under this Agreement arising in connection with all previously sold Accounts shall survive the termination or expiration of this Agreement.
- i) Majestic Breach.** To the extent that the "Six Month Rolling Average" (as defined in Exhibit C of the Balance Transfer Agreement) is less than 35,000, then the amount of Eligible Forward Flow Accounts to be delivered by Seller pursuant to this Paragraph 2.2 shall be reduced in the month following any such shortfall under the Balance Transfer Agreement by the product of (i) 35,000 minus the Six Month Rolling Average and (ii) the average Cut-off Claim Amount of the Accounts sold pursuant to this Paragraph 2.2 during the 90-day period prior to the shortfall occurring under the Balance Transfer Agreement (the "Balance Transfer Adjustment"). The amount of any Balance Transfer Adjustment resulting from a deficit under the Balance Transfer Agreement shall reduce the Yearly Minimum and the \$3.25 billion commitment of Seller for purposes of determining the expiration of the Term unless the Balance Transfer Agreement is deemed not to have been breached by Buyer (or its Affiliate) pursuant to Paragraph 2.2(j) below.
- j)** Notwithstanding anything to the contrary above: (i) the amount of Eligible Forward Flow Accounts to be delivered by Seller, the Yearly Minimum and the \$3.25 billion commitment shall not be reduced; and (ii) Buyer (or its Affiliate) will be deemed not to have breached the Balance Transfer Agreement if (A) Buyer's deficit under the Balance Transfer Agreement is the result of Seller's failure to deliver Eligible Forward Flow Accounts with an aggregate Cut-off Claim Amount equal to or in excess of \$150 million within the 180 day period prior to such deficit under the Balance Transfer Agreement, or (B) a Bi-Monthly Shortfall Adjustment is triggered pursuant to Paragraph 2.4(c)(ii) of this Agreement.
- 2.3 **Employees.** Buyer or its Affiliates shall have the right to obtain certain services from Seller and the right to hire certain employees of Seller (or its Affiliate), each as set forth in the Transition Services Agreement.
- 2.4 **Payments.**
- a) Purchase Price.** On the Account Purchase Closing Date, Buyer shall pay to Seller the Purchase Price for the Account Purchase, the Forward Flow Transfers and the right to hire certain employees of Seller (or its Affiliate) as identified in the Transition Services Agreement, as follows:
- (i) \$132,813,854 at the Closing, in cash or in other immediately available funds to the Wire Transfer Account, and
  - (ii) \$10,000,000 to be deposited in escrow (the "Escrow") pursuant to the terms and conditions of the Escrow Agreement.

- b) Forward Flow Transfer Payments.** On each Closing Date (other than the Account Purchase Closing Date), Buyer shall pay to Seller the applicable Forward Flow Transfer Payment in cash or other immediately available funds to the Wire Transfer Account.
- c) Price Reduction.**
- (i) If the Cut-off Claim Amount of Accounts transferred pursuant to Forward Flow Transfers is less than \$270 million in any given six-month period during the Term, the Forward Flow Transfer Payments shall be reduced in the following six-month period by an amount that is determined by multiplying the Cut-off Claim Amount of Accounts transferred pursuant to Forward Flow Transfers for the six-month period that is less than \$270 million (the "Shortfall"), by the factor set forth on Schedule 2.4 attached hereto (such amount, the "Shortfall Adjustment"). If the total Cut-off Claim Amount of the Accounts transferred pursuant to the Forward Flow Transfers in the following 120 days is insufficient to offset the Shortfall, Seller shall pay Buyer the portion of the Shortfall Adjustment from the prior six-month period that has not been offset.
  - (ii) Notwithstanding anything to the contrary in Section 2.4(c)(i) above, if CCRT, its Affiliates or its joint venture partners elects not to sell Accounts to Seller that are otherwise available to be sold, or Seller elects not to sell Accounts to Buyer that are otherwise available to be sold (other than Excess Eligible Accounts which sale shall be governed by Paragraphs 2.2(c) and 2.2(d)), in either case that results in the Cut-off Claim Amount of Accounts transferred pursuant to Forward Flow Transfers being less than \$50 million in any consecutive two-month period, Seller shall pay to Buyer within ten days after the end of such two-month period an amount that is determined by multiplying (x) the difference between \$90 million and the Cut-off Claim Amount of Accounts transferred in such two-month period (a "Bi-Monthly Shortfall"), by (y) the factor set forth on Schedule 2.4 attached hereto (such amount, a "Bi-Monthly Shortfall Adjustment"), plus the amount of any Shortfall Adjustment from the prior six-month period that has not been offset. The amount of any Bi-Monthly Shortfall that results in a Bi-Monthly Shortfall Adjustment payment shall reduce the Yearly Minimum and the \$3.25 billion commitment of Seller for purposes of determining the expiration of the Term.
  - (iii) Once the total Cut-off Claim Amount of Accounts transferred pursuant to the Forward Flow Transfers is equal to or greater than



\$2.4 billion, up to \$5.0 million of the Escrow may be used to pay any Shortfall Adjustments, and once the total Cut-off Claim Amount of Accounts transferred pursuant to the Forward Flow Transfers is equal to or greater than \$3.0 billion, the remaining portion of the Escrow may be used to pay any Shortfall Adjustments. The amount of any Shortfall associated with a Shortfall Adjustment paid shall reduce the Yearly Minimum and the \$3.25 billion commitment of Seller for purposes of determining the expiration of the Term. Seller shall be entitled to recover all or a portion of any Shortfall Adjustment so paid if in any subsequent period Seller exceeds its aggregate minimum volume requirements to such date under the Forward Flow Transfers; provided, however, any recovery of a Shortfall Adjustment payment shall reverse the previous reduction resulting from such Shortfall in the Yearly Minimum and the \$3.25 billion commitment of Seller for purposes of determining the expiration of the Term.

### 3. Repurchase of Certain Accounts.

3.1 **Ineligible Forward Flow Accounts.** In the event any Account is, at the time of the applicable Forward Flow Transfer, an Ineligible Forward Flow Account, then Seller, during the period commencing on the applicable Closing Date and continuing for 180 days thereafter (the "Guarantee Period"), shall repurchase such Ineligible Forward Flow Account for an amount equal to (i) the Forward Flow Price Percentage multiplied by (ii) the Cut-off Claim Amount of each such Ineligible Forward Flow Account minus any payments received thereon by Buyer, prior to the date such Ineligible Forward Flow Accounts are repurchased. Seller's obligation regarding any Ineligible Forward Flow Accounts shall terminate upon the expiration of the Guarantee Period as to any Ineligible Forward Flow Account for which Seller has not received written notice identifying such Account as an Ineligible Forward Flow Account prior to expiration of such period. For purposes of this Agreement, an "Ineligible Forward Flow Account" shall mean an Account included in a Forward Flow Transfer for which at least one of the following criteria exists as of the applicable Closing Date: (a) the Debtor(s) has filed, after origination of such Account or the date CCRT, its Affiliates or its joint venture partners, as applicable, acquired such Account, a petition for relief under any United States Bankruptcy Code, which has not been dismissed prior to such date; (b) the Debtor(s) is deceased after origination of such Account or the date CCRT, its Affiliates or its joint venture partners, as applicable, acquired such Account; (c) the Account has been paid in full, settled or otherwise discharged by Seller or one of its predecessors or by a court of competent jurisdiction; (d) the Account was originated by fraud; (e) the Cut-off Date Amount is less than \$200.00; (f) Seller received written notice of any dispute, counterclaim, or defense; (g) Seller has received written notice that the Debtor or his representative has commenced litigation, arbitration, or any other formal or informal proceeding against Seller or its predecessor; (h) any CCRT originated Account which, pursuant to the applicable cardholder agreement or disclosure statement, mandates that claims, disputes or other controversies arising out of or relating to such Account be submitted to any form of arbitration or alternative dispute resolution process including, without limitation, binding or mandatory arbitration; or (i) the Account does not comply with the representations and warranties set forth in Paragraph 5.1(a) that are made with respect to a Forward Flow Transfer and Paragraph 5.1(b) of this Agreement. Other than Buyer's right to seek indemnification pursuant to Paragraph 9.1(b), the sole remedy for a breach of the foregoing eligibility criteria shall be the repurchase obligation pursuant to this Paragraph 3.1.

3.2 **Ineligible Purchased Accounts.** In the event more than 1% of the total Cut-off Claim Amount of Accounts (other than the NFE Accounts) included in the Account Purchase are Ineligible Purchased Accounts at the time of the Account Purchase Closing Date, then Seller, during the Guarantee Period, shall repurchase such excess Ineligible Purchased Accounts for an amount equal to (i) the Account Purchase Putback Factor multiplied by (ii) the Cut-off Claim Amount of such Ineligible Purchased Accounts minus any payments received thereon by Buyer, prior to the date such Ineligible Purchased Accounts are repurchased. Seller's obligation pursuant to this Paragraph 3.2 shall terminate upon the expiration of the Guarantee Period as to any Ineligible Purchased Account for which Seller has not received written notice identifying such Account as an Ineligible Purchased Account prior to expiration of such period. For purposes of this Agreement, an "Ineligible Purchased Account" shall mean an Account transferred pursuant to the Account Purchase which at least one of the following criteria exists as of the Account Purchase Closing Date: (a) the Debtor(s) has filed, after origination of such Account or the date CCRT, its Affiliates or its joint venture partners, as applicable, acquired such Account, a petition for relief under any United States Bankruptcy Code, which has not been dismissed as of such date; (b) the Debtor(s) is deceased, after origination of such Account or the date CCRT, its Affiliates or its joint venture partners, as applicable, acquired such Account; (c) the Account has been paid in full, settled or discharged by Seller, one of its predecessors or by a court of competent jurisdiction; (d) the Account was originated by fraud; (f) Seller received written notice of any dispute, counterclaim, or defense; (g) Seller received written notice that the Debtor or his representative has commenced litigation, arbitration, or any other formal or informal proceeding against Seller or its predecessor; or (h) the Account does not comply with the representations and warranties set forth in Paragraph 5.1(a) that is made on the Account Purchase Closing Date and Paragraph 5.1(c) of this Agreement. Other than Buyer's right to seek indemnification pursuant to Paragraph 9.1(a), the sole remedy for a breach of the foregoing eligibility criteria shall be the repurchase obligation pursuant to this Paragraph 3.2.

3.3 **Documentation for Repurchase.** Buyer is required to provide to Seller reasonable documentation to demonstrate to Seller's reasonable satisfaction, that the Accounts to be repurchased pursuant to this Paragraph 3 qualify as an Ineligible Forward Flow Account or Ineligible Purchased Account, as applicable. Such documentation may include (to the extent necessary and applicable): copies of death certificates or other public references to the Debtor and date of death; copies of bankruptcy petition (including the name, address and telephone number of Debtor's bankruptcy counsel); affidavits of Debtor stating resolution by prior payment; police reports or notarized affidavits of Debtor attesting to fraud; copies of any filed Form 1099; and/or police reports or any other documentation which reasonably supports the claim for repurchase. Letters from family members identifying death of the Debtor, letters from attorneys identifying bankruptcy of the Debtor, and copies of credit reports with reference to death or bankruptcy of the Debtor shall be subject to confirmation by Seller. The documentation provided for herein may be provided electronically in a format as provided in Exhibit G and may include those data fields provided by a nationally recognized data provider (such as those provided by LexisNexis Banko Incorporated).

### 4. Conditions Precedent to Purchase or Sale of Accounts.

4.1 **Conditions Precedent to Closing.** Seller's obligation to sell and Buyer's obligation to purchase any Accounts on the Account Purchase Closing Date will be subject to the following conditions, which may be waived by either party with respect to the other party's satisfaction of a condition:

- a) **Representations and Warranties.** Each party's applicable representations and warranties, as the case may be, in this Agreement will be true and correct in all material respects as of the Account Purchase Closing Date.
- b) **Compliance with Covenants and Agreements.** Each party will have complied in all material respects with any obligation required to be performed by it on or before the Account Purchase Closing Date.
- c) **Bankruptcy.** Each party is solvent, has not instituted a bankruptcy proceeding seeking relief under any bankruptcy law, has not made a general assignment for the benefit of its creditors or is dissolved or passes a resolution for its winding-up.
- d) **Ancillary Agreements.** Each party shall have executed and delivered the Acknowledgement Agreement, the Escrow Agreement, the Transition Services Agreement, the Balance Transfer Agreement and the Bankruptcy Receivable Purchase Agreement, each in substantially the form as of the date hereof.
- e) **Financing.** Buyer shall have obtained the financing necessary to pay the Purchase Price; provided, however, that this condition shall be deemed unsatisfied after June 10, 2005 and, after such time, Seller has the right to terminate this Agreement without further obligation on the part of either party.

4.2 **Conditions Precedent to Each Forward Flow Transfer.** Seller's obligation to sell and Buyer's obligation to purchase any Accounts pursuant to any Forward Flow Transfer on the applicable Closing Date will be subject to the following conditions, which may be waived at the sole discretion of Buyer with respect to Seller's satisfaction of a condition:

- a) **Representations and Warranties.** Each party's applicable representations and warranties, as the case may be, in this Agreement will be true and correct in all material respects as of such Closing Date.
- b) **Compliance with Covenants and Agreements.** Each party will have complied in all material respects with any obligation required to be performed by it on or before such Closing Date.
- c) **Bankruptcy.** Each party is solvent, has not instituted a bankruptcy proceeding seeking relief under any bankruptcy law, has not made a general assignment for the benefit of its creditors or is dissolved or passes a resolution for its winding-up.

## 5. **Representations and Warranties of Seller.**

### 5.1 **Representations and Warranties of Seller.**

- a) **All Accounts.** As of each Closing Date, Seller represents and warrants in connection with the Account Purchase (other than the NFE Accounts purchased thereunder) and each Forward Flow Transfer that:
  - (i) **Organization; Status.** Seller is a limited liability company, duly organized, validly existing and in good standing under the laws of the State of Georgia. Seller has the power and authority to own the Accounts and to carry on the business relating to such Accounts.

- (ii) **Capacity; Authority; Validity.** Seller has all necessary power and authority to make, execute and deliver this Agreement and to perform all of the obligations to be performed by it under this Agreement. The making, execution, delivery and performance of this Agreement and the consummation by Seller of the transactions contemplated hereby have been duly and validly authorized by all necessary action of Seller. This Agreement has been duly and validly executed and delivered by Seller and, assuming the due authorization, execution and delivery hereof by Buyer, this Agreement will constitute the valid, legal and binding obligation of Seller, enforceable against Seller in accordance with its respective terms (except as such enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium, receivership, conservatorship, and other laws relating to or affecting creditors' rights generally and by general equity principles).
- (iii) **Conflicts; Defaults.** Neither the execution and delivery of this Agreement by Seller nor the consummation of the transactions contemplated hereby will (i) conflict with, result in the breach of, constitute a default under, or accelerate the performance provided by, the terms of any order, law, regulation, contract, indenture, mortgage, instrument, commitment, order, judgment or decree to which Seller is a party or by which Seller is bound, other than any such breach or default that will not have a material adverse effect on Seller, or (ii) violate the limited liability company agreement of Seller.
- (iv) **Consents.** No consent, approval, authorization or order of, or filing, registration or qualification with, any court, governmental authority or third party (each, a "Consent") is required in connection with the execution, delivery or performance of this Agreement other than (i) those Consents that have been or will be, before the applicable Closing Date, obtained or (ii) where the failure to obtain such Consents will not have a material adverse effect on Seller. Seller is not in default under, and no event has occurred which, with the lapse of time or otherwise, will result in a default under the terms of any judgment, order, writ, decree, permit or license of any agency of any government or court, whether federal, state, municipal or local and whether at law or in equity, which would have a material adverse effect on Seller.
- (v) **Litigation.** There is no pending or, to Seller's actual knowledge, threatened action, investigation, litigation or proceeding by or

against Seller which would (i) prevent Seller from performing its obligations hereunder in any material respect or (ii) have a material adverse effect on, result in a lien against, or otherwise materially impair such Accounts.

- (vi) **Effect of Law on Closing.** There is no federal or state statute, rule or regulation, or order or rule of any federal or state regulatory agency that would prevent Seller from performing its obligations under this Agreement.

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- (vii) **Sole Ownership to the Accounts.** Seller is the sole and exclusive owner of the Accounts transferred on such Closing Date free and clear of any lien. Delivery by Seller of such Accounts, the applicable Term Agreement, if any, and the applicable Assignment to Buyer on the applicable Closing Date will (i) vest in Buyer sole and exclusive ownership of the Accounts free and clear of any lien, claim, or interest of any type and in compliance with all federal or state statutes, rules or regulations, or any order or rule of any federal or state regulatory agency and (ii) constitute a valid assignment of Seller's interest in such Accounts, the applicable Term Agreement, if any, and the applicable Assignment, enforceable against Seller and all other persons, including, without limitation, creditors of and all other entities that have purchased or will purchase assets from Seller. Other than the sale of Accounts to Buyer as provided in this Agreement, Seller has not assigned, sold, conveyed, transferred, granted, created, otherwise disposed of, or suffered to exist, any lien, claim, or interest of any type, in or to such Accounts.
- (viii) **Valid Account.** Each Account included in the Account Purchase is the legal, valid and binding obligation of the Debtor and is enforceable in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws, now or hereafter in effect, affecting the enforcement of creditors' rights in general and except as such enforceability may be limited by general principles of equity (whether considered in a suit at law or in equity).
- (ix) **Compliance with Laws.** Seller has complied, in all material respects, with all local, state and federal laws and regulations applicable to debt collection including, without limitation, the U.S. Bankruptcy Code, the federal Consumer Credit Protection Act, the federal Fair Credit Reporting Act and the federal Fair Debt Collection Practices Act, with respect to the Accounts transferred as of such Closing Date.
- (x) **Accurate Reflection of Seller Party's Data.** The data fields as set forth in the applicable Computer File accurately reflect in all material respects the information in Seller's database with respect to the data fields listed therein.
- (xi) **Card Member Agreements.** No Account is subject to any card member agreement and disclosure statement mandating claims, disputes or other controversies arising out of or relating to an Account to be submitted to any form of arbitration or alternative dispute resolution process including, without limitation, binding or mandatory arbitration.
- (xii) **Accuracy of Certain Information.** Except with respect to the Specialized Legal File identified in the Account Purchase Computer File, to Seller's actual knowledge, the written and electronic diligence information provided to the Buyer in contemplation of the transactions pursuant to this Agreement, including but not limited to the information contained in each Computer File, and the Cut-off Claim Amounts are true and accurate in all material respects; provided that this representation shall not apply to any information that constitutes projections, predictions or other forward looking statements of any nature.

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- (xiii) **Post Charge off Assessments.** Except with respect to the Specialized Legal File identified in the Account Purchase Computer File, no interest, fees, or other charges have been assessed or applied by Seller on any Account after the date of charge off.
  - (xiv) **Notice.** Seller has not received any written notice of any dispute, offset, or other defenses asserted by anyone in connection with the Accounts to be transferred on such Closing Date.
- b) Forward Flow Accounts.** As of each Closing Date (other than the Account Purchase Closing Date), Seller represents and warrants that since acquiring the Accounts set forth on the applicable Forward Flow Computer File, none of such Accounts has been worked by Seller or its agents (other than routine responses to inquiries received from the Debtor) or assigned by Seller or its agents to anyone for any purpose, including, without limitation, any attempt to initiate contact with the Debtor or otherwise collect the Account (whether by outbound telephone calls, outbound letters or through any other means).
- c) Purchased Accounts.** As of the Account Purchase Closing Date, Seller represents and warrants that:
- (i) The Accounts transferred pursuant to the Account Purchase are the only accounts owned by Seller as of the Account Purchase Closing Date, other than (i) Accounts which have been paid in full, settled in full or where the Debtor has received and accepted a Majestic balance transfer offer (whether or not an initial payment has been made), in each case, prior to the Account Purchase Closing Date, (ii) accounts acquired from parties other than CCRT, its Affiliates or joint venture partners related to the Majestic Balance Transfer Program, (iii) Chapter 13 bankruptcy accounts purchased by Seller; or (iv) the Fingerhut sale file previously delivered by Seller to Buyer.
  - (ii) Except with respect to the Specialized Legal File identified in the Account Purchase Computer File, the Accounts (other than the NFE Accounts) transferred pursuant to the Account Purchase may be subject to a collection/servicing agreements and if so, none of the agreements (i) grant to anyone more than a fifty percent (50%) contingency fee on any amounts collected and (ii) are substantially and materially different from the forms identified and delivered by Seller to Buyer on the date of this Agreement.
  - (iii) Seller has not within the six month period immediately prior to the Account Purchase Closing Date initiated any programs or

- (iv) None of the Accounts (other than the NFE Accounts) have been subjected by Seller or, to Seller's actual knowledge its agents, to a settlement offer or an offer of compromise that by its terms offered to accept as payment in full an amount less than fifty percent (50%) of the Cut-off Claim Amount including interest assessed by Seller, as a part of a Blanket Settlement.
- (v) The financial statements of the business relating to the Accounts and other assets being sold pursuant to this Agreement on the Account Purchase Closing Date and to be provided to Buyer pursuant to Paragraph 6.6 will be correct in all material respects, and will have been prepared in accordance with the requirements of the Securities and Exchange Commission and will fairly present, in all material respects, the information required to be set forth therein. The books of account and other financial records with respect to the business relating to the Accounts and other assets being sold pursuant to this Agreement on the Account Purchase Closing Date are accurate and complete in all material respects.
- d) **NFE Accounts.** As of the Account Purchase Closing Date, Seller represents and warrants that each NFE Account that is a Chapter 7 bankruptcy account or deceased account was, at the time of charge off, the legal, valid and binding obligation of the Debtor and was, at the time of charge off, enforceable in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws, now or hereafter in effect, affecting the enforcement of creditors' rights in general and except as such enforceability may be limited by general principles of equity (whether considered in a suit at law or in equity).
- e) **No Other Representations and Warranties by Seller.** Except for the representations and warranties contained in this Paragraph 5.1, notwithstanding anything to the contrary in this Agreement, Seller, makes no representation or warranty, either express or implied, regarding (i) the credit quality of the Accounts or (ii) the future performance of the Accounts. Buyer acknowledges and agrees that none of the representations and warranties made in Paragraph 5.1(b) are being made with respect to the Accounts transferred pursuant to the Account Purchase and that none of the representations and warranties made in Paragraph 5.1(c) are being made with respect to the Accounts transferred pursuant to the Forward Flow Transfers and that none of the representations and warranties (other than those set forth in Paragraph 5.1(d)) are being made with respect to the NFE Accounts.

5.2 **Buyer's Representations and Warranties.** As of each Closing Date, Buyer represents and warrants that:

- a) **Organization; Status.** Buyer is a limited liability company, duly organized, validly existing and in good standing under the laws of the State of Delaware. Buyer has the power and authority to purchase the Accounts and to carry on the business relating to such Accounts.

- b) **Capacity; Authority; Validity.** Buyer has all necessary power and authority to make, execute and deliver this Agreement and to perform all of the obligations to be performed by it under this Agreement. The making, execution, delivery and performance of this Agreement and the consummation by Buyer of the transactions contemplated hereby have been duly and validly authorized by all necessary action of Buyer. This Agreement has been duly and validly executed and delivered by Buyer and, assuming the due authorization, execution and delivery hereof by Seller, this Agreement will constitute the valid, legal and binding obligations of Buyer, enforceable against Buyer in accordance with its respective terms (except as such enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium, receivership, conservatorship, and other laws relating to or affecting creditors' rights generally and by general equity principles).
- c) **Conflicts; Defaults.** Neither the execution and delivery of this Agreement by Buyer nor the consummation of the transactions contemplated hereby will (i) conflict with, result in the breach of, constitute a default under, or accelerate the performance provided by, the terms of any order, law, regulation, contract, indenture, mortgage, instrument, commitment, order, judgment or decree to which Buyer is a party or by which Buyer is bound, other than any such breach or default that will not have a material adverse effect on Buyer or (ii) violate the limited liability company agreement of Buyer.
- d) **Consents.** No Consent is required in connection with the execution, delivery or performance of this Agreement other than (i) those Consents that have been or will be, before the applicable Closing Date, obtained or (ii) where the failure to obtain such Consents will not have a material adverse effect on Buyer. Buyer is not in default under, and no event has occurred which, with the lapse of time or otherwise, will result in a default under the terms of any judgment, order, writ, decree, permit or license of any agency of any government or court, whether federal, state, municipal or local and whether at law or in equity, which would have a material adverse effect on Buyer.
- e) **Effect of Law on Closing.** There is no federal or state statute, rule or regulation, or order or rule of any federal or state regulatory agency that would prevent Buyer from performing its obligations under this Agreement.

5.3 **Buyer's Decision to Purchase.**

- a) **Due Diligence.** Buyer has completed all due diligence it deems necessary. The sale and assignment of Accounts are without recourse to Seller, and without warranty of any kind (including, without limitation warranties pertaining to the nature, validity, collectibility, enforceability and value of the Accounts) except as stated herein. Buyer acknowledges and agrees that: (i) the written due diligence materials (including, without limitation, each of the Computer Files) made available to Buyer are an adequate and sufficient basis on which to determine whether and at what price to purchase the Accounts; and (ii) Buyer has made such independent investigation as it deems to be warranted into the nature, validity, enforceability, collectibility, and value of the Accounts and all other facts it deems material to its purchase, and is entering into this transaction solely on the basis of Buyer's investigation and its own judgment and independent determination of the value of the Accounts, and is not acting in reliance on any representations or warranties made, or any

- b) **Independent Determination.** Buyer has made independent determination of (i) the value of the Accounts; and (ii) the possible reduction in value resulting from the limited representations and warranties of Seller contained in this Agreement.
- c) **Disputed Accounts.** Buyer acknowledges that some Accounts, or certain transactions posted to some Accounts, may be subject to potential claims or disputes by a Debtor against Seller; provided, however, that prior to the applicable Closing Date, Seller or its predecessors have not received any written notice of the existence of such disputes or claims with respect to such Accounts (other than the NFE Accounts). Buyer purchases all Accounts expressly subject to any rights of a Debtor. Buyer acknowledges and agrees that it has performed its financial and business due diligence with respect to the portfolio of accounts and the operations of Seller and that Buyer is satisfied with the results of such financial and business due diligence and determination of the Purchase Price, the Account Purchase Putback Factor and the Forward Flow Price Percentage.
- d) **No Tax Advice.** Buyer acknowledges that none of Buyer nor any of its respective Affiliates is relying on Seller for U.S. federal, state, local or foreign income tax advice or relying on Seller to warrant or guarantee the accuracy of any legal conclusions rendered to Buyer or any of its respective Affiliates by anyone other than Seller, its Affiliates or its counsel.

6. **Conduct of Business.**

- 6.1 **Notice.** After each Closing Date, Seller may give a Debtor written or oral notice of the transfer of such Debtor's Account to Buyer at the Debtor's last known address. If Seller elects to provide written notice, it shall first provide to Buyer, for its approval and consent (which consent shall not be unreasonably withheld or delayed), a copy of the letter or script that Seller intends to give to any Debtor; provided, that such approval and consent shall not be required to the extent such written notice is in response to an inquiry from a Debtor.
- 6.2 **Communications.** From and after the date of the delivery of the applicable Computer File to Buyer, Seller, within forty-five calendar days of receipt, will deliver to Buyer any communications received by Seller with respect to the Accounts identified in such Computer File. With respect to the Accounts sold by Seller hereunder, Seller will change and maintain its records on its computer system to indicate that such Accounts have been sold. If Seller is contacted by any Debtor or a representative of any Debtor, Seller will direct all such individuals to contact Buyer via its collection agent at 1-888-303-3005.
- 6.3 **Debt Collections of Accounts.** If Buyer or its agent collects or attempts to collect on an Account, Buyer and its agents will at all times:
  - a) Comply, in all material respects, with all local, state and federal laws and regulations applicable to debt collection including, without limitation, the U.S. Bankruptcy Code, the federal Consumer Credit Protection Act, the federal Fair Credit Reporting Act and the federal Fair Debt Collection Practices Act; and

- b) For any Account where the statute of limitations has run, not falsely represent that a lawsuit will be filed if the Debtor does not pay.
- 6.4 **Credit Bureau Reporting.** After the Account Purchase Closing Date, Seller will delete its trade-line as currently reported with respect to the Accounts transferred to Buyer on such Closing Date. Seller shall not report any of the Accounts subject to any Forward Flow Transfer. It is at Buyer's discretion to report the Account status to the credit bureau reporting agencies. Buyer may use the name of the original grantor or issuer of any Account in connection with its credit reporting of such accounts, provided that the name used by Buyer with respect to such Account is as set forth in the applicable Computer File data field called "Credit Bureau Referral Name" as provided to by Seller to Buyer; provided, however, that if such data field was not populated in the applicable Computer File, Seller shall have five (5) Business Days following the applicable Closing Date to provide to Buyer such information.
- 6.5 **Account Documents.** Seller will furnish to Buyer, at Buyer's request, within (a) one hundred eighty (180) days after such request by Buyer with respect to the Accounts sold on the Account Purchase Closing Date and (b) ninety (90) days after such request by Buyer with respect to the Accounts sold pursuant to a Closing Date (other than the Account Purchase Closing Date), the Account Documents specified by Buyer pursuant to such request with respect to the Accounts purchased on such Closing Date, and Buyer shall reimburse Seller for the costs and expenses (out-of-pocket or otherwise) with respect thereto. The Account Documents provided to Buyer may be original documents or copies thereof, whether by photocopy, microfiche, microfilm or other reproduction process.

Without limiting the generality of the forgoing provision, Seller may hire, at Buyer's expense, a sufficient number of temporary agents or employees for the purpose of promptly and efficiently retrieving and imaging the Account Documents requested by Buyer. All of Seller's obligations with respect to document retrieval for each Account shall cease upon delivery of the applicable Account Documents to Buyer unless compelled by a court of competent jurisdiction as a result of a third-party claim against Buyer with respect to such matter. For each Account for which no Account Documents exist, Seller shall deliver, or in the case of Forward Flow Transfers Seller shall cause to be delivered from CCRT, to Buyer an affidavit in substantially the form of Exhibit H.

- 6.6 **Financial Statements.** Seller shall provide to Buyer no later than 60 days after the Closing of the Account Purchase audited historical financial statements of the business relating to the Accounts and other assets being sold to Buyer by Seller pursuant to this Agreement on the Account Purchase Closing Date as of and for the years ended December 31, 2002, December 31, 2003 and December 31, 2004. The Seller also agrees to deliver to Buyer no later than 45 days after the Closing of the Account Purchase unaudited income statements, statements of revenues and expenses of acquired operations or equivalent of the business relating to the Accounts and other assets being sold to Buyer on the Account Purchase Closing Date for the three and six month periods ended June 30, 2004 and for the periods from April 1, 2005 and January 1, 2005

through the Account Purchasing Closing Date. The fees of Seller's auditor for the audit and the preparation of such financial statements shall be paid by Buyer up to an amount of Sixty-Seven Thousand Dollars (\$67,000.00), and any fees in excess of such amount shall be the responsibility of Seller.

6.7 **Access to Books and Records.** From and after the Closing of the Account Purchase until March 31, 2009, Seller shall upon request from Buyer during normal business hours and upon reasonable notice, to the extent necessary for Buyer to (a) complete its initial audit and (b) comply with Securities and Exchange Commission requirements, in each case solely with respect to the periods covered by the financial statements prepared pursuant to Paragraph 6.6: (i) make available and permit Buyer and its representatives and agents to inspect and copy books and records which relate to the business of Seller transferred to Buyer pursuant to this Agreement and the transactions contemplated hereby and personnel records for Seller's employees who accept Buyer's offer of employment; and (ii) arrange discussions with its current officers and employees regarding the business of Seller transferred to Buyer pursuant to this Agreement and the transactions contemplated hereby; provided, however, that (A) all such inspection, copying and assistance shall be at Seller's place of business at reasonable times, (B) all such inspection, copying and assistance shall be at the sole cost and expense of Buyer, and (C) Buyer shall treat all such records and information obtained and the contents thereof as confidential and not disclose such records or information to any other person or entity except as required by applicable law.

6.8 **Seller as Witness.**

- a) If Buyer files any legal action to collect on an Account and requests or subpoenas an officer or employee of Seller to appear at a trial, hearing or deposition to testify, Buyer will reimburse Seller for the officer's or employee's out-of-pocket, travel-related expenses, plus a per diem allowance equal to (i) 1/365 of the officer's annual salary or (ii) the hourly rate Seller is required under law to pay any non-exempt employee.
- b) If Seller requests or subpoenas an officer or employee of Buyer to appear at a trial, hearing or deposition to testify on any Returned Account, Seller will reimburse Buyer for the officer's or employee's out-of-pocket, travel-related expenses, plus a per diem allowance equal to (i) 1/365 of the officer's annual salary or (ii) the hourly rate Buyer is required under law to pay any non-exempt employee.

6.9 **Debtor Communications.**

- a) Buyer will, from and after the applicable Closing Date, handle and respond directly to any inquiries, requests or communications made by any person on any Account. Buyer will not refer, for any reason, any Debtor with an inquiry or any other Account issue to Seller or an Originating Creditor unless compelled by a court of competent jurisdiction as a result of a third-party claim against Buyer with respect to such matter.
- b) Seller will handle and respond directly to any inquiries, requests or communications made by any person on any Returned Account. Seller will not refer, for any reason, any Debtor with an inquiry with respect to a Returned Account to Buyer.

6.10 **Originating Creditor Communications.** Buyer will not (for any reason) initiate communication with or contact, by any means or method, any Originating Creditor with respect to any Accounts.

6.11 **GLB Compliance.** Buyer must protect and keep confidential, to the extent required by all applicable privacy laws, rules and regulations with respect to information concerning or relating to any Debtor including, without limitation, all "Nonpublic Personal Information", as that term is defined by the Gramm-Leach-Bliley Act and any regulations promulgated in connection therewith. Buyer must collect, use, and disclose Nonpublic Personal Information only in accordance with the terms of all applicable laws, rules and regulations. Buyer has, and will continue to have for so long as it retains Nonpublic Personal Information, adequate administrative, technical, and physical safeguards to (i) ensure the security and confidentiality of Debtor records and information, (ii) protect against any anticipated threats or hazards to the security or integrity of records and (iii) protect against unauthorized access to or use of records or information.

6.12 **Delivery.** Seller will agree (i) to sell the Eligible Forward Flow Accounts to Buyer within ten days after the purchase thereof by Seller from the Originating Creditor and (ii) that all amounts received by Seller with respect to such Eligible Forward Flow Accounts during its ownership of such Accounts will be remitted to Buyer.

6.13 **Brokers or Finders.** Seller shall pay any fee or commission due or owing to SunTrust Robinson Humphrey, and each party shall pay any fee or commission due or owing to any other persons retained by such party, for or on account of services rendered as a broker or finder in connection with this Agreement or any other transaction between Seller and Buyer, which would give rise to any valid claim for the payment of any such fee or commission.

7. **Returned Accounts.**

7.1 Except for Accounts that have already settled or that have pending payment or settlement arrangements, Buyer shall return to Seller, within ten (10) days after receiving a Recall Request (as defined below) from Seller, any Account purchased by Buyer that (i) is or becomes involved in pending or threatened litigation against Seller or an Originating Creditor including arbitration or any other legal or quasi-legal proceeding; (ii) forms the basis of a claim against Seller or an Affiliate, officer, director, employee, or agent of Seller or an Originating Creditor or (iii) Seller, after the Guarantee Period applicable to such Account, elects to request the return of, in its sole discretion, an Ineligible Forward Flow Account or an Ineligible Purchased Account (each, a "Recalled Account"). To the extent the current balance (i.e., the Cut-off Claim Amount less payments received by Buyer and in all cases excluding all accrued post-charge off interest) of the Recalled Accounts exceeds an aggregate of one percent (1%) of the Cut-off Claim Amount of (a) the Accounts (other than the NFE Accounts) included in the Account Purchase, and (b) the Eligible Forward Flow Accounts purchased pursuant to the Forward Flow Transfers (the "Replacement Trigger"), Seller shall repurchase all of the excess

Recalled Accounts, at the rates applicable to each type of Account as specified in Section 3.1 or 3.2, as applicable. In addition, if Buyer has incurred any out-of-pocket legal expenses in connection with litigation that the Buyer has filed in connection with a Recalled Account, Seller will reimburse Buyer for such costs and expenses incurred in connection with such accounts.

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- 7.2 If Seller determines the existence of any of the circumstances set forth in Paragraph 7.1, Seller will submit a recall request to Buyer on a form substantially similar to the document attached as Exhibit F (the "Recall Request").
- 7.3 Buyer must, upon receipt of a Recall Request immediately cease all collection activity with respect to such Recalled Account. Upon Seller's compliance with Section 7.4 and Buyer's receipt of the repurchase price, if any, Buyer must endorse and/or re-assign each Recalled Account to Seller, with representations or warranties of free and clear title and its compliance with all applicable laws, rules and regulations. Buyer must also remove its credit reporting on any Recalled Account and, if requested by Seller, execute an appropriate UCC form evidencing return of such Accounts.
- 7.4 Seller must, as a condition precedent to recall, provide to Buyer a report identifying each Recalled Account and containing evidence, which is reasonably satisfactory in Buyer's sole discretion and judgment, to verify that any identified Account meets the specific criteria specified above.
- 7.5 Any payments received by Buyer after receipt of a Recall Request with respect to the Recalled Accounts up to the Replacement Trigger will belong to Seller and Buyer must remit payments to Seller within thirty (30) days after receipt, in the same form as received, with negotiable instruments being endorsed by Buyer without recourse or warranty.
- 7.6 The current balance (i.e., the Cut-off Claim Amount less payments received by Buyer and in all cases excluding all accrued post-charge off interest) of any Recalled Accounts (excluding Accounts sold on the Account Purchase Closing Date) up to the Replacement Trigger shall reduce the amount counted toward the \$3.25 billion of Seller for purposes of determining the expiration of the Term and shall reduce the amount counted toward the Yearly Minimum for the applicable Term Year.

8. **UCC.** Each party hereby consents to the other party's filing of, at its own expense, any UCC Financing Statements (including continuation statements or amendments) necessary or appropriate to give effect to such party's purchase or repurchase of, the Accounts hereunder.

9. **Indemnity.**

9.1 **Indemnification by Seller.**

- a) **Account Purchase.** Subject to Paragraphs 11.10 and 11.13 herein, Seller hereby agrees to indemnify, and hold harmless Buyer, its parents, subsidiaries and Affiliates, and their officers, directors, general and limited partners, members, managers, principals, controlling persons, agents and employees, from and against any and all damages, losses, costs or expenses (including any and all reasonable attorneys' fees) incurred by Buyer or Buyer's parents, subsidiaries, Affiliates, officers, directors, general and limited partners, members, managers, principals, controlling persons, employees, and agents, arising out of (i) Seller's breach of any of the warranties and representations in Paragraphs 5.1(a) made on the Account Purchase Closing Date and Paragraphs 5.1(c) and (d), (ii) Seller's breach of any covenants in this Agreement related to the Account Purchase (excluding any liability arising solely as a result of Buyer's actions), (iii) the agreement between Seller and CCRT's joint venture partner with respect to the Fingerhut Sale File, and (iv) any breach of the representations and warranties related to the Account Purchase set forth in Paragraph 1 of the Acknowledgement Agreement. At its option, Seller will have the right to assume the defense, in a manner and with counsel reasonably acceptable to Buyer, of any claims, actions, suits or other actual or threatened proceedings for which Buyer is entitled to indemnification under this Paragraph 9.1(a) and to directly pay for all losses, judgments, damages, expenses and other costs (including reasonable fees and disbursements of counsel) which may be imposed in connection therewith.

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- b) **Forward Flow Transfers.** Subject to Paragraphs 11.10 and 11.13 herein, Seller hereby agrees to indemnify, and hold harmless Buyer, its parents, subsidiaries and Affiliates, and their officers, directors, general and limited partners, members, managers, principals, controlling persons, agents and employees, from and against any and all damages, losses, costs or expenses (including any and all reasonable attorneys' fees) incurred by Buyer or Buyer's parents, subsidiaries, Affiliates, officers, directors, general and limited partners, members, managers, principals, controlling persons, agents and employees, arising out of (i) Seller's breach of any of the warranties and representations in Paragraphs 5.1(a) made on each Closing Date other than the Account Purchase Closing Date and Paragraph 5.1(b), (ii) Seller's breach of any of the covenants in this Agreement related to any Forward Flow Transfer (excluding any liability arising solely as a result of Buyer's actions), and (iii) any breach of the representations, warranties or covenants related to any Forward Flow Transfer set forth in Paragraphs 1 and 2 of the Acknowledgement Agreement. At its option, Seller will have the right to assume the defense, in a manner and with counsel reasonably acceptable to the Buyer, of any claims, actions, suits or other actual or threatened proceedings for which Buyer is entitled to indemnification under this Paragraph 9.1(b) and to directly pay for all losses, judgments, damages, expenses and other costs, (including reasonable fees and disbursements of counsel) which may be imposed in connection therewith.

- c) Seller's aggregate indemnification for any and all claims pursuant to Paragraph 9.1 shall be limited to \$71,406,927 and shall be calculated with respect to a particular claim in the manner set forth in Schedule 9.1.

- 9.2 **Indemnification by Buyer.** Subject to Paragraphs 11.10 and 11.13 herein, Buyer hereby agrees to indemnify, and hold harmless Seller, its parents, subsidiaries and Affiliates, and their officers, directors, general and limited partners, members, managers, principals, controlling persons, agents and employees, from and against any and all damages, losses, costs or expenses (including any and all reasonable attorney's) incurred by Seller or Seller's parents, subsidiaries, Affiliates, officers, directors, general and limited partners, members, managers, principals, controlling persons, employees, and agents, arising out of Buyer's breach of any of the warranties, representations and covenants of this Agreement

(excluding any liability arising solely as a result of Seller's actions). At its option, Buyer will have the right to assume the defense, in a manner and with counsel reasonably acceptable to Seller, of any claims, actions, suits or other actual or threatened proceedings for which Seller is entitled to indemnification under this Paragraph 9.2 and to directly pay for all losses, judgments, damages, expenses and other costs (including reasonable fees and disbursements of counsel) which may be imposed in connection therewith. Buyer's aggregate indemnification for any and all claims pursuant to Paragraph 9.2 shall be limited to \$71,406,927.

- 9.3 **Notice.** Promptly after discovery, each party will notify the other party of any claim or threatened claim against the other party, or any claim or threatened claim that may affect the other party. Failure to give such notice to an indemnifying party will not effect any indemnification hereunder except to the extent that such failure adversely affects the indemnifying party.
- 9.4 **Procedures.** The indemnifying party will select defense counsel who is reasonably satisfactory to the indemnified party and will bear all expenses in connection with the defense and settlement of any claim or suit. The indemnified party will have the right, at its own expense, to participate in the defense of any claim against which it is indemnified and which has been assumed by the obligation of indemnity hereunder. In the defense of any claim, the indemnifying party must not, except with the written consent of the indemnified party, consent to entry of any judgment or enter into any settlement that either: (a) does not include, as an unconditional term, the grant by the claimant to the indemnified party of a release of all liabilities in respect of claims, or (b) otherwise adversely affects the rights of the indemnified party. The indemnified party will cooperate with the indemnifying party in every reasonable way to facilitate the defense of any claim, demand, action or suit.
- 9.5 **Allocation of Fault.** The allocation between the indemnifying party and the indemnified party of any amounts due in connection with any threatened or pending claim, action, or suit involving events prior to and after the applicable Closing Date will be determined (unless the parties agree otherwise) by the arbitrator or mediator deciding any claim, action, or suit.
- 9.6 **Exclusive Remedy.** The remedies provided for in this Agreement and the Acknowledgement Agreement shall be the sole and exclusive remedy for the parties with respect to any claim under this Agreement.
10. **Confidentiality.** This Agreement and the terms of this Agreement, including the consideration paid for the Accounts, will remain confidential and will not be disclosed by either party without the written consent of the other, except to the extent such disclosure (i) is required to be made under any applicable court order, law or regulation (including, without limitation, any stock exchange), (ii) is required to be made to any tax, banking or other regulatory authority or legal or financial advisor of either party, (iii) is made in connection with the sale or other transfer of any Account or interest therein by Buyer or its successors or assigns, (iv) is made to such party's current or prospective lenders or investors, or (v) such information is or becomes public without a breach of this Agreement.
11. **Miscellaneous Terms.**
- 11.1 **Notices.** All notices and other communications between the parties will be in writing and will be deemed given when delivered personally or four Business Days after mailing by registered or certified mail, return receipt requested, to a party at its address set forth below, or to any other address as a party may designate in writing:

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To Buyer: Midland Funding LLC  
c/o Encore Capital Group, Inc.  
8875 Aero Drive, Suite 200  
San Diego, CA 92123  
Attention: General Counsel  
Fax: (858) 309-6995

To Seller: CompuCredit Corporation  
245 Perimeter Center Parkway, Suite 600  
Atlanta, Georgia 30346  
San Diego, CA 92123  
Attention: David Burton  
Fax: (678) 259-8249

With a copy to: Jefferson Capital Systems, LLC  
16 McLeland Road  
St. Cloud, MN 56303  
San Diego, CA 92123  
Attention: General Counsel  
Fax: (770) 206-6183

- 11.2 **Expenses.** Except as otherwise expressly provided in this Agreement, Buyer and Seller will each bear its own out-of-pocket expenses, including fees and disbursements of its attorneys and any other agents or representatives in connection with the transaction contemplated by this Agreement.
- 11.3 **Successors and Assigns.** This Agreement may not be assigned by a party without the express prior written consent of the other party, consent for which may be withheld; provided, however, that Buyer may assign this Agreement and any of its rights in this Agreement to an Affiliate without the Seller's consent, provided that no such assignment shall relieve Buyer from its obligations or liabilities under this Agreement.



- 11.4 **Entire Agreement.** This Agreement, the Acknowledgement Agreement, the Escrow Agreement, the Balance Transfer Agreement, the Bankruptcy Receivable Purchase Agreement, and the Transition Services Agreement embodies all of the agreements and understandings between the parties with respect to the subject matter of each respective agreement and such agreements supersede all prior agreements and understandings relating to the subject matter of such agreements.
- 11.5 **Amendment.** Neither this Agreement nor any of its provisions may be changed, waived, discharged or terminated orally. Any change, waiver, discharge or termination may be effected only in writing signed by the party against whom enforcement is sought.
- 11.6 **Governing Law: Severability.** THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF NEW YORK, WITHOUT REFERENCE TO ITS CONFLICT OF LAW PROVISIONS. AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS. If any portion of this Agreement is found by a court of competent jurisdiction to be illegal, unenforceable, invalid or otherwise ineffectual, all remaining terms of this Agreement (unless the economic and legal substance of the transaction, as contemplated by the parties at the time of its execution, is affected in any manner materially adverse to a party) are severable and will remain valid and enforceable without regard to the illegal, unenforceable, invalid or ineffectual provisions. In the event of any such finding, to the extent practicable, the parties will attempt to construe the remaining portions of this Agreement so as to most accurately reflect the legal and economic intent of the parties at the time this Agreement was signed.

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- 11.7 **Waivers.** No party shall be deemed to have waived any of its rights or remedies under this Agreement unless such waiver is in writing and signed by such party and then only to the extent specifically recited. No failure to exercise and no delay or omission in exercising any right, remedy or recourse on the part of either party will operate or be deemed as a waiver of such right, remedy or recourse hereunder or preclude any other or further exercise thereof. A waiver or release on any one occasion will not be construed as continuing, as a bar to, or as a waiver or release of any subsequent right, remedy or recourse on any subsequent occasion. All rights and remedies of each party, whether pursuant to this Agreement, or any other document or instrument delivered in connection therewith, are cumulative and concurrent and may be exercised singly, successively or concurrently at the sole discretion of such party and may be exercised as often as occasion therefor may exist. Except as otherwise limited by this Agreement, the rights of each party hereunder or under any such document or instrument delivered in connection therewith shall be in addition to all other rights and remedies provided at law or in equity.
- 11.8 **Headings.** Paragraph headings are for reference only, and will not affect the interpretation or meaning of any provision of this Agreement.
- 11.9 **Counterparts.** This Agreement may be signed in two or more counterparts, each of which will be deemed an original and will constitute one and the same Agreement.
- 11.10 **Survival.** All representations and agreements in this Agreement made on a Closing Date will survive for a period of two (2) years after such Closing Date with respect to the Accounts transferred on such Closing Date; provided, however, that the representation in Paragraph 5.1(a)(viii) (but not any obligation of indemnification for a breach prior to such expiration) will expire at the end of the relevant Guarantee Period with respect to any Ineligible Forward Flow Account and any Ineligible Purchased Account.
- 11.11 **Further Assurance.** From and after the date hereof, each party will take such action as the other party may reasonably request to carry out the purposes of this Agreement.
- 11.12 **Relationship.** Nothing in this Agreement establishes an agency, joint venture, partnership or fiduciary relationship between the parties and neither party has the right or authority to act for or on behalf of the other party.
- 11.13 **Limitations of Liability.** Seller, Buyer and their Affiliates will not be liable, under any circumstances, to each other or any other person or entity for lost profits or any consequential, indirect, exemplary, special, punitive or incidental damages, whether foreseeable or unforeseeable.
- 11.14 **Securities.** The parties mutually represent and warrant that the transactions contemplated by this Agreement do not involve, nor are they intended in anyway to constitute, the sale, or purchase, of a "security" or "securities" within the meaning of any securities laws, rules or regulations.

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- 11.15 **No Third-Party Beneficiaries.** Each provision of this Agreement only confers rights and remedies upon, and is for the sole and exclusive benefit of Seller and Buyer and their respective Affiliates. No other person or entity has any rights or remedies, or is a direct or indirect beneficiary of, or has any direct or indirect cause of action or claim in connection with this Agreement, and none of the provisions of this Agreement will be deemed to be for the benefit of (or enforceable by) any other person or entity; provided, however, that Section 9 shall inure to the benefit of any indemnified parties.
- 11.16 **Waiver of Jury Trial.** To the fullest extent permitted by law, the parties (after consulting or having had the opportunity to consult with legal counsel) knowingly, voluntarily and intentionally waive any right either of them may have to a trial by jury in any action or other legal proceeding based upon, relating to, or arising out of this Agreement or any other thing, matter or related transaction in connection herewith. The parties shall not seek to consolidate, by counterclaim or otherwise, any action in which a jury trial has been waived with any other action in which a jury trial cannot be waived. This waiver applies to any action or legal proceeding, whether sounding in contract, tort or otherwise.
- 11.17 **No Strict Construction.** The parties hereto have participated jointly in the negotiation and drafting of this Agreement. In the event of an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as drafted jointly by the parties hereto, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of this Agreement or any of its provisions.
- 11.18 **Dispute Resolution.** Any dispute, claim, controversy arising out of or relating to this Agreement, or its breach, or any issues regarding the

enforceability or coverage of this arbitration provision, will be resolved by binding arbitration conducted in accordance with the Commercial Arbitration rules of the American Arbitration Association, as such rules shall be in effect on the date of delivery of demand for arbitration, which arbitration will be held in New York, New York, or such other city and state as mutually agreed upon. Each party shall pay the fees of its own attorneys, the expenses of witnesses and all other expenses connected with the presentation of such party's case, except that the arbitrators may impose all such fees, costs and expenses otherwise payable by the prevailing party on the losing party if they determine that the losing party's position was taken without good faith or solely for the purpose of delay. The costs of the arbitration including the cost of the record of transcripts thereof, if any, administrative fees, and all other fees and costs, shall be divided equally between the parties, except that the arbitrators may impose all such fees, costs and expenses otherwise payable by the prevailing party on the losing party if they determine that the losing party's position was taken without good faith or solely for the purpose of delay. Except as otherwise limited by this Agreement, the arbitrators will be empowered to award damages in the amount established by the preponderance of the evidence. The arbitrators will have no authority to award punitive damages or any other damages not measured by the prevailing party's actual damages, and may not, in any event, make any ruling, finding or award that does not conform to the terms and conditions of the Agreement. The arbitrators also will have the authority to grant any temporary, preliminary or permanent equitable remedy or relief they deem just and equitable and within the scope of this Agreement, including, but not limited to, an injunction or order for specific performance. Any award will be final and binding upon the parties and their successors and permitted assigns, without appeal or review, except as permitted by the laws of New York. Any party may apply to any court of competent jurisdiction for confirmation and entry of judgment based on the award of the arbitrators.

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11.19 **Buyer's Right of Resale.**

- a) Buyer shall not sell or otherwise transfer any Account purchased hereunder to a third party at any time without the prior written consent of Seller, such consent not to be unreasonably withheld, conditioned, or delayed; provided, however, that any Chapter 7 bankruptcy Account included in the Account Purchase may only be resold by Buyer within the 12-month period following the bankruptcy filing date of such Account; provided, further, that in no event shall Buyer transfer more than forty percent (40%) of the Accounts purchased by Buyer on each Closing Date (excluding Accounts Buyer is required to sell to Seller and excluding Chapter 7 bankruptcy Accounts included in the Account Purchase) within the first twelve months after such Closing Date. Buyer shall provide Seller in accordance with Paragraph 11.1 and in accordance with Schedule 11.19 setting forth the information in Exhibit I. Thereafter, Seller shall have seven (7) Business Days from the date of such notice to provide its consent. In the event Seller fails to respond to Buyer within the prescribed period of time, Seller shall be deemed to have consented to the transaction set forth in the notice. Upon any such transfer, Buyer will not be relieved of any of Buyer's obligations under this Agreement even to the extent such obligations are transferred to and assumed by the third party.
- b) As a condition of any subsequent assignment, sale or other transfer of Accounts, Buyer must attach, as an exhibit to Buyer's agreement, a redacted copy of this Agreement (after deleting any numerical expressions relating to the Purchase Price, Forward Flow Price Percentage, Account Purchase Putback Factor and Forward Flow Transfer Payments) and Buyer must also: (i) have any assignee explicitly assume each and every term or condition under this Agreement; (ii) explicitly name Seller and Originating Creditor as third-party beneficiaries of the agreement and (iii) grant to Seller and Originating Creditor in Buyer's agreement a direct right to bring a cause of action against any assignee, buyer or other transferee. Nothing contained in this Agreement will relieve Buyer from its obligations or liabilities under this Agreement and Buyer will remain, under all circumstances, liable to Seller for the matters set forth in this Agreement including, without limitation, the acts and omissions of Buyer, the acts or omissions of its assignees, any successors-in-interest, or any other transferees of the Accounts or this Agreement. Buyer will be as fully liable (and responsible) to Seller for the acts and omissions of any subcontractor (or any other entities engaged by Buyer or its agents) as it is for the acts and omissions of its own employees and agents.

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IN WITNESS WHEREOF, the parties have executed this Asset Purchase and Forward Flow Agreement as of the date set forth above.

**JEFFERSON CAPITAL SYSTEMS, LLC, as Seller**

By: /s/ David M. Burton  
Name: David M. Burton  
Title: Manager

**MIDLAND FUNDING LLC, as Buyer**

By: /s/ J. Brandon Black  
Name: J. Brandon Black  
Title: President

Guaranty:

Encore Capital Group, Inc, a Delaware corporation and an Affiliate of Buyer, hereby unconditionally and irrevocably guarantees upon any failure by Buyer to pay, without deduction by reason of setoff, defense or counterclaim, the full and punctual payment of any and all present and future liabilities of Buyer and its successors and permitted assigns for which Seller is entitled to receive payment from Buyer pursuant to Paragraph 9.2 of the Purchase Agreement.

**ENCORE CAPITAL GROUP, INC.**

By: /s/ J. Brandon Black  
Name: J. Brandon Black  
Title: President

## ACKNOWLEDGEMENT AGREEMENT

**THIS ACKNOWLEDGEMENT AGREEMENT**, dated as of June 7, 2005 (the "Agreement"), is made and entered into by **COMPUCREDIT CORPORATION**, a Georgia corporation ("CCRT"), in favor of **MIDLAND FUNDING LLC**, a Delaware limited liability company (the "Buyer"). Except as otherwise defined herein, capitalized terms used herein but not defined shall have the respective meanings given to them in that certain Asset Purchase and Forward Flow Agreement, dated June 2, 2005, between Jefferson Capital Systems, LLC ("Seller") and Buyer (the "Purchase Agreement").

**W I T N E S S E T H:**

**WHEREAS**, CCRT is an Affiliate of Seller;

**WHEREAS**, Buyer has agreed to enter into the Purchase Agreement on the condition that CCRT provide this Agreement;

**WHEREAS**, CCRT acknowledges that it will benefit, directly and indirectly, from the Purchase Agreement.

**NOW, THEREFORE**, in consideration of the provisions set forth above and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and as an inducement to Buyer to enter into the Purchase Agreement, CCRT hereby consents and agrees as follows:

1. Statements with Respect to all Accounts. As of each Closing Date, CCRT hereby represents and warrants with respect to the transfer of Accounts (other than the NFE Accounts) to Buyer on such Closing Date that:

(a) (i) The execution, delivery and performance of this Agreement is not made with the intent to hinder, delay or defraud the creditors of CCRT, (ii)(A) the sale of such Accounts to Seller was recorded in the records of CCRT, its Affiliates or its joint venture partners as a sale of the Accounts and (B) represented a bona fide and arm's length transaction undertaken for adequate consideration.

(b) Both prior to and after giving effect to the transfer of such Accounts to Seller, CCRT (i) was not "insolvent" (as such term is defined in Section 101(32)(A) of the Bankruptcy Code), (ii) was able to pay its debts as they become due and (iii) did not have unreasonably small capital for the business in which it is engaged.

(c) There is no pending or, to the actual knowledge of CCRT, threatened action, investigation, litigation, or proceeding by or against CCRT, which would (i) prevent CCRT from performing its obligations hereunder in any material respect or (ii) have a material adverse affect on, result in a lien against, or otherwise materially impair such Accounts.

(d) There is no order, judgment or decree entered or pending against CCRT, which would (i) prevent CCRT from performing its obligations hereunder in any material respect, or (iii) have a material adverse affect on, result in a lien against, or otherwise materially impair such Accounts.

(e) Seller, CCRT and/or CCRT's Affiliates or its joint venture partners are the only entities that are parties to the original purchase agreements or other underlying document through which Seller acquires the Accounts.

Buyer's sole remedy with respect to any breach of this Paragraph 1 shall be to make a claim against Seller pursuant to (i) Paragraph 9.1(a) of the Purchase Agreement with respect to representations and warranties made by CCRT on the Account Purchase Closing Date and (ii) Paragraph 9.1(b) of the Purchase Agreement with respect to representations and warranties made by CCRT on each Closing Date (other than the Account Purchase Closing Date). The limitations set forth in Paragraphs 9.1(c), 11.10 and 11.13 of the Purchase Agreement shall apply to any breach of this Paragraph 1. To the extent Buyer is entitled to receive payment from Seller pursuant to Paragraph 9.1(a) or Paragraph 9.1(b), as applicable, of the Purchase Agreement and such payment is not made by Seller (pursuant to the Escrow Agreement or otherwise), then Buyer shall have the rights set forth in Paragraph 3 of this Agreement.

2. Statements with Respect to Forward Flow Accounts.

(a) On each Closing Date (other than the Account Purchase Closing Date), CCRT hereby represents and warrants with respect to Accounts to be sold to Seller that will be transferred to Buyer pursuant to Forward Flow Transfers that: (i) no Blanket Settlements Offers have been or will be made by CCRT with respect to such Accounts for any discount in excess of twenty percent (20%); (ii) such Accounts have received consistent treatment, in all material respects, by CCRT prior to charge off; (iii) each such Account (if marketed by CCRT) has been originated, maintained, billed, charged off, collected and serviced by CCRT and its agents in compliance, in all material respects, with all applicable laws, rules and regulations and its card member agreement and disclosure statement; and (iv) each such Account (if first serviced by CCRT as a result of a portfolio acquisition) has been maintained, billed, charged off, collected and serviced by CCRT since the date of its acquisition in compliance, in all material respects, with all applicable laws, rules and regulations and the applicable card member agreement and disclosure statement.

(b) On each Closing Date (other than the Account Purchase Closing Date), CCRT hereby represents and warrants that to the extent that (i) any representations, warranties or other provisions in any original purchase agreement or any other underlying document through which Seller acquires the Accounts is contrary or inconsistent with anything in the Purchase Agreement or (ii) such agreements or documents contain any provision, term or condition that limits, prohibits or otherwise restricts (A) Seller's execution or performance of the Purchase Agreement or (B) Buyer's rights or its exercise of such rights (including, without limitation, the pursuit of any lawful use or enjoyment of the Accounts) in connection with the Accounts or its ownership thereof, the terms of the Purchase Agreement shall supersede such terms of the applicable original purchase agreement.

Buyer's sole remedy with respect to any breach of this Paragraph 2 shall be to make a claim against Seller pursuant to Paragraph 9.1(b) of the Purchase Agreement. The limitations set forth in Paragraphs 9.1(c), 11.10 and 11.13 of the Purchase Agreement shall apply to any breach of this Paragraph 2. To the extent Buyer is entitled to receive payment from Seller pursuant to Paragraph 9.1(b) of the Purchase Agreement and such payment is not made by Seller (under the Escrow Agreement or otherwise), then Buyer shall have the rights set forth in Paragraph 3 of this Agreement.

3. Guaranty. CCRT for the benefit of Buyer, its Affiliates and assigns, hereby unconditionally and irrevocably guarantees upon an failure by Seller to pay or to perform, as applicable, and in accordance with Paragraph 6 hereof, as a primary obligor and not as a surety, without deduction by reason of setoff, defense or counterclaim:

(a) the full and punctual performance of any and all present and future obligations of Seller and its successors and permitted assigns now or hereafter existing: (i) to forward to Buyer all payments made by a Debtor to Seller, CCRT or its predecessor in interest under Paragraphs 2.1(b) and 2.2(g) of the Purchase Agreement, (ii) to maintain records showing which Accounts have been sold to Buyer under Paragraph 6.2 of the Purchase Agreement, (iii) to process and forward to Buyer all written correspondence received in connection with any Account sold to Buyer under the Purchase Agreement and to provide Buyer's telephone number to any Debtor or such Debtor's representative who contacts Seller about any such Account under Paragraph 6.2 of the Purchase Agreement, and (iv) to provide Account Documents under Paragraph 6.5 of the Agreement; and

(b) the full and punctual payment of any and all present and future liabilities of Seller and its successors and permitted assigns now or hereafter existing for which Buyer is entitled to receive payment from Seller pursuant to Paragraph 9.1 of the Purchase Agreement, including, without limitation, any payment for the repurchase of any Ineligible Forward Flow Account or any Ineligible Purchased Account under Paragraphs 3.1 and 3.2 of the Purchase Agreement and any payment required under Paragraph 2.4(c) of the Purchase Agreement.

The obligations described in this Paragraph 3 are hereinafter referred to collectively as the "Guaranteed Obligations."

4. Agreement Unconditional and Absolute. CCRT hereby unconditionally and irrevocably guarantees that each of the Guaranteed Obligations shall be paid, performed, satisfied and discharged, as the case may be, strictly in accordance with the terms of the Purchase Agreement. CCRT's obligations under this Guaranty are continuing and unconditional. Without limiting the generality of the foregoing, the obligations of CCRT hereunder shall not be released, discharged, or otherwise affected by: (a) any extension, renewal, settlement, indulgence, compromise, waiver or release of or with respect to the Guaranteed Obligations or any part thereof or any agreement relating thereto; (b) any modification or amendment of or supplement to the Purchase Agreement; (c) the existence of any claim, setoff or other rights which CCRT may have at any time against Buyer; provided that nothing herein shall prevent the assertion of any such claim by separate suit or compulsory counterclaim; (d) the enforceability or validity of the Guaranteed Obligations or any part thereof or the genuineness, enforceability or validity of any agreement relating thereto, or any provision of applicable law or regulation purporting to prohibit the payment by CCRT of any of the Guaranteed Obligations; or (e) any other act or omission to act or delay of any kind by Buyer.

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5. Reinstatement of Agreement; Bankruptcy Matters; Other Events. This Agreement shall continue to be effective or be reinstated, as the case may be, if at any time any payment of any of the Guaranteed Obligations is rescinded or must otherwise be returned by Buyer upon the insolvency, bankruptcy or reorganization of Seller or CCRT, or otherwise, all as though such payment had not been made. The obligations of CCRT under this Agreement shall not be affected by any compromise of the Guaranteed Obligations, any application, release or substitution of any security therefor, the winding-up, liquidation, dissolution, receivership, bankruptcy, amalgamation, merger, consolidation, recapitalization, reorganization or fundamental corporate change of Seller or CCRT, sale of all or substantially all of the assets of Seller or CCRT, or for any other reason other than performance of the Guaranteed Obligations. Buyer shall not be obligated to file any claim in bankruptcy court relating to the Guaranteed Obligations if Seller becomes subject to a bankruptcy, reorganization or similar proceeding, and the failure of Buyer to so file shall not affect CCRT's obligations hereunder.

6. CCRT Payments and Performance. CCRT shall, upon any failure (a) by Seller to pay or perform any of the Guaranteed Obligations and (b) of the Guaranteed Obligations to be satisfied from the Escrow, within five business days after such failure, pay Buyer all such amounts owing to Buyer, or perform all obligations that Seller has failed to perform, pursuant to such Guaranteed Obligations, at the place and in the manner specified in the Purchase Agreement.

7. Certain Agreements and Waivers by CCRT. (a) CCRT hereby waives (i) notice of extension of time of payment, notice of acceptance of this Agreement, and notice of change, modification or amendment to the Purchase Agreement, and CCRT hereby consents to any and all forbearances and extensions of time of payment or performance of the Purchase Agreement and to any and all changes in the terms, covenants and conditions thereof now or at any other time hereafter made or granted by the parties to the Purchase Agreement or to any other applicable agreement with or without notice to CCRT or prior consent by CCRT, (ii) any right or defense based on the absence of any or all presentments, demands (including demands for performance), (iii) the defense of any statute of limitations in any action under or related to this Agreement or the Purchase Agreement, and (iv) any right to require Buyer to proceed against Seller, or any other person or to pursue any other security or remedy before proceeding against CCRT; (b) no delay or omission by Buyer in exercising any rights, remedies, powers and privileges hereunder and no course of dealing between Buyer, on the one hand, and Seller and CCRT, on the other hand, shall be deemed a waiver by Buyer of any rights, remedies, powers and privileges hereunder, even if such delay or omission is continuous or repeated, nor shall any single or partial exercise of any right, remedy, power or privilege by Buyer preclude any other or further exercise thereof by Buyer, or the exercise of any other right, remedy, power or privilege by Buyer; (c) no notice to or demand on Seller, CCRT or any other person or entity in any instance shall entitle Seller, CCRT or any other person or entity to any other or further notice of demand in similar or other circumstances or constitute a waiver of any of the rights of Buyer to any other or further action in any circumstances without notice or demand; (d) CCRT agrees that, to the extent Seller makes any payment in respect of the Guaranteed Obligations, which payment or any part thereof is subsequently required to be repaid by Buyer or is declared to be fraudulent or preferential, set aside, recovered, rescinded or is required to be retained by or repaid to a trustee, receiver, or any other person under any bankruptcy code, common law, or equitable cause, then and to the extent of such payment, the obligation of the part thereof intended to be satisfied shall be revived and continued in full force and effect with respect to CCRT's obligations hereunder, as if such payment had not been made (the terms of this subparagraph (d) shall survive termination of the Purchase Agreement).

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8. Representations and Warranties of CCRT. As of the date of this Agreement, CCRT hereby represents and warrants to Buyer that the following are true and correct: (a) CCRT has received or derived, or will receive or derive, substantial direct and indirect benefit from the Purchase Agreement; (b) CCRT is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Georgia and has full corporate power to execute, deliver and perform its obligations under this Agreement; (c) the execution, delivery and performance of this Agreement has been and will remain duly authorized by all necessary corporate action of CCRT, and do not contravene any provision of law or of CCRT's governing documents or any contractual restriction binding upon CCRT or its assets; (d) all consents, authorizations and approvals of, and registrations and declarations with, any governmental authority necessary for the due execution, delivery and performance of this Agreement have been obtained and remain in full force and effect and all conditions thereof have been duly complied with, and no other action by and no notice to or filing with, any governmental authority is required in connection with the execution, delivery or performance of this Agreement; and (e) this Agreement constitutes a legal, valid and binding obligation of CCRT enforceable against CCRT in accordance with its terms, subject, as to enforcement, to bankruptcy, insolvency, reorganization and other laws of general applicability relating to or affecting creditors' rights and to general equity principles.

9. Continuing Agreement. This Agreement is an absolute, irrevocable and continuing Agreement and shall remain in full force and effect until all of the Guaranteed Obligations and all other obligations under this Agreement have been fully and completely paid, performed, satisfied and discharged, have been terminated or have expired in accordance with their terms.

10. Agreement of Payment and Performance. CCRT hereby agrees that this Agreement is an absolute, irrevocable and unconditional guaranty of payment and performance and not merely a guaranty of collection.

11. Successors and Assigns. This Agreement shall be binding upon and enforceable against CCRT and its successors and permitted assigns. This Agreement shall inure to the benefit of and be enforceable by Buyer and its permitted successors and assigns.

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12. Entire Agreement. This Agreement constitutes the entire agreement between CCRT and Buyer with respect to the subject matter hereof, and supersedes any and all prior agreements and undertakings, both written and oral, between CCRT and Buyer with respect to such subject matter hereof.

13. Governing Law; Jurisdiction; Venue; Right to Jury. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York without regard to principal of conflicts of law. Each of Buyer and CCRT hereby irrevocably consents to the jurisdiction and venue of the state and federal courts located in the State of New York in connection with any action relating to this Agreement. Each of Buyer and CCRT hereby irrevocably waives, to the fullest extent it may effectively do so, the defense of an inconvenient forum to the maintenance of an action or proceeding in a state or federal court located in the State of New York. Each of Buyer and CCRT hereby irrevocably waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect of any action, suit or proceeding arising out of or relating to this Agreement.

14. Amendment, Waiver or Consent. No amendment, waiver or consent with respect to this Agreement shall be effective against CCRT unless and until duly signed by an authorized representative of CCRT, and no amendment, waiver or consent with respect to this Agreement shall be effective against Buyer unless and until signed by Buyer, and then, in each case, any such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. No failure on the part of CCRT or Buyer to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

15. Assignment. CCRT shall not assign or transfer this Agreement, or delegate any of its duties hereunder, in any manner whatsoever, without the prior, express, written consent of Buyer.

16. Limitation by Law. Should any provision of this Agreement be judicially declared to be invalid, unenforceable or void, in whole or in part, (i) a suitable and equitable provision shall be substituted therefor in order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid or unenforceable provision; and (ii) the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected by such invalidity or unenforceability, nor shall such invalidity or unenforceability affect the validity or enforceability of such provision, or the application thereof, in any other jurisdiction.

17. Notices. Notices to CCRT and Buyer under or in connection with this Agreement shall be given in the same manner as notices to Seller under the Purchase Agreement and shall be sent to the address set forth on the signature page hereto.

18. Costs of Collection. CCRT shall pay all costs of collection, including, but not limited to, attorneys' fees, whether or not suit is instituted, and all costs of suit and preparation for suit (whether at trial or appellate level), in the event any obligation of CCRT under this Agreement is not paid or discharged when required to be paid or discharged.

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19. Headings. The Paragraph and other headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

**[Remainder of Page Left Blank Intentionally]**

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IN WITNESS WHEREOF, CCRT has executed this Acknowledgement Agreement as of the date first above written.

**CompuCredit Corporation**

By: /s/ William McCamey  
Name: William McCamey  
Title: Treasurer

Address for Notices:  
245 Perimeter Center Parkway  
Suite 600  
Atlanta, GA 30346  
Facsimile: (770) 206-6187

Agreed and accepted:

**Midland Funding LLC**

By: /s/ J. Brandon Black  
Name: J. Brandon Black  
Title: President

Address for Notices:

c/o Encore Capital Group, Inc.  
8875 Aero Drive  
Suite 200  
San Diego, CA 92123  
Facsimile: (858) 309-6995  
Attention: General Counsel

## CREDIT AGREEMENT

DATED AS OF JUNE 7, 2005

AMONG

ENCORE CAPITAL GROUP, INC.

THE LENDERS FROM TIME TO TIME PARTIES HERETO

JPMORGAN CHASE BANK, N.A.,  
AS ADMINISTRATIVE AGENTJ.P. MORGAN SECURITIES INC.,  
AS LEAD ARRANGER AND SOLE BOOK RUNNER

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**CREDIT AGREEMENT**

This Credit Agreement, dated as of June 7, 2005, is entered into by and among Encore Capital Group, Inc., a Delaware corporation, the Lenders, the LC Issuer and JPMorgan Chase Bank, N.A., a national banking association, as Administrative Agent. The parties hereto agree as follows:

**ARTICLE I**

**DEFINITIONS**

1.1. Certain Defined Terms. As used in this Agreement:

“Accounting Changes” is defined in Section 9.8 hereof.

“Accounts” means and includes all of the Borrower's and each Subsidiary's presently existing and hereafter arising or acquired accounts, accounts receivable, and all present and future rights of the Borrower or such Subsidiary to payment for goods sold or leased or for services rendered (except those evidenced by instruments or chattel paper), whether or not they have been earned by performance, and all rights in any merchandise or goods which any of the same may represent, and all rights, title, security and guarantees with respect to each of the foregoing, including, without limitation, any right of stoppage in transit.

“Acquisition” means any transaction or any series of related transactions, other than the Permitted Restructuring or purchases or acquisitions of Receivables Portfolios in the ordinary course of business, consummated on or after the Closing Date, by which the Borrower or any of its Subsidiaries (i) acquires any going business or all or substantially all of the assets of any firm, corporation or limited liability company, or division thereof, whether through purchase of assets, merger or otherwise or (ii) directly or indirectly acquires (in one transaction or as the most recent transaction in a series of transactions) at least a majority (in number of votes) of the securities of a corporation which have ordinary voting power for the election of directors (other than securities having such power only by reason of the happening of a contingency) or a majority (by percentage of voting power) of the outstanding ownership interests of a partnership or limited liability company of any Person; provided, however, that the following shall not be considered “Acquisitions”: (a) any asset purchase consisting solely of Receivables Portfolios and (b) the purchase of stock of an entity (1) the assets of which consist solely of Receivables, (2) which has not engaged in the conduct of business and (3) which has no Indebtedness.

“Adjusted Available Aggregate Revolving Loan Commitment” means, at any time, the lesser of (i) Aggregate Revolving Loan Commitment and (ii) the Borrowing Base, in each case as then in effect.

“Administrative Agent” means JPMorgan in its capacity as contractual representative of the Lenders pursuant to Article X, and not in its individual capacity as a Lender, as Administrative Agent, and any successor Administrative Agent appointed pursuant to Article X.

“Advance” means a borrowing hereunder consisting of the aggregate amount of several Revolving Loans (i) made by some or all of the Lenders on the same Borrowing Date, or (ii) converted or continued by the Lenders on the same date of conversion or continuation, consisting, in either case, of the aggregate amount of the several Loans of the same Type and, in the case of Eurodollar Loans, for the same Interest Period. The term “Advance” shall include Swing Line Loans unless otherwise expressly provided.

“Affiliate” of any Person means any other Person directly or indirectly controlling, controlled by or under common control with such Person. A Person shall be deemed to control another Person if the controlling Person is the “beneficial owner” (as defined in Rule 13d-3 under the Securities Exchange Act of 1934) of 10% or more of any class of voting securities (or other ownership interests) of the controlled Person or possesses, directly or indirectly, the power to direct or cause the direction of the management or policies of the controlled Person, whether through ownership of voting securities, by contract or otherwise.

“Age Adjusted Advance Rate” means with respect to any Receivables Portfolio of any Credit Party, (a) for the period from and including the date such Credit Party acquires such Receivables Portfolio to and including the end of the third full calendar month ending after such date, eighty-five percent (85%), and (b) for any subsequent calendar month beginning after such third full calendar month, the percentage equal to eighty-five percent (85%) minus three percentage points (3%) for each successive calendar month that has begun since the end of such third full calendar month (it being understood and agreed that, for the sake of illustration, if a Receivables Portfolio is acquired on January 1, 2006, the Age Adjusted Advance Rate with respect thereto shall be 85% through April 30, 2006, 82% from May 1, 2006 through May 31, 2006, 79% from June 1, 2006 through June 30, 2006 and continuing to reduce in the same manner by three percentage points (3%) for each successive calendar month).

“Aggregate Outstanding Revolving Credit Exposure” means, at any time, the aggregate of the Outstanding Revolving Credit Exposure of all the Lenders.

“Aggregate Revolving Loan Commitment” means the aggregate of the Revolving Loan Commitments of all the Lenders, as may be increased or reduced from time to time pursuant to the terms hereof. The initial Aggregate Revolving Loan Commitment is One Hundred and Fifty Million and 00/100 Dollars (\$150,000,000).

“Agreement” means this Credit Agreement, as it may be amended, restated, supplemented or otherwise modified and as in effect from time to time.

“Agreement Accounting Principles” means generally accepted accounting principles as in effect in the United States from time to time, applied in a manner consistent with that used in preparing the financial statements of the Borrower referred to in Section 5.4.

“Alternate Base Rate” means, for any day, a rate of interest per annum equal to the higher of (i) the Prime Rate for such day and (ii) the sum of the Federal Funds Effective Rate for such day plus ½% per annum.

“Applicable Fee Rate” means, with respect to the Commitment Fee at any time, the percentage rate per annum which is applicable at such time with respect to such fee as set forth in the Pricing Schedule.

“Applicable Margin” means, with respect to Advances of any Type at any time, the percentage rate per annum which is applicable at such time with respect to Advances of such Type as set forth in the Pricing Schedule.

“Applicable Pledge Percentage” means 100%, but 65% in the case of a pledge of Capital Stock of a Foreign Subsidiary to the extent a 100% pledge would cause a Deemed Dividend Problem or a Financial Assistance Problem.

“Approved Fund” means any Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

“Arranger” means J.P. Morgan Securities Inc., and its successors, in its capacity as Lead Arranger and Sole Book Runner.

“Article” means an article of this Agreement unless another document is specifically referenced.

“Asset Sale” means, with respect to the Borrower or any Subsidiary, the sale, lease, conveyance, disposition or other transfer by such Person of any of its assets (including by way of a Sale and Leaseback Transaction, and including the sale or other transfer of any of the capital stock or other equity interests of such Person or any Subsidiary of such Person) to any Person other than the Borrower or any of its wholly-owned Subsidiaries other than (i) the sale of Receivables in the ordinary course of business (so long as, after giving effect to each such sale, the Borrower makes the required prepayments and/or reinvestment of proceeds required under Section 2.2(a)), (ii) the sale or other disposition of any obsolete, excess, damaged or worn-out Equipment disposed of in the ordinary course of business, (iii) leases of assets in the ordinary course of business consistent with past practice and (iv) sales or dispositions of assets outside the ordinary course of business with an aggregate fair market value not to exceed, during the term of this Agreement, \$5,000,000.

“Assignment Agreement” is defined in Section 12.3.1.

“Authorized Officer” means any of the President and Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, Treasurer or Controller of the Borrower, or such other officer of the Borrower as may be designated by the Borrower in writing to the Administrative Agent from time to time, acting singly.

“Available Aggregate Revolving Loan Commitment” means, at any time, the Aggregate Revolving Loan Commitment then in effect minus the Aggregate Outstanding Revolving Credit Exposure at such time.

“Borrower” means Encore Capital Group, Inc., a Delaware corporation, and its permitted successors and assigns (including, without limitation, a debtor in possession on its behalf).

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“Borrowing Base” means, as of any date of calculation, the sum of (i) an amount, as set forth on the most current Borrowing Base Certificate delivered to the Administrative Agent, equal to the lesser of (a) the aggregate Borrowing Base Value of all Receivables Portfolios of the Credit Parties as of such date and (b) the sum of (1) the product of the net book value of all Receivables Portfolios acquired by any Credit Party on or after January 1, 2005 multiplied by 95% plus (2) the amount of the Borrowing Base under the Existing Credit Agreement as of December 31, 2004, as the same has been adjusted by the Age Adjusted Advance Rate thereunder and hereunder for subsequent periods on or prior to the date of calculation and (ii) solely during the period commencing on the Closing Date and ending on September 30, 2005, an additional \$10,000,000.

“Borrowing Base Certificate” means a certificate, in substantially the form of Exhibit H hereto, setting forth the Borrowing Base and the component calculations thereof.

“Borrowing Base Value” means, for any period, with respect to any Receivables Portfolio owned by any Credit Party or which will be acquired by one or more Credit Parties by applying the proceeds from a requested Credit Extension, the product of (a) the original book value for such Receivables Portfolio, multiplied by (b) the Age Adjusted Advance Rate (expressed as a decimal) applicable to such Receivables Portfolio for such period; provided that, if at any time after any Receivables Portfolio of any Credit Party is included in Borrowing Base, such Credit Party shall sell or otherwise dispose of all or any portion of such Receivables Portfolio (other than a Receivables Portfolio which has not been included in the Borrowing Base and which has been sold or disposed back to the seller of such Receivables Portfolio pursuant to put-back obligations in accordance with the terms of such sale) within 30 days of the date of purchase of such Receivables Portfolio (each such sale or disposition, a “Flip Sale”) then (i) the Borrower shall apply an amount equal to one hundred percent (100%) of the cash proceeds of such Flip Sale to any required payments pursuant to the second sentence of Section 2.2(a) and (ii) the “Borrowing Base Value” for such Receivables Portfolio shall be reduced by 85% of the original book value of the portion of such Receivables Portfolio being sold or disposed of pursuant to such Flip Sale. Notwithstanding anything contained herein to the contrary, the Borrowing Base Value with respect to any Receivables Portfolio shall be determined exclusive of any Receivable in such Receivables Portfolio that (i) is not an Eligible Receivable and (ii) in the case of a Receivable which is a Health Care Receivable, such Health Care Receivable, when aggregated with all other Health Care Receivables included in the Borrowing Base, exceeds 15% of the Borrowing Base.

“Borrowing Date” means a date on which an Advance is made hereunder.

“Borrowing Notice” is defined in Section 2.8.

“Business Day” means (i) with respect to any borrowing, payment or rate selection of Eurodollar Advances, a day (other than a Saturday or Sunday) on which banks generally are open in Phoenix, Arizona for the conduct of substantially all of their commercial lending activities, interbank wire transfers can be made on the Fedwire system and dealings in Dollars are carried on in the London interbank market and (ii) for all other purposes, a day (other than a Saturday or Sunday) on which banks generally are open in Phoenix, Arizona for the conduct of substantially all of their commercial lending activities and interbank wire transfers can be made on the Fedwire system.

“Buying Lender” is defined in Section 2.5.3(ii).

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“Capital Expenditures” means, without duplication, any expenditures for any purchase or other acquisition of any asset which would be classified as a fixed or capital asset on a consolidated balance sheet of the Borrower and its Subsidiaries prepared in accordance with Agreement Accounting Principles, but excluding, solely for the fiscal year in which each Acquisition is consummated, any such expenditures of any Person or business acquired pursuant to such Acquisition.

“Capitalized Lease” of a Person means any lease of Property by such Person as lessee which would be capitalized on a balance sheet of such Person prepared in accordance with Agreement Accounting Principles.

“Capitalized Lease Obligations” of a Person means the amount of the obligations of such Person under Capitalized Leases which would be shown as a liability on a balance sheet of such Person prepared in accordance with Agreement Accounting Principles.

“Cash Equivalent Investments” means (i) short-term obligations of, or fully guaranteed by, the United States of America, (ii) commercial paper rated A-1 or better by S&P or P-1 or better by Moody’s, (iii) demand deposit accounts maintained in the ordinary course of business, (iv) certificates of deposit issued by and time deposits with commercial banks (whether domestic or foreign) having capital and surplus in excess of \$100,000,000; provided in each case that the same provides for payment of both principal and interest (and not principal alone or interest alone) and is not subject to any contingency regarding the payment of principal or interest and (v) auction rate preferred stock or corporate bonds rated AAA or better by S&P or Aaa or better by Moody’s with a maximum maturity of 12 months and with an interest rate reset date occurring no less frequently than every 35 days.

“Cash Flow Leverage Ratio” is defined in Section 6.21.

“CFSC Transaction” means the transaction, or series of transactions, pursuant to that certain Credit Agreement dated December 20, 2000 between MRC Receivables Corporation and CFSC Capital Corp. VIII (as amended or otherwise modified) provided that (i) all such transactions were entered into on or before

December 31, 2004 and (ii) the aggregate principal amount of Indebtedness outstanding pursuant to such transaction or series of transactions does not exceed \$75,000,000.

“Change of Control” means (i) the acquisition by any Person, or two or more Persons acting in concert, of beneficial ownership (within the meaning of Rule 13d-3 of the Securities and Exchange Commission under the Securities Exchange Act of 1934) of 30% or more of the outstanding shares of voting stock of the Borrower, excluding acquisitions by any Person with beneficial ownership of 5% or more of the outstanding shares of voting stock of the Borrower as of the Closing Date so long as the aggregate shares so acquired by all such Persons do not exceed 49% of the outstanding shares of voting stock of the Borrower; (ii) other than pursuant to a transaction permitted hereunder, the Borrower shall cease to own, directly or indirectly and free and clear of all Liens or other encumbrances, all of the outstanding shares of voting stock of the Guarantors on a fully diluted basis; or (iii) the majority of the Board of Directors of the Borrower fails to consist of Continuing Directors. The Permitted Restructuring shall not constitute a Change of Control.

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“Closing Date” means June 7, 2005.

“Code” means the Internal Revenue Code of 1986, as amended, reformed or otherwise modified from time to time, and any rule or regulation issued thereunder.

“Collateral” means all Property and interests in Property now owned or hereafter acquired by the Borrower or any of its Subsidiaries in or upon which a security interest, lien or mortgage is granted to the Administrative Agent, for the benefit of the Holders of Secured Obligations, whether under the Pledge and Security Agreement, under any of the other Collateral Documents or under any of the other Loan Documents.

“Collateral Documents” means all agreements, instruments and documents executed in connection with this Agreement that are intended to create or evidence Liens to secure the Secured Obligations, including, without limitation, the Pledge and Security Agreement, the Intellectual Property Security Agreements, the Mortgages and all other security agreements, mortgages, deeds of trust, loan agreements, notes, guarantees, subordination agreements, pledges, powers of attorney, consents, assignments, contracts, fee letters, notices, leases, financing statements and all other written matter whether heretofore, now, or hereafter executed by the Borrower or any of its Subsidiaries and delivered to the Administrative Agent.

“Collateral Shortfall Amount” is defined in Section 8.1.

“Commitment and Acceptance” is defined in Section 2.5.3(i).

“Commitment Increase Notice” is defined in Section 2.5.3(i).

“Commitment Fee” is defined in Section 2.5.1.

“Commitment Schedule” means the Schedule identifying each Lender’s Revolving Loan Commitment as of the Closing Date attached hereto and identified as such.

“Consolidated Capital Expenditures” means, with reference to any period, the Capital Expenditures of the Borrower and its Subsidiaries calculated on a consolidated basis for such period.

“Consolidated EBIT” means Consolidated Net Income plus, to the extent deducted from revenues in determining Consolidated Net Income, (i) Consolidated Interest Expense (whether actual or contingent), (ii) expense for taxes paid or accrued and (iii) any extraordinary losses minus, to the extent included in Consolidated Net Income, (a) interest income, (b) any extraordinary gains, (c) the income of any JV Entity or any other Person (1) in which any Person other than the Borrower or any of its Subsidiaries has a joint interest or a partnership interest or other ownership interest and (2) to the extent the Borrower or any of its Subsidiaries does not control the Board of Directors or other governing body of such JV Entity or Person or otherwise does not control the declaration of a dividend or other distribution by such JV Entity or Person, except in each case to the extent of the amount of dividends or other distributions actually paid to the Borrower or any of its Subsidiaries by such JV Entity or Person during the relevant period and (d) the income of any Subsidiary of the Borrower to the extent that the declaration or payment of dividends or distributions (including via intercompany advances or other intercompany transactions but in each case up to and not exceeding the amount of such income) by that Subsidiary of that income is not at the time permitted by operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to that Subsidiary, all calculated for the Borrower and its Subsidiaries on a consolidated basis.

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“Consolidated EBITDA” means Consolidated Net Income plus, to the extent deducted from revenues in determining Consolidated Net Income, (i) Consolidated Interest Expense (whether actual or contingent), (ii) expense for taxes paid or accrued, (iii) depreciation expense, (iv) amortization expense and (v) any extraordinary losses minus, to the extent included in Consolidated Net Income, (a) interest income, (b) any extraordinary gains, (c) the income of any JV Entity or any other Person (1) in which any Person other than the Borrower or any of its Subsidiaries has a joint interest or a partnership interest or other ownership interest and (2) to the extent the Borrower or any of its Subsidiaries does not control the Board of Directors or other governing body of such JV Entity or Person or otherwise does not control the declaration of a dividend or other distribution by such JV Entity or Person, except in each case to the extent of the amount of dividends or other distributions actually paid to the Borrower or any of its Subsidiaries by such JV Entity or Person during the relevant period and (d) the income of any Subsidiary of the Borrower to the extent that the declaration or payment of dividends or distributions (including via intercompany advances or other intercompany transactions but in each case up to and not exceeding the amount of such income) by that Subsidiary of that income is not at the time permitted by operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to that Subsidiary, all calculated for the Borrower and its Subsidiaries on a consolidated basis.

“Consolidated Interest Expense” means, with reference to any period, the interest expense and contingent interest expense of the Borrower and its Subsidiaries (including that portion attributable to Capital Leases) calculated on a consolidated basis for such period, in accordance with Agreement Accounting Principles, including without limitation, any Off-Balance Sheet Liability that would constitute interest if the transaction giving rise to such Off-Balance Sheet Liability were re-characterized as a loan transaction and financing costs (including contingent interest expense) in connection with a Permitted Receivables Transaction.

“Consolidated Net Income” means, with reference to any period, (i) the net income (or loss) of the Borrower and its Subsidiaries calculated on a consolidated basis for such period in accordance with Agreement Accounting Principles and (ii) without duplication with the net income (or loss) described in the foregoing clause (i), the actual amount of dividends or other distributions actually paid during such period to the Borrower or any of its Subsidiaries by a JV Entity.

“Consolidated Rentals” means, with reference to any period, the Rentals of the Borrower and its Subsidiaries calculated on a consolidated basis for such period in accordance with Agreement Accounting Principles.

“Consolidated Tangible Assets” means Consolidated Total Assets minus any Intangible Assets.

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“Consolidated Tangible Net Worth” means at any time, with respect to any Person, the consolidated stockholders’ equity of such Person and its Subsidiaries calculated on a consolidated basis in accordance with Agreement Accounting Principles minus any Intangible Assets.

“Consolidated Total Assets” means the total assets of the Borrower and its Subsidiaries calculated on a consolidated basis in accordance with Agreement Accounting Principles.

“Consolidated Total Liabilities” means the total liabilities of the Borrower and its Subsidiaries calculated on a consolidated basis in accordance with Agreement Accounting Principles.

“Contingent Obligation” of a Person means any agreement, undertaking or arrangement by which such Person assumes, guarantees, endorses, contingently agrees to purchase or provide funds for the payment of, or otherwise becomes or is contingently liable upon, the obligation or liability of any other Person, or agrees to maintain the net worth or working capital or other financial condition of any other Person, or otherwise assures any creditor of such other Person against loss, including, without limitation, any comfort letter, operating agreement, take-or-pay contract or the obligations of any such Person as general partner of a partnership with respect to the liabilities of the partnership.

“Continuing Director” means, with respect to any Person as of any date of determination, any member of the board of directors of such Person who (i) was a member of such board of directors on the Closing Date, or (ii) was nominated for election or elected to such board of directors with the approval of the required majority of the Continuing Directors who were members of such board at the time of such nomination or election.

“Controlled Group” means all members of a controlled group of corporations or other business entities and all trades or businesses (whether or not incorporated) under common control which, together with the Borrower or any of its Subsidiaries, are treated as a single employer under Section 414 of the Code.

“Conversion/Continuation Notice” is defined in Section 2.9.

“Credit Extension” means the making of an Advance or the issuance of a Facility LC hereunder.

“Credit Extension Date” means the Borrowing Date for an Advance or the issuance date for a Facility LC.

“Credit Party” means, at any time, any of the Borrower and any Person which is a Guarantor at such time.

“Deemed Dividend Problem” means, with respect to any Foreign Subsidiary, such Foreign Subsidiary’s accumulated and undistributed earnings and profits being deemed to be repatriated to the Borrower or the applicable parent Domestic Subsidiary for U.S. federal income tax purposes and the effect of such repatriation causing adverse tax consequences to the Borrower or such parent Domestic Subsidiary, in each case as determined by the Borrower in its commercially reasonable judgment acting in good faith and in consultation with its legal and tax advisors.

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“Default” means an event described in Article VII.

“Disqualified Stock” means any capital stock or other equity interest that, by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable), or upon the happening of any event, matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or redeemable at the option of the holder thereof, in whole or in part, on or prior to the date that is 91 days after the Revolving Loan Termination Date.

“Dollar”, “dollar” and “\$” means the lawful currency of the United States of America.

“Domestic Subsidiary” means any Subsidiary of any Person organized under the laws of a jurisdiction located in the United States of America.

“Effective Commitment Amount” is defined in Section 2.5.3(i).

“Eligible Receivables” of any Credit Party shall mean, as of any date of determination, (i) Receivables owned by a Credit Party as of the Closing Date, which Receivables were included in the Borrowing Base under the Existing Credit Agreement as of the Closing Date and (ii) Receivables purchased by a Credit Party on or after the Closing Date to the extent such Receivable is owned, or to be purchased by such Credit Party by applying the proceeds of a Credit Extension within five (5) Business Days of the making of such Credit Extension, and in the case of both (i) and (ii) that is payable in Dollars and in which the Administrative Agent has, for the benefit of the Holders of Secured Obligations, a first-priority perfected security interest pursuant to the Collateral Documents, other than any such Receivable:

(a) that is not an existing obligation for which sufficient consideration has been given;

(b) with respect to which such Credit Party does not (or will not, upon the closing of the relevant purchase thereof) have good and marketable title pursuant to a legal, valid and binding bill of sale or purchase agreement entered into by such Credit Party or assignment to such Credit Party;

(c) that has been repurchased by, or returned or put-back to, the person from whom such Credit Party acquired such Receivable and such Receivable has not subsequently been replaced with a new Receivable of at least comparable value acquired from such Person;

(d) all or any portion of which is subject to any Lien (except the Lien in favor of the Administrative Agent under the Collateral Documents);

(e) that is due from or has been originated by any Subsidiary or Encore Affiliate;

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(f) that is not a type of collateral for which a security interest can be perfected by filing pursuant to Article 9 of the Uniform Commercial Code as then in effect in the State of New York; and

(g) that is owed by (i) the government (or any department, agency, public corporation, or instrumentality thereof) of any country other than the United States of America unless such Receivable is backed by a Letter of Credit acceptable to the Administrative Agent which is in the possession of the Administrative Agent or (ii) the government of the United States of America, or any department, agency, public corporation, or instrumentality or any agency or instrumentality thereof, including any agency or instrumentality which is obligated to make payment with respect to Medicare, Medicaid or other Receivables representing amounts owing under any other program established by federal, State, county, municipal or other local law which requires that payments for healthcare services be made to the provider of such services in order to comply with any applicable "anti-assignment" provisions, provider agreement or federal, State, county, municipal or other local law, rule or regulation.

"Encore Affiliate" means any Person directly or indirectly controlling, controlled by or under common control with the Borrower. A Person shall be deemed to control another Person if the controlling Person is the "beneficial owner" (as defined in Rule 13d-3 under the Securities Exchange Act of 1934) of 10% or more of any class of voting securities (or other ownership interests) of the controlled Person *and* possesses, directly or indirectly, the power to direct or cause the direction of the management or policies of the controlled Person, whether through ownership of voting securities, by contract or otherwise.

"Environmental Laws" means any and all federal, state, local and foreign statutes, laws, judicial decisions, regulations, ordinances, rules, judgments, orders, decrees, plans, injunctions, permits, concessions, grants, franchises, licenses, agreements and other governmental restrictions relating to (i) the protection of the environment, (ii) the effect of the environment on human health, (iii) emissions, discharges or releases of pollutants, contaminants, hazardous substances or wastes into surface water, ground water or land, or (iv) the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of pollutants, contaminants, hazardous substances or wastes or the clean-up or other remediation thereof.

"Equipment" means all of the Borrower's and each Subsidiary's present and future (i) equipment, including, without limitation, machinery, manufacturing, distribution, data processing and office equipment, assembly systems, tools, molds, dies, fixtures, appliances, furniture, furnishings, vehicles, vessels, aircraft, aircraft engines, and trade fixtures, (ii) other tangible personal property (other than inventory), and (iii) any and all accessions, parts and appurtenances attached to any of the foregoing or used in connection therewith, and any substitutions therefor and replacements, products and proceeds thereof.

"Equipment Financing Transactions" means the secured equipment financing arrangements of the Credit Parties set forth on Schedule 6.14.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended from time to time, and any rules or regulations promulgated thereunder.

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"Eurodollar Advance" means an Advance which, except as otherwise provided in Section 2.11, bears interest at the applicable Eurodollar Rate.

"Eurodollar Base Rate" means, with respect to a Eurodollar Advance for the relevant Interest Period, the applicable British Bankers' Association LIBOR rate for deposits in Dollars as reported on Page 3750 of the Dow Jones Market Service or, if such service is not available, by any other generally recognized financial information service as of 11:00 a.m. (London time) two (2) Business Days prior to the first day of such Interest Period, and having a maturity equal to such Interest Period, provided that, if no such British Bankers' Association LIBOR rate is available to the Administrative Agent, the applicable Eurodollar Base Rate for the relevant Interest Period shall instead be the rate determined by the Administrative Agent to be the rate at which JPMorgan or one of its affiliate banks offers to place deposits in Dollars with first-class banks in the London interbank market at approximately 11:00 a.m. (London time) two (2) Business Days prior to the first day of such Interest Period, in the approximate amount of JPMorgan's relevant Eurodollar Loan and having a maturity equal to such Interest Period.

"Eurodollar Loan" means a Revolving Loan which, except as otherwise provided in Section 2.11, bears interest at the applicable Eurodollar Rate.

"Eurodollar Rate" means, with respect to a Eurodollar Advance for the relevant Interest Period, the sum of (i) the quotient of (a) the Eurodollar Base Rate applicable to such Interest Period, divided by (b) one minus the Reserve Requirement (expressed as a decimal) applicable to such Interest Period, plus (ii) the Applicable Margin then in effect, changing as and when the Applicable Margin changes.

"Excluded Subsidiaries" means, (i) to the extent the applicable Permitted Receivables Transaction in respect of which such entity was created is in full force and effect and the Indebtedness thereunder had not been repaid in full, MRC Receivables Corporation and any other successor or transferee Subsidiaries created in connection with the Permitted Restructuring, (ii) the Inactive Subsidiaries and any other successor or transferee Subsidiaries created in connection with the Permitted Restructuring and (iii) the JV Entities and any other successor or transferee JV Entities created in connection with the Permitted Restructuring.

"Excluded Taxes" means, in the case of each Lender or applicable Lending Installation and the Administrative Agent, taxes imposed on its overall net income, and franchise taxes imposed on it, by (i) the jurisdiction under the laws of which such Lender or the Administrative Agent is incorporated or organized or any political combination or subdivision or taxing authority thereof or (ii) the jurisdiction in which the Administrative Agent's or such Lender's principal executive office or such Lender's applicable Lending Installation is located.

"Exhibit" refers to an exhibit to this Agreement, unless another document is specifically referenced.

"Existing Credit Agreement" means that certain Credit Agreement dated as of June 30, 2004 by and among the Borrower, the lenders party thereto and JPMorgan (as successor by merger to Bank One, NA), as amended, supplemented or otherwise modified prior to the Closing Date.

“Existing Financing Arrangements” means financing arrangements of the Borrower or any Subsidiary (other than the transactions under the Loan Documents and the Permitted Receivables Transactions and the Equipment Financing Transactions) in effect on the Closing Date, including without limitation under the Existing Credit Agreement.

“Facility LC” is defined in Section 2.20.1.

“Facility LC Application” is defined in Section 2.20.3.

“Facility LC Collateral Account” is defined in Section 2.20.11.

“Federal Funds Effective Rate” means, for any day, an interest rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published for such day (or, if such day is not a Business Day, for the immediately preceding Business Day) by the Federal Reserve Bank of New York, or, if such rate is not so published for any day which is a Business Day, the average of the quotations at approximately 10:00 a.m. (Phoenix, Arizona time) on such day on such transactions received by the Administrative Agent from three Federal funds brokers of recognized standing selected by the Administrative Agent in its sole discretion.

“Financial Contract” of a Person means (i) any exchange-traded or over-the-counter futures, forward, swap or option contract or other financial instrument with similar characteristics or (ii) any Rate Management Transaction.

“Financial Assistance Problem” means, with respect to any Foreign Subsidiary, the inability of such Foreign Subsidiary to become a Subsidiary Guarantor or to permit its Capital Stock from being pledged pursuant to a pledge agreement on account of legal or financial limitations imposed by the jurisdiction of organization of such Foreign Subsidiary or other relevant jurisdictions having authority over such Foreign Subsidiary, in each case as determined by the Borrower in its commercially reasonable judgment acting in good faith and in consultation with its legal and tax advisors.

“First Tier Foreign Subsidiary” means each Foreign Subsidiary with respect to which any one or more of the Borrower and its Domestic Subsidiaries directly owns or controls more than 50% of such Foreign Subsidiary’s issued and outstanding equity interests.

“Floating Rate” means, for any day, a rate per annum equal to the sum of (i) the Alternate Base Rate for such day, changing when and as the Alternate Base Rate changes *plus* (ii) the Applicable Margin then in effect, changing as and when the Applicable Margin changes.

“Floating Rate Advance” means an Advance which, except as otherwise provided in Section 2.11, bears interest at the Floating Rate.

“Floating Rate Loan” means a Loan which, except as otherwise provided in Section 2.11, bears interest at the Floating Rate.

“Foreign Subsidiary” means any Subsidiary of any Person which is not a Domestic Subsidiary of such Person.

“Fund” means any Person (other than a natural person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its business.

“Governmental Authority” means any nation or government, any foreign, federal, state, local or other political subdivision thereof and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

“Guarantor” means each Subsidiary of the Borrower which is a party to the Guaranty Agreement, including each Subsidiary of the Borrower which becomes a party to the Guaranty Agreement pursuant to a joinder or other supplement thereto.

“Guaranty Agreement” means the Guaranty Agreement, dated as of the Closing Date, made by the Guarantors in favor of the Administrative Agent for the benefit of the Holders of Secured Obligations, as the same may be amended, restated, supplemented or otherwise modified from time to time.

“Health Care Receivable” shall mean a “Health-care-insurance-receivable” as such term is defined in Article 9 of the Uniform Commercial Code as in effect from time to time in the State of New York.

“Holders of Secured Obligations” means the holders of the Secured Obligations from time to time and shall refer to (i) each Lender in respect of its Loans, (ii) the LC Issuer in respect of Reimbursement Obligations, (iii) the Administrative Agent, the Lenders and the LC Issuer in respect of all other present and future obligations and liabilities of the Borrower or any of its Domestic Subsidiaries of every type and description arising under or in connection with this Agreement or any other Loan Document, (iii) each Lender (or affiliate thereof), in respect of all Rate Management Obligations of the Borrower to such Lender (or such affiliate) as exchange party or counterparty under any Rate Management Transaction, and (iv) their respective successors, transferees and assigns.

“Inactive Subsidiaries” means the following Subsidiaries in existence on the Closing Date: Midland Funding 98-A Corporation, Midland Receivables 98-1 Corporation and Midland Receivables 99-1 Corporation.

“Indebtedness” of a Person means, at any time, without duplication, such Person’s (i) obligations for borrowed money, (ii) obligations representing the deferred purchase price of Property or services (other than current accounts payable arising in the ordinary course of such Person’s business payable on terms customary in the trade), (iii) obligations, whether or not assumed, secured by Liens or payable out of the proceeds or production from Property now or hereafter owned or acquired by such Person, (iv) obligations which are evidenced by notes, bonds, debentures, acceptances, or other instruments, (v) obligations to purchase securities or other Property arising out of or in connection with the sale of the same or substantially similar securities or Property, (vi) Capitalized Lease Obligations, (vii) Contingent Obligations of such Person, (viii) reimbursement obligations under Letters of Credit, bankers’ acceptances, surety bonds and similar instruments, (ix) Off-Balance Sheet Liabilities, (x) obligations under Sale and Leaseback Transactions, (xi) Net Mark-to-Market Exposure under Rate Management Transactions and other Financial Contracts, (xii) Rate Management Obligations and (xiii) any other obligation for borrowed money which in accordance with Agreement Accounting Principles would be shown as a liability on the consolidated balance sheet of such Person.



“Intangible Assets” means the aggregate amount, for the Borrower and its Subsidiaries on a consolidated basis, of: (1) all assets classified as intangible assets under Agreement Accounting Principles, including, without limitation, goodwill, trademarks, patents, copyrights, organization expenses, franchises, licenses, trade names, brand names, mailing lists, catalogs, excess of cost over book value of assets acquired, and bond discount and underwriting expenses; (2) loans or advances to, investments in, or receivables from (i) Encore Affiliates, officers, directors, employees or shareholders of the Borrower or any Subsidiary or (ii) any Person if such loan, advance, investment or receivable is outside the Borrower’s or any Subsidiary’s normal course of business; and (3) prepaid expenses; provided that Intangible Assets shall not include deferred court costs, deferred tax assets, deposits under state workers compensation programs and assets of the Borrower’s excess deferred compensation plan.

“Intellectual Property Security Agreements” means the intellectual property security agreements as any Credit Party may from time to time make in favor of the Administrative Agent for the benefit of the Holders of Secured Obligations, in each case as the same may be amended, restated, supplemented or otherwise modified from time to time.

“Interest Period” means, with respect to a Eurodollar Advance, a period of one, two, three, six, nine or twelve months, commencing on a Business Day selected by the Borrower pursuant to this Agreement. Such Interest Period shall end on but exclude the day which corresponds numerically to such date one, two, three, six, nine or twelve months thereafter, *provided, however*, that if there is no such numerically corresponding day in such next, second, third, sixth, ninth or twelfth succeeding month, such Interest Period shall end on the last Business Day of such next, second, third, sixth, ninth or twelfth succeeding month. If an Interest Period would otherwise end on a day which is not a Business Day, such Interest Period shall end on the next succeeding Business Day, *provided, however*, that if said next succeeding Business Day falls in a new calendar month, such Interest Period shall end on the immediately preceding Business Day.

“Investment” of a Person means any loan, advance (other than commission, travel and similar advances to officers, employees made in the ordinary course of business), extension of credit (other than Accounts arising in the ordinary course of business) or contribution of capital by such Person; stocks, bonds, mutual funds, partnership interests, notes, debentures or other securities owned by such Person; any deposit accounts and certificate of deposit owned by such Person; and structured notes, derivative financial instruments and other similar instruments or contracts owned by such Person. The Permitted Restructuring shall not constitute Investments.

“Jefferson Capital” means Jefferson Capital Systems, LLC, a Georgia limited liability company.

“Jefferson Capital Acquired Assets” means the Receivables Portfolio and related forward flow contract acquired from Jefferson Capital by the Borrower pursuant to the Jefferson Capital Acquisition.

“Jefferson Capital Acquisition” means the acquisition by the Borrower, directly or indirectly, of the Jefferson Capital Acquisition Assets.

“JPMorgan” means JPMorgan Chase Bank, N.A., a national banking association, in its individual capacity, and its successors.

“JV Entity” means (a) any Subsidiary (without giving effect to the proviso at the end of the definition of Subsidiary) of the Borrower that is (i) a joint venture with another Person and (ii) designated as a “JV Entity” by the Borrower with the written consent of the Administrative Agent and (b) any subsidiary of such Subsidiary.

“LC Fee” is defined in Section 2.20.4.

“LC Issuer” means JPMorgan (or any subsidiary or affiliate of JPMorgan designated by JPMorgan) in its capacity as issuer of Facility LCs hereunder.

“LC Obligations” means, at any time, the sum, without duplication, of (i) the aggregate undrawn stated amount under all Facility LCs outstanding at such time plus (ii) the aggregate unpaid amount at such time of all Reimbursement Obligations.

“LC Payment Date” is defined in Section 2.20.5.

“Lenders” means the lending institutions listed on the signature pages of this Agreement and their respective successors and assigns. Unless otherwise specified, the term “Lenders” includes the Swing Line Lender and the LC Issuer.

“Lender Increase Notice” is defined in Section 2.5.3(i).

“Lending Installation” means, with respect to a Lender or the Administrative Agent, the office, branch, subsidiary or affiliate of such Lender or the Administrative Agent listed on the signature pages hereof or on the administrative information sheets provided to the Administrative Agent in connection herewith or on a Schedule or otherwise selected by such Lender or the Administrative Agent pursuant to Section 2.17.

“Letter of Credit” of a Person means a letter of credit or similar instrument which is issued upon the application of such Person or upon which such Person is an account party or for which such Person is in any way liable.

“Lien” means any lien (statutory or other), mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance or preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever (including, without limitation, the interest of a vendor or lessor under any conditional sale, Capitalized Lease or other title retention agreement, and, in the case of stock, stockholders agreements, voting trust agreements and all similar arrangements).

“Liquidity” means, at any time the same is to be determined, the sum of (i) all unencumbered cash and Cash Equivalent Investments held by the Credit Parties free and clear of any Liens or claims other than Liens under the Collateral Documents and (ii) an amount equal to the lesser of (a) the Aggregate Revolving Loan Commitment and (b) the Borrowing Base, in each case minus the Aggregate Outstanding Revolving Credit Exposure.

“Loan” means, with respect to a Lender, such Lender’s loan made pursuant to Article II (or any conversion or continuation thereof), whether constituting a Revolving Loan or a Swing Line Loan.

“Loan Documents” means this Agreement, the Facility LC Applications, the Collateral Documents, the Guaranty Agreement and all other documents, instruments, notes (including any Notes issued pursuant to Section 2.13 (if requested)) and agreements executed in connection herewith or therewith or contemplated hereby or thereby, as the same may be amended, restated or otherwise modified and in effect from time to time.

“Material Adverse Effect” means a material adverse effect on (i) the business, Property, condition (financial or otherwise), operations or results of operations or prospects of the Borrower, or the Borrower and its Subsidiaries taken as a whole, (ii) the ability of the Borrower or any Subsidiary to perform its obligations under the Loan Documents, or (iii) the validity or enforceability of any of the Loan Documents or the rights or remedies of the Administrative Agent, the LC Issuer or the Lenders thereunder or their rights with respect to the Collateral.

“Material Indebtedness” means any Indebtedness in an outstanding principal amount of \$1,000,000 or more in the aggregate (or the equivalent thereof in any currency other than Dollars).

“Material Indebtedness Agreement” means any agreement under which any Material Indebtedness was created or is governed or which provides for the incurrence of Indebtedness in an amount which would constitute Material Indebtedness (whether or not an amount of Indebtedness constituting Material Indebtedness is outstanding thereunder).

“Medicaid” means the medical assistance program established by Title XIX of the Social Security Act (42 U.S.C. ss. 1396 ET SEQ.) and any successor or similar statutes, as in effect from time to time.

“Medicare” means the health insurance program for the aged and disabled established by Title XVIII of the Social Security Act (42 U.S.C. ss. 1395 ET SEQ.) and any successor or similar statutes as in effect from time to time.

“Modify” and “Modification” are defined in Section 2.20.1.

“Moody’s” means Moody’s Investors Services, Inc. and any successor thereto.

“Mortgage” means each of those certain mortgages and deeds of trust as are entered into by the Credit Parties pursuant hereto or in connection herewith, in each case as amended, restated, supplemented or otherwise modified from time to time.

“Mortgage Instruments” means such title reports, title insurance, opinions of counsel, surveys, appraisals and environmental reports as are requested by, and in form and substance reasonably acceptable to, the Administrative Agent from time to time.

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“Mortgaged Properties” means each Credit Party’s real Property with a book value equal to or in excess of \$1,000,000.

“Multiemployer Plan” means a multiemployer plan, as defined in Section 4001(a)(3) of ERISA, which is covered by Title IV of ERISA and to which the Borrower or any member of the Controlled Group is obligated to make contributions.

“Net Cash Proceeds” means, with respect to any Asset Sale by any Person, cash (freely convertible into Dollars) received by such Person or any Subsidiary of such Person from such Asset Sale (including cash received as consideration for the assumption or incurrence of liabilities incurred in connection with or in anticipation of such Asset Sale), after (i) provision for all income or other taxes measured by or resulting from such sale of Property, (ii) cash payment of all reasonable brokerage commissions and other fees and expenses related to such sale of Property, and (iii) taking into account all amounts in cash used to repay Indebtedness secured by a Lien on any Property disposed of in such Asset Sale which is or may be required (by the express terms of the instrument governing such Indebtedness) to be repaid in connection with such Asset Sale (including payments made to obtain or avoid the need for the consent of any holder of such Indebtedness).

“Net Mark-to-Market Exposure” of a Person means, as of any date of determination, the excess (if any) of all unrealized losses over all unrealized profits of such Person arising from Rate Management Transactions. “Unrealized losses” means the fair market value of the cost to such Person of replacing such Rate Management Transaction as of the date of determination (assuming the Rate Management Transaction were to be terminated as of that date), and “unrealized profits” means the fair market value of the gain to such Person of replacing such Rate Management Transaction as of the date of determination (assuming such Rate Management Transaction were to be terminated as of that date).

“Non-U.S. Lender” is defined in Section 3.5(iv).

“Note” is defined in Section 2.13.

“Obligations” means all Loans, all Reimbursement Obligations, advances, debts, liabilities, obligations, covenants and duties owing by the Borrower or any other Credit Party to the Administrative Agent, any Lender, the Swing Line Lender, the LC Issuer, the Arranger, any affiliate of the Administrative Agent, any Lender, the Swing Line Lender, the LC Issuer or the Arranger, or any indemnitee under the provisions of Section 9.6 or any other provisions of the Loan Documents, in each case of any kind or nature, present or future, arising under this Agreement or any other Loan Document, whether or not evidenced by any note, guaranty or other instrument, whether or not for the payment of money, whether arising by reason of an extension of credit, loan, foreign exchange risk, guaranty, indemnification, or in any other manner, whether direct or indirect (including those acquired by assignment), absolute or contingent, due or to become due, now existing or hereafter arising and however acquired. The term includes, without limitation, all interest, charges, expenses, fees, attorneys’ fees and disbursements, paralegals’ fees (in each case whether or not allowed), and any other sum chargeable to the Borrower or any of its Subsidiaries under this Agreement or any other Loan Document.

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“Off-Balance Sheet Liability” of a Person means the principal component of (i) any repurchase obligation or liability of such Person (excluding any such obligation or liability for disposition of Receivables), with respect to Accounts or notes receivable sold by such Person, (ii) any liability under any so-called “synthetic lease” or “tax ownership operating lease” transaction entered into by such Person, or (iii) any obligation arising with respect to any other transaction which is the functional equivalent of or takes the place of borrowing but which does not constitute a liability on the consolidated balance sheets of such Person, but excluding from this clause (iii) all Operating Leases.

“Operating Lease” of a Person means any lease of Property (other than a Capitalized Lease) by such Person as lessee which has an original term (including any required renewals and any renewals effective at the option of the lessor) of one year or more.

“Other Taxes” is defined in Section 3.5(ii).

“Outstanding Revolving Credit Exposure” means, as to any Lender at any time, the sum of (i) the aggregate principal amount of its Revolving Loans outstanding at such time, plus (ii) an amount equal to its ratable obligation to purchase participations in the aggregate principal amount of Swing Line Loans outstanding at such time, plus (iii) an amount equal to its ratable obligation to purchase participations in the LC Obligations at such time.

“Participants” is defined in Section 12.2.1.

“Payment Date” means the first day of each April, July, October and January and the Revolving Loan Termination Date. The first Payment Date under this Agreement is July 1, 2005.

“PBG” means the Pension Benefit Guaranty Corporation, or any successor thereto.

“Permitted Acquisition” is defined in Section 6.13.3

“Permitted Receivables Transactions” means the CFSC Transaction.

“Permitted Receivables Transactions Documents” means any document, agreement or instrument evidencing any Permitted Receivables Transaction or entered into in connection with any Permitted Receivables Transaction.

“Permitted Restructuring” means a transaction or series of transactions pursuant to which the Borrower or any Subsidiary sells, assigns or otherwise transfers Receivables and/or other assets between or among themselves, including transfers to or mergers or consolidations with, or voluntary dissolutions or liquidations into, newly created Wholly-Owned Subsidiaries of the Borrower or the Subsidiaries, subject to compliance with Sections 6.25 and 6.26; provided that (i) no Receivables or other assets of Excluded Subsidiaries shall be commingled with the assets of a Credit Party as a result of such Permitted Restructuring, (ii) no such transfers shall take place from a Credit Party to an Excluded Subsidiary or to a Subsidiary that is not a Credit Party and (iii) such transactions are effected for tax planning and related general corporate purposes.

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“Person” means any natural person, corporation, firm, joint venture, partnership, limited liability company, association, enterprise, trust or other entity or organization, or any government or political subdivision or any agency, department or instrumentality thereof.

“Plan” means an employee pension benefit plan, excluding any Multiemployer Plan, which is covered by Title IV of ERISA or subject to the minimum funding standards under Section 412 of the Code as to which the Borrower or any member of the Controlled Group may have any liability.

“Pledge and Security Agreement” means that certain Pledge and Security Agreement, dated as of the Closing Date, by and between the Credit Parties and the Administrative Agent for the benefit of the Holders of Secured Obligations, as the same may be amended, restated, supplemented, or otherwise modified from time to time.

“Pledge Subsidiary” means each Domestic Subsidiary and First Tier Foreign Subsidiary.

“Pricing Schedule” means the Schedule identifying the Applicable Margin and Applicable Fee Rate attached hereto and identified as such.

“Prime Rate” means the rate of interest per annum publicly announced from time to time by JPMorgan as its prime rate in effect at its principal office in New York City; each change in the Prime Rate shall be effective from and including the date such change is publicly announced as being effective.

“Property” of a Person means any and all property, whether real, personal, tangible, intangible, or mixed, of such Person, or other assets owned, leased or operated by such Person.

“Proposed New Lender” is defined in Section 2.5.3(i).

“Purchase Price” means the total consideration and other amounts payable in connection with any Acquisition, including, without limitation, any portion of the consideration payable in cash, all Indebtedness, liabilities and contingent obligations incurred or assumed in connection with such Acquisition and all transaction costs and expenses incurred in connection with such Acquisition.

“Purchasers” is defined in Section 12.3.1.

“Rate Management Obligations” of a Person means any and all obligations of such Person, whether absolute or contingent and howsoever and whensoever created, arising, evidenced or acquired (including all renewals, extensions and modifications thereof and substitutions therefor), under (i) any and all Rate Management Transactions, and (ii) any and all cancellations, buy backs, reversals, terminations or assignments of any Rate Management Transactions.

“Rate Management Transaction” means any transaction (including an agreement with respect thereto) now existing or hereafter entered by the Borrower or a Subsidiary which is a rate swap, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap, equity or equity index option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, forward transaction, currency swap transaction, cross-currency rate swap transaction, currency option or any other similar transaction (including any option with respect to any of these transactions) or any combination thereof, whether linked to one or more interest rates, foreign currencies, commodity prices, equity prices or other financial measures.

“Receivable” of a Credit Party shall mean a Health Care Receivable of such Credit Party or any other right of such Credit Party to the payment of money arising out of a consumer transaction, and which right was acquired by such Credit Party with a group of similar rights.

“Receivables Portfolio” of a Credit Party means any group of Receivables of such Credit Party acquired by such Credit Party as part of a single transaction.

“Regulation D” means Regulation D of the Board of Governors of the Federal Reserve System as from time to time in effect and any successor thereto or other regulation or official interpretation of said Board of Governors relating to reserve requirements applicable to member banks of the Federal Reserve System.

“Regulation U” means Regulation U of the Board of Governors of the Federal Reserve System as from time to time in effect and any successor or other regulation or official interpretation of said Board of Governors relating to the extension of credit by banks, non-banks and non-broker lenders for the purpose of purchasing or carrying margin stocks applicable to member banks of the Federal Reserve System.

“Regulation X” means Regulation X of the Board of Governors of the Federal Reserve System as from time to time in effect and any successor or other regulation or official interpretation of said Board of Governors relating to the extension of credit by foreign lenders for the purpose of purchasing or carrying margin stock (as defined therein).

“Reimbursement Obligations” means, at any time, the aggregate of all obligations of the Borrower then outstanding under Section 2.20 to reimburse the LC Issuer for amounts paid by the LC Issuer in respect of any one or more drawings under Facility LCs.

“Rentals” of a Person means the aggregate rent expense incurred by such Person under any Operating Lease.

“Reportable Event” means a reportable event as defined in Section 4043 of ERISA and the regulations issued under such section, with respect to a Plan subject to Title IV of ERISA, excluding, however, such events as to which the PBGC has by regulation waived the requirement of Section 4043(a) of ERISA that it be notified within 30 days of the occurrence of such event, *provided, however*, that a failure to meet the minimum funding standard of Section 412 of the Code and of Section 302 of ERISA shall be a Reportable Event regardless of the issuance of any such waiver of the notice requirement in accordance with either Section 4043(a) of ERISA or Section 412(d) of the Code.

“Reports” is defined in Section 9.6.

“Required Lenders” means Lenders in the aggregate having at least 66 2/3% of the sum of the Aggregate Revolving Loan Commitment (or, if all of the Revolving Loan Commitments are terminated pursuant to the terms of this Agreement, the Aggregate Outstanding Revolving Credit Exposure at such time).

“Reserve Requirement” means, with respect to an Interest Period, the maximum aggregate reserve requirement (including all basic, supplemental, marginal and other reserves) which is imposed under Regulation D on “Eurocurrency liabilities” (as defined in Regulation D) (it being understood that no Reserve Requirement is in effect on the Closing Date).

“Restricted Payment” means (i) any dividend or other distribution, direct or indirect, on account of any equity interests of the Borrower now or hereafter outstanding, except a dividend payable solely in the Borrower’s capital stock (other than Disqualified Stock) or in options, warrants or other rights to purchase such capital stock, (ii) any redemption, retirement, purchase or other acquisition for value, direct or indirect, of any equity interests of the Borrower or any of its Subsidiaries now or hereafter outstanding, other than in exchange for, or out of the proceeds of, the substantially concurrent sale (other than to a Subsidiary of the Borrower) of other equity interests of the Borrower (other than Disqualified Stock) and (iii) any redemption, purchase, retirement, defeasance, prepayment or other acquisition for value, direct or indirect, of any Indebtedness prior to the stated maturity thereof, other than the Obligations and the Equipment Financing Transactions.

“Revolving Loan” means, with respect to a Lender, such Lender’s loan made pursuant to its commitment to lend set forth in Section 2.1.1 (and any conversion or continuation thereof).

“Revolving Loan Commitment” means, for each Lender, including without limitation, each LC Issuer, such Lender’s obligation to make Revolving Loans to, and participate in Facility LCs issued upon the application of, the Borrower in an aggregate amount not exceeding the amount set forth for such Lender on the Commitment Schedule or in any Assignment Agreement delivered pursuant to Section 12.3, as such amount may be modified from time to time pursuant to the terms hereof.

“Revolving Loan Pro Rata Share” means, with respect to any Lender, the percentage obtained by dividing (i) such Lender’s Revolving Loan Commitment at such time by (ii) the Aggregate Revolving Loan Commitment at such time; *provided, however*, if all of the Revolving Loan Commitments are terminated pursuant to the terms of this Agreement, then “Revolving Loan Pro Rata Share” means the percentage obtained by dividing (a) such Lender’s Outstanding Revolving Credit Exposure at such time by (b) the Aggregate Outstanding Revolving Credit Exposure at such time.

“Revolving Loan Termination Date” means the earlier of (a) June 7, 2008, and (b) the date of termination in whole of the Aggregate Revolving Loan Commitment pursuant to Section 2.2 hereof or the Revolving Loan Commitments pursuant to Section 8.1 hereof.

“S&P” means Standard and Poor’s Ratings Services, a division of The McGraw-Hill Companies, Inc., and any successor thereto.

“Sale and Leaseback Transaction” means any sale or other transfer of Property by any Person with the intent to lease such Property as lessee.

“Schedule” refers to a specific schedule to this Agreement, unless another document is specifically referenced.

“Section” means a numbered section of this Agreement, unless another document is specifically referenced.

“Secured Obligations” means, collectively, (i) the Obligations and (ii) all Rate Management Obligations owing in connection with Rate Management Transactions to any Lender or any affiliate of any Lender.

“Selling Lender” is defined in Section 2.5.3(ii).

“Single Employer Plan” means a Plan maintained by the Borrower or any member of the Controlled Group for employees of the Borrower or any member of the Controlled Group.

“Subordinated Indebtedness” of a Person means any Indebtedness (other than Indebtedness arising from intercompany loans and advances) of such Person the payment of which is subordinated to payment of the Secured Obligations to the written satisfaction of the Required Lenders.

“Subordinated Indebtedness Documents” means any document, agreement or instrument evidencing any Subordinated Indebtedness or entered into in connection with any Subordinated Indebtedness.

“Subsidiary” of a Person means (i) any corporation more than 50% of the outstanding securities having ordinary voting power of which shall at the time be owned or controlled, directly or indirectly, by such Person or by one or more of its Subsidiaries or by such Person and one or more of its Subsidiaries, or (ii) any partnership, limited liability company, association, joint venture or similar business organization more than 50% of the ownership interests having ordinary voting power of which shall at the time be so owned or controlled; provided that, for purposes of the Loan Documents, each JV Entity shall be deemed to not be a Subsidiary. Unless otherwise expressly provided, all references herein to a “Subsidiary” shall mean a Subsidiary of the Borrower.

“Substantial Portion” means, with respect to the Property of the Borrower and its Subsidiaries, Property which represents more than 5% of Consolidated Tangible Assets or Property which is responsible for more than 5% of the consolidated net revenues of the Borrower and its Subsidiaries, in each case, as would be shown in the consolidated financial statements of the Borrower and its Subsidiaries as at the beginning of the twelve-month period ending with the month in which such determination is made (or if financial statements have not been delivered hereunder for that month which begins the twelve-month period, then the financial statements delivered hereunder for the quarter ending immediately prior to that month).

“Swing Line Borrowing Notice” is defined in Section 2.4.2.

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“Swing Line Commitment” means the obligation of the Swing Line Lender to make Swing Line Loans up to a maximum principal amount of \$5,000,000 at any one time outstanding.

“Swing Line Lender” means JPMorgan.

“Swing Line Loan” means a Loan made available to the Borrower by the Swing Line Lender pursuant to Section 2.4.

“Taxes” means any and all present or future taxes, duties, levies, imposts, deductions, charges or withholdings, and any and all liabilities with respect to the foregoing, but *excluding* Excluded Taxes and Other Taxes.

“Transferee” is defined in Section 12.4.

“Type” means, with respect to any Advance, its nature as a Floating Rate Advance or a Eurodollar Advance and with respect to any Loan, its nature as a Floating Rate Loan or a Eurodollar Loan.

“Unfunded Liabilities” means the amount (if any) by which the present value of all vested and unvested accrued benefits under each Single Employer Plan subject to Title IV of ERISA exceeds the fair market value of all such Plan’s assets allocable to such benefits, all determined as of the then most recent valuation date for such Plan for which a valuation report is available, using actuarial assumptions for funding purposes as set forth in such report.

“Unmatured Default” means an event which but for the lapse of time or the giving of notice, or both, would constitute a Default.

“Wholly-Owned Subsidiary” of a Person means (i) any Subsidiary all of the outstanding voting securities of which shall at the time be owned or controlled, directly or indirectly, by such Person or one or more Wholly-Owned Subsidiaries of such Person, or by such Person and one or more Wholly-Owned Subsidiaries of such Person, or (ii) any partnership, limited liability company, association, joint venture or similar business organization 100% of the ownership interests having ordinary voting power of which shall at the time be so owned or controlled.

1.2. Plural Forms. The foregoing definitions shall be equally applicable to both the singular and plural forms of the defined terms.

## ARTICLE II

### THE CREDITS

2.1. Revolving Loan Commitments. From and including the Closing Date and prior to the Revolving Loan Termination Date, upon the satisfaction of the conditions precedent set forth in Section 4.1 and 4.2, as applicable, each Lender severally and not jointly agrees, on the terms and conditions set forth in this Agreement, to (i) make Revolving Loans to the Borrower from time to time and (ii) participate in Facility LCs issued upon the request of the Borrower, in each case in an amount not to exceed in the aggregate at any one time outstanding of its Revolving Loan Pro Rata Share of the Available Aggregate Revolving Loan Commitment; *provided* that at no time shall the Aggregate Outstanding Revolving Credit Exposure hereunder exceed the Adjusted Available Aggregate Revolving Loan Commitment. Subject to the terms of this Agreement, the Borrower may borrow, repay and reborrow Revolving Loans at any time prior to the Revolving Loan Termination Date. The commitment of each Lender to lend hereunder shall automatically expire on the Revolving Loan Termination Date. The LC Issuer will issue Facility LCs hereunder on the terms and conditions set forth in Section 2.20.

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2.2. Required Payments; Termination. (a) Any outstanding Revolving Loans shall be paid in full by the Borrower on the Revolving Loan Termination Date and all other unpaid Secured Obligations shall be paid in full by the Borrower on the later of the date when due or the Revolving Loan Termination Date. In addition, if at any time the Aggregate Outstanding Revolving Credit Exposure hereunder exceeds the Adjusted Available Aggregate Revolving Loan Commitment, the Borrower shall promptly (i) repay outstanding Revolving Loans up to the aggregate amount of such excess, and (ii) if such excess is greater than the outstanding principal amount of the Revolving Loans, cash collateralize the outstanding LC Obligations by depositing funds in the Facility LC Collateral Account, in an aggregate amount equal to the remaining excess. Notwithstanding the termination of the Revolving Loan Commitments under this Agreement on the Revolving Loan Termination Date, until all of the Obligations (other than contingent indemnity obligations) shall have been fully paid and satisfied and all financing arrangements among the Borrower and the Lenders hereunder and under the other Loan Documents shall have been terminated, all of the rights and remedies under this Agreement and the other Loan Documents shall survive.

(b) Asset Sales. Upon the consummation of any Asset Sale (other than sales permitted under Sections 6.12.1, 6.12.2, 6.12.3 or 6.12.4) by the Borrower or any Subsidiary, within three (3) Business Days after the Borrower's or any of its Subsidiaries' receipt of any Net Cash Proceeds (or conversion to cash of non-cash proceeds (whether principal or interest and including securities, release of escrow arrangements)) received from any such Asset Sale, the Borrower shall make a mandatory prepayment of the Loans, subject to the provisions governing the application of payments set forth in Section 2.2(c), in an amount equal to one hundred percent (100%) of such Net Cash Proceeds. Notwithstanding the foregoing, Net Cash Proceeds of Asset Sales with respect to which the Borrower shall have given the Administrative Agent written notice of its intention to repair or replace the Property subject to any such Asset Sale or invest such Net Cash Proceeds in the purchase of assets (other than securities, unless those securities represent equity interests in an entity that becomes a Guarantor) to be used by one or more of the Borrower or the Guarantors in their businesses within one year following such Asset Sale, shall not be subject to the provisions of the first sentence of this Section 2.2(b) unless and to the extent that such applicable period shall have expired without such repair or replacement having been made.

(c) Application of Designated Prepayments. Each mandatory prepayment required by clause (b) of this Section 2.2 shall be referred to herein as a "Designated Prepayment." Designated Prepayments of Loans shall first be applied to Floating Rate Loans and to any Eurodollar Rate Loans maturing on such date and then to subsequently maturing Eurodollar Rate Loans in order of maturity. Notwithstanding the foregoing, so long as no Default has occurred and is then continuing and at the Borrower's option, the Administrative Agent shall hold all Designated Prepayments to be applied to Eurodollar Rate Loans in escrow for the benefit of the Lenders and shall release such amounts upon the expiration of the Interest Periods applicable to any such Eurodollar Rate Loans being prepaid (it being understood and agreed that interest shall continue to accrue on the Obligations until such time as such prepayments are released from escrow and applied to reduce the Obligations); provided, however, that upon the occurrence and during the continuance of an Event of Default, such escrowed amounts may be applied to Eurodollar Rate Loans without regard to the expiration of any Interest Period and the Borrower shall make all payments under Section 3.4 resulting therefrom.

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(d) Mandatory Reductions in Aggregate Revolving Loan Commitment. Each Designated Prepayment (as defined in clause (c) above) shall permanently reduce, by an amount equal to the amount of such Designated Prepayment, the Aggregate Revolving Loan Commitment and the Borrower shall make the payments required under Section 2.2(a).

2.3. Ratable Loans; Types of Advances. (a) Each Advance hereunder (other than a Swing Line Loan) shall consist of Loans made from the several Lenders ratably in proportion to their respective Revolving Loan Pro Rata Share.

(b) The Advances may be Floating Rate Advances or Eurodollar Advances, or a combination thereof, selected by the Borrower in accordance with Sections 2.8 and 2.9, or Swing Line Loans selected by the Borrower in accordance with Section 2.4.

#### 2.4. Swing Line Loans.

2.4.1 Amount of Swing Line Loans. Upon the satisfaction of the conditions precedent set forth in Section 4.2 and, if such Swing Line Loan is to be made on the date of the initial Credit Extension hereunder, the satisfaction of the conditions precedent set forth in Section 4.1 as well, from and including the date of this Agreement and prior to the Revolving Loan Termination Date, the Swing Line Lender agrees, on the terms and conditions set forth in this Agreement, to make Swing Line Loans to the Borrower from time to time in an aggregate principal amount not to exceed the Swing Line Commitment, *provided* that the Aggregate Outstanding Revolving Credit Exposure shall not at any time exceed the Aggregate Revolving Loan Commitment, and *provided further* that at no time shall the sum of (i) the Swing Line Lender's Revolving Loan Pro Rata Share of the Swing Line Loans then outstanding, plus (ii) the outstanding Revolving Loans made by the Swing Line Lender pursuant to Section 2.1 (including its participation in any Facility LCs), exceed the Swing Line Lender's Revolving Loan Commitment at such time. Subject to the terms of this Agreement, the Borrower may borrow, repay and reborrow Swing Line Loans at any time prior to the Revolving Loan Termination Date.

2.4.2 Borrowing Notice. The Borrower shall deliver to the Administrative Agent and the Swing Line Lender irrevocable notice (a "Swing Line Borrowing Notice") not later than 12:00 noon (Phoenix, Arizona time) on the Borrowing Date of each Swing Line Loan, specifying (i) the applicable Borrowing Date (which date shall be a Business Day), and (ii) the aggregate amount of the requested Swing Line Loan which shall be an amount not less than \$100,000. The Swing Line Loans shall bear interest at the Floating Rate or at such other rate as is agreed upon by the Borrower and the Swing Line Lender.

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2.4.3 Making of Swing Line Loans. Promptly after receipt of a Swing Line Borrowing Notice, the Administrative Agent shall notify each Lender by fax or other similar form of transmission, of the requested Swing Line Loan. Not later than 2:00 p.m. (Phoenix, Arizona time) on the applicable Borrowing Date, the Swing Line Lender shall make available the Swing Line Loan, in funds immediately available in Phoenix, to the Administrative Agent at its address specified pursuant to Article XIII. The Administrative Agent will promptly make the

funds so received from the Swing Line Lender available to the Borrower on the Borrowing Date at the Administrative Agent's aforesaid address.

- 2.4.4 Repayment of Swing Line Loans. Each Swing Line Loan shall be paid in full by the Borrower on or before the fifth (5<sup>th</sup>) Business Day after the Borrowing Date for such Swing Line Loan. In addition, the Swing Line Lender (i) may at any time in its sole discretion with respect to any outstanding Swing Line Loan, or (ii) shall, on the fifth (5<sup>th</sup>) Business Day after the Borrowing Date of any Swing Line Loan, require each Lender (including the Swing Line Lender) to make a Revolving Loan in the amount of such Lender's Revolving Loan Pro Rata Share of such Swing Line Loan (including, without limitation, any interest accrued and unpaid thereon), for the purpose of repaying such Swing Line Loan. Not later than 1:00 p.m. (Phoenix, Arizona time) on the date of any notice received pursuant to this Section 2.4.4, each Lender shall make available its required Revolving Loan, in funds immediately available in Phoenix to the Administrative Agent at its address specified pursuant to Article XIII. Revolving Loans made pursuant to this Section 2.4.4 shall initially be Floating Rate Loans and thereafter may be continued as Floating Rate Loans or converted into Eurodollar Loans in the manner provided in Section 2.9 and subject to the other conditions and limitations set forth in Article II. Unless a Lender shall have notified the Swing Line Lender, prior to its making any Swing Line Loan, that any applicable condition precedent set forth in Sections 4.1 or 4.2 had not been satisfied, such Lender's obligation to make Revolving Loans pursuant to this Section 2.4.4 to repay Swing Line Loans shall be unconditional, continuing, irrevocable and absolute and shall not be affected by any circumstances, including, without limitation, (a) any set-off, counterclaim, recoupment, defense or other right which such Lender may have against the Swing Line Lender or any other Person, (b) the occurrence or continuance of a Default or Unmatured Default, (c) any adverse change in the condition (financial or otherwise) of the Borrower, or (d) any other circumstances, happening or event whatsoever. In the event that any Lender fails to make payment to the Administrative Agent of any amount due under this Section 2.4.4, the Administrative Agent shall be entitled to receive, retain and apply against such obligation the principal and interest otherwise payable to such Lender hereunder until the Administrative Agent receives such payment from such Lender or such obligation is otherwise fully satisfied. In addition to the foregoing, if for any reason any Lender fails to make payment to the Administrative Agent of any amount due under this Section 2.4.4, such Lender shall be deemed, at the option of the Administrative Agent, to have unconditionally and irrevocably purchased from the Swing Line Lender, without recourse or warranty, an undivided interest and participation in the applicable Swing Line Loan in the amount of such Revolving Loan, and such interest and participation may be recovered from such Lender together with interest thereon at the Federal Funds Effective Rate for each day during the period commencing on the date of demand and ending on the date such amount is received. On the Revolving Loan Termination Date, the Borrower shall repay in full the outstanding principal balance of the Swing Line Loans.

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2.5. Commitment Fee; Aggregate Revolving Loan Commitment.

- 2.5.1 Commitment Fee. The Borrower shall pay to the Administrative Agent, for the account of the Lenders in accordance with their Revolving Loan Pro Rata Shares, from and after the Closing Date until the date on which the Aggregate Revolving Loan Commitment shall be terminated in whole, a commitment fee (the "Commitment Fee") accruing at the rate of the then Applicable Fee Rate on the Available Aggregate Revolving Loan Commitment in effect from time to time; provided that, to the extent any Swing Line Loan is outstanding, the amount of the Commitment Fee payable to the Swing Line Lender shall be computed by adding to its Outstanding Revolving Credit Exposure the outstanding principal amount of such Swing Line Loan. In the case of each Lender other than the Swing Line Lender, Swing Line Loans shall not count as usage of the Aggregate Commitment for purposes of calculating the Commitment Fee. All such Commitment Fees payable hereunder shall be payable quarterly in arrears on each Payment Date; provided, that if any Lender continues to have Outstanding Revolving Credit Exposure after the termination of its Revolving Loan Commitment, then the Commitment Fee shall continue to accrue and be due and payable pursuant to the terms hereof until such Outstanding Revolving Credit Exposure is reduced to zero.
- 2.5.2 Voluntary Reductions in Aggregate Revolving Loan Commitment. The Borrower may permanently reduce the Aggregate Revolving Loan Commitment in whole, or in part, ratably among the Lenders in the minimum amount of \$3,000,000 (and in multiples of \$1,000,000 in excess thereof), upon at least three (3) Business Days' written notice to the Administrative Agent, which notice shall specify the amount of any such reduction, *provided, however*, that the amount of the Aggregate Revolving Loan Commitment may not be reduced below the Aggregate Outstanding Revolving Credit Exposure. All accrued Commitment Fees shall be payable on the effective date of any termination of the obligations of the Lenders to make Credit Extensions hereunder and on the final date upon which all Loans are repaid.

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- 2.5.3 Increase in Aggregate Revolving Loan Commitment. (i) At any time, but not more than once during the period commencing on the Closing Date and ending on the one-year anniversary thereof and not more than once during each successive one-year anniversary of the Closing Date, the Borrower may request that the Aggregate Revolving Loan Commitment be increased; *provided that*, without the prior written consent of all of the Lenders, (A) the Aggregate Revolving Loan Commitment shall at no time exceed \$200,000,000 *minus* the aggregate amount of all reductions in the Aggregate Revolving Loan Commitment previously made pursuant to Section 2.5.2; (B) such request shall be in an amount not less than \$5,000,000; and (C) the aggregate amount of such increase shall not exceed \$50,000,000. Such request shall be made in a written notice given to the Administrative Agent and the Lenders by the Borrower not less than twenty (20) Business Days prior to the proposed effective date of such increase, which notice (a "Commitment Increase Notice") shall specify the amount of the proposed increase in the Aggregate Revolving Loan Commitment and the proposed effective date of such increase. In the event of such a Commitment Increase Notice, each of the Lenders shall be given the opportunity to participate in the requested increase ratably in the proportions that their respective Revolving Loan Commitments bear to the Aggregate Revolving Loan Commitment under this Agreement. On or prior to the date that is fifteen (15) Business Days after receipt of the Commitment Increase Notice, each Lender shall submit to the Administrative Agent a notice indicating the maximum amount by which it is willing to increase its Revolving Loan Commitment in connection with such Commitment Increase Notice (any such notice to the Administrative Agent being herein a "Lender Increase Notice"). Any Lender which does not submit a Lender Increase Notice to the Administrative Agent prior to the expiration of such fifteen (15) Business Day period shall be deemed to have denied any increase in its Revolving Loan

Commitment. In the event that the increases of Revolving Loan Commitments set forth in the Lender Increase Notices exceed the amount requested by the Borrower in the Commitment Increase Notice, the Administrative Agent and the Arranger shall have the right, with the consent of the Borrower, to allocate the amount of increases necessary to meet the Borrower's Commitment Increase Notice. In the event that the Lender Increase Notices are less than the amount requested by the Borrower, not later than three (3) Business Days prior to the proposed effective date, the Borrower may notify the Administrative Agent of any financial institution that shall have agreed to become a "Lender" party hereto (a "Proposed New Lender") in connection with the Commitment Increase Notice. Any Proposed New Lender shall be subject to the consent of the Administrative Agent (which consent shall not be unreasonably withheld). If the Borrower shall not have arranged any Proposed New Lender(s) to commit to the shortfall from the Lender Increase Notices, then the Borrower shall be deemed to have reduced the amount of its Commitment Increase Notice to the aggregate amount set forth in the Lender Increase Notices. Based upon the Lender Increase Notices, any allocations made in connection therewith and any notice regarding any Proposed New Lender, if applicable, the Administrative Agent shall notify the Borrower and the Lenders on or before the Business Day immediately prior to the proposed effective date of the amount of each Lender's and Proposed New Lenders' Revolving Loan Commitment (the "Effective Commitment Amount") and the amount of the Aggregate Revolving Loan Commitment, which amounts shall be effective on the following Business Day. Any

increase in the Aggregate Revolving Loan Commitment shall be subject to the following conditions precedent: (I) as of the date of the Commitment Increase Notice and as of the proposed effective date of the increase in the Aggregate Revolving Loan Commitment, all representations and warranties shall be true and correct in all material respects as though made on such date and no event shall have occurred and then be continuing which constitutes a Default or Unmatured Default, (II) the Borrower, the Administrative Agent and each Proposed New Lender or Lender that shall have agreed to provide a "Revolving Loan Commitment" in support of such increase in the Aggregate Revolving Loan Commitment shall have executed and delivered a "Commitment and Acceptance" substantially in the form of Exhibit I hereto, (III) counsel for the Borrower and for the Guarantors shall have provided to the Administrative Agent supplemental opinions in form and substance reasonably satisfactory to the Administrative Agent and (IV) the Borrower and the Proposed New Lender shall otherwise have executed and delivered such other instruments and documents as may be required under Article IV or that the Administrative Agent shall have reasonably requested in connection with such increase. If any fee shall be charged by the Lenders in connection with any such increase, such fee shall be in accordance with then prevailing market conditions, which market conditions shall have been reasonably documented by the Administrative Agent to the Borrower. No less than two (2) Business Days prior to the effective date of the increase of the Aggregate Revolving Loan Commitment, the Administrative Agent shall notify the Borrower of the amount of the fee to be charged by the Lenders, and the Borrower may, at least one (1) Business Day prior to such effective date, cancel its request for the commitment increase. If the commitment increase is cancelled pursuant to the immediately preceding sentence, the Borrower's cancelled increase request shall not be counted towards the Borrower's maximum number of increase requests permitted by the first sentence of this Section 2.5.3(i). Upon satisfaction of the conditions precedent to any increase in the Aggregate Revolving Loan Commitment, the Administrative Agent shall promptly advise the Borrower and each Lender of the effective date of such increase. Upon the effective date of any increase in the Aggregate Revolving Loan Commitment that is supported by a Proposed New Lender, such Proposed New Lender shall be a party to this Agreement as a Lender and shall have the rights and obligations of a Lender hereunder. Nothing contained herein shall constitute, or otherwise be deemed to be, a commitment on the part of any Lender to increase its Revolving Loan Commitment hereunder at any time.

- (ii) For purposes of this clause (ii), (A) the term "Buying Lender(s)" shall mean (1) each Lender the Effective Commitment Amount of which is greater than its Revolving Loan Commitment prior to the effective date of any increase in the Aggregate Revolving Loan Commitment and (2) each Proposed New Lender that is allocated an Effective Commitment Amount in connection with any Commitment Increase Notice and (B) the term "Selling Lender(s)" shall mean each Lender whose Revolving Loan Commitment is not being increased from that in effect prior to such increase in the Aggregate Revolving Loan Commitment. Effective on the effective date of any increase in the Aggregate Revolving Loan Commitment pursuant to clause (i) above, each Selling Lender hereby sells, grants, assigns and conveys to each Buying Lender, without recourse, warranty, or representation of any kind, except as specifically provided herein, an undivided percentage in such Selling Lender's right, title and interest in and to its outstanding Credit Extensions in the respective dollar amounts and percentages necessary so that, from and after such sale, each such Selling Lender's outstanding Credit Extensions shall equal such Selling Lender's Revolving Loan Pro Rata Share (calculated based upon the Effective Commitment Amounts) of the outstanding Credit Extensions. Effective on the effective date of the increase in the Aggregate Revolving Loan Commitment pursuant to clause (i) above, each Buying Lender hereby purchases and accepts such grant, assignment and conveyance from the Selling Lenders. Each Buying Lender hereby agrees that its respective purchase price for the portion of the outstanding Credit Extensions purchased hereby shall equal the respective dollar amount necessary so that, from and after such payments, each Buying Lender's outstanding Credit Extensions shall equal such Buying Lender's Revolving Loan Pro Rata Share (calculated based upon the Effective Commitment Amounts) of the outstanding Credit Extensions. Such amount shall be payable on the effective date of the increase in the Aggregate Revolving Loan Commitment by wire transfer of immediately available funds to the Administrative Agent. The Administrative Agent, in turn, shall wire transfer any such funds received to the Selling Lenders, in same day funds, for the sole account of the Selling Lenders. Each Selling Lender hereby represents and warrants to each Buying Lender that such Selling Lender owns the Credit Extensions being sold and assigned hereby for its own account and has not sold, transferred or encumbered any or all of its interest in such Credit Extensions, except for participations which will be extinguished upon payment to Selling Lender of an amount equal to the portion of the outstanding Credit Extensions being sold by such Selling Lender. Each Buying Lender hereby acknowledges and agrees that, except for each Selling Lender's representations and warranties contained in the foregoing sentence, each such Buying Lender has entered into its Commitment and Acceptance with respect to such increase on the basis of its own independent investigation and has not relied upon, and will not rely upon, any explicit or implicit written or oral representation, warranty or other statement of the Lenders or the Administrative Agent concerning the authorization, execution, legality, validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or the other Loan Documents. The Borrower hereby agrees to compensate each Selling Lender for all losses, expenses and liabilities incurred by each Lender in connection with the sale and assignment of any Eurodollar Loan hereunder on the terms and in the manner as set forth in Section 3.4.



2.6. Minimum Amount of Each Advance. Each Eurodollar Advance shall be in the minimum amount of \$250,000, and each Floating Rate Advance (other than an Advance to repay Swing Line Loans) shall be in the minimum amount of \$250,000, *provided, however*, that any Floating Rate Advance may be in the amount of the Adjusted Available Aggregate Revolving Loan Commitment minus the Aggregate Outstanding Revolving Credit Exposure at such time.

2.7. Optional Principal Payments. The Borrower may from time to time pay, without penalty or premium, all outstanding Floating Rate Advances (other than Swing Line Loans), or any portion of the outstanding Floating Rate Advances (other than Swing Line Loans), in a minimum aggregate amount of \$250,000, in each case upon prior notice to the Administrative Agent by 10:00 a.m. (Phoenix, Arizona time) at least one Business Day prior to the date of such payment. The Borrower may at any time pay, without penalty or premium, all outstanding Swing Line Loans, or, in a minimum amount of \$100,000, any portion of the outstanding Swing Line Loans, with notice to the Administrative Agent and the Swing Line Lender by 11:00 a.m. (Phoenix, Arizona time) on the date of repayment. The Borrower may from time to time pay, subject to the payment of any funding indemnification amounts required by Section 3.4 but without penalty or premium, all outstanding Eurodollar Advances, or, in a minimum aggregate amount of \$250,000, any portion of the outstanding Eurodollar Advances upon three (3) Business Days' prior notice to the Administrative Agent.

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2.8. Method of Selecting Types and Interest Periods for New Advances. The Borrower shall select the Type of Advance and, in the case of each Eurodollar Advance, the Interest Period applicable thereto from time to time; provided that there shall be no more than 30 Interest Periods in effect with respect to all of the Loans at any time, unless such limit has been waived by the Administrative Agent in its sole discretion. The Borrower shall give the Administrative Agent irrevocable notice (a "Borrowing Notice") not later than 10:00 a.m. (Phoenix, Arizona time) at least one Business Day before the Borrowing Date of each Floating Rate Advance (other than a Swing Line Loan) and 12:00 noon (Phoenix, Arizona time) at least three Business Days before the Borrowing Date for each Eurodollar Advance, specifying:

- (i) the Borrowing Date, which shall be a Business Day, of such Advance,
- (ii) the aggregate amount of such Advance,
- (iii) the Type of Advance selected, and
- (iv) in the case of each Eurodollar Advance, the Interest Period applicable thereto.

Not later than 1:00 p.m. (Phoenix, Arizona time) on each Borrowing Date, each Lender shall make available its Loan or Loans in Federal or other funds immediately available in Phoenix to the Administrative Agent at its address specified pursuant to Article XIII. The Administrative Agent will promptly make the funds so received from the Lenders available to the Borrower at the Administrative Agent's aforesaid address.

2.9. Conversion and Continuation of Outstanding Advances; No Conversion or Continuation of Eurodollar Advances After Default. Floating Rate Advances (other than Swing Line Advances) shall continue as Floating Rate Advances unless and until such Floating Rate Advances are converted into Eurodollar Advances pursuant to this Section 2.9 or are repaid in accordance with Section 2.7. Each Eurodollar Advance shall continue as a Eurodollar Advance until the end of the then applicable Interest Period therefor, at which time such Eurodollar Advance shall be automatically converted into a Floating Rate Advance unless (x) such Eurodollar Advance is or was repaid in accordance with Section 2.7 or (y) the Borrower shall have given the Administrative Agent a Conversion/Continuation Notice (as defined below) requesting that, at the end of such Interest Period, such Eurodollar Advance continue as a Eurodollar Advance for the same or another Interest Period. Subject to the terms of Section 2.6, the Borrower may elect from time to time to convert all or any part of an Advance of any Type (other than a Swing Line Advance) into any other Type or Types of Advances; *provided* that any conversion of any Eurodollar Advance shall be made on, and only on, the last day of the Interest Period applicable thereto. Notwithstanding anything to the contrary contained in this Section 2.9, during the continuance of a Default or an Unmatured Default, the Administrative Agent may (or shall at the direction of the Required Lenders), by notice to the Borrower, declare that no Advance may be made, converted or continued as a Eurodollar Advance. The Borrower shall give the Administrative Agent irrevocable notice (a "Conversion/Continuation Notice") of each conversion of an Advance or continuation of a Eurodollar Advance not later than 10:00 a.m. (Phoenix, Arizona time) at least one (1) Business Day, in the case of a conversion into a Floating Rate Advance, or three (3) Business Days, in the case of a conversion into or continuation of a Eurodollar Advance, prior to the date of the requested conversion or continuation, specifying:

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- (i) the requested date, which shall be a Business Day, of such conversion or continuation,
- (ii) the aggregate amount and Type of the Advance which is to be converted or continued, and
- (iii) the amount of such Advance which is to be converted into or continued as a Eurodollar Advance and the duration of the Interest Period applicable thereto.

2.10. Changes in Interest Rate, etc. Each Floating Rate Advance (other than a Swing Line Advance) shall bear interest on the outstanding principal amount thereof, for each day from and including the date such Advance is made or is automatically converted from a Eurodollar Advance into a Floating Rate Advance pursuant to Section 2.9, to but excluding the date it is paid or is converted into a Eurodollar Advance pursuant to Section 2.9 hereof, at a rate per annum equal to the Floating Rate for such day. Each Swing Line Loan shall bear interest on the outstanding principal amount thereof, for each day from and including the day such Swing Line Loan is made to but excluding the date it is fully paid at a rate per annum equal to the Floating Rate for such day. Changes in the rate of interest on that portion of any Advance maintained as a Floating Rate Advance will take effect simultaneously with each change in the Alternate Base Rate. Each Eurodollar Advance shall bear interest on the outstanding principal amount thereof from and including the first day of the Interest Period applicable thereto to (but not including) the last day of such Interest Period at the interest rate determined by the Administrative Agent as applicable to such Eurodollar Advance based upon the Borrower's selections under Sections 2.8 and 2.9 and otherwise in accordance with the terms hereof. No Interest Period in respect of any Revolving Loan may end after the Revolving Loan Termination Date.

2.11. Rates Applicable After Default. During the continuance of a Default (including the Borrower's failure to pay any Loan at maturity) the Required Lenders may, at their option, by notice to the Borrower (which notice may be revoked at the option of the Required Lenders notwithstanding any provision of Section 8.2

requiring unanimous consent of the Lenders to changes in interest rates), declare that (i) each Eurodollar Advance shall bear interest for the remainder of the applicable Interest Period at the rate otherwise applicable to such Interest Period plus 2% per annum, (ii) each Floating Rate Advance shall bear interest at a rate per annum equal to the Floating Rate in effect from time to time plus 2% per annum, and (iii) the LC Fee shall be increased by 2% per annum; provided that, during the continuance of a Default under Section 7.6 or 7.7, the interest rates set forth in clauses (i) and (ii) above and the increase in the LC Fee set forth in clause (iii) above shall be applicable to all Credit Extensions, Advances, fees and other Obligations hereunder without any election or action on the part of the Administrative Agent or any Lender.

2.12. Method of Payment. All payments of the Obligations hereunder shall be made, without setoff, deduction, or counterclaim, in immediately available funds to the Administrative Agent at the Administrative Agent's address specified pursuant to Article XIII, or at any other Lending Installation of the Administrative Agent specified in writing by the Administrative Agent to the Borrower, by 12:00 noon (Phoenix, Arizona time) on the date when due and shall (except with respect to repayments of Swing Line Loans, and except in the case of Reimbursement Obligations for which the LC Issuer has not been fully indemnified by the Lenders, or as otherwise specifically required hereunder) be applied ratably by the Administrative Agent among the Lenders. Each payment delivered to the Administrative Agent for the account of any Lender shall be delivered promptly by the Administrative Agent to such Lender in the same type of funds that the Administrative Agent received at its address specified pursuant to Article XIII or at any Lending Installation specified in a notice received by the Administrative Agent from such Lender. The Administrative Agent is hereby authorized to charge the account of the Borrower maintained with JPMorgan for each payment of the Obligations as it becomes due hereunder. Each reference to the Administrative Agent in this Section 2.12 shall also be deemed to refer, and shall apply equally, to the LC Issuer in the case of payments required to be made by the Borrower to the LC Issuer pursuant to Section 2.20.6.

2.13. Noteless Agreement; Evidence of Indebtedness.

- (i) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of the Borrower to such Lender resulting from each Loan made by such Lender from time to time, including the amounts of principal and interest payable and paid to such Lender from time to time hereunder.
- (ii) The Administrative Agent shall also maintain accounts in which it will record (a) the date and the amount of each Loan made hereunder, the Type thereof and the Interest Period (in the case of a Eurodollar Advance) with respect thereto, (b) the amount of any principal or interest due and payable or to become due and payable from the Borrower to each Lender hereunder, (c) the original stated amount of each Facility LC and the amount of LC Obligations outstanding at any time, (d) the effective date and amount of each Assignment Agreement delivered to and accepted by it and the parties thereto pursuant to Section 12.3, (e) the amount of any sum received by the Administrative Agent hereunder from the Borrower and each Lender's share thereof, and (f) all other appropriate debits and credits as provided in this Agreement, including, without limitation, all fees, charges, expenses and interest.

- (iii) The entries maintained in the accounts maintained pursuant to paragraphs (i) and (ii) above shall be *prima facie* evidence of the existence and amounts of the Obligations therein recorded; provided, *however*, that the failure of the Administrative Agent or any Lender to maintain such accounts or any error therein shall not in any manner affect the obligation of the Borrower to repay the Obligations in accordance with their terms.
- (iv) Any Lender may request that its Revolving Loans or, in the case of the Swing Line Lender, the Swing Line Loans, be evidenced by promissory notes (the "Notes") in substantially the form of Exhibit E-1 or E-2, with appropriate changes for notes evidencing Swing Line Loans. In such event, the Borrower shall prepare, execute and deliver to such Lender such Note(s) payable to the order of such Lender. Thereafter, the Loans evidenced by such Note(s) and interest thereon shall at all times (prior to any assignment pursuant to Section 12.3) be represented by one or more Notes payable to the order of the payee named therein, except to the extent that any such Lender subsequently returns any such Note(s) for cancellation and requests that such Loans once again be evidenced as described in paragraphs (i) and (ii) above.

2.14. Telephonic Notices. The Borrower hereby authorizes the Lenders and the Administrative Agent to extend, convert or continue Advances, effect selections of Types of Advances and to transfer funds based on telephonic notices made by any person or persons the Administrative Agent or any Lender in good faith believes to be acting on behalf of the Borrower, it being understood that the foregoing authorization is specifically intended to allow Borrowing Notices and Conversion/Continuation Notices to be given telephonically. The Borrower agrees to deliver promptly to the Administrative Agent a written confirmation, signed by an Authorized Officer, if such confirmation is requested by the Administrative Agent or any Lender, of each telephonic notice. If the written confirmation differs in any material respect from the action taken by the Administrative Agent and the Lenders, the records of the Administrative Agent and the Lenders shall govern absent manifest error.

2.15. Interest Payment Dates; Interest and Fee Basis. Interest accrued on each Floating Rate Advance shall be payable in arrears on the first day of each calendar month, commencing with the first such date to occur after the Closing Date, on any date on which the Floating Rate Advance is prepaid, whether due to acceleration or otherwise, and at maturity. Interest accrued on that portion of the outstanding principal amount of any Floating Rate Advance converted into a Eurodollar Advance on a day other than a Payment Date shall be payable on the date of conversion. Interest accrued on each Eurodollar Advance shall be payable on the last day of its applicable Interest Period, on any date on which the Eurodollar Advance is prepaid, whether by acceleration or otherwise, and at maturity. Interest accrued on each Eurodollar Advance having an Interest Period longer than three months shall also be payable on the last day of each three-month interval during such Interest Period. Interest on Eurodollar Advances, LC Fees and all other fees hereunder shall be calculated for actual days elapsed on the basis of a 360-day year. Interest on Floating Rate Advances shall be calculated for actual days elapsed on the basis of a 365/366-day year. Interest shall be payable for the day an Advance is made but not for the day of any payment on the amount paid if payment is received prior to 12:00 noon (Phoenix, Arizona time) at the place of payment. If any payment of principal or interest on an Advance, any fees or any other amounts payable to the Administrative Agent or any Lender hereunder shall become due on a day which is not a Business Day, such payment shall be made on the next succeeding Business Day and, in the case of a principal payment, such extension of time shall be included in computing interest, fees and commissions in connection with such payment.

2.16. Notification of Advances, Interest Rates, Prepayments and Revolving Loan Commitment Reductions; Availability of Loans. Promptly after receipt thereof, the Administrative Agent will notify each Lender of the contents of each Aggregate Revolving Loan Commitment reduction notice, Borrowing Notice, Swing Line Borrowing Notice, Conversion/Continuation Notice, and repayment notice received by it hereunder. Promptly after notice from the LC Issuer, the Administrative Agent will notify each Lender of the contents of each request for issuance of a Facility LC hereunder. The Administrative Agent will notify the Borrower and each Lender of the interest rate applicable to each Eurodollar Advance promptly upon determination of such interest rate and will give the Borrower and each Lender prompt notice of each change in the Alternate Base Rate. Not later than 1:00 p.m. Phoenix, Arizona time) on each Borrowing Date, each Lender shall make available its Revolving Loan or Revolving Loans in funds immediately available in Phoenix to the Administrative Agent at its address specified pursuant to Article XIII. The Administrative Agent will promptly make the funds so received from the Lenders available to the Borrower at the Administrative Agent's aforesaid address.

2.17. Lending Installations. Each Lender may book its Loans and its participation in any LC Obligations and the LC Issuer may book the Facility LCs at any Lending Installation selected by such Lender or the LC Issuer, as applicable, and may change its Lending Installation from time to time. All terms of this Agreement shall apply to any such Lending Installation and the Loans, Facility LCs, participations in LC Obligations and any Notes issued hereunder shall be deemed held by each Lender or the LC Issuer, as applicable, for the benefit of any such Lending Installation. Each Lender and the LC Issuer may, by written notice to the Administrative Agent and the Borrower in accordance with Article XIII, designate replacement or additional Lending Installations through which Loans will be made by it or Facility LCs will be issued by it and for whose account Loan payments or payments with respect to Facility LCs are to be made.

2.18. Non-Receipt of Funds by the Administrative Agent. Unless the Borrower or a Lender, as the case may be, notifies the Administrative Agent prior to the date on which it is scheduled to make payment to the Administrative Agent of (i) in the case of a Lender, the proceeds of a Loan or (ii) in the case of the Borrower, a payment of principal, interest or fees to the Administrative Agent for the account of the Lenders, that it does not intend to make such payment, the Administrative Agent may assume that such payment has been made. The Administrative Agent may, but shall not be obligated to, make the amount of such payment available to the intended recipient in reliance upon such assumption. If such Lender or the Borrower, as the case may be, has not in fact made such payment to the Administrative Agent, the recipient of such payment shall, on demand by the Administrative Agent, repay to the Administrative Agent the amount so made available together with interest thereon in respect of each day during the period commencing on the date such amount was so made available by the Administrative Agent until the date the Administrative Agent recovers such amount at a rate per annum equal to (x) in the case of payment by a Lender, the Federal Funds Effective Rate for such day for the first three days and, thereafter, the interest rate applicable to the relevant Loan or (y) in the case of payment by the Borrower, the interest rate applicable to the relevant Loan.

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2.19. Replacement of Lender. If the Borrower is required pursuant to Section 3.1, 3.2 or 3.5 to make any additional payment to any Lender or if any Lender's obligation to make or continue, or to convert Floating Rate Advances into, Eurodollar Advances shall be suspended pursuant to Section 3.3 (any Lender so affected an "Affected Lender"), the Borrower may elect, if such amounts continue to be charged or such suspension is still effective, to terminate or replace the Revolving Loan Commitment, and Loans of such Affected Lender, *provided* that no Default or Unmatured Default shall have occurred and be continuing at the time of such termination or replacement, and *provided further* that, concurrently with such termination or replacement, (i) if the Affected Lender is being replaced, another bank or other entity which is reasonably satisfactory to the Borrower and the Administrative Agent shall agree, as of such date, to purchase for cash the Outstanding Revolving Credit Exposure of the Affected Lender pursuant to an Assignment Agreement substantially in the form of Exhibit C and to become a Lender for all purposes under this Agreement and to assume all obligations of the Affected Lender to be terminated as of such date and to comply with the requirements of Section 12.3 applicable to assignments, and (ii) the Borrower shall pay to such Affected Lender in immediately available funds on the day of such replacement (A) all interest, fees and other amounts then accrued but unpaid to such Affected Lender by the Borrower hereunder to and including the date of termination, including without limitation payments due to such Affected Lender under Sections 3.1, 3.2 and 3.5, and (B) an amount, if any, equal to the payment which would have been due to such Lender on the day of such replacement under Section 3.4 had the Loans of such Affected Lender been prepaid on such date rather than sold to the replacement Lender, in each case to the extent not paid by the purchasing lender and (iii) if the Affected Lender is being terminated, the Borrower shall pay to such Affected Lender all Obligations due to such Affected Lender (including the amounts described in the immediately preceding clauses (i) and (ii) plus, to the extent not paid by the replacement Lender, the outstanding principal balance of such Affected Lender's Credit Extensions).

2.20. Facility LCs.

2.20.1 Issuance. The LC Issuer hereby agrees, on the terms and conditions set forth in this Agreement, to issue standby and commercial Letters of Credit (each, a "Facility LC") and to renew, extend, increase, decrease or otherwise modify each Facility LC ("Modify," and each such action, a "Modification"), from time to time from and including the date of this Agreement and prior to the Revolving Loan Termination Date upon the request of the Borrower; *provided* that, immediately after each such Facility LC is issued or Modified, (i) the aggregate amount of the outstanding LC Obligations shall not exceed \$5,000,000 and (ii) the Aggregate Outstanding Revolving Credit Exposure shall not exceed the Adjusted Available Aggregate Revolving Loan Commitment. No Facility LC shall have an expiry date later than the earlier of (x) the fifteenth Business Day prior to the Revolving Loan Termination Date and (y) one year after its issuance; *provided* that any Facility LC with a one-year term may provide for the renewal thereof for additional one-year periods (which in no event shall extend beyond the date referred to in the preceding clause (x)).

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2.20.2 Participations. Upon the issuance or Modification by the LC Issuer of a Facility LC in accordance with this Section 2.20, the LC Issuer shall be deemed, without further action by any party hereto, to have unconditionally and irrevocably sold to each Lender, and each Lender shall be deemed, without further action by any party hereto, to have unconditionally and irrevocably purchased from the LC Issuer, a participation in such Facility LC (and each Modification thereof) and the related LC Obligations in proportion to its Revolving Loan Pro Rata Share.

2.20.3 Notice. Subject to Section 2.20.1, the Borrower shall give the LC Issuer notice prior to 10:00 a.m. (Phoenix, Arizona time) at least five Business Days prior to the proposed date of issuance or Modification of each Facility LC, specifying the beneficiary, the proposed date of issuance (or Modification) and the expiry date of such Facility LC, and describing the proposed terms of such Facility LC and the nature of the transactions proposed to be supported thereby. Upon receipt of such notice, the LC Issuer shall promptly notify the Administrative Agent, and, upon issuance only, the Administrative Agent shall promptly notify each Lender, of the contents thereof and of the amount of such Lender's participation in such proposed Facility LC. The issuance or Modification by the LC Issuer of any Facility LC shall, in addition to the conditions precedent set forth in Article IV (the satisfaction of which the LC Issuer shall have no duty to ascertain), be

subject to the conditions precedent that such Facility LC shall be satisfactory to the LC Issuer and that the Borrower shall have executed and delivered such application agreement and/or such other instruments and agreements relating to such Facility LC as the LC Issuer shall have reasonably requested (each, a "Facility LC Application"). In the event of any conflict between the terms of this Agreement and the terms of any Facility LC Application, the terms of this Agreement shall control.

- 2.20.4 LC Fees. The Borrower shall pay to the Administrative Agent, for the account of the Lenders ratably in accordance with their respective Revolving Loan Pro Rata Shares, a letter of credit fee at a per annum rate equal to the Applicable Margin for Eurodollar Loans in effect from time to time on the average daily undrawn stated amount under such Facility LC, such fee to be payable in arrears on each Payment Date. The Borrower shall also pay to the LC Issuer for its own account (x) at the time of issuance of each Facility LC which is a standby letter of credit, a fronting fee in an amount equal to 0.125% times the face amount of such Facility LC, (y) in connection with each Facility LC which is a commercial letter of credit, a fee in accordance with the LC Issuer's customary commissions for such letters of credit and (z) documentary and processing charges in connection with the issuance or Modification of and draws under Facility LCs in accordance with the LC Issuer's standard schedule for such charges as in effect from time to time. Each fee described in this Section 2.20.4 shall constitute an "LC Fee".

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- 2.20.5 Administration; Reimbursement by Lenders. Upon receipt from the beneficiary of any Facility LC of any demand for payment under such Facility LC, the LC Issuer shall notify the Administrative Agent and the Administrative Agent shall promptly notify the Borrower and each other Lender as to the amount to be paid by the LC Issuer as a result of such demand and the proposed payment date (the "LC Payment Date"). The responsibility of the LC Issuer to the Borrower and each Lender shall be only to determine that the documents (including each demand for payment) delivered under each Facility LC in connection with such presentment shall be in conformity in all material respects with such Facility LC. The LC Issuer shall endeavor to exercise the same care in the issuance and administration of the Facility LCs as it does with respect to letters of credit in which no participations are granted, it being understood that in the absence of any gross negligence or willful misconduct by the LC Issuer, each Lender shall be unconditionally and irrevocably liable without regard to the occurrence of any Default or any condition precedent whatsoever, to reimburse the LC Issuer on demand for (i) such Lender's Revolving Loan Pro Rata Share of the amount of each payment made by the LC Issuer under each Facility LC to the extent such amount is not reimbursed by the Borrower pursuant to Section 2.20.6 below, plus (ii) interest on the foregoing amount to be reimbursed by such Lender, for each day from the date of the LC Issuer's demand for such reimbursement (or, if such demand is made after 11:00 a.m. (Phoenix, Arizona time) on such date, from the next succeeding Business Day) to the date on which such Lender pays the amount to be reimbursed by it, at a rate of interest per annum equal to the Federal Funds Effective Rate for the first three days and, thereafter, at a rate of interest equal to the rate applicable to Floating Rate Advances.

- 2.20.6 Reimbursement by Borrower. The Borrower shall be irrevocably and unconditionally obligated to reimburse the LC Issuer on or before the applicable LC Payment Date for any amounts to be paid by the LC Issuer upon any drawing under any Facility LC, without presentment, demand, protest or other formalities of any kind; *provided* that neither the Borrower nor any Lender shall hereby be precluded from asserting any claim for direct (but not consequential) damages suffered by the Borrower or such Lender to the extent, but only to the extent, caused by (i) the willful misconduct or gross negligence of the LC Issuer in determining whether a request presented under any Facility LC issued by it complied with the terms of such Facility LC or (ii) the LC Issuer's failure to pay under any Facility LC issued by it after the presentation to it of a request strictly complying with the terms and conditions of such Facility LC. If the Borrower at any time fails to repay a Reimbursement Obligation pursuant to this Section 2.20, such unpaid Reimbursement Obligation shall at that time be automatically converted into an obligation and the Borrower shall be deemed to have elected to borrow a Revolving Loan from the Lenders, as of the date of the payment by the LC Issuer giving rise to the Reimbursement Obligation equal in amount to the amount of the unpaid Reimbursement Obligation. Such Revolving Loan shall be made as of the date of the payment giving rise to such Reimbursement Obligation, automatically, without notice and without any requirement to satisfy the conditions precedent otherwise applicable to a Revolving Loan if the Borrower shall have failed to make such payment to the Administrative Agent for the account of the LC Issuer prior to such time. Such Revolving Loan shall constitute a Floating Rate Advance and the proceeds of such Advance shall be used to repay such Reimbursement Obligation. If, for any reason, the Borrower fails to repay a Reimbursement Obligation on the day such Reimbursement Obligation arises and, for any reason, the Lenders are unable to make or have no obligation to make a Revolving Loan, then such Reimbursement Obligation shall bear interest from and after such day, until paid in full, at the interest rate applicable to a Floating Rate Advance. The Borrower agrees to indemnify the LC Issuer against any loss or expense determined by the LC Issuer in good faith to have resulted from any conversion pursuant to this Section 2.20 by reason of the inability of the LC Issuer to convert the amount received from the Borrower or from the Lenders, as applicable, into an amount equal to the amount of such Reimbursement Obligation. The LC Issuer will pay to each Lender ratably in accordance with its Revolving Loan Pro Rata Share all amounts received by it from the Borrower for application in payment, in whole or in part, of the Reimbursement Obligation in respect of any Facility LC issued by the LC Issuer, but only to the extent such Lender has made payment to the LC Issuer in respect of such Facility LC pursuant to Section 2.20.5.

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- 2.20.7 Obligations Absolute. The Borrower's obligations under this Section 2.20 shall be absolute and unconditional under any and all circumstances and irrespective of any setoff, counterclaim or defense to payment which the Borrower may have or have had against the LC Issuer, any Lender or any beneficiary of a Facility LC. The Borrower further agrees with the LC Issuer and the Lenders that the LC Issuer and the Lenders shall not be responsible for, and the Borrower's Reimbursement Obligation in respect of any Facility LC shall not be affected by, among other things, the validity or genuineness of documents or of any endorsements thereon, even if such documents should in fact prove to be in any or all respects invalid, fraudulent or forged, or any dispute between or among the Borrower, any of its Affiliates, the beneficiary of any Facility LC or any financing institution or other party to whom any Facility LC may be transferred or any claims or defenses whatsoever of the Borrower or of any of its Affiliates against the beneficiary of any Facility LC or any such transferee. The LC Issuer shall not be liable for any error, omission, interruption or delay in transmission, dispatch or delivery of any message or advice, however transmitted, in connection with any Facility LC. The Borrower agrees that any action taken or omitted by the LC Issuer or any Lender under or in connection with each Facility LC and the related drafts and documents, if done without gross negligence or willful misconduct, shall be binding upon the Borrower and shall not put the LC Issuer or any Lender under any liability to

the Borrower. Nothing in this Section 2.20.7 is intended to limit the right of the Borrower to make a claim against the LC Issuer for damages as contemplated by the proviso to the first sentence of Section 2.20.6.

- 2.20.8 Actions of LC Issuer. The LC Issuer shall be entitled to rely, and shall be fully protected in relying, upon any Facility LC, draft, writing, resolution, notice, consent, certificate, affidavit, letter, cablegram, telegram, telecopy, telex or teletype message, statement, order or other document believed by it to be genuine and correct and to have been signed, sent or made by the proper Person or Persons, and upon advice and statements of legal counsel, independent accountants and other experts selected by the LC Issuer. The LC Issuer shall be fully justified in failing or refusing to take any action under this Agreement unless it shall first have received such advice or concurrence of the Required Lenders as it reasonably deems appropriate or it shall first be indemnified to its reasonable satisfaction by the Lenders against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action. Notwithstanding any other provision of this Section 2.20, the LC Issuer shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement in accordance with a request of the Required Lenders, and such request and any action taken or failure to act pursuant thereto shall be binding upon the Lenders and any future holders of a participation in any Facility LC.
- 2.20.9 Indemnification. The Borrower hereby agrees to indemnify and hold harmless each Lender, the LC Issuer and the Administrative Agent, and their respective directors, officers, agents and employees (collectively, the "LC Indemnitees") from and against any and all claims and damages, losses, liabilities, costs or expenses which such Lender, the LC Issuer or the Administrative Agent may incur (or which may be claimed against such Lender, the LC Issuer or the Administrative Agent by any Person whatsoever) by reason of or in connection with the issuance, execution and delivery or transfer of or payment or failure to pay under any Facility LC or any actual or proposed use of any Facility LC, including, without limitation, any claims, damages, losses, liabilities, costs or expenses which the LC Issuer may incur by reason of or in connection with (i) the failure of any other Lender to fulfill or comply with its obligations to the LC Issuer hereunder (but nothing herein contained shall affect any rights the Borrower may have against any defaulting Lender) or (ii) by reason of or on account of the LC Issuer issuing any Facility LC which specifies that the term "Beneficiary" included therein includes any successor by operation of law of the named Beneficiary, but which Facility LC does not require that any drawing by any such successor Beneficiary be accompanied by a copy of a legal document, satisfactory to the LC Issuer, evidencing the appointment of such successor Beneficiary; *provided* that the Borrower shall not be required to indemnify any LC Indemnitee for any claims, damages, losses, liabilities, costs or expenses to the extent, but only to the extent, caused by (x) the willful misconduct or gross negligence of such LC Indemnitee or (y) the LC Issuer's failure to pay under any Facility LC after the presentation to it of a request strictly complying with the terms and conditions of such Facility LC. Nothing in this Section 2.20.9 is intended to limit the obligations of the Borrower under any other provision of this Agreement.

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- 2.20.10 Lenders' Indemnification. Each Lender shall, ratably in accordance with its Revolving Loan Pro Rata Share, indemnify the LC Issuer, its affiliates and their respective directors, officers, agents and employees (to the extent not reimbursed by the Borrower) against any cost, expense (including reasonable counsel fees and disbursements), claim, demand, action, loss or liability (except such as result from such indemnitees' gross negligence or willful misconduct or the LC Issuer's failure to pay under any Facility LC after the presentation to it of a request strictly complying with the terms and conditions of the Facility LC) that such indemnitees may suffer or incur in connection with this Section 2.20 or any action taken or omitted by such indemnitees hereunder.
- 2.20.11 Facility LC Collateral Account. The Borrower agrees that it will, upon the request of the Administrative Agent or the Required Lenders and until the final expiration date of any Facility LC and thereafter as long as any amount is payable to the LC Issuer or the Lenders in respect of any Facility LC, maintain a special collateral account pursuant to arrangements satisfactory to the Administrative Agent (the "Facility LC Collateral Account") at the Administrative Agent's office at the address specified pursuant to Article XIII, in the name of the Borrower but under the sole dominion and control of the Administrative Agent, for the benefit of the Lenders and in which the Borrower shall have no interest other than as set forth in Section 8.1. The Borrower hereby pledges, assigns and grants to the Administrative Agent, on behalf of and for the ratable benefit of the Lenders and the LC Issuer, a security interest in all of the Borrower's right, title and interest in and to all funds which may from time to time be on deposit in the Facility LC Collateral Account to secure the prompt and complete payment and performance of the Secured Obligations. The Administrative Agent will invest any funds on deposit from time to time in the Facility LC Collateral Account in certificates of deposit of JPMorgan having a maturity not exceeding 30 days. Nothing in this Section 2.20.11 shall either require the Borrower or any Guarantor to deposit any funds in the Facility LC Collateral Account or limit the right of the Administrative Agent to release any funds held in the Facility LC Collateral Account in each case other than as required by Section 2.2 or Section 8.1.
- 2.20.12 Rights as a Lender. In its capacity as a Lender, the LC Issuer shall have the same rights and obligations as any other Lender.

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### ARTICLE III

#### YIELD PROTECTION; TAXES

3.1. Yield Protection. If, on or after the Closing Date, the adoption of any law or any governmental or quasi-governmental rule, regulation, policy, guideline or directive (whether or not having the force of law), or any change in any such law, rule, regulation, policy, guideline or directive or in the interpretation or administration thereof by any governmental or quasi-governmental authority, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by any Lender or applicable Lending Installation or the LC Issuer with any request or directive (whether or not having the force of law) of any such authority, central bank or comparable agency:

- (i) subjects any Lender or any applicable Lending Installation or the LC Issuer to any additional Taxes, or changes the basis of taxation of payments (other than with respect to Excluded Taxes) to any Lender or the LC Issuer in respect of its Revolving Loan Commitments, Eurodollar Loans,

- (ii) imposes or increases or deems applicable any reserve, assessment, insurance charge, special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by, any Lender or any applicable Lending Installation or the LC Issuer (other than reserves and assessments taken into account in determining the interest rate applicable to Eurodollar Advances), or
- (iii) imposes any other condition (other than with respect to Taxes) the result of which is to increase the cost to any Lender or any applicable Lending Installation of making, funding or maintaining its Revolving Loan Commitment or Eurodollar Loans or of issuing or participating in Facility LCs, or reduces any amount receivable by any Lender or any applicable Lending Installation or the LC Issuer in connection with its Revolving Loan Commitment or Eurodollar Loans or Facility LCs (including participations therein), or requires any Lender or any applicable Lending Installation or the LC Issuer to make any payment calculated by reference to the amount of Revolving Loan Commitment or Eurodollar Loans or Facility LCs (including participations therein) held or interest or LC Fees received by it, by an amount deemed material by such Lender or the LC Issuer, as applicable.

and the result of any of the foregoing is to increase the cost to such Lender or applicable Lending Installation or the LC Issuer of making or maintaining its Eurodollar Loans or Revolving Loan Commitment or of issuing or participating in Facility LCs, as applicable, or to reduce the return received by such Lender or applicable Lending Installation or LC Issuer in connection with such Eurodollar Loans or Revolving Loan Commitment, or Facility LCs (including participations therein), then, within 15 days of demand, accompanied by the written statement required by Section 3.6, by such Lender or LC Issuer, the Borrower shall pay such Lender or LC Issuer such additional amount or amounts as will compensate such Lender or LC Issuer for such increased cost or reduction in amount received; provided that the Borrower shall not be required to compensate any Lender or LC Issuer pursuant to this subsection for any increased cost or reduction in respect of a period occurring more than six months prior to the date that such Lender or LC Issuer notifies the Borrower of such intention to claim compensation therefor unless the circumstances giving rise to such increased cost or reduction became applicable retroactively, in which case no such time limitation shall apply so long as such Lender or LC Issuer requests compensation within six months from the date such circumstances become applicable.

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3.2. Changes in Capital Adequacy Regulations. If a Lender or LC Issuer determines the amount of capital required or expected to be maintained by such Lender or LC Issuer, any Lending Installation of such Lender or LC Issuer or any corporation controlling such Lender or LC Issuer is increased as a result of a Change, then, within 15 days of demand, accompanied by the written statement required by Section 3.6, by such Lender or LC Issuer, the Borrower shall pay such Lender or LC Issuer the amount necessary to compensate for any shortfall in the rate of return on the portion of such increased capital which such Lender or LC Issuer determines is attributable to this Agreement, its Outstanding Revolving Credit Exposure, its Revolving Loan Commitment to make Revolving Loans and issue or participate in Facility LCs, as applicable, hereunder (after taking into account such Lender's or LC Issuer's policies as to capital adequacy). "Change" means (i) any change after the Closing Date in the Risk-Based Capital Guidelines or (ii) any adoption of, or change in, or change in the interpretation or administration of any other law, governmental or quasi-governmental rule, regulation, policy, guideline, interpretation, or directive (whether or not having the force of law) after the Closing Date which affects the amount of capital required or expected to be maintained by any Lender or LC Issuer or any Lending Installation or any corporation controlling any Lender or LC Issuer. "Risk-Based Capital Guidelines" means (i) the risk-based capital guidelines in effect in the United States on the Closing Date, including transition rules, and (ii) the corresponding capital regulations promulgated by regulatory authorities outside the United States implementing the July 1988 report of the Basle Committee on Banking Regulation and Supervisory Practices Entitled "International Convergence of Capital Measurements and Capital Standards," including transition rules, and any amendments to such regulations adopted prior to the Closing Date; provided that the Borrower shall not be required to compensate any Lender or LC Issuer pursuant to this Section for any reduction in respect of a period occurring more than six months prior to the date of such notification of the intent to claim compensation therefor unless the circumstances giving rise to such reduction become applicable retroactively in which case no such time limitation shall apply so long as such Lender or LC issuer requests compensation within six months from the date such circumstances become applicable.

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3.3. Availability of Types of Advances. If (x) any Lender determines that maintenance of its Eurodollar Loans at a suitable Lending Installation would violate any applicable law, rule, regulation, or directive, whether or not having the force of law, or (y) the Required Lenders determine in good faith that (i) deposits of a type and maturity appropriate to match fund Eurodollar Advances are not available or (ii) the interest rate applicable to Eurodollar Advances does not accurately reflect the cost of making or maintaining Eurodollar Advances, or (iii) no reasonable basis exists for determining the Eurodollar Base Rate, then the Administrative Agent shall suspend the availability of Eurodollar Advances and require any affected Eurodollar Advances to be repaid or converted to Floating Rate Advances on the respective last days of the then current Interest Periods with respect to such Revolving Loans or within such earlier period as required by law, subject to the payment of any funding indemnification amounts required by Section 3.4.

3.4. Funding Indemnification. If any payment of a Eurodollar Advance occurs on a date which is not the last day of the applicable Interest Period, whether because of acceleration, prepayment or otherwise, or a Eurodollar Advance is not made or continued, or a Floating Rate Advance is not converted into a Eurodollar Advance, on the date specified by the Borrower for any reason other than default by the Lenders, or a Eurodollar Advance is not prepaid on the date specified by the Borrower for any reason, the Borrower, upon notice from, or on behalf of, any Lender will promptly compensate each Lender for any loss or cost incurred by it resulting therefrom, including, without limitation, any loss or cost in liquidating or employing deposits acquired to fund or maintain such Eurodollar Advance.

3.5. Taxes.

- (i) All payments by the Borrower to or for the account of any Lender or the LC Issuer or the Administrative Agent hereunder or under any Note shall be made free and clear of and without deduction for any and all Taxes. If the Borrower shall be required by law to deduct any Taxes from or in respect of any sum payable hereunder to any Lender, LC Issuer or the Administrative Agent, (a) the sum payable shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 3.5) such Lender, LC Issuer or the Administrative Agent (as the case may be) receives an amount equal to the sum it would have received had no such deductions been made, (b) the Borrower shall make such deductions, (c) the Borrower shall pay the full amount deducted to the relevant authority

in accordance with applicable law and (d) the Borrower shall furnish to the Administrative Agent the original copy of a receipt evidencing payment thereof or, if a receipt cannot be obtained with reasonable efforts, such other evidence of payment as is reasonably acceptable to the Administrative Agent, in each case within 30 days after such payment is made; provided that no such additional amount shall be required to be paid under this Section except to the extent that any change after the date such Lender, LC Issuer or the Administrative Agent became a Lender, LC Issuer or Administrative Agent results in an increase in the rate of such deduction, withholding or payment from that in effect at the date on which such Lender, LC Issuer or Administrative Agent became a Lender, LC Issuer or Administrative Agent.

- (ii) In addition, the Borrower shall pay any present or future stamp or documentary taxes and any other excise or property taxes, charges or similar levies which arise from any payment made hereunder or under any Note or Facility LC Application or from the execution or delivery of, or otherwise with respect to, this Agreement or any Note or Facility LC Application (“Other Taxes”).
- (iii) The Borrower shall indemnify the Administrative Agent, the LC Issuer and each Lender for the full amount of Taxes or Other Taxes (including, without limitation, any Taxes or Other Taxes imposed on amounts payable under this Section 3.5) paid by the Administrative Agent, the LC Issuer or such Lender as a result of its Revolving Loan Commitment, any Credit Extensions made by it hereunder, any Facility LC issued or participated in by it hereunder, or otherwise in connection with its participation in this Agreement and any liability (including penalties, interest and expenses) arising therefrom or with respect thereto. Payments due under this indemnification shall be made within 30 days of the date the Administrative Agent, the LC Issuer or such Lender makes demand therefor pursuant to Section 3.6.
- (iv) Each Lender that is not incorporated under the laws of the United States of America or a state thereof (each a “Non-U.S. Lender”) agrees that it will, not more than ten Business Days after the date on which it becomes a party to this Agreement (but in any event before a payment is due to it hereunder), (i) deliver to each of the Borrower and the Administrative Agent two duly completed copies of United States Internal Revenue Service Form W-8BEN or W-8ECI, certifying in either case that such Lender is entitled to receive payments under this Agreement without deduction or withholding of any United States federal income taxes, or (ii) in the case of a Non-U.S. Lender that is fiscally transparent, deliver to the Administrative Agent a United States Internal Revenue Form W-8IMY together with the applicable accompanying forms, W-8 or W-9, as the case may be, and certify that it is entitled to an exemption from United States backup withholding tax. Each Non-U.S. Lender further undertakes to deliver to each of the Borrower and the Administrative Agent (x) renewals or additional copies of such form (or any successor form) on or before the date that such form expires or becomes obsolete, and (y) after the occurrence of any event requiring a change in the most recent forms so delivered by it, such additional forms or amendments thereto as may be reasonably requested by the Borrower or the Administrative Agent. All forms or amendments described in the preceding sentence shall certify that such Lender is entitled to receive payments under this Agreement without deduction or withholding of any United States federal income taxes, *unless* an event (including without limitation any change in treaty, law or regulation) has occurred prior to the date on which any such delivery would otherwise be required which renders all such forms inapplicable or which would prevent such Lender from duly completing and delivering any such form or amendment with respect to it and such Lender advises the Borrower and the Administrative Agent that it is not capable of receiving payments without any deduction or withholding of United States federal income tax.

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- (v) For any period during which a Non-U.S. Lender has failed to provide the Borrower with an appropriate form pursuant to clause (iv) above (unless such failure is due to a change in treaty, law or regulation, or any change in the interpretation or administration thereof by any governmental authority, occurring subsequent to the date on which a form originally was required to be provided), such Non-U.S. Lender shall not be entitled to indemnification under this Section 3.5 with respect to Taxes imposed by the United States; *provided* that, should a Non-U.S. Lender which is otherwise exempt from or subject to a reduced rate of withholding tax become subject to Taxes because of its failure to deliver a form required under clause (iv) above, the Borrower shall take such commercially reasonable steps as such Non-U.S. Lender shall reasonably request to assist such Non-U.S. Lender to recover such Taxes at such Non U.S. Lender’s cost and expense.
  - (vi) Any Lender that is entitled to an exemption from or reduction of withholding tax with respect to payments under this Agreement or any Note pursuant to the law of any relevant jurisdiction or any treaty shall deliver to the Borrower (with a copy to the Administrative Agent), at the time or times prescribed by applicable law, such properly completed and executed documentation prescribed by applicable law as will permit such payments to be made without withholding or at a reduced rate.
  - (vii) If the U.S. Internal Revenue Service or any other governmental authority of the United States or any other country or any political subdivision thereof asserts a claim that the Administrative Agent did not properly withhold tax from amounts paid to or for the account of any Lender (because the appropriate form was not delivered or properly completed, because such Lender failed to notify the Administrative Agent of a change in circumstances which rendered its exemption from withholding ineffective, or for any other reason), such Lender shall indemnify the Administrative Agent fully for all amounts paid, directly or indirectly, by the Administrative Agent as tax, withholding therefor, or otherwise, including penalties and interest, and including taxes imposed by any jurisdiction on amounts payable to the Administrative Agent under this subsection, together with all costs and expenses related thereto (including attorneys fees and time charges of attorneys for the Administrative Agent, which attorneys may be employees of the Administrative Agent). The obligations of the Lenders under this Section 3.5(vii) shall survive the payment of the Obligations and termination of this Agreement.

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3.6. Lender Statements; Survival of Indemnity. Each Lender shall deliver a written statement of such Lender to the Borrower (with a copy to the Administrative Agent) as to the amount due, if any, under Section 3.1, 3.2, 3.4 or 3.5. Such written statement shall set forth in reasonable detail the calculations upon which such Lender determined such amount and shall be final, conclusive and binding on the Borrower in the absence of manifest error. Determination of amounts payable under such Sections in connection with a Eurodollar Loan shall be calculated as though each Lender funded its Eurodollar Loan through the purchase of a deposit of the type, currency and maturity corresponding to the deposit used as a reference in determining the Eurodollar Rate applicable to such Loan, whether in fact that is the case or not. Unless otherwise provided herein, the amount specified in the written statement of any Lender shall be payable on demand after receipt by the Borrower of such written statement. The obligations of the Borrower under Sections 3.1, 3.2, 3.4 and 3.5 shall survive payment of the Obligations and termination of this Agreement.

3.7. Alternative Lending Installation. To the extent reasonably possible, each Lender shall designate an alternate Lending Installation with respect to its Eurodollar Loans to reduce any liability of the Borrower to such Lender under Sections 3.1, 3.2 and 3.5 or to avoid the unavailability of Eurodollar Advances under Section 3.3, so long as such designation is not, in the judgment of such Lender, reasonably and materially disadvantageous to such Lender. A Lender's designation of an alternative Lending Installation shall not affect the Borrower's rights under Section 2.19 to replace a Lender.

## ARTICLE IV

### CONDITIONS PRECEDENT

4.1. Initial Credit Extension. The Lenders shall not be required to make the initial Credit Extension hereunder, unless the following conditions precedent have been satisfied and, if applicable, the Borrower has furnished to the Administrative Agent with sufficient copies for the Lenders:

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- 4.1.1 Copies of the articles or certificate of incorporation (or the equivalent thereof) of each initial Credit Party, in each case, together with all amendments thereto, and a certificate of good standing, each certified by the appropriate governmental officer in its jurisdiction of organization, as well as any other information required by Section 326 of the USA Patriot Act, 31 U.S.C. Section 5318 or otherwise necessary for the Administrative Agent or any Lender to verify the identity of such Credit Party as required by Section 326 of the USA Patriot Act, 31 U.S.C. Section 5318.
  - 4.1.2 Copies, certified by the Secretary or Assistant Secretary (or the equivalent thereof) of each initial Credit Party, in each case, of its by-laws and of its Board of Directors' resolutions and of resolutions or actions of any other body authorizing the execution of the Loan Documents to which such Credit Party is a party.
  - 4.1.3 An incumbency certificate, executed by the Secretary or Assistant Secretary (or the equivalent thereof) of each initial Credit Party, in each case, which shall identify by name and title and bear the signatures of the Authorized Officers and any other officers of such Credit Party authorized to sign the Loan Documents to which such Credit Party is party, upon which certificate the Administrative Agent and the Lenders shall be entitled to rely until informed of any change in writing by such Credit Party.
  - 4.1.4 A certificate signed by the chief financial officer of the Borrower, stating that on the initial Credit Extension Date (a) no Default or Unmatured Default has occurred and is continuing, (b) all of the representations and warranties in Article V shall be true and correct in all material respects as of such date and (c) no material adverse change in the business, Property, condition (financial or otherwise), operations or results of operations or prospects of the Borrower or any of its Subsidiaries has occurred since December 31, 2004.
  - 4.1.5 A written opinion of the initial Credit Parties' counsel, in form and substance reasonably satisfactory to the Administrative Agent and addressed to the Lenders, in substantially the form of Exhibit A.
  - 4.1.6 Any Notes requested by a Lender pursuant to Section 2.13 payable to the order of each such requesting Lender.
  - 4.1.7 Written money transfer instructions, in substantially the form of Exhibit D, addressed to the Administrative Agent and signed by an Authorized Officer, together with such other related money transfer authorizations as the Administrative Agent may have reasonably requested.
  - 4.1.8 The Administrative Agent shall have determined that (i) there is an absence of any material adverse change or disruption in primary or secondary loan syndication markets, financial markets or in capital markets generally that would likely impair syndication of the Credit Extensions hereunder, (ii) the Borrower has cooperated with the Administrative Agent's syndication efforts, including, without limitation, by providing the Administrative Agent with information regarding the Borrower's operations and prospects and such other information as the Administrative Agent deems necessary to successfully syndicate the Credit Extensions hereunder and (iii) no material adverse change in the business, condition (financial or otherwise), operations, performance, properties or prospects of (a) the Borrower or any of the Borrower's Subsidiaries since December 31, 2004 or (b) the Jefferson Capital Acquired Assets since May 31, 2005.

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- 4.1.9 An initial compliance certificate, dated as of the Closing Date, in substantially the form of Exhibit B hereto, with such adjustments and amendments as are mutually acceptable to the Borrower and the Administrative Agent.
  - 4.1.10 The Administrative Agent and the Lenders shall have received, in form and substance satisfactory to the Administrative Agent, pro forma financial statement projections for each fiscal quarter and fiscal year through the Borrower's fiscal year ending on or about December 31, 2007 ("Projections"), together with such information as the Administrative Agent and the Lenders may reasonably request to confirm the tax, legal, and business assumptions made in such Projections, such Projections demonstrating, in the reasonable judgment of the Administrative Agent and the Lenders, together with all other information then available to the Administrative Agent and the Lenders, that the Borrower and its Subsidiaries have the ability to repay their debts and satisfy the respective other obligations as and when due and to comply with Sections 6.21 through 6.24 and Section 6.31.
  - 4.1.11 The Administrative Agent and the Lenders shall have received a certificate from the Chief Financial Officer of the Borrower certifying that the Borrower is solvent and will be solvent subsequent to incurring the Indebtedness hereunder (including the Credit Extensions to finance the Jefferson Capital Acquisition), will be able to pay its debts and liabilities as they become due and will not be left with unreasonably small capital with which to engage in its businesses.
  - 4.1.12 The Administrative Agent shall have received evidence reasonably satisfactory to the Administrative Agent of the termination of the Existing Financing Arrangements and the agreements relating thereto, all taking effect concurrently with the effectiveness of this



- 4.1.13 No order, judgment or decree of any arbitrator or Governmental Authority shall purport to enjoin or restrain (i) any Lender from making the initial Credit Extension and (ii) the Jefferson Capital Acquisition.

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4.1.14 The Administrative Agent shall have received:

- (i) audited financial statements of the Borrower for the fiscal year ended December 31, 2004 and (ii) unaudited financial statements of the Borrower for the fiscal quarter ended March 31, 2005; and
- (ii) evidence satisfactory to the Administrative Agent that Jefferson Capital's and Borrower's respective directors shall have approved the Jefferson Capital Acquisition; and all regulatory and legal approvals for the Jefferson Capital Acquisition shall have been obtained.

4.1.15 The amounts and forms of consideration paid in connection with the Jefferson Capital Acquisition shall be acceptable to the Administrative Agent and the Jefferson Capital Acquisition shall be consummated on the terms reasonably acceptable to the Administrative Agent substantially concurrently with the initial funding under this Agreement.

4.1.16 The agreement or agreements evidencing the Jefferson Capital Acquisition (collectively, the "Acquisition Agreement") must contain terms and conditions which are acceptable the Administrative Agent (including, without limitation, the consideration to be paid in the Jefferson Capital Acquisition), the representations and warranties in the Acquisition Agreement shall be accurate as of the date of the Jefferson Capital Acquisition closing and the conditions therein shall have been satisfied or waived with the consent of the Administrative Agent.

4.1.17 The Borrower shall have demonstrated, to the Administrative Agent's reasonable satisfaction, pro forma compliance with all financial covenants set forth in the Loan Documents.

4.1.18 The Borrower shall have provided, to the Administrative Agent's reasonable satisfaction, documentation describing the sources and uses of funds necessary for the consummation of the Jefferson Capital Acquisition.

4.1.19 Such other documents as the Administrative Agent or its counsel may have reasonably requested, including, without limitation, those documents set forth in Exhibit G hereto.

4.2. Each Credit Extension. The Lenders shall not (except as otherwise set forth in Section 2.4.4 with respect to Revolving Loans extended for the purpose of repaying Swing Line Loans) be required to make any Credit Extension unless on the applicable Credit Extension Date:

4.2.1 There exists no Default or Unmatured Default.

4.2.2 The representations and warranties contained in Article V are true and correct as of such Credit Extension Date except to the extent any such representation or warranty is stated to relate solely to an earlier date, in which case such representation or warranty shall have been true and correct on and as of such earlier date.

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4.2.3 No order, judgment or decree of any arbitrator or Governmental Authority shall purport to enjoin or restrain any Lender from making such Credit Extension.

4.2.4 If, after giving to effect to such Credit Extension and any repayment of Loans to be made on the date such Credit Extension is made, the Aggregate Outstanding Revolving Credit Exposure will be increased above the amount of the Borrowing Base as shown on the then most recently delivered Borrowing Base Certificate, the Lenders and the Administrative Agent shall have received an updated Borrowing Base Certificate as of a later date demonstrating Borrowing Base availability to support such increased Aggregate Outstanding Revolving Credit Exposure.

Each Borrowing Notice or Swing Line Borrowing Notice, as the case may be, or request for issuance of a Facility LC, with respect to each such Credit Extension shall constitute a representation and warranty by the Borrower that the conditions contained in Sections 4.2.1, 4.2.2, 4.2.3 and 4.2.4 have been satisfied. The Administrative Agent may require a duly completed compliance certificate in substantially the form of Exhibit B as a condition to making a Credit Extension.

## ARTICLE V

### REPRESENTATIONS AND WARRANTIES

The Borrower represents and warrants to each Lender and the Administrative Agent as of each of (i) the Closing Date, (ii) the date of the initial Credit Extension hereunder (if different from the Closing Date) and (iii) each date as required by Section 4.2:

5.1. Existence and Standing. Each of the Borrower and its Subsidiaries is a corporation, partnership (in the case of Subsidiaries only) or limited liability company duly and properly incorporated or organized, as the case may be, validly existing and (to the extent such concept applies to such entity) in good standing

under the laws of its jurisdiction of incorporation or organization and has all requisite authority to conduct its business in each jurisdiction in which its business is conducted.

5.2. Authorization and Validity. The Borrower has the power and authority and legal right to execute and deliver the Loan Documents to which it is a party and to perform its obligations thereunder. The execution and delivery by the Borrower of the Loan Documents to which it is a party and the performance of its obligations thereunder have been duly authorized by proper proceedings, and the Loan Documents to which the Borrower is a party constitute legal, valid and binding obligations of the Borrower enforceable against the Borrower in accordance with their terms, except as enforceability may be limited by (i) bankruptcy, insolvency, fraudulent conveyances, reorganization or similar laws relating to or affecting the enforcement of creditors' rights generally; (ii) general equitable principles (whether considered in a proceeding in equity or at law); and (iii) requirements of reasonableness, good faith and fair dealing.

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5.3. No Conflict; Government Consent. Neither the execution and delivery by the Borrower or its Subsidiaries, as applicable, of the Loan Documents to which such Person is a party, nor the consummation of the transactions therein contemplated, nor compliance with the provisions thereof will violate (i) any law, rule, regulation, order, writ, judgment, injunction, decree or award binding on the Borrower or any of its Subsidiaries or (ii) the Borrower's or any Subsidiary's articles or certificate of incorporation, partnership agreement, certificate of partnership, articles or certificate of organization, by-laws, or operating agreement or other management agreement, as the case may be, or (iii) the provisions of any indenture, instrument or agreement to which the Borrower or any of its Subsidiaries is a party or is subject, or by which it, or its Property, is bound, or conflict with, or constitute a default thereunder, or result in, or require, the creation or imposition of any Lien in, of or on the Property of the Borrower or a Subsidiary pursuant to the terms of, any such indenture, instrument or agreement. No order, consent, adjudication, approval, license, authorization, or validation of, or filing, recording or registration with, or exemption by, or other action in respect of any governmental or public body or authority, or any subdivision thereof, which has not been obtained by the Borrower or any of its Subsidiaries, is required to be obtained by the Borrower or any of its Subsidiaries in connection with the execution and delivery of the Loan Documents, the borrowings under this Agreement, the payment and performance by the Borrower of the Obligations or the legality, validity, binding effect or enforceability of any of the Loan Documents.

5.4. Financial Statements. The December 31, 2004 audited consolidated financial statements of the Borrower and its Subsidiaries heretofore delivered to the Administrative Agent and the Lenders were prepared in accordance with generally accepted accounting principles in effect on the date such statements were prepared and fairly present the consolidated financial condition and operations of the Borrower and its Subsidiaries at such date and the consolidated results of their operations for the period then ended.

5.5. Material Adverse Change. Since December 31, 2004, there has been no change in the business, Property, prospects, condition (financial or otherwise) or results of operations of the Borrower, any Guarantor, or the Borrower and its Subsidiaries taken together, in each case which could reasonably be expected to have a Material Adverse Effect.

5.6. Taxes. Except as disclosed on Schedule 5.6, the Borrower and its Subsidiaries have filed all United States federal tax returns and all other tax returns which are required to be filed and have paid all taxes due pursuant to said returns or pursuant to any assessment received by the Borrower or any of its Subsidiaries, except in respect of such taxes, if any, as are being contested in good faith and as to which adequate reserves have been provided in accordance with Agreement Accounting Principles and as to which no Lien exists (except as permitted by Section 6.15.1). Except as disclosed on Schedule 5.6, the United States income tax returns of the Borrower and its Subsidiaries have not been audited by the Internal Revenue Service. No Liens have been filed and no claims are being asserted with respect to such taxes. The charges, accruals and reserves on the books of the Borrower and its Subsidiaries in respect of any taxes or other governmental charges are adequate.

5.7. Litigation and Contingent Obligations. There is no litigation, arbitration, governmental investigation, proceeding or inquiry pending or, to the knowledge of any of their officers, threatened against or affecting the Borrower or any of its Subsidiaries which could reasonably be expected to have a Material Adverse Effect or which seeks to prevent, enjoin or delay the making of any Credit Extensions. Other than liabilities incident to any litigation, arbitration or proceeding which could not reasonably be expected to be in an aggregate amount in excess of \$3,000,000, the Borrower has no material contingent obligations not provided for or disclosed in the financial statements referred to in Section 5.4.

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5.8. Subsidiaries. Schedule 5.8 contains an accurate list of all Subsidiaries of the Borrower as of the date of this Agreement, setting forth their respective jurisdictions of organization and the percentage of their respective capital stock or other ownership interests owned by the Borrower or other Subsidiaries. All of the issued and outstanding shares of capital stock or other ownership interests of such Subsidiaries have been (to the extent such concepts are relevant with respect to such ownership interests) duly authorized and issued and are fully paid and non-assessable. No Inactive Subsidiary owns any assets (other than as disclosed to the Administrative Agent on the Closing Date), conducts any business or is the obligor under any Indebtedness or other liabilities.

5.9. ERISA. The Unfunded Liabilities of all Single Employer Plans do not in the aggregate exceed \$1,000,000. Neither the Borrower nor any other member of the Controlled Group has incurred, or is reasonably expected to incur, pursuant to Section 4201 of ERISA, any withdrawal liability to Multiemployer Plans in excess of an amount that would have a Material Adverse Effect. Each Plan complies in all material respects with all applicable requirements of law and regulations. No Reportable Event has occurred with respect to any Plan. Neither the Borrower nor any other member of the Controlled Group has withdrawn from any Multiemployer Plan within the meaning of Title IV of ERISA or initiated steps to do so, and no steps have been taken to reorganize or terminate, within the meaning of Title IV of ERISA, any Multiemployer Plan.

5.10. Accuracy of Information. No Loan Document or written statement furnished by the Borrower or any of its Subsidiaries to the Administrative Agent or to any Lender in connection with the negotiation of, or compliance with, the Loan Documents contained, on the date such Loan Document was entered into or such statements were made, any material misstatement of fact or omitted to state a material fact or any fact necessary to make the statements contained therein, in light of the circumstances under which they were made, not misleading in their presentation of the Borrower, its Subsidiaries, their businesses and their Property. The Borrower makes no representation or warranty concerning the forecasts, estimates, pro forma information, projections and statements as to anticipated future performance or conditions, and the assumptions on which they were based, except that as of the date made (i) such forecasts, estimates, pro forma information, projections and statements were based on good faith assumptions of the management of the Borrower and (ii) such assumptions were believed by such management to be reasonable; it being understood and agreed that such forecasts, estimates, pro forma information, projections and statements, and the assumptions on which they are based, may or may not prove to be correct. In addition, the information provided by or on behalf of the Credit Parties with respect to the Receivables owned or to be acquired by the Credit Parties (or the related purchase agreements) is, to the Borrower's knowledge and as of the date provided, true and correct in all material respects and, to the Borrower's knowledge, does not contain any material omissions which would cause such information to be materially misleading with respect to such Receivables, taken as a whole.

5.11. Regulation U. Neither the Borrower nor any of its Subsidiaries is engaged principally, or as one of its important activities, in the business of extending credit for the purpose, whether immediate, incidental or ultimate of buying or carrying margin stock (as defined in Regulation U), and after applying the proceeds of each Credit Extension, margin stock (as defined in Regulation U) constitutes less than 25% of the value of those assets of the Borrower and its Subsidiaries which are subject to any limitation on sale, pledge, or any other restriction hereunder.

5.12. Material Agreements. Except as described in Schedule 5.12, neither the Borrower nor any Subsidiary is a party to any agreement or instrument or subject to any charter or other corporate restriction which could reasonably be expected to have a Material Adverse Effect. Neither the Borrower nor any Subsidiary is in default in any material respect in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any (i) agreement or instrument to which it is a party, which default could reasonably be expected to have a Material Adverse Effect or (ii) any agreement or instrument evidencing or governing Indebtedness for borrowed money.

5.13. Compliance With Laws. The Borrower and its Subsidiaries have complied in all material respects with all applicable statutes, rules, regulations, orders and restrictions of any domestic or foreign government or any instrumentality or agency thereof having jurisdiction over the conduct of their respective businesses or the ownership of their respective Property.

5.14. Ownership of Properties. The Borrower and its Subsidiaries have good title, free of all Liens other than those permitted by Section 6.15, to all of the Property and assets reflected in the Borrower's most recent consolidated financial statements provided to the Administrative Agent, as owned by the Borrower and its Subsidiaries, except for minor irregularities in title with respect to Receivables that do not materially interfere with the business or operations of the Borrower or its Subsidiaries as presently conducted.

5.15. Plan Assets; Prohibited Transactions. The Borrower is not an entity deemed to hold "plan assets" within the meaning of 29 C.F.R. § 2510.3-101 of an employee benefit plan (as defined in Section 3(3) of ERISA) which is subject to Title I of ERISA or any plan (within the meaning of Section 4975 of the Code), and neither the execution of this Agreement nor the making of Loans hereunder gives rise to a prohibited transaction within the meaning of Section 406 of ERISA or Section 4975 of the Code.

5.16. Environmental Matters. Given the nature of its business, the Borrower has concluded that Environmental Laws cannot reasonably be expected to have a Material Adverse Effect. Neither the Borrower nor any Subsidiary has received any notice to the effect that its operations are not in material compliance with any of the requirements of applicable Environmental Laws or are the subject of any federal or state investigation evaluating whether any remedial action is needed to respond to a release of any toxic or hazardous waste or substance into the environment, which non-compliance or remedial action could reasonably be expected to have a Material Adverse Effect.

5.17. Investment Company Act. Neither the Borrower nor any Subsidiary is an "investment company" or a company "controlled" by an "investment company", within the meaning of the Investment Company Act of 1940, as amended.

5.18. Public Utility Holding Company Act. The Borrower is not a "holding company" as such term is defined in the Public Utility Holding Company Act of 1935, as amended.

5.19. Insurance. The Borrower maintains, and has caused each Subsidiary to maintain, with financially sound and reputable insurance companies insurance on their Property as necessary to conduct their business in such amounts, subject to such deductibles and self-insurance retentions and covering such properties and risks as is consistent with sound business practice.

5.20. No Default or Unmatured Default. No Default or Unmatured Default has occurred and is continuing.

5.21. SDN List Designation. Neither the Borrower nor any of its Subsidiaries or Encore Affiliates is a country, individual or entity named on the Specifically Designated National and Blocked Persons (SDN) list issued by the Office of Foreign Asset Control of the Department of the Treasury of the United States of America.

## ARTICLE VI

### COVENANTS

During the term of this Agreement, unless the Required Lenders shall otherwise consent in writing:

6.1. Financial Reporting. The Borrower will maintain, for itself and each Subsidiary, a system of accounting established and administered in accordance with generally accepted accounting principles, and furnish to the Lenders:

- 6.1.1 Within 90 days after the close of each of its fiscal years, financial statements prepared in accordance with Agreement Accounting Principles on a consolidated basis for itself and its Subsidiaries, including balance sheets as of the end of such period, statements of income and statements of cash flows, accompanied by (a) an audit report, unqualified as to scope, of BDO Seidman or another nationally recognized firm of independent public accountants or other independent public accountants reasonably acceptable to the Required Lenders (provided that so long as the Borrower is a reporting company, delivery of the Form 10-K filed by the Borrower with respect to a fiscal year as promptly as practicable but in no event later than 5 Business Days after the filing thereof shall satisfy the requirement for the annual audit report and consolidated financial statements for such fiscal year under this Section), (b) any management letter prepared by said accountants and (c) a certificate of said accountants that, in the course of their examination necessary for their certification of the foregoing, they have obtained no knowledge of any Default, or if, in the opinion of such accountants, any Default shall exist, stating the nature and status thereof.

- 6.1.2 Within 45 days after the close of the first three quarterly periods of each of its fiscal years, for itself and its Subsidiaries, consolidated unaudited balance sheets as at the close of each such period and consolidated statements of income and a statement of cash flows for the period from the beginning of such fiscal year to the end of such quarter, all certified as to fairness of presentation, compliance with Agreement Accounting Principles and consistency by its chief financial officer or treasurer (provided that so long as the Borrower is a reporting company, delivery of the Form 10-Q filed by the Borrower with respect to a fiscal quarter as promptly as practicable but in no event later than 5 Business Days after the filing thereof shall satisfy the requirement for certified quarterly consolidated financial statements for such fiscal quarter under this Section).
- 6.1.3 Together with the financial statements required under Sections 6.1.1 and 6.1.2, a compliance certificate in substantially the form of Exhibit B signed by its chief financial officer or treasurer showing the calculations necessary to determine compliance with the relevant provisions of this Agreement, an officer's certificate in substantially the form of Exhibit F stating that no Default or Unmatured Default exists, or if any Default or Unmatured Default exists, stating the nature and status thereof, and a certificate executed and delivered by the chief executive officer or chief financial officer stating that the Borrower and each of its principal officers are in compliance with all requirements of Section 302 and Section 906 of the Sarbanes-Oxley Act of 2002 and all rules and regulations related thereto (provided that so long as the Borrower is a reporting company, delivery of the certificates required pursuant to Section 302 and 906 of the Sarbanes-Oxley Act of 2002 as contained in the form 10-K or Form 10-Q filed by the Borrower and delivered pursuant to Section 6.1.1 or 6.1.2 shall satisfy the requirement for such certification of compliance with the Sarbanes-Oxley Act under this Section).
- 6.1.4 Within 270 days after the close of each fiscal year of the Borrower during which the Borrower maintained a Single Employer Plan, a copy of the actuarial report showing the Unfunded Liabilities of each Single Employer Plan as of the valuation date occurring in such fiscal year, certified by an actuary enrolled under ERISA, if applicable.
- 6.1.5 As soon as possible and in any event within 10 days after the Borrower knows that any Reportable Event has occurred with respect to any Plan, a statement, signed by the chief financial officer or treasurer of the Borrower, describing said Reportable Event and the action which the Borrower proposes to take with respect thereto.
- 6.1.6 As soon as possible and in any event within 10 days after receipt by the Borrower, a copy of (a) any notice or claim to the effect that the Borrower or any of its Subsidiaries is or may be liable to any Person as a result of the release by the Borrower, any of its Subsidiaries, or any other Person of any toxic or hazardous waste or substance into the environment, and (b) any notice alleging any violation of any federal, state or local environmental, health or safety law or regulation by the Borrower or any of its Subsidiaries, which, in either case, could reasonably be expected to have a Material Adverse Effect.

- 6.1.7 Promptly upon the filing thereof, copies of all registration statements and annual, quarterly, monthly or other regular reports which the Borrower or any of its Subsidiaries files with the Securities and Exchange Commission, including, without limitation, all certifications and other filings required by Section 302 and Section 906 of the Sarbanes-Oxley Act of 2002 and all rules and regulations related thereto.
- 6.1.8 As soon as practicable, and in any event within 90 days after the beginning of each fiscal year of the Borrower, a copy of the plan and forecast (including a projected consolidated balance sheet, income statement and funds flow statement) of the Borrower for such fiscal year.
- 6.1.9 As soon as possible, and in any event within 3 Business Days (in the case of the Borrower) and 15 days (in the case of any Guarantor) after the occurrence thereof, a reasonably detailed notification to the Administrative Agent and its counsel of any change in the jurisdiction of organization of the Borrower or any Guarantor.
- 6.1.10 As soon as practicable, and in any event within thirty (30) days after the close of each calendar month, the Borrower shall provide the Administrative Agent and the Lenders with a Borrowing Base Certificate (containing a certification by an Authorized Officer that the Receivables Portfolios included in the Borrowing Base referenced in such Borrowing Base Certificate are performing, in the aggregate, at a sufficient level to support the amount of such Borrowing Base), together with such supporting documents (including without limitation (i) to the extent requested by the Administrative Agent, copies of all bills of sale and purchase agreements evidencing the acquisition of Receivables Portfolios included in the Borrowing Base and (ii) a copy of the most recent static pool report with respect to such Receivables Portfolios as the Administrative Agent reasonably deems desirable, all certified as being true and correct in all material respects by an Authorized Officer of the Borrower). The Borrower may update the Borrowing Base Certificate more frequently than monthly and the most recently delivered Borrowing Base Certificate shall be the applicable Borrowing Base Certificate for purposes of determining the Borrowing Base at any time.
- 6.1.11 Such other information (including non-financial information) as the Administrative Agent or any Lender may from time to time reasonably request.

If any information which is required to be furnished to the Lenders under this Section 6.1 is required by law or regulation to be filed by the Borrower with a government body on an earlier date, then the information required hereunder shall be furnished to the Lenders by no later than 5 Business Days after such earlier date.

6.2. **Use of Proceeds.** The Borrower will, and will cause each Subsidiary to, use the proceeds of the Revolving Loans for working capital and general corporate purposes, which may include, without limitation, financing the Jefferson Capital Acquisition, purchases of Receivables Portfolios, Permitted Acquisitions and

repayment of Indebtedness under the Existing Financing Arrangements. The Borrower shall use the proceeds of Credit Extensions in compliance with all applicable legal and regulatory requirements and any such use shall not result in a violation of any such requirements, including, without limitation, Regulation U and X, the Securities Act of 1933, as amended, and the Securities Exchange Act of 1934, as amended, and the regulations promulgated thereunder.

6.3. Notice of Default. Within three (3) Business Days after an Authorized Officer becomes aware thereof, the Borrower will, and will cause each Subsidiary to, give notice in writing to the Lenders of the occurrence (i) of any Default or Unmatured Default and (ii) of any other development, financial or otherwise, which (solely with respect to this clause (ii)) could reasonably be expected to have a Material Adverse Effect.

6.4. Conduct of Business. The Borrower will, and will cause each Subsidiary to, carry on and conduct its business in substantially the same manner and in substantially the same fields of enterprise as it is presently conducted and do all things necessary to remain duly incorporated or organized, validly existing and (to the extent such concept applies to such entity) in good standing as a domestic corporation, partnership or limited liability company in its jurisdiction of incorporation or organization, as the case may be, as in effect on the Closing Date, and maintain all requisite authority to conduct its business in each jurisdiction in which its business is conducted, except (i) as permitted by Section 6.11 and (ii) except to the extent that the failure to maintain any of the foregoing could not reasonably be expected to have a Material Adverse Effect.

6.5. Taxes. The Borrower will, and will cause each Subsidiary to, timely file complete and correct United States federal and applicable foreign, state and local tax returns required by law and pay when due all taxes, assessments and governmental charges and levies upon it or its income, profits or Property, except those which are being contested in good faith by appropriate proceedings and with respect to which adequate reserves have been set aside in accordance with Agreement Accounting Principles.

6.6. Insurance. The Borrower will, and will cause each Subsidiary to, maintain with financially sound and reputable insurance companies insurance on their Property in such amounts, subject to such deductibles and self-insurance retentions, and covering such risks as is consistent with sound business practice. The Borrower shall deliver to the Administrative Agent endorsements in form and substance acceptable to the Administrative Agent to all general liability and other liability policies naming the Administrative Agent as an additional insured. The Borrower shall furnish to any Lender such additional information as such Lender may reasonably request regarding the insurance carried by the Borrower and its Subsidiaries. In the event the Borrower or any of its Subsidiaries at any time or times hereafter shall fail to obtain or maintain any of the policies or insurance required herein or to pay any premium in whole or in part relating thereto, then the Administrative Agent, without waiving or releasing any obligations or resulting Default hereunder, may at any time or times thereafter (but shall be under no obligation to do so) obtain and maintain such policies of insurance and pay such premiums and take any other action with respect thereto which the Administrative Agent deems advisable. All sums so disbursed by the Administrative Agent shall constitute part of the Obligations, payable as provided in this Agreement.

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6.7. Compliance with Laws. The Borrower will, and will cause each Subsidiary to, comply with all laws, rules, regulations, orders, writs, judgments, injunctions, decrees or awards to which it may be subject including, without limitation, all Environmental Laws, ERISA and Section 302 and Section 906 of the Sarbanes-Oxley Act of 2002) to which it may be subject where non-compliance with such laws, rules, regulations, orders, writs, judgments, injunctions, decrees or awards could reasonably be expected to cause a Material Adverse Effect.

6.8. Maintenance of Properties. Subject to Section 6.12, the Borrower will, and will cause each Subsidiary to, do all things necessary to maintain, preserve, protect and keep the tangible Property material to the operation of its business in good repair, working order and condition, (ordinary wear and tear excepted), and make all necessary and proper repairs, renewals and replacements so that its business carried on in connection therewith may be properly conducted at all times.

6.9. Inspection; Keeping of Books and Records. The Borrower will, and will cause each Subsidiary to, permit the Administrative Agent and the Lenders, by their respective representatives and agents (at reasonable times and upon reasonable advance written notice, so long as no Default or Unmatured Default has occurred and is continuing) to inspect any of the Property, including, without limitation, the Collateral, books and financial records of the Borrower and each Credit Party, to examine and make copies of the books of accounts and other financial records of the Borrower and each Credit Party, and to discuss the affairs, finances and accounts of the Borrower and each Credit Party with, and to be advised as to the same by, their respective officers at such reasonable times and intervals as the Administrative Agent or any Lender may designate. The Borrower shall keep and maintain, and cause each of its Subsidiaries to keep and maintain, in all material respects, proper books of record and account in which entries in conformity with Agreement Accounting Principles shall be made of all dealings and transactions in relation to their respective businesses and activities. If a Default has occurred and is continuing, the Borrower, upon the Administrative Agent's request, shall turn over copies of any such records to the Administrative Agent or its representatives.

6.10. Restricted Payments. The Borrower will not, nor will it permit any Subsidiary to, make any Restricted Payment (other than dividends payable in its own capital stock) except that (i) any Subsidiary may declare and pay dividends or make distributions to the Borrower or to a Guarantor, (ii) the Borrower may, so long as no Default or Unmatured Default has occurred and is continuing or would arise after giving effect thereto, declare and pay dividends in an amount not to exceed, during any fiscal year of the Borrower, 20% of the audited Consolidated Net Income for the then most recently completed fiscal year of the Borrower, (iii) payments required to be made under the CFSC Transaction may be made in accordance with the terms thereof and (iv) the Borrower or any Subsidiary may acquire all or any portion of the minority interest in a JV Entity, so long as such acquisition constitutes a Permitted Acquisition.

6.11. Merger or Dissolution. The Borrower will not, nor will it permit any Subsidiary to, merge or consolidate with or into any other Person or dissolve, except that:

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6.11.1 A Guarantor may merge into (x) the Borrower or (y) a Wholly-Owned Subsidiary that is a Guarantor or becomes a Guarantor promptly upon the completion of the applicable merger or consolidation.

6.11.2 The Borrower or any Subsidiary may consummate any merger or consolidation in connection with any Permitted Acquisition so long as (i) in the case of the Borrower, the Borrower is the surviving entity and (ii) in the case of any Subsidiary, the Borrower has otherwise complied with Sections 6.25 and 6.26 in respect of the surviving entity.

6.11.3 The Borrower and the Subsidiaries may enter into the Permitted Restructuring.

6.11.4 Any of the Inactive Subsidiaries may be dissolved.

6.12. Sale of Assets. The Borrower will not, nor will it permit any other Credit Party to, lease, sell or otherwise dispose of its Property to any other Person, except:

- 6.12.1 Sales of Receivables in the ordinary course of business.
- 6.12.2 A disposition or transfer of assets by a Credit Party to another Credit Party or a Person that becomes a Credit Party prior to such disposition or transfer.
- 6.12.3 A disposition of obsolete Property, Property no longer used in the business of the Borrower or the other Credit Parties or other assets in the ordinary course of business of the Borrower or any other Credit Party, but excluding in each case Property (other than fixtures and personal Property) subject to a Lien under a Mortgage.
- 6.12.4 Leases, sales or other dispositions of its Property that, together with all other Property of the Borrower and the Credit Parties previously leased, sold or disposed of (other than dispositions otherwise permitted by this Section 6.12) as permitted by this Section during any fiscal year of the Borrower do not exceed one percent (1%) of Consolidated Tangible Assets in the aggregate.
- 6.12.5 So long as the Borrower makes the prepayments and/or reinvestment of proceeds required under Section 2.2(a) in respect thereof, sales or dispositions of assets outside the ordinary course of business with an aggregate fair market value not to exceed, during the term of this Agreement, \$5,000,000.
- 6.12.6 Any lease, transfer or other disposition of its Property that constitutes a permitted Investment under Section 6.13.8.

6.13. Investments and Acquisitions. The Borrower will not, nor will it permit any Subsidiary to, make or suffer to exist any Investments (including without limitation, loans and advances to, and other Investments in, Subsidiaries), or commitments therefor, or to create any Subsidiary or to become or remain a partner in any partnership or joint venture, or to make any Acquisition of any Person, except:

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- 6.13.1 (i) Cash Equivalent Investments and (ii) other Investments described in Schedule 6.13.1.
  - 6.13.2 Existing Investments in Subsidiaries and other Investments in existence on the date hereof and described in Schedule 6.13.2.
  - 6.13.3 Acquisitions meeting the following requirements or otherwise approved by the Required Lenders (each such Acquisition constituting a "Permitted Acquisition"):

- (i) as of the date of the consummation of such Permitted Acquisition, no Default or Unmatured Default shall have occurred and be continuing or would result from such Permitted Acquisition, and the representation and warranty contained in Section 5.11 shall be true both before and after giving effect to such Permitted Acquisition;
- (ii) such Permitted Acquisition is consummated pursuant to a negotiated acquisition agreement approved by the board of directors or other applicable governing body of the seller or entity to be acquired, and no material challenge to such Permitted Acquisition (excluding the exercise of appraisal rights) shall be pending or threatened by any shareholder or director of the seller or entity to be acquired;
- (iii) the business to be acquired in such Permitted Acquisition is similar or related to one or more of the lines of business in which the Borrower and its Subsidiaries are engaged on the Closing Date;
- (iv) as of the date of the consummation of such Permitted Acquisition, all material governmental and corporate approvals required in connection therewith shall have been obtained;
- (v) the aggregate Purchase Price for all such Permitted Acquisitions during the term of this Agreement shall not exceed \$60,000,000, provided that the Purchase Price for any single Permitted Acquisition during the term of this Agreement shall not exceed \$30,000,000;
- (vi) prior to the consummation of such Permitted Acquisition, the Borrower shall have delivered to the Administrative Agent a pro forma consolidated balance sheet, income statement and cash flow statement of the Borrower and its Subsidiaries (the "Acquisition Pro Forma"), based on the Borrower's most recent financial statements delivered pursuant to Section 6.1.1 (using, to the extent available, historical financial statements for such entity provided by the seller(s)) which shall be complete and shall fairly present, in all material respects, the financial condition and results of operations and cash flows of the Borrower and its Subsidiaries in accordance with Agreement Accounting Principles, but taking into account such Permitted Acquisition and the funding of all Credit Extensions in connection therewith, and such Acquisition Pro Forma shall reflect that, on a pro forma basis, the Borrower would have been in compliance with the financial covenants set forth in Sections 6.21 and 6.22 for the period of four fiscal quarters reflected in the compliance certificate most recently delivered to the Administrative Agent pursuant to Section 6.1.3 prior to the consummation of such Permitted Acquisition (giving effect to such Permitted Acquisition and all Credit Extensions funded in connection therewith as if made on the first day of such period); provided, however, that no such compliance with Section 6.21 is required to be demonstrated in such Acquisition Pro Forma for an Acquisition which is either (x) solely a purchase of assets or (y) an acquisition of an entity or a going business for which no financial statements are available; and

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- (vii) prior to each such Permitted Acquisition, the Borrower shall deliver to the Administrative Agent a documentation, information and certification package in form reasonably acceptable to the Administrative Agent and demonstrating conformity with the applicable Acquisition Pro Forma and

sufficient to describe the assets and Persons being acquired, including, without limitation:

- (A) a near-final version (with no further material amendments to be made thereto) of the acquisition agreement for such Permitted Acquisition together with drafts of the material schedules thereto;
- (B) a near-final version (with no further material amendments to be made thereto) of all documents, instruments and agreements with respect to any Indebtedness to be incurred or assumed in connection with such Permitted Acquisition; and
- (C) such other documents or information as shall be reasonably requested by the Administrative Agent in connection with such Permitted Acquisition.

6.13.4 The Permitted Restructuring.

6.13.5 Creation of, or investment in, a Subsidiary and in respect of which the Borrower has otherwise complied with Sections 6.25 and 6.26.

6.13.6 Investments constituting Indebtedness permitted by Section 6.14.5.

6.13.7 Investments by a Credit Party in another Credit Party.

6.13.8 Creation of, or investment in, one or more JV Entities so long as the aggregate amount invested in such JV Entities does not exceed \$5,000,000.

6.13.9 The Jefferson Capital Acquisition.

6.14. Indebtedness. The Borrower will not, nor will it permit any Subsidiary to, create, incur or suffer to exist any Indebtedness, except:

6.14.1 The Secured Obligations.

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6.14.2 Indebtedness existing on the date hereof and described in Schedule 6.14.

6.14.3 To the extent approved by the Administrative Agent, Indebtedness arising under Rate Management Transactions.

6.14.4 Secured or unsecured purchase money Indebtedness (including Capitalized Leases) incurred by the Borrower or any of its Subsidiaries after the Closing Date to finance the acquisition of assets used in its business, if (1) the total of all such Indebtedness for the Borrower and its Subsidiaries taken together incurred on or after the Closing Date, when aggregated with the Indebtedness permitted under Section 6.14.9, shall not exceed an aggregate principal amount of \$5,000,000 at any one time outstanding, (2) such Indebtedness when incurred shall not exceed the purchase price of the asset(s) financed, (3) no such Indebtedness shall be refinanced for a principal amount in excess of the principal balance outstanding thereon at the time of such refinancing, and (4) any Lien securing such Indebtedness is permitted under Section 6.15 (such Indebtedness being referred to herein as "Permitted Purchase Money Indebtedness").

6.14.5 Indebtedness arising from intercompany loans and advances (i) made by any Subsidiary to any Credit Party, (ii) made by the Borrower to any Credit Party; provided that the Borrower agrees that all such Indebtedness shall be expressly subordinated to the Secured Obligations pursuant to subordination provisions reasonably acceptable to the Administrative Agent or (iii) made by the Borrower or any Subsidiary to any other Subsidiary solely for the purpose of facilitating, in the ordinary course of business consistent with past practice, the payment of fees and expenses in connection with collection actions or proceedings.

6.14.6 Guaranty obligations of the Borrower of any Indebtedness of any Subsidiary permitted under Section 6.14.2.

6.14.7 Guaranty obligations of any Subsidiary of the Borrower that is a Guarantor with respect to any Indebtedness of the Borrower or any other Subsidiary permitted under this Section 6.14.

6.14.8 Indebtedness incurred pursuant to a Permitted Receivables Transaction.

6.14.9 Additional unsecured Indebtedness of the Borrower or any Subsidiary, to the extent not otherwise permitted under this Section 6.14; provided, however, that the aggregate principal amount of such additional Indebtedness, when aggregated with the Indebtedness permitted under Section 6.14.4 shall not exceed \$5,000,000 at any time outstanding.

6.14.10 Bonds or other Indebtedness required by collections licensing laws in the ordinary course of the Credit Parties' business.

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6.14.11 Indebtedness, liabilities and contingent obligations incurred or assumed in connection with a Permitted Acquisition.

6.15. Liens. The Borrower will not, nor will it permit any Subsidiary to, create, incur, or suffer to exist any Lien in, of or on the Property of the Borrower or any of its Subsidiaries, except:

- 6.15.1 Liens, if any, securing Secured Obligations.
- 6.15.2 Liens for taxes, assessments or governmental charges or levies on its Property if the same (i) shall not at the time be delinquent or thereafter can be paid without penalty, (ii) are disclosed on Schedule 5.6 or (iii) are being contested in good faith and by appropriate proceedings and for which adequate reserves in accordance with Agreement Accounting Principles shall have been set aside on its books.
- 6.15.3 Liens imposed by law, such as landlords', wage earners', carriers', warehousemen's and mechanics' liens and other similar liens arising in the ordinary course of business which secure payment of obligations not more than 45 days past due or which are being contested in good faith by appropriate proceedings and for which adequate reserves in accordance with Agreement Accounting Principles shall have been set aside on its books.
- 6.15.4 Liens arising out of pledges or deposits under worker's compensation laws, unemployment insurance, old age pensions, or other social security or retirement benefits, or similar legislation.
- 6.15.5 Liens securing the Permitted Receivables Transactions existing on the Closing Date and other Liens as described in Schedule 6.15.
- 6.15.6 Deposits securing liability to insurance carriers under insurance or self-insurance arrangements.
- 6.15.7 Deposits to secure the performance of bids, trade contracts (other than for borrowed money), leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature incurred in the ordinary course of business.
- 6.15.8 Easements, reservations, rights-of-way, restrictions, survey exceptions and other similar encumbrances as to real property of the Borrower and its Subsidiaries which customarily exist on properties of corporations engaged in similar activities and similarly situated and which do not materially interfere with the conduct of the business of the Borrower or such Subsidiary conducted at the property subject thereto.
- 6.15.9 Purchase money Liens securing Permitted Purchase Money Indebtedness (as defined in Section 6.14); provided, that such Liens shall not apply to any property of the Borrower or its Subsidiaries other than that purchased with the proceeds of such Permitted Purchase Money Indebtedness.

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- 6.15.10 Liens existing on any asset of any Subsidiary of the Borrower at the time such Subsidiary becomes a Subsidiary and not created in contemplation of such event.
- 6.15.11 Liens on any asset securing Indebtedness incurred or assumed for the purpose of financing or refinancing all or any part of the cost of acquiring or constructing such asset; provided that such Lien attaches to such asset concurrently with or, except in the case of Liens created under a Permitted Receivables Transaction, within eighteen (18) months after the acquisition or completion or construction thereof.
- 6.15.12 Liens existing on any asset of any Subsidiary of the Borrower at the time such Subsidiary is merged or consolidated with or into the Borrower or any Subsidiary and not created in contemplation of such event.
- 6.15.13 Liens existing on any asset prior to the acquisition thereof by the Borrower or any Subsidiary and not created in contemplation thereof; *provided* that such Liens do not encumber any other property or assets.
- 6.15.14 Liens arising out of the refinancing, extension, renewal or refunding of any Indebtedness secured by any Lien permitted under Sections 6.15.11 through 6.15.13; provided that (a) such Indebtedness is not secured by any additional assets, and (b) the amount of such Indebtedness secured by any such Lien is not increased.

In addition, no Credit Party shall become a party to any agreement, note, indenture or other instrument, or take any other action, which would prohibit the creation of a Lien on any of its Properties or other assets in favor of the Administrative Agent for the benefit of the Holders of Secured Obligations; provided, further, that any agreement, note, indenture or other instrument in connection with purchase money Indebtedness (including Capitalized Leases) for which the related Liens are permitted hereunder may prohibit the creation of a Lien in favor of the Administrative Agent for the benefit of the Holders of Secured Obligations, with respect to the assets or Property obtained with the proceeds of such Indebtedness.

6.16. Affiliates. The Borrower will not, and will not permit any Subsidiary to, enter into any transaction (including, without limitation, the purchase or sale of any Property or service) with, or make any payment or transfer to, any Affiliate (other than the Borrower and the Credit Parties) except (i) in the ordinary course of business and pursuant to the reasonable requirements of the Borrower's or such Subsidiary's business and upon fair and reasonable terms no less favorable to the Borrower or such Subsidiary than the Borrower or such Subsidiary would obtain in a comparable arm's-length transaction and (ii) the Permitted Restructuring.

6.17. Financial Contracts. The Borrower will not, nor will it permit any Subsidiary to, enter into or remain liable upon any Rate Management Transactions except for those entered into in the ordinary course of business for bona fide hedging purposes and not for speculative purposes.

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6.18. Subsidiary Covenants. The Borrower will not, and will not permit any Credit Party to, create or otherwise cause to become effective any consensual encumbrance or restriction of any kind on the ability of any Credit Party (i) to pay dividends or make any other distribution on its stock, (ii) to pay any Indebtedness or other obligation owed to the Borrower or any other Subsidiary, (iii) to make loans or advances or other Investments in the Borrower or any other



Subsidiary, or (iv) to sell, transfer or otherwise convey any of its property to the Borrower or any other Subsidiary, other than customary restrictions on transfers, business changes or similar matters relating to earn out obligations in connection with Acquisitions.

6.19. Contingent Obligations. The Borrower will not, nor will it permit any Subsidiary to, make or suffer to exist any Contingent Obligation (including, without limitation, any Contingent Obligation with respect to the obligations of a Subsidiary), except (i) by endorsement of instruments for deposit or collection in the ordinary course of business, (ii) the Reimbursement Obligations, (iii) any guaranty of the Secured Obligations, (iv) any liability of the Borrower or its Subsidiaries under the Loan Documents, (v) Contingent Obligations in respect of customary indemnification and purchase price adjustment obligations incurred in connection with Asset Sales or other sales of assets, (vi) customary corporate indemnification obligations under charter documents, indemnification agreements with officers and directors and underwriting agreements, (vii) any liability of the relevant Subsidiary which is not a Credit Party but which is a special purpose entity under the Permitted Receivables Transactions and (viii) any liability under any Indebtedness permitted by Section 6.14 (other than liability of a Credit Party under the Permitted Receivables Transactions).

6.20. Subordinated Indebtedness, Indebtedness under Permitted Receivables Transactions and Amendments to Subordinated Note Documents and Permitted Receivables Transactions Documents. The Borrower will not, and will not permit any Subsidiary to, directly or indirectly voluntarily prepay, defease or in substance defease, purchase, redeem, retire or otherwise acquire, any Subordinated Indebtedness, the Indebtedness from time to time outstanding under the Subordinated Indebtedness Documents or under any of the Permitted Receivables Transactions Documents except, in the case of the Permitted Receivables Transactions, in accordance with the existing terms thereof. Furthermore, the Borrower will not, and will not permit any Subsidiary to, amend the Subordinated Indebtedness Documents, the Permitted Receivables Transactions Documents or any document, agreement or instrument evidencing any Indebtedness incurred pursuant to the Subordinated Indebtedness Documents or any of the Permitted Receivables Transactions Documents (or any replacements, substitutions, extensions or renewals thereof) or pursuant to which such Indebtedness is issued where such amendment, modification or supplement provides for the following or which has any of the following effects:

- (i) increases the overall principal amount of any such Indebtedness or increases the amount of any single scheduled installment of principal or interest;
- (ii) shortens or accelerates the date upon which any installment of principal or interest becomes due or adds any additional mandatory redemption provisions;

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- (iii) shortens the final maturity date of such Indebtedness or otherwise accelerates the amortization schedule with respect to such Indebtedness;
  - (iv) increases the rate of interest accruing on such Indebtedness;
  - (v) provides for the payment of additional fees or increases existing fees or changes any profit sharing arrangements to the detriment of the Borrower or any Credit Party;
  - (vi) amends or modifies any financial or negative covenant (or covenant which prohibits or restricts the Borrower or any of its Subsidiaries from taking certain actions) in a manner which is more onerous or more restrictive in any material respect to the Borrower or such Subsidiary or which is otherwise materially adverse to the Borrower, its Subsidiaries and/or the Lenders or, in the case of any such covenant, which places material additional restrictions on the Borrower or such Subsidiary or which requires the Borrower or such Subsidiary to comply with more restrictive financial ratios or which requires the Borrower to better its financial performance, in each case from that set forth in the existing applicable covenants in the Subordinated Indebtedness Documents, the Permitted Receivables Transactions Documents or the applicable covenants in this Agreement; or
  - (vii) amends, modifies or adds any affirmative covenant in a manner which (a) when taken as a whole, is materially adverse to the Borrower, its Subsidiaries and/or the Lenders or (b) is more onerous than the existing applicable covenant in the Subordinated Indebtedness Documents, the Permitted Receivables Transactions Documents or the applicable covenant in this Agreement.

6.21. Leverage Ratios.

6.21.1 Cash Flow Leverage Ratio. The Borrower will not permit the ratio (the "Cash Flow Leverage Ratio"), determined as of the end of each of its fiscal quarters, of (i) Consolidated Total Liabilities of the Borrower to (ii) Consolidated EBITDA for the then most-recently ended four fiscal quarters to be greater than (a) 3.0 to 1.0 for each fiscal four-quarter period ending on or before December 31, 2005 and (b) 2.5 to 1.0 at all times thereafter.

The Cash Flow Leverage Ratio shall be calculated based upon (a) for Consolidated Total Liabilities as of the last day of each such fiscal quarter and (b) for Consolidated EBITDA, the actual amount as of the last day of each fiscal quarter for the most recently ended four consecutive fiscal quarters.

6.21.2 Balance Sheet Leverage Ratio. The Borrower will not permit the ratio, determined as of the end of each of its fiscal quarters for the then most-recently ended four fiscal quarters of (i) Consolidated Total Liabilities to (ii) Consolidated Tangible Net Worth as of the end of such period, all calculated for the Borrower and its Subsidiaries on a consolidated basis, to be greater than (a) 2.25 to 1.0 for each fiscal four-quarter period ending on or before December 31, 2005 and (b) 2.00 to 1.0 at all times thereafter.

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6.22. Interest Coverage Ratio. The Borrower will not permit the ratio, determined as of the end of each of its fiscal quarters for the then most-recently completed four fiscal quarters, of (i) Consolidated EBIT of the Borrower to (ii) Consolidated Interest Expense, in each case as of the end of such period, to be less than 2.0 to 1.0.

6.23. Capital Expenditures. The Borrower will not, nor will it permit any Subsidiary to, expend, or be committed to expend, in excess of an aggregate of \$5,000,000 for Capital Expenditures of the Borrower and its Subsidiaries during any fiscal year of the Borrower.

6.24. Rentals. The Borrower shall not permit, nor shall it permit any Subsidiary to, create, pay or incur Consolidated Rentals in excess of \$3,500,000 for any fiscal year during the term of this Agreement on a consolidated basis for the Borrower and its Subsidiaries.

6.25. Guarantors. The Borrower shall cause each of its Subsidiaries (other than the Excluded Subsidiaries) to guarantee pursuant to the Guaranty Agreement or supplement thereto (or, in the case of a Foreign Subsidiary, any other guarantee agreement requested by the Administrative Agent) the Secured Obligations. In furtherance of the above, the Borrower shall promptly (and in any event within 45 days thereof) (i) provide written notice to the Administrative Agent and the Lenders upon any Person becoming a Subsidiary, setting forth information in reasonable detail describing all of the assets of such Person, (ii) cause such Person to execute a supplement to the Guaranty Agreement and such other Collateral Documents as are necessary for the Borrower and its Subsidiaries to comply with Section 6.26, (iii) cause the Applicable Pledge Percentage of the issued and outstanding equity interests of such Person and each other Pledge Subsidiary to be delivered to the Administrative Agent (together with undated stock powers signed in blank, if applicable) and pledged to the Administrative Agent pursuant to an appropriate pledge agreement(s) in substantially the form of the Pledge and Security Agreement (or joinder or other supplement thereto) and otherwise in form reasonably acceptable to the Administrative Agent and (iv) deliver such other documentation as the Administrative Agent may reasonably request in connection with the foregoing, including, without limitation, certified resolutions and other authority documents of such Person and, to the extent requested by the Administrative Agent, favorable opinions of counsel to such Person (which shall cover, among other things, the legality, validity, binding effect and enforceability of the documentation referred to above), all in form, content and scope reasonably satisfactory to the Administrative Agent. Notwithstanding the foregoing, no Foreign Subsidiary shall be required to execute and deliver the Guaranty Agreement (or supplement thereto) or such other guarantee agreement if such execution and delivery would cause a Deemed Dividend Problem or a Financial Assistance Problem with respect to such Foreign Subsidiary and, in lieu thereof, the Borrower and the relevant Subsidiaries shall provide the pledge agreements required under this Section 6.25 or Section 6.26.

6.26. Collateral. The Borrower will cause, and will cause each other Credit Party to cause, all of its owned Property to be subject at all times to first priority, perfected Liens in favor of the Administrative Agent for the benefit of the Holders of Secured Obligations to secure the Secured Obligations in accordance with the terms and conditions of the Collateral Documents, subject in any case to Liens permitted by Section 6.15 hereof (it being understood and agreed that (a) no control agreements will be required hereunder in respect of bank accounts and (b) Mortgages and Mortgage Instruments will only be required hereunder in respect of Mortgaged Properties). Without limiting the generality of the foregoing, the Borrower will (i) cause the Applicable Pledge Percentage of the issued and outstanding equity interests of each Pledge Subsidiary directly owned by the Borrower or any other Credit Party to be subject at all times to a first priority, perfected Lien in favor of the Administrative Agent to secure the Secured Obligations in accordance with the terms and conditions of the Collateral Documents or such other security documents as the Administrative Agent shall reasonably request and (ii) will, and will cause each Guarantor to, deliver Mortgages and Mortgage Instruments with respect to real property owned by the Borrower or such Guarantor to the extent, and within such time period as is, reasonably required by the Administrative Agent. Notwithstanding the foregoing, no pledge agreement in respect of the equity interests of a Foreign Subsidiary shall be required hereunder to the extent such pledge thereunder is prohibited by applicable law or its counsel reasonably determines that such pledge would not provide material credit support for the benefit of the Holders of Secured Obligations pursuant to legally valid, binding and enforceable pledge agreements.

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6.27. Sale and Leaseback Transactions. The Borrower shall not, nor shall it permit any Subsidiary to, enter into any Sale and Leaseback Transaction.

6.28. Acquisitions of Receivables Portfolios. The Borrower will not, nor will it permit any Credit Party to, acquire any single Receivables Portfolio with a purchase price in excess of the lesser of (i) 50% of Consolidated Tangible Net Worth as of the Borrower's most recently ended fiscal quarter and based on the financial statements of the Borrower for such fiscal quarter and (ii) \$100,000,000.

6.29. Government Regulation. The Borrower shall not, and shall not permit any other Subsidiary to (a) be or become subject at any time to any law, regulation, or list of any government agency (including, without limitation, the U.S. Office of Foreign Asset Control list) that prohibits or limits any Lender from making any Credit Extension to the Borrower or from otherwise conducting business with the Borrower, or (b) fail to provide documentary and other evidence of any Subsidiary's identity as may be requested by any Lender at any time to enable such Lender to verify such Subsidiary's identity or to comply with any applicable law or regulation, including, without limitation, Section 326 of the USA Patriot Act of 2001, 31 U.S.C. Section 5318.

6.30. Inactive Subsidiaries. The Borrower shall not permit any Inactive Subsidiary to (i) acquire any assets, (ii) conduct any business and (iii) incur any Indebtedness or other liabilities. Furthermore, the Borrower shall not, and shall not permit any other Subsidiary to, sell, dispose or otherwise transfer any assets or Property to any Inactive Subsidiary.

6.31. Liquidity. The Borrower shall not permit Liquidity to be less than \$5,000,000.

6.32. Collection Accounts. The Borrower shall cause, and shall cause the Credit Parties to cause, sixty percent (60%) of all cash collections and other proceeds of Receivables (including late charges, fees and interest arising thereon, and all recoveries with respect thereto that have been written off as uncollectible) acquired by any Credit Party with the proceeds of a Credit Extension to be deposited from the Initial Collection Account (as defined in Schedule 6.32) directly into the Intermediate Collection Account (as defined in Schedule 6.32).

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## ARTICLE VII

### DEFAULTS

The occurrence of any one or more of the following events shall constitute a Default:

7.1 Any representation or warranty made or deemed made by or on behalf of the Borrower or any of its Subsidiaries to the Lenders or the Administrative Agent under or in connection with this Agreement, any Credit Extension, or any certificate or information delivered in connection with this Agreement or any other Loan Document shall be false in any material respect on the date as of which made or deemed made.

7.2 Nonpayment of (i) principal of any Loan when due, (ii) any Reimbursement Obligation within two Business Days after the same becomes due, or (iii) interest upon any Loan or any Commitment Fee, LC Fee or other Obligations under any of the Loan Documents within five (5) Business Days after such interest, fee or other Obligation becomes due.

7.3 The breach by the Borrower of any of the terms or provisions of Section 6.2, 6.10, 6.11, 6.12, 6.13, 6.14, 6.15, 6.16, 6.17, 6.18, 6.19, 6.20, 6.21, 6.22, 6.23, 6.24, 6.25, 6.26, 6.27, 6.28, 6.29, 6.30 and 6.31.

7.4 The breach by the Borrower (other than a breach which constitutes a Default under another Section of this Article VII) of any of the terms or provisions of (i) this Agreement or (ii) any other Loan Document (beyond the applicable grace period with respect thereto, if any), in each case which is not remedied within thirty (30) days after the earlier to occur of (x) written notice from the Administrative Agent or any Lender to the Borrower or (y) an Authorized Officer otherwise becomes aware of any such breach.

7.5 Failure of the Borrower or any of its Subsidiaries to pay when due any Material Indebtedness (subject to any applicable grace period with respect thereto, if any, set forth in the Material Indebtedness Agreement evidencing such Material Indebtedness) which failure has not been (i) timely cured or (ii) waived in writing by the requisite holders of such Material Indebtedness; or the default by the Borrower or any of its Subsidiaries in the performance (beyond the applicable grace period with respect thereto, if any) of any term, provision or condition contained in any Material Indebtedness Agreement or any other event shall occur or condition exist thereunder and such default has not been (x) timely cured or (y) waived in writing by the requisite holders of the Material Indebtedness in respect thereof and the effect of such default, event or condition is to cause, or to permit the holder(s) of such Material Indebtedness or the lender(s) under any Material Indebtedness Agreement to cause, such Material Indebtedness to become due prior to its stated maturity or any commitment to lend under any Material Indebtedness Agreement to be terminated prior to its stated expiration date; or any Material Indebtedness of the Borrower or any of its Subsidiaries shall be declared to be due and payable or required to be prepaid or repurchased (other than by a regularly scheduled payment) prior to the stated maturity thereof; or the Borrower or any of its Subsidiaries shall not pay, or admit in writing its inability to pay, its debts generally as they become due.

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7.6 The Borrower or any of its Subsidiaries shall (i) have an order for relief entered with respect to it under the Federal bankruptcy laws as now or hereafter in effect, (ii) make an assignment for the benefit of creditors, (iii) apply for, seek, consent to, or acquiesce in, the appointment of a receiver, custodian, trustee, examiner, liquidator or similar official for it or any Substantial Portion of its Property, (iv) institute any proceeding seeking an order for relief under the Federal bankruptcy laws as now or hereafter in effect or seeking to adjudicate it a bankrupt or insolvent, or seeking dissolution, winding up, liquidation, reorganization, arrangement, adjustment or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors or fail to file an answer or other pleading denying the material allegations of any such proceeding filed against it, (v) take any corporate or partnership action to authorize or effect any of the foregoing actions set forth in this Section 7.6 or (vi) fail to contest in good faith any appointment or proceeding described in Section 7.7.

7.7 Without the application, approval or consent of the Borrower or any of its Subsidiaries, a receiver, trustee, examiner, liquidator or similar official shall be appointed for the Borrower or any of its Subsidiaries or any Substantial Portion of its Property, or a proceeding described in Section 7.6(iv) shall be instituted against the Borrower or any of its Subsidiaries and such appointment continues undischarged or such proceeding continues undismissed or unstayed for a period of 60 consecutive days.

7.8 Any court, government or governmental agency shall condemn, seize or otherwise appropriate, or take custody or control of, all or any portion of the Property of the Borrower and its Subsidiaries which, when taken together with all other Property of the Borrower and its Subsidiaries so condemned, seized, appropriated, or taken custody or control of, during the twelve-month period ending with the month in which any such action occurs, constitutes a Substantial Portion.

7.9 The Borrower or any of its Subsidiaries shall fail within 30 days to pay, bond or otherwise discharge one or more (i) judgments or orders for the payment of money in excess of \$1,000,000 (or the equivalent thereof in currencies other than Dollars) in the aggregate, or (ii) nonmonetary judgments or orders which, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect, which judgment(s), in any such case, is/are not stayed on appeal or otherwise being appropriately contested in good faith or otherwise not covered by a creditworthy insurer or indemnitor.

7.10 The Unfunded Liabilities of all Single Employer Plans shall exceed \$1,000,000 in the aggregate, or any Reportable Event shall occur in connection with any Plan.

7.11 Nonpayment by the Borrower or any Subsidiary of any Rate Management Obligation, when due or the breach by the Borrower or any Subsidiary of any term, provision or condition contained in any Rate Management Transaction or any transaction of the type described in the definition of "Rate Management Transactions," whether or not any Lender or Affiliate of a Lender is a party thereto.

7.12 *Any Change of Control shall occur.*

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7.13 The Borrower or any other member of the Controlled Group shall have been notified by the sponsor of a Multiemployer Plan that it has incurred, pursuant to Section 4201 of ERISA, withdrawal liability to such Multiemployer Plan in an amount which, when aggregated with all other amounts required to be paid to Multiemployer Plans by the Borrower or any other member of the Controlled Group as withdrawal liability (determined as of the date of such notification), exceeds \$1,000,000 or requires payments exceeding \$1,000,000 per annum.

7.14 The Borrower or any other member of the Controlled Group shall have been notified by the sponsor of a Multiemployer Plan that such Multiemployer Plan is in reorganization or is being terminated, within the meaning of Title IV of ERISA, if as a result of such reorganization or termination the aggregate annual contributions of the Borrower and the other members of the Controlled Group (taken as a whole) to all Multiemployer Plans which are then in reorganization or being terminated have been or will be increased, in the aggregate, over the amounts contributed to such Multiemployer Plans for the respective plan years of such Multiemployer Plans immediately preceding the plan year in which the reorganization or termination occurs by an amount exceeding \$1,000,000.

7.15 The Borrower or any of its Subsidiaries shall violate any Environmental Law, which has resulted in liability to the Borrower or any of its Subsidiaries in an amount equal to \$1,000,000 or more, which liability is not paid, bonded or otherwise discharged within 45 days or which is not stayed on appeal and being

appropriately contested in good faith.

7.16 This Agreement (including amendments and supplements hereto), the Guaranty Agreement (including amendments and supplements thereto) or any Collateral Document (including amendments and supplements thereto) shall fail to remain in full force or effect or any action shall be taken to assert the invalidity or unenforceability of, or which results in the invalidity or unenforceability of, any such Loan Document, or any Collateral Document shall, other than as permitted thereby, fail to create or maintain for any reason a valid and perfected security interest in any collateral purported to be covered thereby.

## ARTICLE VIII

### ACCELERATION, WAIVERS, AMENDMENTS AND REMEDIES

#### 8.1. Acceleration.

- (i) If any Default described in Section 7.6 or 7.7 occurs with respect to the Borrower, the obligations of the Lenders to make Loans hereunder and the obligation and power of the LC Issuer to issue Facility LCs shall automatically terminate and the Secured Obligations shall immediately become due and payable without any election or action on the part of the Administrative Agent, the LC Issuer or any Lender, and the Borrower will be and become thereby unconditionally obligated, without any further notice, act or demand, to pay the Administrative Agent an amount in immediately available funds, which funds shall be held in the Facility LC Collateral Account, equal to the difference of (x) the amount of LC Obligations at such time less (y) the amount or deposit in the Facility LC Collateral Account at such time which is free and clear of all rights and claims of third parties and has not been applied against the Obligations (the "Collateral Shortfall Amount"). If any other Default occurs, the Required Lenders (or the Administrative Agent with the consent of the Required Lenders) may (a) terminate or suspend the obligations of the Lenders to make Loans hereunder and the obligation and power of the LC Issuer to issue Facility LCs, or declare the Secured Obligations to be due and payable, or both, whereupon the Secured Obligations shall become immediately due and payable, without presentment, demand, protest or notice of any kind, all of which the Borrower hereby expressly waives and (b) upon notice to the Borrower and in addition to the continuing right to demand payment of all amounts payable under this Agreement, make demand on the Borrower to pay, and the Borrower will forthwith upon such demand and without any further notice or act pay to the Administrative Agent the Collateral Shortfall Amount which funds shall be deposited in the Facility LC Collateral Account.

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- (ii) If at any time while any Default is continuing, the Administrative Agent determines that the Collateral Shortfall Amount at such time is greater than zero, the Administrative Agent may make demand on the Borrower to pay, and the Borrower will, forthwith upon such demand and without any further notice or act, pay to the Administrative Agent the Collateral Shortfall Amount, which funds shall be deposited in the Facility LC Collateral Account.
- (iii) The Administrative Agent may at any time or from time to time after funds are deposited in the Facility LC Collateral Account, apply such funds to the payment of the Secured Obligations and any other amounts as shall from time to time have become due and payable by the Borrower to the Lenders or the LC Issuer under the Loan Documents.
- (iv) At any time while any Default is continuing, neither the Borrower nor any Person claiming on behalf of or through the Borrower shall have any right to withdraw any of the funds held in the Facility LC Collateral Account. After all of the Secured Obligations have been indefeasibly paid in full and the Aggregate Revolving Loan Commitment has been terminated, any funds remaining in the Facility LC Collateral Account shall be returned by the Administrative Agent to the Borrower or paid to whomever may be legally entitled thereto at such time.
- (v) If, after acceleration of the maturity of the Obligations or termination of the obligations of the Lenders to make Loans and the obligation and power of the LC Issuer to issue Facility LCs hereunder as a result of any Default (other than any Default as described in Section 7.6 or 7.7 with respect to the Borrower) and before any judgment or decree for the payment of the Obligations due shall have been obtained or entered, the Required Lenders (in their sole discretion) shall so direct, the Administrative Agent shall, by notice to the Borrower, rescind and annul such acceleration and/or termination.

8.2. Amendments. Subject to the provisions of this Section 8.2, the Required Lenders (or the Administrative Agent with the consent in writing of the Required Lenders) and (subject to the fee letter described in Section 10.13) the Borrower may enter into agreements supplemental hereto for the purpose of adding or modifying any provisions to the Loan Documents or changing in any manner the rights of the Lenders or the Borrower hereunder or thereunder or waiving any Default hereunder or thereunder; *provided, however*, that no such supplemental agreement shall, without the consent of all of the Lenders adversely affected thereby:

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- 8.2.1 Extend the Revolving Loan Termination Date, extend the final maturity of any Revolving Loan or extend the expiry date of any Facility LC to a date after the Revolving Loan Termination Date, or postpone any regularly scheduled payment of principal of any Loan or forgive all or any portion of the principal amount thereof, or any Reimbursement Obligation related thereto, or reduce the rate or extend the time of payment of interest or fees thereon or Reimbursement Obligations related thereto (other than (x) a waiver of the application of the default rate of interest pursuant to Section 2.11 hereof and (y) any reduction of the amount of or any extension of the payment date for the mandatory payments required under Section 2.2, in each case which shall only require the approval of the Required Lenders).
- 8.2.2 Reduce the percentage specified in the definition of Required Lenders or any other percentage of Lenders specified to be the applicable percentage in this Agreement to act on specified matters or amend the definition of "Revolving Loan Pro Rata Share".
- 8.2.3 Increase the amount of the Revolving Loan Commitment of any Lender hereunder, or permit the Borrower to assign its rights or

obligations under this Agreement.

8.2.4 Amend this Section 8.2.

8.2.5 Other than in connection with a transaction permitted under this Agreement, release all or substantially all of the Collateral.

8.2.6 Other than in connection with a transaction permitted under this Agreement, release any Guarantor from its obligations thereunder.

No amendment of any provision of this Agreement relating to the Administrative Agent shall be effective without the written consent of the Administrative Agent. The Administrative Agent may waive payment of the fee required under Section 12.3.3 without obtaining the consent of any other party to this Agreement. No amendment of any provision of this Agreement relating to the Swing Line Lender or any Swing Line Loan shall be effective without the written consent of the Swing Line Lender. No amendment of any provision of this Agreement relating to the LC Issuer shall be effective without the written consent of the LC Issuer.

8.3. Preservation of Rights. No delay or omission of the Lenders, the LC Issuer or the Administrative Agent to exercise any right under the Loan Documents shall impair such right or be construed to be a waiver of any Default or an acquiescence therein, and the making of a Credit Extension notwithstanding the existence of a Default or Unmatured Default or the inability of the Borrower to satisfy the conditions precedent to such Credit Extension shall not constitute any waiver or acquiescence. Any single or partial exercise of any such right shall not preclude other or further exercise thereof or the exercise of any other right, and no waiver, amendment or other variation of the terms, conditions or provisions of the Loan Documents whatsoever shall be valid unless in writing signed by, or by the Administrative Agent with the consent of, the requisite number of Lenders required pursuant to Section 8.2, and then only to the extent in such writing specifically set forth. All remedies contained in the Loan Documents or by law afforded shall be cumulative and all shall be available to the Administrative Agent, the LC Issuer and the Lenders until all of the Secured Obligations have been paid in full.

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## ARTICLE IX

### GENERAL PROVISIONS

9.1. Survival of Representations. All representations and warranties of the Borrower contained in this Agreement shall survive the making of the Credit Extensions herein contemplated.

9.2. Governmental Regulation. Anything contained in this Agreement to the contrary notwithstanding, neither the LC Issuer nor any Lender shall be obligated to extend credit to the Borrower in violation of any limitation or prohibition provided by any applicable statute or regulation.

9.3. Headings. Section headings in the Loan Documents are for convenience of reference only, and shall not govern the interpretation of any of the provisions of the Loan Documents.

9.4. Entire Agreement. The Loan Documents embody the entire agreement and understanding among the Borrower, the Administrative Agent, the LC Issuer and the Lenders and supersede all prior agreements and understandings among the Borrower, the Administrative Agent, the LC Issuer and the Lenders relating to the subject matter thereof other than those contained in the fee letter described in Section 10.13 which shall survive and remain in full force and effect during the term of this Agreement.

9.5. Several Obligations; Benefits of this Agreement. The respective obligations of the Lenders hereunder are several and not joint and no Lender shall be the partner or agent of any other (except to the extent to which the Administrative Agent is authorized to act as such). The failure of any Lender to perform any of its obligations hereunder shall not relieve any other Lender from any of its obligations hereunder. This Agreement shall not be construed so as to confer any right or benefit upon any Person other than the parties to this Agreement and their respective successors and assigns, *provided, however*, that the parties hereto expressly agree that the Arranger shall enjoy the benefits of the provisions of Sections 9.6, 9.10 and 10.11 to the extent specifically set forth therein and shall have the right to enforce such provisions on its own behalf and in its own name to the same extent as if it were a party to this Agreement.

9.6. Expenses; Indemnification. (i) The Borrower shall reimburse the Administrative Agent and the Arranger for any reasonable costs, internal charges and out-of-pocket expenses (including reasonable attorneys' and paralegals' fees and time charges of attorneys for the Administrative

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Agent, which attorneys may be employees of the Administrative Agent and expenses of and fees for other advisors and professionals engaged by the Administrative Agent or the Arranger) paid or incurred by the Administrative Agent or the Arranger in connection with the investigation, preparation, negotiation, documentation, execution, delivery, syndication, distribution (including, without limitation, via the internet), review, amendment, modification and administration of the Loan Documents. The Borrower also agrees to reimburse the Administrative Agent, the Arranger, the LC Issuer and the Lenders for any reasonable costs, internal charges and out-of-pocket expenses (including reasonable attorneys' and paralegals' fees and time charges and expenses of attorneys and paralegals for the Administrative Agent, the Arranger, the LC Issuer and the Lenders, which attorneys and paralegals may be employees of the Administrative Agent, the Arranger, the LC Issuer or the Lenders) paid or incurred by the Administrative Agent, the Arranger, the LC Issuer or any Lender in connection with the collection and enforcement of the Loan Documents. Expenses being reimbursed by the Borrower under this Section include, without limitation, the cost and expense of obtaining an appraisal of each parcel of real property or interest in real property described in any relevant Collateral Document, which appraisal shall be in conformity with the applicable requirements of any law or any governmental rule, regulation, policy, guideline or directive (whether or not having the force of law), or any interpretation thereof, and any rules promulgated to implement such provisions and costs and expenses incurred in connection with the Reports described in the following sentence. The Borrower acknowledges that from time to time JPMorgan may prepare and may distribute to the Lenders (but shall have no obligation or duty to prepare or to distribute to the Lenders) certain audit reports (the "Reports") pertaining to the Borrower's assets for internal use by JPMorgan from information furnished to it by or on behalf of the Borrower, after JPMorgan has exercised its rights of inspection pursuant to this Agreement.

(ii) The Borrower hereby further agrees to indemnify the Administrative Agent, the Arranger, the LC Issuer, each Lender, their respective affiliates, and each of their directors, officers and employees against all losses, claims, damages, penalties, judgments, liabilities and expenses (including, without limitation, all expenses of litigation or preparation therefor whether or not the Administrative Agent, the Arranger, the LC Issuer, any Lender or any affiliate is a party thereto, and all reasonable attorneys' and paralegals' fees, time charges and expenses of attorneys and paralegals of the party seeking indemnification, which attorneys and paralegals may or may not be employees of such party seeking indemnification) which any of them may pay or incur arising out of or relating to this Agreement, the other Loan Documents, the transactions contemplated hereby or the direct or indirect application or proposed application of the proceeds of any Credit Extension hereunder except to the extent that they are determined in a final non-appealable judgment by a court of competent jurisdiction to have resulted from the gross negligence or willful misconduct of the party seeking indemnification. The obligations of the Borrower under this Section 9.6 shall survive the termination of this Agreement.

9.7. Numbers of Documents. All statements, notices, closing documents, and requests hereunder shall be furnished to the Administrative Agent with sufficient counterparts so that the Administrative Agent may furnish one to each of the Lenders, to the extent that the Administrative Agent deems appropriate.

9.8. Accounting. If any changes in generally accepted accounting principles are hereafter required or permitted and are adopted by the Borrower or any of its Subsidiaries with the agreement of its independent certified public accountants and such changes result in a change in the method of calculation of any of the financial covenants, tests, restrictions or standards herein or in the related definitions or terms used therein ("Accounting Changes"), the parties hereto agree, at the Borrower's request, to enter into negotiations, in good faith, in order to amend such provisions in a credit neutral manner so as to reflect equitably such changes with the desired result that the criteria for evaluating the Borrower's and its Subsidiaries' financial condition shall be the same after such changes as if such changes had not been made; *provided, however*, until such provisions are amended in a manner reasonably satisfactory to the Administrative Agent and the Required Lenders, no Accounting Change shall be given effect in such calculations. In the event such amendment is entered into, all references in this Agreement to Agreement Accounting Principles shall mean generally accepted accounting principles as of the date of such amendment. Notwithstanding the foregoing, all financial statements to be delivered by the Borrower pursuant to Section 6.1 shall be prepared in accordance with generally accepted accounting principles in effect at such time.

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9.9. Severability of Provisions. Any provision in any Loan Document that is held to be inoperative, unenforceable, or invalid in any jurisdiction shall, as to that jurisdiction, be inoperative, unenforceable, or invalid without affecting the remaining provisions in that jurisdiction or the operation, enforceability, or validity of that provision in any other jurisdiction, and to this end the provisions of all Loan Documents are declared to be severable.

9.10. Nonliability of Lenders. The relationship between the Borrower on the one hand and the Lenders, the LC Issuer and the Administrative Agent on the other hand shall be solely that of borrower and lender. Neither the Administrative Agent, the Arranger, the LC Issuer nor any Lender shall have any fiduciary responsibilities to the Borrower. Neither the Administrative Agent, the Arranger, the LC Issuer nor any Lender undertakes any responsibility to the Borrower to review or inform the Borrower of any matter in connection with any phase of the Borrower's business or operations. The Borrower agrees that neither the Administrative Agent, the Arranger, the LC Issuer nor any Lender shall have liability to the Borrower (whether sounding in tort, contract or otherwise) for losses suffered by the Borrower in connection with, arising out of, or in any way related to, the transactions contemplated and the relationship established by the Loan Documents, or any act, omission or event occurring in connection therewith, unless it is determined in a final non-appealable judgment by a court of competent jurisdiction that such losses resulted from the gross negligence or willful misconduct of the party from which recovery is sought. Neither the Administrative Agent, the Arranger, the LC Issuer nor any Lender shall have any liability with respect to, and the Borrower hereby waives, releases and agrees not to sue for, any special, indirect, consequential or punitive damages suffered by the Borrower in connection with, arising out of, or in any way related to the Loan Documents or the transactions contemplated thereby.

9.11. Confidentiality. The Administrative Agent and each Lender agrees to hold any Confidential Information (as hereinafter defined) which it may receive from the Borrower in connection with this Agreement in confidence, except for disclosure (i) to its Affiliates and to the Administrative Agent and any other Lender and their respective Affiliates in connection with the transactions contemplated by this Agreement (provided that such parties are informed of the confidential nature of the Confidential Information and are instructed to keep such Confidential Information confidential), (ii) to legal counsel, accountants, and other professional advisors to such Lender or to a Transferee in connection with the transactions contemplated by this Agreement (provided that such parties are informed of the confidential nature of the Confidential Information and are instructed to keep such Confidential Information confidential), (iii) to regulatory officials upon request or as required by law, (iv) subject to the proviso below, to any Person as requested pursuant to or as required by law, regulation, or legal process, (v) to its direct or indirect contractual counterparties in swap agreements related to the Credit Extensions or to legal counsel, accountants and other professional advisors to such counterparties when provided for such purposes, (vii) permitted by Section 12.4, (viii) to rating agencies if requested or required by such agencies in connection with a rating

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relating to the Credit Extensions hereunder and (ix) in connection with enforcement of the rights and remedies of the Administrative Agent or any Lender under the Loan Documents to the extent such disclosure is necessary or appropriate to pursue such enforcement in a commercially reasonable manner; provided that, in the case of subsection (iv) to the extent permitted by applicable law, the Administrative Agent or relevant Lender to whom the disclosure request or requirement is made, agrees to use its commercially reasonable efforts to promptly notify the Borrower of such request or requirement so that the Borrower may (a) seek an appropriate protective order or other appropriate order at the Borrower's sole cost and expense and/or (b) waive compliance with this proviso – it being understood and agreed that if the Borrower does not have the right to obtain such an order or if the Borrower does not commence procedures to obtain such a protective order within 5 Business Days of receipt of such notice, the Administrative Agent and Lenders' compliance with this proviso shall be deemed to have been waived with respect to such disclosure. Without limiting Section 9.4, the Borrower agrees that the terms of this Section 9.11 shall set forth the entire agreement between the Borrower and each Lender (including the Administrative Agent) with respect to any Confidential Information previously or hereafter received by such Lender in connection with this Agreement, and this Section 9.11 shall supersede any and all prior confidentiality agreements entered into by such Lender with respect to such Confidential Information. As used in this Section 9.11, "Confidential Information" means any information or material regarding the business operations, procedures, methods and plans of the Borrower and its Subsidiaries, any financial data, proposed transaction or financing structures, information relating to the Receivables or the Receivables Portfolios, and all reports (other than copies of reports filed with the Securities and Exchange Commission) and other information provided pursuant to Section 6.1, together with all notes, analyses, compilations, studies and other documents to the extent they contain or otherwise reflect such information; provided that "Confidential Information" shall not include any such information which (i) is generally available to the public at the time it is provided by, or on behalf of, the Borrower or any Subsidiary, (ii) was known to the intended recipient prior to such information being disclosed to the Administrative Agent or any Lender and (iii) is independently developed by or for the Administrative Agent or any Lender.

9.12. Lenders Not Utilizing Plan Assets. Each Lender represents and warrants that none of the consideration used by such Lender to make its Credit Extensions constitutes for any purpose of ERISA or Section 4975 of the Code assets of any “plan” as defined in Section 3(3) of ERISA or Section 4975 of the Code and the rights and interests of such Lender in and under the Loan Documents shall not constitute such “plan assets” under ERISA.

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9.13. Nonreliance. Each Lender hereby represents that it is not relying on or looking to any margin stock (as defined in Regulation U) as collateral in the extension or maintenance of the credit provided for herein.

9.14. Disclosure. The Borrower and each Lender, including the LC Issuer, hereby acknowledge and agree that each Lender and/or its Affiliates from time to time may hold investments in, make other loans to or have other relationships with the Borrower and its Affiliates.

9.15. Performance of Obligations. The Borrower agrees that the Administrative Agent may, but shall have no obligation to (i) at any time, pay or discharge taxes, liens, security interests or other encumbrances levied or placed on or threatened against any Collateral and (ii) after the occurrence and during the continuance of a Default make any other payment or perform any act required of the Borrower under any Loan Document or take any other action which the Administrative Agent in its discretion deems necessary or desirable to protect or preserve the Collateral, including, without limitation, any action to (x) effect any repairs or obtain any insurance called for by the terms of any of the Loan Documents and to pay all or any part of the premiums therefor and the costs thereof and (y) pay any rents payable by the Borrower which are more than 30 days past due, or as to which the landlord has given notice of termination, under any lease. The Administrative Agent shall use its best efforts to give the Borrower notice of any action taken under this Section 9.15 prior to the taking of such action or promptly thereafter provided the failure to give such notice shall not affect the Borrower’s obligations in respect thereof. The Borrower agrees to pay the Administrative Agent, upon demand, the principal amount of all funds advanced by the Administrative Agent under this Section 9.15, together with interest thereon at the rate from time to time applicable to Floating Rate Loans from the date of such advance until the outstanding principal balance thereof is paid in full. If the Borrower fails to make payment in respect of any such advance under this Section 9.15 within one (1) Business Day after the date the Borrower receives written demand therefor from the Administrative Agent, the Administrative Agent shall promptly notify each Lender and each Lender agrees that it shall thereupon make available to the Administrative Agent, in Dollars in immediately available funds, the amount equal to such Lender’s Revolving Loan Pro Rata Share of such advance. If such funds are not made available to the Administrative Agent by such Lender within one (1) Business Day after the Administrative Agent’s demand therefor, the Administrative Agent will be entitled to recover any such amount from such Lender together with interest thereon at the Federal Funds Effective Rate for each day during the period commencing on the date of such demand and ending on the date such amount is received. The failure of any Lender to make available to the Administrative Agent its Revolving Loan Pro Rata Share of any such unreimbursed advance under this Section 9.15 shall neither relieve any other Lender of its obligation hereunder to make available to the Administrative Agent such other Lender’s Revolving Loan Pro Rata Share of such advance on the date such payment is to be made nor increase the obligation of any other Lender to make such payment to the Administrative Agent. All outstanding principal of, and interest on, advances made under this Section 9.15 shall constitute Obligations secured by the Collateral until paid in full by the Borrower.

9.16. USA Patriot Act Notification. The following notification is provided to the Borrower pursuant to Section 326 of the USA Patriot Act of 2001, 31 U.S.C. Section 5318:

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IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT. To help the government of the United States of America fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each Person that opens an account, including any deposit account, treasury management account, loan, other extension of credit, or other financial services product. Accordingly, when the Borrower opens an account, the Administrative Agent and the Lenders will ask for the Borrower’s name, tax identification number, business address, and other information that will allow the Administrative Agent and the Lenders to identify the Borrower. The Administrative Agent and the Lenders may also ask to see the Borrower’s legal organizational documents or other identifying documents.

## ARTICLE X

### THE ADMINISTRATIVE AGENT

10.1. Appointment; Nature of Relationship. JPMorgan is hereby appointed by each of the Lenders as its contractual representative (herein referred to as the “Administrative Agent”) hereunder and under each other Loan Document, and each of the Lenders irrevocably authorizes the Administrative Agent to act as the contractual representative of such Lender with the rights and duties expressly set forth herein and in the other Loan Documents. The Administrative Agent agrees to act as such contractual representative upon the express conditions contained in this Article X. Notwithstanding the use of the defined term “Administrative Agent,” it is expressly understood and agreed that the Administrative Agent shall not have any fiduciary responsibilities to any of the Holders of Secured Obligations by reason of this Agreement or any other Loan Document and that the Administrative Agent is merely acting as the contractual representative of the Lenders with only those duties as are expressly set forth in this Agreement and the other Loan Documents. In its capacity as the Lenders’ contractual representative, the Administrative Agent (i) does not hereby assume any fiduciary duties to any of the Holders of Secured Obligations, (ii) is a “representative” of the Holders of Secured Obligations within the meaning of the term “secured party” as defined in the New York Uniform Commercial Code and (iii) is acting as an independent contractor, the rights and duties of which are limited to those expressly set forth in this Agreement and the other Loan Documents. Each of the Lenders, for itself and on behalf of its Affiliates as Holders of Secured Obligations, hereby agrees to assert no claim against the Administrative Agent on any agency theory or any other theory of liability for breach of fiduciary duty, all of which claims each Holder of Secured Obligations hereby waives. Except as expressly set forth herein, the Administrative Agent shall not have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower or any other Credit Party that is communicated to or obtained by the bank serving as Administrative Agent or any of its Affiliates in any capacity.

10.2. Powers. The Administrative Agent shall have and may exercise such powers under the Loan Documents as are specifically delegated to the Administrative Agent by the terms of each thereof, together with such powers as are reasonably incidental thereto. The Administrative Agent shall have no implied duties or fiduciary duties to the Lenders, or any obligation to the Lenders to take any action thereunder except any action specifically provided by the Loan Documents to be taken by the Administrative Agent.

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10.3. General Immunity. Neither the Administrative Agent nor any of its directors, officers, agents or employees shall be liable to the Borrower, or any Lender or Holder of Secured Obligations for any action taken or omitted to be taken by it or them hereunder or under any other Loan Document or in connection herewith or therewith except to the extent such action or inaction is determined in a final, non-appealable judgment by a court of competent jurisdiction to have arisen from the gross negligence or willful misconduct of such Person.

10.4. No Responsibility for Loans, Recitals, etc. Neither the Administrative Agent nor any of its directors, officers, agents or employees shall be responsible for or have any duty to ascertain, inquire into, or verify (a) any statement, warranty or representation made in connection with any Loan Document or any borrowing hereunder; (b) the performance or observance of any of the covenants or agreements of any obligor under any Loan Document, including, without limitation, any agreement by an obligor to furnish information directly to each Lender; (c) the satisfaction of any condition specified in Article IV, except receipt of items required to be delivered solely to the Administrative Agent; (d) the existence or possible existence of any Default or Unmatured Default; (e) the validity, enforceability, effectiveness, sufficiency or genuineness of any Loan Document or any other instrument or writing furnished in connection therewith; (f) the value, sufficiency, creation, perfection or priority of any Lien in any Collateral; or (g) the financial condition of the Borrower or any guarantor of any of the Obligations or of any of the Borrower's or any such guarantor's respective Subsidiaries. The Administrative Agent shall have no duty to disclose to the Lenders information that is not required to be furnished by the Borrower to the Administrative Agent at such time, but is voluntarily furnished by the Borrower to the Administrative Agent (either in its capacity as Administrative Agent or in its individual capacity).

10.5. Action on Instructions of Lenders. The Administrative Agent shall in all cases be fully protected in acting, or in refraining from acting, hereunder and under any other Loan Document in accordance with written instructions signed by the Required Lenders (or all of the Lenders in the event that and to the extent that this Agreement expressly requires such), and such instructions and any action taken or failure to act pursuant thereto shall be binding on all of the Lenders. The Lenders hereby acknowledge that the Administrative Agent shall be under no duty to take any discretionary action permitted to be taken by it pursuant to the provisions of this Agreement or any other Loan Document unless it shall be requested in writing to do so by the Required Lenders (or all of the Lenders in the event that and to the extent that this Agreement expressly requires such). The Administrative Agent shall be fully justified in failing or refusing to take any action hereunder and under any other Loan Document unless it shall first be indemnified to its satisfaction by the Lenders pro rata against any and all liability, cost and expense that it may incur by reason of taking or continuing to take any such action.

10.6. Employment of Agents and Counsel. The Administrative Agent may execute any of its duties as Administrative Agent hereunder and under any other Loan Document by or through employees, agents, and attorneys-in-fact and shall not be answerable to the Lenders, except as to money or securities received by it or its authorized agents, for the default or misconduct of any such agents or attorneys-in-fact selected by it with reasonable care. The Administrative Agent shall be entitled to advice of counsel concerning the contractual arrangement between the Administrative Agent and the Lenders and all matters pertaining to the Administrative Agent's duties hereunder and under any other Loan Document.

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10.7. Reliance on Documents; Counsel. The Administrative Agent shall be entitled to rely upon any Note, notice, consent, certificate, affidavit, letter, telegram, facsimile, telex, electronic mail message, statement, paper or document believed by it to be genuine and correct and to have been signed or sent by the proper person or persons, and, in respect to legal matters, upon the opinion of counsel selected by the Administrative Agent, which counsel may be employees of the Administrative Agent. For purposes of determining compliance with the conditions specified in Sections 4.1 and 4.2, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the applicable date specifying its objection thereto.

10.8. Administrative Agent's Reimbursement and Indemnification. The Lenders agree to reimburse and indemnify the Administrative Agent ratably in proportion to the Lenders' Revolving Loan Pro Rata Shares (i) for any amounts not reimbursed by the Borrower for which the Administrative Agent is entitled to reimbursement by the Borrower under the Loan Documents, (ii) for any other expenses incurred by the Administrative Agent on behalf of the Lenders, in connection with the preparation, execution, delivery, administration and enforcement of the Loan Documents (including, without limitation, for any expenses incurred by the Administrative Agent in connection with any dispute between the Administrative Agent and any Lender or between two or more of the Lenders) and (iii) for any liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind and nature whatsoever which may be imposed on, incurred by or asserted against the Administrative Agent in any way relating to or arising out of the Loan Documents or any other document delivered in connection therewith or the transactions contemplated thereby (including, without limitation, for any such amounts incurred by or asserted against the Administrative Agent in connection with any dispute between the Administrative Agent and any Lender or between two or more of the Lenders), or the enforcement of any of the terms of the Loan Documents or of any such other documents, *provided* that (i) no Lender shall be liable for any of the foregoing to the extent any of the foregoing is found in a final, non-appealable judgment by a court of competent jurisdiction to have resulted from the gross negligence or willful misconduct of the Administrative Agent and (ii) any indemnification required pursuant to Section 3.5(vii) shall, notwithstanding the provisions of this Section 10.8, be paid by the relevant Lender in accordance with the provisions thereof. The obligations of the Lenders under this Section 10.8 shall survive payment of the Secured Obligations and termination of this Agreement.

10.9. Notice of Default. The Administrative Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Unmatured Default hereunder unless the Administrative Agent has received written notice from a Lender or the Borrower referring to this Agreement describing such Default or Unmatured Default and stating that such notice is a "notice of default". In the event that the Administrative Agent receives such a notice, the Administrative Agent shall give prompt notice thereof to the Lenders.

10.10. Rights as a Lender. In the event the Administrative Agent is a Lender, the Administrative Agent shall have the same rights and powers hereunder and under any other Loan Document with respect to its Revolving Loan Commitment and its Credit Extensions as any Lender and may exercise the same as though it were not the Administrative Agent, and the term "Lender" or "Lenders" shall, at any time when the Administrative Agent is a Lender, unless the context otherwise indicates, include the Administrative Agent in its individual capacity. The Administrative Agent and its Affiliates may accept deposits from, lend money to, and generally engage in any kind of trust, debt, equity or other transaction, in addition to those contemplated by this Agreement or any other Loan Document, with the Borrower or any of its Subsidiaries in which the Borrower or such Subsidiary is not restricted hereby from engaging with any other Person. The Administrative Agent, in its individual capacity, is not obligated to remain a Lender.

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10.11. Lender Credit Decision. Each Lender acknowledges that it has, independently and without reliance upon the Administrative Agent, the Arranger or any other Lender and based on the financial statements prepared by the Borrower and such other documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement and the other Loan Documents. Each Lender also acknowledges that it will, independently and



without reliance upon the Administrative Agent, the Arranger or any other Lender and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement and the other Loan Documents.

10.12. Successor Administrative Agent. The Administrative Agent may resign at any time by giving written notice thereof to the Lenders and the Borrower, such resignation to be effective upon the appointment of a successor Administrative Agent or, if no successor Administrative Agent has been appointed, forty-five (45) days after the retiring Administrative Agent gives notice of its intention to resign. Upon any such resignation, the Required Lenders shall have the right to appoint, on behalf of the Borrower and the Lenders, a successor Administrative Agent. If no successor Administrative Agent shall have been so appointed by the Required Lenders within thirty days after the resigning Administrative Agent's giving notice of its intention to resign, then the resigning Administrative Agent may appoint, on behalf of the Borrower and the Lenders, a successor Administrative Agent. Notwithstanding the previous sentence, the Administrative Agent may at any time without the consent of the Borrower or any Lender, appoint any of its Affiliates which is a commercial bank as a successor Administrative Agent hereunder. If the Administrative Agent has resigned and no successor Administrative Agent has been appointed, the Lenders may perform all the duties of the Administrative Agent hereunder and the Borrower shall make all payments in respect of the Obligations to the applicable Lender and for all other purposes shall deal directly with the Lenders. No successor Administrative Agent shall be deemed to be appointed hereunder until such successor Administrative Agent has accepted the appointment. Any such successor Administrative Agent shall be a commercial bank having capital and retained earnings of at least \$100,000,000. Upon the acceptance of any appointment as Administrative Agent hereunder by a successor Administrative Agent, such successor Administrative Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the resigning Administrative Agent. Upon the effectiveness of the resignation of the Administrative Agent, the resigning Administrative Agent shall be discharged from its duties and obligations hereunder and under the Loan Documents. After the effectiveness of the resignation of an Administrative Agent, the provisions of this Article X shall continue in effect for the benefit of such Administrative Agent in respect of any actions taken or omitted to be taken by it while it was acting as the Administrative Agent hereunder and under the other Loan Documents. In the event that there is a successor to the Administrative Agent by merger, or the Administrative Agent assigns its duties and obligations to an Affiliate pursuant to this Section 10.12, then the term "Prime Rate" as used in this Agreement shall mean the prime rate, base rate or other analogous rate of the new Administrative Agent.

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10.13. Administrative Agent and Arranger Fees. The Borrower agrees to pay to the Administrative Agent and the Arranger, for their respective accounts, the fees agreed to by the Borrower, the Administrative Agent and the Arranger pursuant to that certain letter agreement dated May 27, 2005, or as otherwise agreed from time to time.

10.14. Delegation to Affiliates. The Borrower and the Lenders agree that the Administrative Agent may delegate any of its duties under this Agreement to any of its Affiliates. Any such Affiliate (and such Affiliate's directors, officers, agents and employees) which performs duties in connection with this Agreement shall be entitled to the same benefits of the indemnification, waiver and other protective provisions to which the Administrative Agent is entitled under Articles IX and X.

10.15. Co-Agents, Documentation Agent, Syndication Agent, etc. None of the Lenders, if any, identified in this Agreement as a "co-agent", "documentation agent" or "syndication agent" shall have any right, power, obligation, liability, responsibility or duty under this Agreement other than those applicable to all Lenders as such. Without limiting the foregoing, none of such Lenders shall have or be deemed to have a fiduciary relationship with any Lender. Each Lender hereby makes the same acknowledgments with respect to such Lenders as it makes with respect to the Administrative Agent in Section 10.11.

10.16. Collateral Documents. (a) Each Lender authorizes the Administrative Agent to enter into each of the Collateral Documents to which it is a party and to take all action contemplated by such documents. Each Lender agrees that no Holder of Secured Obligations (other than the Administrative Agent) shall have the right individually to seek to realize upon the security granted by any Collateral Document, it being understood and agreed that such rights and remedies may be exercised solely by the Administrative Agent for the benefit of the Holders of Secured Obligations upon the terms of the Collateral Documents.

(b) In the event that any Collateral is hereafter pledged by any Person as collateral security for the Secured Obligations, the Administrative Agent is hereby authorized to execute and deliver on behalf of the Holders of Secured Obligations any Loan Documents necessary or appropriate to grant and perfect a Lien on such Collateral in favor of the Administrative Agent on behalf of the Holders of Secured Obligations.

(c) The Lenders hereby authorize the Administrative Agent, at its option and in its discretion, to release any Lien granted to or held by the Administrative Agent upon any Collateral (i) upon termination of the Revolving Loan Commitments and payment and satisfaction of all of the Obligations (other than contingent indemnity obligations and Rate Management Obligations) at any time arising under or in respect of this Agreement or the Loan Documents or the transactions contemplated hereby or thereby; (ii) as permitted by, but only in accordance with, the terms of the applicable Loan Document; or (iii) if approved, authorized or ratified in writing by the Required Lenders, unless such release is required to be approved by all of the Lenders hereunder. Upon request by the Administrative Agent at any time, the Lenders will confirm in writing the Administrative Agent's authority to release particular types or items of Collateral pursuant to this Section 10.16.

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(d) Upon any sale or transfer of assets constituting Collateral which is permitted pursuant to the terms of any Loan Document, or consented to in writing by the Required Lenders or all of the Lenders, as applicable, and upon at least five Business Days' prior written request by the Borrower to the Administrative Agent, the Administrative Agent shall (and is hereby irrevocably authorized by the Lenders to) execute such documents as may be necessary to evidence the release of the Liens granted to the Administrative Agent for the benefit of the Holders of Secured Obligations herein or pursuant hereto upon the Collateral that was sold or transferred; provided, however, that (i) the Administrative Agent shall not be required to execute any such document on terms which, in the Administrative Agent's opinion, would expose the Administrative Agent to liability or create any obligation or entail any consequence other than the release of such Liens without recourse or warranty, and (ii) such release shall not in any manner discharge, affect or impair the Secured Obligations or any Liens upon (or obligations of the Borrower or any Subsidiary in respect of) all interests retained by the Borrower or any Subsidiary, including (without limitation) the proceeds of the sale, all of which shall continue to constitute part of the Collateral.

## ARTICLE XI

### SETOFF; RATABLE PAYMENTS

11.1. Setoff. In addition to, and without limitation of, any rights of the Lenders under applicable law, if the Borrower becomes insolvent, however evidenced, or any other Default occurs, any and all deposits (including all account balances, whether provisional or final and whether or not collected or available) and any other Indebtedness at any time held or owing by any Lender or any Affiliate of any Lender to or for the credit or account of the Borrower may be offset and applied toward the payment of the Secured Obligations owing to such Lender, whether or not the Secured Obligations, or any part thereof, shall then be due.

11.2. Ratable Payments. If any Lender, whether by setoff or otherwise, has payment made to it upon its Outstanding Revolving Credit Exposure (other than payments received pursuant to Section 3.1, 3.2, 3.4 or 3.5) in a greater proportion than that received by any other Lender, such Lender agrees, promptly upon demand, to purchase a participation in the Aggregate Outstanding Revolving Credit Exposure held by the other Lenders so that after such purchase each Lender will hold its Revolving Loan Pro Rata Share. If any Lender, whether in connection with setoff or amounts which might be subject to setoff or otherwise, receives collateral or other protection for its Obligations or such amounts which may be subject to setoff, such Lender agrees, promptly upon demand, to take such action necessary such that all Lenders share in the benefits of such collateral ratably in proportion to their respective Revolving Loan Pro Rata Shares. In case any such payment is disturbed by legal process, or otherwise, appropriate further adjustments shall be made.

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## ARTICLE XII

### BENEFIT OF AGREEMENT; ASSIGNMENTS; PARTICIPATIONS

12.1. Successors and Assigns. The terms and provisions of the Loan Documents shall be binding upon and inure to the benefit of the Borrower, the Administrative Agent and the Lenders and their respective successors and assigns permitted hereby, except that (i) the Borrower shall not have the right to assign its rights or obligations under the Loan Documents without the prior written consent of each Lender, (ii) any assignment by any Lender must be made in compliance with Section 12.3, and (iii) any transfer by Participation must be made in compliance with Section 12.2. Any attempted assignment or transfer by any party not made in compliance with this Section 12.1 shall be null and void, unless such attempted assignment or transfer is treated as a participation in accordance with Section 12.3.2. The parties to this Agreement acknowledge that clause (ii) of this Section 12.1 relates only to absolute assignments and this Section 12.1 does not prohibit assignments creating security interests, including, without limitation, (x) any pledge or assignment by any Lender of all or any portion of its rights under this Agreement and any Note to a Federal Reserve Bank, (y) in the case of a Lender which is a Fund, any pledge or assignment of all or any portion of its rights under this Agreement and any Note to its trustee in support of its obligations to its trustee or (z) any pledge or assignment by any Lender of all or any portion of its rights under this Agreement and any Note to direct or indirect contractual counterparties in swap agreements relating to the Loans; *provided, however*, that no such pledge or assignment creating a security interest shall release the transferor Lender from its obligations hereunder unless and until the parties thereto have complied with the provisions of Section 12.3. The Administrative Agent may treat the Person which made any Loan or which holds any Note as the owner thereof for all purposes hereof unless and until such Person complies with Section 12.3; *provided, however*, that the Administrative Agent may in its discretion (but shall not be required to) follow instructions from the Person which made any Loan or which holds any Note to direct payments relating to such Loan or Note to another Person. Any assignee of the rights to any Loan or any Note agrees by acceptance of such assignment to be bound by all the terms and provisions of the Loan Documents. Any request, authority or consent of any Person, who at the time of making such request or giving such authority or consent is the owner of the rights to any Loan (whether or not a Note has been issued in evidence thereof), shall be conclusive and binding on any subsequent holder or assignee of the rights to such Loan.

12.2. Participations.

12.2.1 Permitted Participants; Effect. Any Lender may at any time sell to one or more banks or other entities ("Participants") participating interests in any Outstanding Revolving Credit Exposure of such Lender, any Note held by such Lender, any Revolving Loan Commitment of such Lender or any other interest of such Lender under the Loan Documents. In the event of any such sale by a Lender of participating interests to a Participant, such Lender's obligations under the Loan Documents shall remain unchanged, such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, such Lender shall remain the owner of its Outstanding Revolving Credit Exposure and the holder of any Note issued to it in evidence thereof for all purposes under the Loan Documents, all amounts payable by the Borrower under this Agreement shall be determined as if such Lender had not sold such participating interests, and the Borrower and the Administrative Agent shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under the Loan Documents.

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12.2.2 Voting Rights. Each Lender shall retain the sole right to approve, without the consent of any Participant, any amendment, modification or waiver of any provision of the Loan Documents other than any amendment, modification or waiver with respect to any Credit Extension or Revolving Loan Commitment in which such Participant has an interest which would require consent of all of the Lenders pursuant to the terms of Section 8.2 or of any other Loan Document.

12.2.3 Benefit of Certain Provisions. The Borrower agrees that each Participant shall be deemed to have the right of setoff provided in Section 11.1 in respect of its participating interest in amounts owing under the Loan Documents to the same extent as if the amount of its participating interest were owing directly to it as a Lender under the Loan Documents, *provided* that each Lender shall retain the right of setoff provided in Section 11.1 with respect to the amount of participating interests sold to each Participant. The Lenders agree to share with each Participant, and each Participant, by exercising the right of setoff provided in Section 11.1, agrees to share with each Lender, any amount received pursuant to the exercise of its right of setoff, such amounts to be shared in accordance with Section 11.2 as if each Participant were a Lender. The Borrower further agrees that each Participant shall be entitled to the benefits of Sections 3.1, 3.2, 3.4 and 3.5 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 12.3, *provided* that (i) a Participant shall not be entitled to receive any greater payment under Section 3.1, 3.2 or 3.5 than the Lender who sold the participating interest to such Participant would have received had it retained such interest for its own account, unless the sale of such interest to such Participant is made with the prior written consent of the Borrower, and (ii) any Participant not incorporated under the laws of the United States of America or any State thereof agrees to comply with the provisions of Section 3.5 to the same extent as if it were a Lender.

12.3. Assignments.

12.3.1 Permitted Assignments. Any Lender may at any time assign to one or more banks or other entities (“Purchasers”) all or any part of its rights and obligations under the Loan Documents. Such assignment shall be evidenced by an agreement substantially in the form of Exhibit C or in such other form as may be agreed to by the parties thereto (each such agreement, an “Assignment Agreement”). Each such assignment with respect to a Purchaser which is not a Lender or an Affiliate of a Lender or an Approved Fund shall either be in an amount equal to the entire applicable Revolving Loan Commitment and Outstanding Revolving Credit Exposure of the assigning Lender or (unless each of the Borrower and the Administrative Agent otherwise consents) be in an aggregate amount not less than \$3,000,000. The amount of the assignment shall be based on the Revolving Loan Commitment and Outstanding Revolving Credit Exposure (if the Revolving Loan Commitment has been terminated) subject to the assignment, determined as of the date of such assignment or as of the “Trade Date,” if the “Trade Date” is specified in the Assignment Agreement.

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12.3.2 Consents. The consent of the Borrower shall be required prior to an assignment becoming effective unless the Purchaser is a Lender, an Affiliate of a Lender or an Approved Fund, provided that the consent of the Borrower shall not be required if (i) a Default has occurred and is continuing or (ii) if such assignment is in connection with the physical settlement of any Lender’s obligations to direct or indirect contractual counterparties in swap agreements relating to the Loans. The consent of the Administrative Agent and the LC Issuer shall be required prior to any assignment becoming effective. Any consent required under this Section 12.3.2 shall not be unreasonably withheld or delayed.

12.3.3 Effect; Effective Date. Upon (i) delivery to the Administrative Agent of an Assignment Agreement, together with any consents required by Sections 12.3.1 and 12.3.2, and (ii) payment of a \$3,500 fee by the relevant assignor or Purchaser to the Administrative Agent for processing such assignment (unless such fee is waived by the Administrative Agent), such assignment shall become effective on the effective date specified in such assignment. The Assignment Agreement shall contain a representation by the Purchaser to the effect that none of the consideration used to make the purchase of the Revolving Loan Commitment and Outstanding Revolving Credit Exposure under the applicable Assignment Agreement constitutes “plan assets” as defined under ERISA and that the rights and interests of the Purchaser in and under the Loan Documents will not be “plan assets” under ERISA. On and after the effective date of such assignment, such Purchaser shall for all purposes be a Lender party to this Agreement and any other Loan Document executed by or on behalf of the Lenders and shall have all the rights and obligations of a Lender under the Loan Documents, to the same extent as if it were an original party thereto, and the transferor Lender shall be released with respect to the Revolving Loan Commitment and Outstanding Revolving Credit Exposure assigned to such Purchaser without any further consent or action by the Borrower, the Lenders or the Administrative Agent. In the case of an assignment covering all of the assigning Lender’s rights and obligations under this Agreement, such Lender shall cease to be a Lender hereunder but shall continue to be entitled to the benefits of, and subject to, those provisions of this Agreement and the other Loan Documents which survive payment of the Obligations and termination of the applicable agreement. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section 12.3 shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with Section 12.2. Upon the consummation of any assignment to a Purchaser pursuant to this Section 12.3.3, the transferor Lender, the Administrative Agent and the Borrower shall, if the transferor Lender or the Purchaser desires that its Loans be evidenced by Notes, make appropriate arrangements so that new Notes or, as appropriate, replacement Notes are issued to such transferor Lender, if applicable, and new Notes or, as appropriate, replacement Notes, are issued to such Purchaser, in each case in principal amounts reflecting their respective Revolving Loan Commitments (or, if the Revolving Loan Termination Date has occurred, their respective Outstanding Revolving Credit Exposure) as adjusted pursuant to such assignment.

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12.3.4 Register. The Administrative Agent, acting solely for this purpose as an agent of the Borrower, shall maintain at one of its offices in Phoenix, Arizona a copy of each Assignment Agreement delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Revolving Loan Commitments of, and principal amounts of the Credit Extensions owing to, each Lender pursuant to the terms hereof from time to time (the “Register”). The entries in the Register shall be conclusive, and the Borrower, the Administrative Agent and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower at any reasonable time and from time to time upon reasonable prior notice.

12.4. Dissemination of Information. The Borrower authorizes each Lender to disclose to any Participant or Purchaser or any other Person acquiring an interest in the Loan Documents by operation of law (each a “Transferee”) and any prospective Transferee any and all information in such Lender’s possession concerning the creditworthiness of the Borrower and its Subsidiaries, including without limitation any information contained in any Reports; *provided* that each Transferee and prospective Transferee agrees to be bound by Section 9.11 of this Agreement.

12.5. Tax Treatment. If any interest in any Loan Document is transferred to any Transferee which is not incorporated under the laws of the United States or any State thereof, the transferor Lender shall cause such Transferee, concurrently with the effectiveness of such transfer, to comply with the provisions of Section 3.5(iv).

## ARTICLE XIII

### NOTICES

13.1. Notices; Effectiveness; Electronic Communication

13.1.1 Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in Section 13.1.2 below), all notices and other communications provided for herein shall be in writing and shall be delivered by

hand or overnight courier service, mailed by certified or registered mail or sent by telecopier, in each case to the attention of the individual or office indicated, if any, as follows:

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- (i) if to the Borrower, at its address or telecopier number set forth on the signature page hereof;
- (ii) if to the Administrative Agent, at its address or telecopier number set forth on the signature page hereof;
- (iii) if to the LC Issuer, at its address or telecopier number set forth on the signature page hereof;
- (iv) if to a Lender, to it at its address (or telecopier number) set forth in its Administrative Questionnaire.

Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent by telecopier shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices delivered through electronic communications to the extent provided in Section 13.1.2 below, shall be effective as provided in said Section 13.1.2.

- 13.1.2 Electronic Communications. Notices and other communications to the Lenders and the LC Issuer hereunder may be delivered or furnished by electronic communication (including e-mail and internet or intranet websites) pursuant to procedures approved by the Administrative Agent or as otherwise determined by the Administrative Agent, provided that the foregoing shall not apply to notices to any Lender or the LC Issuer pursuant to Article II if such Lender or the LC Issuer, as applicable, has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent or the Borrower may, in its respective discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it or as it otherwise determines, provided that such determination or approval may be limited to particular notices or communications. Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgment from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgment), provided that if such notice or other communication is not given during the normal business hours of the recipient, such notice or communication shall be deemed to have been given at the opening of business on the next Business Day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

13.2. Change of Address, Etc. Any party hereto may change its address or telecopier number for notices and other communications hereunder by notice to the other parties hereto.

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## ARTICLE XIV

### COUNTERPARTS; INTEGRATION; EFFECTIVENESS; ELECTRONIC EXECUTION

14.1. Counterparts; Effectiveness. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Except as provided in Article IV, this Agreement shall become effective when it shall have been executed by the Borrower, the Administrative Agent, the LC Issuer and the Lenders and when the Administrative Agent shall have received counterparts hereof which, when taken together, bear the signatures of each of such parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Delivery of an executed counterpart of a signature page of this Agreement by telecopy shall be effective as delivery of a manually executed counterpart of this Agreement.

14.2. Electronic Execution of Assignments. The words "execution," "signed," "signature," and words of like import in any Assignment Agreement shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, or any other state laws based on the Uniform Electronic Transactions Act.

## ARTICLE XV

### CHOICE OF LAW; CONSENT TO JURISDICTION; WAIVER OF JURY TRIAL

**15.1 CHOICE OF LAW. THE LOAN DOCUMENTS (OTHER THAN THOSE CONTAINING A CONTRARY EXPRESS CHOICE OF LAW PROVISION) SHALL BE CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF NEW YORK, BUT GIVING EFFECT TO FEDERAL LAWS APPLICABLE TO NATIONAL BANKS.**

**15.2 CONSENT TO JURISDICTION. THE BORROWER HEREBY IRREVOCABLY SUBMITS TO THE NON-EXCLUSIVE JURISDICTION OF ANY UNITED STATES FEDERAL OR NEW YORK STATE COURT SITTING IN NEW YORK CITY, NEW YORK IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO ANY LOAN DOCUMENTS AND THE BORROWER HEREBY IRREVOCABLY AGREES THAT ALL CLAIMS IN RESPECT OF SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN ANY SUCH COURT AND IRREVOCABLY WAIVES ANY OBJECTION IT MAY NOW OR HEREAFTER HAVE AS TO THE VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN SUCH A COURT OR THAT SUCH COURT IS AN INCONVENIENT FORUM. NOTHING HEREIN SHALL LIMIT THE RIGHT OF ANY PARTY HERETO TO BRING PROCEEDINGS IN THE COURTS OF ANY OTHER JURISDICTION.**

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**15.3 WAIVER OF JURY TRIAL.** THE BORROWER, THE ADMINISTRATIVE AGENT, THE LC ISSUER, EACH LENDER, AND EACH OTHER HOLDER OF SECURED OBLIGATIONS HEREBY WAIVE TRIAL BY JURY IN ANY JUDICIAL PROCEEDING INVOLVING, DIRECTLY OR INDIRECTLY, ANY MATTER (WHETHER SOUNDING IN TORT, CONTRACT OR OTHERWISE) IN ANY WAY ARISING OUT OF, RELATED TO, OR CONNECTED WITH ANY LOAN DOCUMENT OR THE RELATIONSHIP ESTABLISHED THEREUNDER.

[Signature Pages Follow]

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IN WITNESS WHEREOF, the Borrower, the Lenders, the LC Issuer and the Administrative Agent have executed this Agreement as of the date first above written.

**ENCORE CAPITAL GROUP, INC.**  
as the Borrower

By: /s/ Carl C. Gregory, III

\_\_\_\_\_  
Print Name: Carl C. Gregory, III

\_\_\_\_\_  
Title: Vice Chairman & CEO

8875 Aero Drive, Suite 200  
San Diego, California 92123

Attention: General Counsel

\_\_\_\_\_  
Telephone: (858) 309-6964  
FAX: (858) 309-6995

**JPMORGAN CHASE BANK, N.A.,**  
as a Lender, as Swing Line Lender, as LC Issuer, and as  
Administrative Agent

By: /s/ Steven J. Krakoski

Print Name: Steven J. Krakoski

Title: Senior Vice President

201 North Central Avenue  
21st Floor  
Phoenix, Arizona 85004

Attention:

Telephone: (602) 221-1360  
FAX: (602) 221-1502  
email: steven.j.krakoski@chase.com

## COMMITMENT SCHEDULE

### Revolving Loan Commitments

<u>Lender</u>	<u>Amount of Revolving Loan Commitment</u>	<u>% of Aggregate Revolving Loan Commitment</u>
JPMorgan Chase Bank, N.A.	\$150,000,000	100%
<b>TOTAL</b>	<b>\$150,000,000.00</b>	<b>100%</b>

## PRICING SCHEDULE

<b>APPLICABLE MARGIN</b>	<b>LEVEL I STATUS</b>	<b>LEVEL II STATUS</b>	<b>LEVEL III STATUS</b>	<b>LEVEL IV STATUS</b>	<b>LEVEL V STATUS</b>	<b>LEVEL VI STATUS</b>
<i>Eurodollar Rate</i>	2.00%	2.25%	2.50%	2.75%	3.00%	3.25%
<i>Floating Rate</i>	0.00%	0.00%	0.00%	0.25%	0.50%	0.50%

<b>APPLICABLE FEE RATE</b>	<b>LEVEL I STATUS</b>	<b>LEVEL II STATUS</b>	<b>LEVEL III STATUS</b>	<b>LEVEL IV STATUS</b>	<b>LEVEL V STATUS</b>	<b>LEVEL VI STATUS</b>
<i>Commitment Fee</i>	0.375%	0.425%	0.500%	0.500%	0.500%	0.500%

For the purposes of this Schedule, the following terms have the following meanings, subject to the final paragraph of this Schedule:

“Financials” means the annual or quarterly financial statements of the Borrower delivered pursuant to Section 6.1.1 or 6.1.2.

“Level I Status” exists at any date if, as of the last day of the fiscal quarter of the Borrower referred to in the most recent Financials, the Cash Flow Leverage Ratio is less than 0.5 to 1.0.

“Level II Status” exists at any date if, as of the last day of the fiscal quarter of the Borrower referred to in the most recent Financials, (i) the Borrower has not qualified for Level I Status and (ii) the Cash Flow Leverage Ratio is less than 1.0 to 1.0.

“Level III Status” exists at any date if, as of the last day of the fiscal quarter of the Borrower referred to in the most recent Financials, (i) the Borrower has not qualified for Level I Status or Level II Status and (ii) the Cash Flow Leverage Ratio is less than 1.5 to 1.0.

“Level IV Status” exists at any date if, as of the last day of the fiscal quarter of the Borrower referred to in the most recent Financials Level I Status or Level II Status or Level III Status and (ii) the Cash Flow Leverage Ratio is less than 2.0 to 1.0.

“Level V Status” exists at any date if, as of the last day of the fiscal quarter of the Borrower referred to in the most recent Financials Level I Status or Level II Status or Level III Status or Level IV Status and (ii) the Cash Flow Leverage Ratio is less than 2.5 to 1.0.

“Level VI Status” exists at any date if, as of the last day of the fiscal quarter of the Borrower referred to in the most recent Financials, the Borrower has not qualified for Level I Status or Level II Status or Level III Status or Level IV Status or Level V Status.

“Status” means either Level I Status, Level II Status, Level III Status, Level IV Status, Level V Status or Level VI Status.

The Applicable Margin and Applicable Fee Rate shall be determined in accordance with foregoing table based on the Borrower's Status as reflected in the then most recent Financials. Adjustments, if any, to the Applicable Margin or Applicable Fee Rate shall be effective five Business Days after the Administrative Agent has received the applicable Financials. If the Borrower fails to deliver the Financials to the Administrative Agent at the time required pursuant to Section 6.1, then the Applicable Margin and Applicable Fee Rate shall be the highest Applicable Margin and Applicable Fee Rate set forth in the foregoing table until five days after such Financials are so delivered.

Notwithstanding the foregoing, Level VI Status shall be deemed to be applicable until the Administrative Agent's receipt of the applicable Financials for the Borrower's fiscal quarter ending on or about June 30, 2005 (unless such Financials demonstrate that a higher Applicable Margin/Applicable Fee Rate should have been applicable during such period, in which case the applicable Level based on such higher Applicable Margin/Applicable Fee Rate shall be deemed to be applicable during such period) and adjustments to the Applicable Margin and Applicable Fee Rate shall thereafter be effected in accordance with the preceding paragraph.

## PLEDGE AND SECURITY AGREEMENT

THIS PLEDGE AND SECURITY AGREEMENT (this “Security Agreement”) is entered into as of June 7, 2005 by and among ENCORE CAPITAL GROUP, INC., a Delaware corporation (the “Borrower”), MIDLAND CREDIT MANAGEMENT, INC., a Kansas corporation, MIDLAND FUNDING NCC-2 CORPORATION, a Delaware corporation, MIDLAND ACQUISITION CORPORATION, a Delaware corporation, MIDLAND RECEIVABLES 98-1 CORPORATION, a Delaware corporation, MIDLAND RECEIVABLES 99-1 CORPORATION, a Delaware corporation, MIDLAND FUNDING 98-A CORPORATION, a Delaware corporation, MIDLAND FUNDING NCC-1 CORPORATION, a Delaware corporation, MIDLAND PORTFOLIO SERVICES, INC., a Delaware corporation and MIDLAND FUNDING LLC, a Delaware limited liability company (together with the Borrower, the “Initial Grantors” and together with any additional Domestic Subsidiaries, whether now existing or hereafter formed which become parties to this Security Agreement by executing a Supplement hereto in substantially the form of Annex I, the “Grantors”), and JPMORGAN CHASE BANK, N.A., in its capacity as administrative agent (the “Administrative Agent”) for the lenders party to the Credit Agreement referred to below (collectively, the “Lenders”).

## PRELIMINARY STATEMENT

The Borrower, the Administrative Agent and the Lenders are entering into a Credit Agreement dated as of the date hereof (as amended, restated, supplemented or otherwise modified from time to time, the “Credit Agreement”). The Grantors are entering into this Security Agreement in order to induce the Lenders to enter into and extend credit to the Borrower under the Credit Agreement.

ACCORDINGLY, the Grantors and the Administrative Agent, on behalf of the Holders of Secured Obligations, hereby agree as follows:

## ARTICLE I

## DEFINITIONS

- 1.1. Terms Defined in Credit Agreement. All capitalized terms used herein and not otherwise defined shall have the meanings assigned to such terms in the Credit Agreement.
- 1.2. Terms Defined in New York UCC. Terms defined in the New York UCC which are not otherwise defined in this Security Agreement are used herein as defined in the New York UCC.
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- 1.3. Definitions of Certain Terms Used Herein. As used in this Security Agreement, in addition to the terms defined in the Preliminary Statement, the following terms shall have the following meanings:
- “Accounts” shall have the meaning set forth in Article 9 of the New York UCC.
- “Article” means a numbered article of this Security Agreement, unless another document is specifically referenced.
- “Chattel Paper” shall have the meaning set forth in Article 9 of the New York UCC.
- “Collateral” means all Accounts, Chattel Paper, Commercial Tort Claims, Documents, Equipment, Fixtures, Goods, General Intangibles, Instruments, Inventory, Investment Property, Pledged Deposits, Supporting Obligations and Other Collateral, wherever located, in which any Grantor now has or hereafter acquires any right or interest, and the proceeds (including Stock Rights), insurance proceeds and products thereof, together with all books and records, customer lists, credit files, computer files, programs, printouts and other computer materials and records related thereto.
- “Commercial Tort Claims” means those certain currently existing commercial tort claims of any Grantor, including each commercial tort claim specifically described in Exhibit F.
- “Control” shall have the meaning set forth in Article 8 or, if applicable, in Section 9-104, 9-105, 9-106 or 9-107 of Article 9 of the New York UCC.
- “Default” means an event described in Section 5.1 hereof.
- “Deposit Accounts” shall have the meaning set forth in Article 9 of the New York UCC.
- “Documents” shall have the meaning set forth in Article 9 of the New York UCC.
- “Equipment” shall have the meaning set forth in Article 9 of the New York UCC.
- “Exhibit” refers to a specific exhibit to this Security Agreement, unless another document is specifically referenced.
- “Fixtures” shall have the meaning set forth in Article 9 of the New York UCC.
- “General Intangibles” shall have the meaning set forth in Article 9 of the New York UCC.
- “Goods” shall have the meaning set forth in Article 9 of the New York UCC.
- “Instruments” shall have the meaning set forth in Article 9 of the New York UCC.
- “Inventory” shall have the meaning set forth in Article 9 of the New York UCC.
- “Investment Property” shall have the meaning set forth in Article 9 of the New York UCC.



“New York UCC” means the New York Uniform Commercial Code *as in effect from time to time*.

“Other Collateral” means any property of the Grantors, not included within the defined terms Accounts, Chattel Paper, Commercial Tort Claims, Documents, Equipment, Fixtures, General Intangibles, Instruments, Inventory, Investment Property and Pledged Deposits, including, without limitation, all cash on hand, letter-of-credit rights, letters of credit, Stock Rights and Deposit Accounts or other deposits (general or special, time or demand, provisional or final) with any bank or other financial institution, it being intended that the Collateral include all real and personal property of the Grantors.

“Pledged Deposits” means all time deposits of money (other than Deposit Accounts and Instruments), whether or not evidenced by certificates, which a Grantor may from time to time designate as pledged to the Administrative Agent or to any Holder of Secured Obligations as security for any Obligation, and all rights to receive interest on said deposits.

“Receivables” means the Accounts, Chattel Paper, Documents, Investment Property, Instruments or Pledged Deposits, and any other rights or claims to receive money which are General Intangibles or which are otherwise included as Collateral.

“Required Secured Parties” means (x) prior to an acceleration of the Secured Obligations under the Credit Agreement, the Required Lenders, (y) after an acceleration of the Secured Obligations under the Credit Agreement but prior to the date upon which the Credit Agreement has terminated by its terms and all of the Secured Obligations thereunder have been paid in full, Lenders and their Affiliates holding in the aggregate more than 50% of the total of (i) the unpaid principal amount of the outstanding Loans and LC Obligations and (ii) the aggregate net early termination payments and all other amounts then due and unpaid from the Borrower to the Lenders or their Affiliates under Rate Management Transactions, as determined by the Administrative Agent in its reasonable discretion, and (z) after the Credit Agreement has terminated by its terms and all of the Secured Obligations thereunder have been paid in full (whether or not the Secured Obligations under the Credit Agreement were ever accelerated), Lenders and their Affiliates holding in the aggregate more than 50% of the aggregate net early termination payments and all other amounts then due and unpaid from the Borrower to the Lenders or their Affiliates under Rate Management Transactions, as determined by the Administrative Agent in its reasonable discretion.

“Section” means a numbered section of this Security Agreement, unless another document is specifically referenced.

“Security” has the meaning set forth in Article 8 of the New York UCC.

“Stock Rights” means any securities, dividends or other distributions and any other right or property which any Grantor shall receive or shall become entitled to receive for any reason whatsoever with respect to, in substitution for or in exchange for any securities or other ownership interests in a corporation, partnership, joint venture or limited liability company constituting Collateral and any securities, any right to receive securities and any right to receive earnings, in which any Grantor now has or hereafter acquires any right, issued by an issuer of such securities.

“Supporting Obligation” shall have the meaning set forth in Article 9 of the New York UCC.

The foregoing definitions shall be equally applicable to both the singular and plural forms of the defined terms.

## ARTICLE II

### GRANT OF SECURITY INTEREST

Each of the Grantors hereby pledges, assigns and grants to the Administrative Agent, on behalf of and for the ratable benefit of the Holders of Secured Obligations and (to the extent specifically provided herein) their Affiliates, a security interest in all of such Grantor’s right, title and interest, whether now owned or hereafter acquired, in and to the Collateral to secure the prompt and complete payment and performance of the Secured Obligations.

## ARTICLE III

### REPRESENTATIONS AND WARRANTIES

Each of the Initial Grantors represents and warrants to the Administrative Agent and the Holders of Secured Obligations, and each Grantor that becomes a party to this Security Agreement pursuant to the execution of a Security Agreement Supplement in substantially the form of Annex I represents and warrants (after giving effect to supplements to each of the Exhibits hereto with respect to such subsequent Grantor as attached to such Security Agreement Supplement), that:

3.1. Title, Authorization, Validity and Enforceability. Such Grantor has good and valid rights in or the power to transfer the Collateral owned by it and title to the Collateral with respect to which it has purported to grant a security interest hereunder, free and clear of all Liens except for Liens permitted under Section 4.1.6 hereof, and has full corporate, limited liability company or partnership, as applicable, power and authority to grant to the Administrative Agent the security interest in such Collateral pursuant hereto. The execution and delivery by such Grantor of this Security Agreement has been duly authorized by proper corporate, limited liability company or partnership, as applicable, other proceedings, and this Security Agreement constitutes a legal, valid and binding obligation of such Grantor and creates a security interest which is enforceable against such Grantor in all Collateral it now owns or hereafter acquires, except as enforceability may be limited by (i) bankruptcy, insolvency, fraudulent conveyances, reorganization or similar laws relating to or affecting the enforcement of creditors’ rights generally, (ii) general equitable principles (whether considered in a proceeding in equity or at law), and (iii) requirements of reasonableness, good faith and fair dealing. When financing statements have been filed in the appropriate offices against such Grantor in the locations listed on Exhibit E, the Administrative Agent will have a fully perfected first priority security interest in the Collateral owned by such Grantor in which a security interest may be perfected by filing, subject only to Liens permitted under Section 4.1.6 hereof.

3.2. Conflicting Laws and Contracts. Neither the execution and delivery by such Grantor of this Security Agreement, the creation and perfection of the security interest in the Collateral granted hereunder, nor compliance with the terms and provisions hereof will violate (i) any law, rule, regulation, order, writ, judgment, injunction, decree or award binding on such Grantor, or (ii) such Grantor's charter, articles or by-laws (or similar constitutive documents), or (iii) the provisions of any indenture, instrument or agreement to which such Grantor is a party or is subject, or by which it, or its Property may be bound or affected, or conflict with or constitute a default thereunder, or result in or require the creation or imposition of any Lien in, of or on the Property of such Grantor pursuant to the terms of any such indenture, instrument or agreement (other than any Lien of the Administrative Agent on behalf of the Holders of Secured Obligations).

3.3. Principal Location. Such Grantor's mailing address and the location of its place of business (if it has only one) or its chief executive office (if it has more than one place of business), is disclosed in Exhibit A; such Grantor has no other places of business except those set forth in Exhibit A.

3.4. Property Locations. The Inventory, Equipment and Fixtures of each Grantor are located solely at the locations of such Grantor described in Exhibit A. All of said locations are owned by such Grantor except for locations (i) which are leased by such Grantor as lessee and designated in Part B of Exhibit A and (ii) at which Inventory is held in a public warehouse or is otherwise held by a bailee or on consignment by such Grantor as designated in Part C of Exhibit A, with respect to which Inventory such Grantor has delivered bailment agreements, warehouse receipts, financing statements or other documents satisfactory to the Administrative Agent to protect the Administrative Agent's and the Holders of Secured Obligations' security interest in such Inventory.

3.5. No Other Names. Except as set forth in Exhibit A, such Grantor has not conducted business under any name except the name in which it has executed this Security Agreement, which is the exact name as it appears in such Grantor's organizational documents, as amended, as filed with such Grantor's jurisdiction of organization as of the Closing Date.

3.6. No Default. No Default or Unmatured Default exists.

3.7. Intentionally Omitted.

3.8. Filing Requirements. None of the Equipment owned by such Grantor is covered by any certificate of title, except for the vehicles described in Part A of Exhibit B. None of the Collateral owned by such Grantor is of a type for which security interests or liens may be perfected by filing under any federal statute except for (i) the vehicles described in Part B of Exhibit B and (ii) patents, trademarks and copyrights held by such Grantor and described in Part C of Exhibit B. The legal description, county and street address of the property on which any Fixtures owned by such Grantor are located is set forth in Exhibit C together with the name and address of the record owner of each such property.

3.9. No Financing Statements. No financing statement describing all or any portion of the Collateral which has not lapsed or been terminated naming such Grantor as debtor has been filed in any jurisdiction except financing statements (i) naming the Administrative Agent on behalf of the Holders of Secured Obligations as the secured party and (ii) in respect of Liens permitted by Section 6.15 of the Credit Agreement; provided, that nothing herein shall be deemed to constitute an agreement to subordinate any of the Liens of the Administrative Agent under the Loan Documents to any Liens otherwise permitted under Section 6.15 of the Credit Agreement.

3.10. Federal Employer Identification Number; State Organization Number; Jurisdiction of Organization. Such Grantor's federal employer identification number is, and if such Grantor is a registered organization, such Grantor's State of organization, type of organization and State of organization identification number and is, as follows:

<u>GRANTOR</u>	<u>Federal Employer Identification Number</u>	<u>Type of Organization</u>	<u>State of Incorporation</u>	<u>State Organization Number</u>
ENCORE CAPITAL GROUP, INC	48-1090909	Corporation	Delaware	3034002
MIDLAND CREDIT MANAGEMENT, INC	48-0581733	Corporation	Kansas	48421
MIDLAND FUNDING NCC-2 CORPORATION	51-0488211	Corporation	Delaware	3683366
MIDLAND ACQUISITION CORPORATION	91-2046942	Corporation	Delaware	3225667
MIDLAND RECEIVABLES 98-1 CORPORATION	48-1208866	Corporation	Delaware	2971702
MIDLAND RECEIVABLES 99-1 CORPORATION	91-2019996	Corporation	Delaware	3139111
MIDLAND FUNDING 98-A CORPORATION	48-1208867	Corporation	Delaware	3329502
MIDLAND FUNDING NCC-1 CORPORATION	91-2197631	Corporation	Delaware	3663115
MIDLAND PORTFOLIO SERVICES, INC	20-2931681	Corporation	Delaware	3978399
MIDLAND FUNDING LLC	20-2931611	Limited Liability Company	Delaware	3978393

3.11. Pledged Securities and Other Investment Property. Exhibit D sets forth a complete and accurate list of the Instruments, Securities and other Investment Property delivered to the Administrative Agent. Each Grantor is the direct and beneficial owner of each Instrument, Security and other type of Investment Property listed on Exhibit D as being owned by it, free and clear of any Liens, except for the security interest granted to the Administrative Agent for the benefit of the Holders of Secured Obligations hereunder or as permitted under Section 4.1.6. Each Grantor further represents and warrants that (i) all such Instruments,

Securities or other types of Investment Property which are shares of stock in a corporation or ownership interests in a partnership or limited liability company have been (to the extent such concepts are relevant with respect to such Instrument, Security or other type of Investment Property) duly and validly issued, are fully paid and non-assessable and constitute the percentage of the issued and outstanding shares of stock (or other equity interests) of the respective issuers thereof indicated on Exhibit D hereto and (ii) with respect to any certificates delivered to the Administrative Agent representing an ownership interest in a partnership or limited liability company, either such certificates are Securities as defined in Article 8 of the New York UCC of the applicable jurisdiction as a result of actions by the issuer or otherwise, or, if such certificates are not Securities, such Grantor has so informed the Administrative Agent so that the Administrative Agent may take steps to perfect its security interest therein as a General Intangible.

## ARTICLE IV

### COVENANTS

From the date of this Security Agreement and thereafter until this Security Agreement is terminated, each of the Initial Grantors agrees, and from and after the effective date of any Security Agreement Supplement applicable to any Grantor (and after giving effect to supplements to each of the Exhibits hereto with respect to such subsequent Grantor as attached to such Security Agreement Supplement) and thereafter until this Security Agreement is terminated each such subsequent Grantor agrees:

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#### 4.1. General.

- 4.1.1 Inspection. Each Grantor will permit the Administrative Agent or any Holder of Secured Obligations (at reasonable times and upon reasonable notice so long as no Default or Unmatured Default has occurred and is continuing) by its representatives and agents (i) to inspect the Collateral, (ii) to examine and make copies of the records of such Grantor relating to the Collateral and (iii) to discuss the Collateral and the related records of such Grantor with, and to be advised as to the same by, such Grantor's officers and employees, all at such reasonable times and intervals as the Administrative Agent or such Holder of Secured Obligations may determine, and all at such Grantor's expense.
- 4.1.2 Taxes. Such Grantor will pay when due all taxes, assessments and governmental charges and levies upon the Collateral owned by such Grantor, except (i) those which are being contested in good faith by appropriate proceedings and with respect to which adequate reserves have been set aside in accordance with Agreement Accounting Principles and with respect to which no Lien exists, (ii) those which by reason of the amount involved or the remedies available to the taxing authority could not reasonably be expected to have a Material Adverse Effect and (iii) those taxes disclosed in Schedule 5.6 to the Credit Agreement.
- 4.1.3 Records and Reports; Notification of Default. Each Grantor shall keep and maintain complete, accurate and proper books and records with respect to the Collateral owned by such Grantor, and furnish to the Administrative Agent such reports relating to the Collateral as the Administrative Agent shall from time to time reasonably request. Each Grantor will give prompt notice in writing to the Administrative Agent and the Lenders of the occurrence of any Default or Unmatured Default and of any other development, financial or otherwise, which might materially and adversely affect the Collateral taken as a whole.
- 4.1.4 Financing Statements and Other Actions; Defense of Title. Each Grantor hereby authorizes the Administrative Agent to file, and if requested will execute and deliver to the Administrative Agent, all financing statements describing the Collateral owned by such Grantor and other documents and take such other actions as may from time to time reasonably be requested by the Administrative Agent in order to maintain a first perfected security interest in and, if applicable, Control of, the Collateral owned by such Grantor, subject to Liens permitted under Section 6.15 of the Credit Agreement; provided, that nothing herein shall be deemed to constitute an agreement to subordinate any of the Liens of the Administrative Agent under the Loan Documents to any Liens otherwise permitted under Section 6.15 of the Credit Agreement. Such financing statements may describe the Collateral in the same manner as described herein or may contain an indication or description of collateral that describes such property in any other manner as the Administrative Agent may determine, in its sole discretion, is necessary, advisable or prudent to ensure that the perfection of the security interest in the Collateral granted to the Administrative Agent herein, including, without limitation, describing such property as "all assets" or "all personal property, whether now owned or hereafter acquired." Each Grantor will take any and all actions necessary to defend title to the Collateral owned by such Grantor against all persons and to defend the security interest of the Administrative Agent in such Collateral and the priority thereof against any Lien not expressly permitted hereunder.

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- 4.1.5 Disposition of Collateral. No Grantor will sell, lease or otherwise dispose of the Collateral owned by such Grantor except (i) prior to the occurrence of a Default or Unmatured Default, dispositions specifically permitted pursuant to the Credit Agreement, (ii) until such time following the occurrence of a Default as such Grantor receives a notice from the Administrative Agent instructing such Grantor to cease such transactions, sales of Receivables in the ordinary course of business, and (iii) until such time as such Grantor receives a notice from the Administrative Agent pursuant to Article VII, proceeds of Inventory and Accounts collected in the ordinary course of business.
- 4.1.6 Liens. No Grantor will create, incur, or suffer to exist any Lien on the Collateral owned by such Grantor except Liens permitted pursuant to Section 6.15 of the Credit Agreement, provided, that nothing herein shall be deemed to constitute an agreement to subordinate any of the Liens of the Administrative Agent under the Loan Documents to any Liens otherwise permitted under Section 6.15 of the Credit Agreement.
- 4.1.7 Change in Corporate Existence, Type or Jurisdiction of Organization, Location, Name. Each Grantor will, except as permitted by the Credit Agreement:
- (i) preserve its existence and corporate structure as in effect on the Closing Date;
  - (ii) not change its jurisdiction of organization;

- (iii) not maintain its place of business (if it has only one) or its chief executive office (if it has more than one place of business) at a location other than a location specified on Exhibit A; and
- (iv) not (i) have any Inventory, Equipment or Fixtures or proceeds or products thereof (other than Inventory and proceeds thereof disposed of as permitted by Section 4.1.5) at a location other than a location specified in Exhibit A, (ii) change its name or taxpayer identification number or (iii) change its mailing address,

unless, in each such case, such Grantor shall have given the Administrative Agent not less than 10 days' prior written notice of such event or occurrence and the Administrative Agent shall have either (x) determined that such event or occurrence will not adversely affect the validity, perfection or priority of the Administrative Agent's security interest in the Collateral, or (y) taken such steps (with the cooperation of such Grantor to the extent necessary or advisable) as are necessary or advisable to properly maintain the validity, perfection and priority of the Administrative Agent's security interest in the Collateral owned by such Grantor.

4.1.8 Other Financing Statements. No Grantor will suffer to exist or authorize the filing of any financing statement naming it as debtor covering all or any portion of the Collateral owned by such Grantor, except any Financial Statement authorized under Section 4.1.4 hereof.

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4.2. Collection of Receivables. Except as otherwise provided in this Security Agreement, each Grantor will collect and enforce, in the ordinary course of business consistent with past practice and at such Grantor's sole expense, amounts due or hereafter due to such Grantor under the Receivables owned by such Grantor.

4.3. Inventory and Equipment. Each Grantor will do all things necessary to maintain, preserve, protect and keep the Inventory and the Equipment owned by such Grantor in good repair, working order and saleable condition (ordinary wear and tear excepted) and make all necessary and proper repairs, renewals and replacements so that its business carried on in connection therewith may be properly conducted at all times, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

4.4. Instruments, Securities, Chattel Paper, Documents and Pledged Deposits. Each Grantor will (i) deliver to the Administrative Agent immediately upon execution of this Security Agreement the originals of all Securities constituting Collateral (if any then exist) listed on Exhibit D hereof, (ii) hold in trust for the Administrative Agent upon receipt and immediately thereafter deliver to the Administrative Agent any Securities constituting Collateral, (iii) upon the designation of any Pledged Deposits (as set forth in the definition thereof), deliver to the Administrative Agent such Pledged Deposits which are evidenced by certificates included in the Collateral endorsed in blank, marked with such legends and assigned as the Administrative Agent shall specify, and (iv) upon the Administrative Agent's request, after the occurrence and during the continuance of a Default, deliver to the Administrative Agent (and thereafter hold in trust for the Administrative Agent upon receipt and immediately deliver to the Administrative Agent) any Document evidencing or constituting Collateral.

4.5. Uncertificated Securities and Certain Other Investment Property. Each Grantor will permit the Administrative Agent from time to time to cause the appropriate issuers (and, if held with a securities intermediary, such securities intermediary) of uncertificated securities or other types of Investment Property not represented by certificates which are Collateral owned by such Grantor to mark their books and records with the numbers and face amounts of all such uncertificated securities or other types of Investment Property not represented by certificates and all rollovers and replacements therefor to reflect the Lien of the Administrative Agent granted pursuant to this Security Agreement.

4.6. Stock and Other Ownership Interests.

4.6.1 Changes in Capital Structure of Issuers. No Grantor will (i) permit or suffer any issuer of privately held corporate securities or other ownership interests in a corporation, partnership, joint venture or limited liability company constituting Collateral owned by such Grantor to dissolve, liquidate, retire any of its capital stock or other Instruments or Securities evidencing ownership, reduce its capital or merge or consolidate with any other entity, or (ii) vote any of the Instruments, Securities or other Investment Property in favor of any of the foregoing except to the extent permitted under Section 6.11 of the Credit Agreement.

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4.6.2 Issuance of Additional Securities. No Grantor will permit or suffer the issuer of privately held corporate securities or other ownership interests in a corporation, partnership, joint venture or limited liability company constituting Collateral to issue any such securities or other ownership interests, any right to receive the same or any right to receive earnings, except to such Grantor; provided, however, that the foregoing shall have no application with respect to any corporation, partnership, joint venture or limited liability company which is not a Subsidiary of such Grantor.

4.6.3 Registration of Pledged Securities and other Investment Property. Each Grantor will permit any registerable Collateral owned by such Grantor to be registered in the name of the Administrative Agent or its nominee at any time at the option of the Required Secured Parties following the occurrence and during the continuance of an Event of Default and without any further consent of such Grantor.

4.6.4 Exercise of Rights in Pledged Securities and other Investment Property. Each Grantor will permit the Administrative Agent or its nominee at any time after the continuance of a Default, without notice, to exercise or refrain from exercising any and all voting and other consensual rights pertaining to the Collateral owned by such Grantor or any part thereof, and to receive all dividends and interest in respect of such Collateral. So long as no Default has occurred and is continuing, the Grantors are entitled to exercise any and all voting and other rights and powers relating to the Collateral.

4.7. Pledged Deposits. No Grantor will withdraw all or any portion of any Pledged Deposit or fail to rollover said Pledged Deposit without the prior written consent of the Administrative Agent.

4.8. Letter-of-Credit Rights. Each Grantor will, upon the Administrative Agent's request, cause each issuer of a letter of credit, to consent to the assignment of proceeds of the letter of credit in order to give the Administrative Agent Control of the letter-of-credit rights to such letter of credit.

4.9. Federal, State or Municipal Claims. Each Grantor will notify the Administrative Agent of any Collateral owned by such Grantor which constitutes a claim against the United States government or any state or local government or any instrumentality or agency thereof, the assignment of which claim is restricted by federal, state or municipal law of which Grantor is aware.

4.10. Intellectual Property. If, after the date hereof, any Grantor obtains rights to, or applies for or seeks registration of, any new patentable invention, trademark or copyright in addition to the patents, trademarks and copyrights described in Part C of Exhibit B, which are all of such Grantor's patents, trademarks and copyrights for which registration has been sought as of the Closing Date, then such Grantor shall give the Administrative Agent prompt notice thereof, and the security interest granted to the Administrative Agent hereunder shall automatically apply thereto. Each Grantor agrees promptly upon request by the Administrative Agent to execute and deliver to the Administrative Agent any supplement to this Security Agreement or any other document reasonably requested by the Administrative Agent to evidence such security interest in a form appropriate for recording in the applicable federal office. Each Grantor also hereby authorizes the Administrative Agent to modify this Security Agreement unilaterally (i) by amending Part C of Exhibit B to include any future patents, trademarks and/or copyrights of which the Administrative Agent receives notification from such Grantor pursuant hereto and (ii) by recording, in addition to and not in substitution for this Security Agreement, a duplicate original of this Security Agreement containing in Part C of Exhibit B a description of such future patents, trademarks and/or copyrights.

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4.11. Commercial Tort Claims. If, after the date hereof, any Grantor identifies the existence of a commercial tort claim belonging to such Grantor that has arisen in the course of such Grantor's business in addition to the commercial tort claims described in Exhibit E, which are all of such Grantor's commercial tort claims as of the Closing Date, then such Grantor shall give the Administrative Agent prompt notice thereof, but in any event not less frequently than quarterly. Each Grantor agrees promptly upon request by the Administrative Agent to execute and deliver to the Administrative Agent any supplement to this Security Agreement or any other document reasonably requested by the Administrative Agent to evidence the grant of a security interest therein in favor of the Administrative Agent.

## ARTICLE V

### DEFAULT

5.1. The occurrence of any one or more of the following events shall constitute a Default:

- 5.1.1 Any representation or warranty made by or on behalf of any Grantor under or in connection with this Security Agreement shall be materially false as of the date on which made.
- 5.1.2 The breach by any Grantor of any of the terms or provisions of Article IV or Article VII.
- 5.1.3 The breach by any Grantor (other than a breach which constitutes a Default under Section 5.1.1 or 5.1.2 hereof) of any of the terms or provisions of this Security Agreement which is not remedied within 10 days after the giving of written notice to such Grantor by the Administrative Agent.
- 5.1.4 Any material portion of the Collateral shall be transferred or otherwise disposed of, either voluntarily or involuntarily, in any manner not permitted by Section 4.1.5 or 8.7 hereof or shall be lost, stolen, damaged or destroyed.
- 5.1.5 The occurrence of any "Default" under, and as defined in, the Credit Agreement.

5.2. Acceleration and Remedies. Upon the acceleration of the Secured Obligations under the Credit Agreement pursuant to Section 8.1 thereof, the Obligations and, to the extent provided for under the Rate Management Transactions evidencing the same, the Rate Management Obligations, shall immediately become due and payable without presentment, demand, protest or notice of any kind, all of which are hereby expressly waived, and the Administrative Agent may, with the concurrence or at the direction of the Required Secured Parties, exercise any or all of the following rights and remedies:

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- 5.2.1 Those rights and remedies provided in this Security Agreement, the Credit Agreement, or any other Loan Document, provided that this Section 5.2.1 shall not be understood to limit any rights or remedies available to the Administrative Agent and the Holders of Secured Obligations prior to a Default.
- 5.2.2 Those rights and remedies available to a secured party under the New York UCC (whether or not the New York UCC applies to the affected Collateral) or under any other applicable law (including, without limitation, any law governing the exercise of a bank's right of setoff or bankers' lien) when a debtor is in default under a security agreement.
- 5.2.3 Without notice except as specifically provided in Section 8.1 hereof or elsewhere herein, sell, lease, assign, grant an option or options to purchase or otherwise dispose of the Collateral or any part thereof in one or more parcels at public or private sale, for cash, on credit or for future delivery, and upon such other terms as the Administrative Agent may deem commercially reasonable.

The Administrative Agent, on behalf of the secured parties, may comply with any applicable state or federal law requirements in connection with a disposition of the Collateral, and such compliance will not be considered to adversely affect the commercial reasonableness of any sale of the Collateral.

If, after the Credit Agreement has terminated by its terms and all of the Obligations have been paid in full, there remain Rate Management Obligations outstanding, the Required Secured Parties may exercise the remedies provided in this Section 5.2 upon the occurrence of any event which would allow or require the termination or acceleration of any Rate Management Obligations pursuant to the terms of the agreement governing any Rate Management Transaction.

5.3. Grantors' Obligations Upon Default. Upon the request of the Administrative Agent after the occurrence of a Default, each Grantor will:

- 5.3.1 Assembly of Collateral. Assemble and make available to the Administrative Agent the Collateral and all records relating thereto at any place or places specified by the Administrative Agent.
- 5.3.2 Secured Party Access. Permit the Administrative Agent, by the Administrative Agent's representatives and agents, to enter any premises where all or any part of the Collateral, or the books and records relating thereto, or both, are located, to take possession of all or any part of the Collateral and to remove all or any part of the Collateral.

5.4. License. The Administrative Agent is hereby granted a license or other right to use, following the occurrence and during the continuance of a Default, without charge, each Grantor's labels, patents, copyrights, rights of use of any name, trade secrets, trade names, trademarks, service marks, customer lists and advertising matter, or any property of a similar nature, as it pertains to the Collateral, in completing production of, advertising for sale, and selling any Collateral, and, following the occurrence and during the continuance of a Default, such Grantor's rights under all licenses shall inure to the Administrative Agent's benefit.

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## ARTICLE VI

### WAIVERS, AMENDMENTS AND REMEDIES

No delay or omission of the Administrative Agent or any Holder of Secured Obligations to exercise any right or remedy granted under this Security Agreement shall impair such right or remedy or be construed to be a waiver of any Default or an acquiescence therein, and any single or partial exercise of any such right or remedy shall not preclude any other or further exercise thereof or the exercise of any other right or remedy. No waiver, amendment or other variation of the terms, conditions or provisions of this Security Agreement whatsoever shall be valid unless in writing signed by the Administrative Agent with the concurrence or at the direction of the Lenders required under Section 8.2 of the Credit Agreement and each Grantor, and then only to the extent in such writing specifically set forth, provided that the addition of any Domestic Subsidiary as a Grantor hereunder by execution of a Security Agreement Supplement in the form of Annex I (with such modifications as shall be acceptable to the Administrative Agent) shall not require receipt of any consent from or execution of any documentation by any other Grantor party hereto. All rights and remedies contained in this Security Agreement or by law afforded shall be cumulative and all shall be available to the Administrative Agent and the Holders of Secured Obligations until the Secured Obligations have been paid in full.

## ARTICLE VII

### PROCEEDS; COLLECTION OF RECEIVABLES

7.1. Collection of Receivables. The Administrative Agent may at any time after the occurrence of a Default, by giving each Grantor written notice, elect to require that the Receivables be paid directly to the Administrative Agent for the benefit of the Holders of Secured Obligations. In such event, each Grantor shall, and shall permit the Administrative Agent to, promptly notify the account debtors or obligors under the Receivables owned by such Grantor of the Administrative Agent's interest therein and direct such account debtors or obligors to make payment of all amounts then or thereafter due under such Receivables directly to the Administrative Agent. Upon receipt of any such notice from the Administrative Agent, each Grantor shall thereafter hold in trust for the Administrative Agent, on behalf of the Holders of Secured Obligations, all amounts and proceeds received by it with respect to the Receivables and Other Collateral and immediately and at all times thereafter deliver to the Administrative Agent all such amounts and proceeds in the same form as so received, whether by cash, check, draft or otherwise, with any necessary endorsements. The Administrative Agent shall hold and apply funds so received as provided by the terms of Sections 7.2 hereof.

7.2. Application of Proceeds. The proceeds of the Collateral received by the Administrative Agent pursuant to the exercise of its rights under Section 5.2 hereof shall be applied by the Administrative Agent to payment of the Secured Obligations in the following order unless a court of competent jurisdiction shall otherwise direct:

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- (a) FIRST, to payment of all costs and expenses of the Administrative Agent incurred in connection with the collection and enforcement of the Secured Obligations or of the security interest granted to the Administrative Agent pursuant to this Security Agreement;
  - (b) SECOND, to payment of that portion of the Secured Obligations constituting accrued and unpaid interest and fees, pro rata among the Lenders and their Affiliates in accordance with the amount of such accrued and unpaid interest and fees owing to each of them;
  - (c) THIRD, to payment of the principal of the Secured Obligations and the net early termination payments and any other Rate Management Obligations then due and unpaid from the Borrower to any of the Lenders or their Affiliates, pro rata among the Lenders and their Affiliates in accordance with the amount of such principal and such net early termination payments and other Rate Management Obligations then due and unpaid owing to each of them;
  - (d) FOURTH, to payment of any Secured Obligations (other than those listed above) pro rata among those parties to whom such Secured Obligations are due in accordance with the amounts owing to each of them; and
  - (e) FIFTH, the balance, if any, after all of the Secured Obligations have been satisfied, shall be distributed by the Administrative Agent to the applicable Grantor or at its direction.

## ARTICLE VIII

8.1. Notice of Disposition of Collateral; Condition of Collateral. Each Grantor hereby waives notice of the time and place of any public sale or the time after which any private sale or other disposition of all or any part of the Collateral may be made. To the extent such notice may not be waived under applicable law, any notice made shall be deemed reasonable if sent to the Borrower, addressed as set forth in Article IX, at least ten days prior to (i) the date of any such public sale or (ii) the time after which any such private sale or other disposition may be made. Administrative Agent shall have no obligation to clean-up or otherwise prepare the Collateral for sale.

8.2. Compromises and Collection of Collateral. Each Grantor and the Administrative Agent recognize that setoffs, counterclaims, defenses and other claims may be asserted by obligors with respect to certain of the Receivables, that certain of the Receivables may be or become uncollectible in whole or in part and that the expense and probability of success in litigating a disputed Receivable may exceed the amount that reasonably may be expected to be recovered with respect to a Receivable. In view of the foregoing, each Grantor agrees that the Administrative Agent may at any time and from time to time, if a Default has occurred and is continuing, compromise with the obligor on any Receivable, accept in full payment of any Receivable such amount as the Administrative Agent in its sole discretion shall determine or abandon any Receivable, and any such action by the Administrative Agent shall be commercially reasonable so long as the Administrative Agent acts in good faith based on information known to it at the time it takes any such action.

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8.3. Secured Party Performance of Grantor's Obligations. Without having any obligation to do so, the Administrative Agent may perform or pay any obligation which any Grantor has agreed to perform or pay in this Security Agreement and such Grantor shall reimburse the Administrative Agent for any reasonable amounts paid by the Administrative Agent pursuant to this Section 8.3. Each Grantor's obligation to reimburse the Administrative Agent pursuant to the preceding sentence shall be a Secured Obligation payable on demand.

8.4. Authorization for Secured Party to Take Certain Action. Each Grantor irrevocably authorizes the Administrative Agent at any time and from time to time in the sole discretion of the Administrative Agent and appoints the Administrative Agent as its attorney in fact (i) to execute on behalf of such Grantor as debtor and to file financing statements necessary or desirable in the Administrative Agent's sole discretion to perfect and to maintain the perfection and priority of the Administrative Agent's security interest in the Collateral, (ii) after the occurrence and during the continuance of a Default, to indorse and collect any cash proceeds of the Collateral, (iii) to file a carbon, photographic or other reproduction of this Security Agreement or any financing statement with respect to the Collateral as a financing statement and to file any other financing statement or amendment of a financing statement (which does not add new collateral or add a debtor) in such offices as the Administrative Agent in its sole discretion deems necessary or desirable to perfect and to maintain the perfection and priority of the Administrative Agent's security interest in the Collateral, (iv) after the occurrence and during the continuance of a Default, to contact and enter into one or more agreements with the issuers of uncertificated securities which are Collateral owned by such Grantor and which are Securities or with financial intermediaries holding other Investment Property as may be necessary or advisable to give the Administrative Agent Control over such Securities or other Investment Property, (v) subject to the terms of Section 4.1.5 hereof and after the occurrence and during the continuance of a Default, to enforce payment of the Instruments, Accounts and Receivables in the name of the Administrative Agent or such Grantor, (vi) to apply the proceeds of any Collateral received by the Administrative Agent to the Secured Obligations as provided in Article VII and (vii) to discharge past due taxes, assessments, charges, fees or Liens on the Collateral (except for such Liens as are specifically permitted hereunder or under any other Loan Document), and each Grantor agrees to reimburse the Administrative Agent on demand for any reasonable payment made or any reasonable expense incurred by the Administrative Agent in connection therewith, provided that this authorization shall not relieve any Grantor of any of its obligations under this Security Agreement or under the Credit Agreement.

8.5. Specific Performance of Certain Covenants. Each Grantor acknowledges and agrees that a breach of any of the covenants contained in Sections 4.1.5, 4.1.6, 4.4, 5.3, or 8.7 or in Article VII hereof will cause irreparable injury to the Administrative Agent and the Holders of Secured Obligations, that the Administrative Agent and Holders of Secured Obligations have no adequate remedy at law in respect of such breaches and therefore agrees, without limiting the right of the Administrative Agent or the Holders of Secured Obligations to seek and obtain specific performance of other obligations of the Grantors contained in this Security Agreement, that the covenants of the Grantors contained in the Sections referred to in this Section 8.5 shall be specifically enforceable against the Grantors.

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8.6. Use and Possession of Certain Premises. Upon the occurrence of a Default, the Administrative Agent shall be entitled to reasonable use and occupancy of any premises owned or leased by the Grantors where any of the Collateral or any records relating to the Collateral are located until the Secured Obligations are paid or the Collateral is removed therefrom, whichever first occurs, without any obligation to pay any Grantor for such use and occupancy.

8.7. Dispositions Not Authorized. No Grantor is authorized to sell or otherwise dispose of the Collateral except as set forth in Section 4.1.5 hereof and notwithstanding any course of dealing between any Grantor and the Administrative Agent or other conduct of the Administrative Agent, no authorization to sell or otherwise dispose of the Collateral (except as set forth in Section 4.1.5 hereof) shall be binding upon the Administrative Agent or the Holders of Secured Obligations unless such authorization is in writing signed by the Administrative Agent with the consent or at the direction of the Required Lenders.

8.8. Benefit of Agreement. The terms and provisions of this Security Agreement shall be binding upon and inure to the benefit of the Grantors, the Administrative Agent and the Holders of Secured Obligations and their respective successors and assigns (including all persons who become bound as a debtor to this Security Agreement), except that the Grantors shall not have the right to assign their rights or delegate their obligations under this Security Agreement or any interest herein, without the prior written consent of the Administrative Agent.

8.9. Survival of Representations. All representations and warranties of the Grantors contained in this Security Agreement shall survive the execution and delivery of this Security Agreement.

8.10. Expenses. The Grantors shall reimburse the Administrative Agent for any and all reasonable out-of-pocket expenses and internal charges (including reasonable attorneys', auditors' and accountants' fees and reasonable time charges of attorneys, paralegals, auditors and accountants who may be employees of the Administrative Agent) paid or incurred by the Administrative Agent in connection with the preparation, execution, delivery, administration, collection and enforcement of this Security Agreement and in the audit, analysis, administration, collection, preservation or sale of the Collateral (including the expenses and charges associated with any periodic or special audit of the Collateral). Any and all costs and expenses incurred by the Grantors in the performance of actions required pursuant to the terms hereof shall be borne solely by the Grantors.

8.11. Headings. The title of and section headings in this Security Agreement are for convenience of reference only, and shall not govern the interpretation of any of the terms and provisions of this Security Agreement.

8.12. Termination. This Security Agreement shall continue in effect (notwithstanding the fact that from time to time there may be no Secured Obligations outstanding) until (i) the Credit Agreement has terminated pursuant to its express terms and (ii) all of the Secured Obligations have been indefeasibly paid and performed in full and no commitments of the Administrative Agent or the Holders of Secured Obligations which would give rise to any Secured Obligations are outstanding.

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8.13. Entire Agreement. This Security Agreement embodies the entire agreement and understanding between the Grantors and the Administrative Agent relating to the Collateral and supersedes all prior agreements and understandings between the Grantors and the Administrative Agent relating to the Collateral.

8.14. **CHOICE OF LAW. THIS SECURITY AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF NEW YORK (WITHOUT REGARD TO THE CONFLICTS OF LAWS PROVISIONS) BUT GIVING EFFECT TO FEDERAL LAWS APPLICABLE TO NATIONAL BANKS.**

8.15. Indemnity. Each Grantor hereby agrees, jointly with the other Grantors and severally, to indemnify the Administrative Agent and the Holders of Secured Obligations (the "Indemnified Parties"), and their respective successors, assigns, agents and employees, from and against any and all liabilities, damages, penalties, suits, costs, and expenses of any kind and nature (including, without limitation, all expenses of litigation or preparation therefor whether or not the Administrative Agent or any Holder of Secured Obligations is a party thereto) imposed on, incurred by or asserted against the Administrative Agent or the Holders of Secured Obligations, or their respective successors, assigns, agents and employees, in any way relating to or arising out of this Security Agreement, or the manufacture, purchase, acceptance, rejection, ownership, delivery, lease, possession, use, operation, condition, sale, return or other disposition of any Collateral (including, without limitation, latent and other defects, whether or not discoverable by the Administrative Agent or the Holders of Secured Obligations or any Grantor, and any claim for patent, trademark or copyright infringement), excluding any liabilities, damages, penalties, suits, costs and expenses resulting from the gross negligence or willful misconduct of any Indemnified Party.

8.16. Subordination of Intercompany Indebtedness. Each Grantor agrees that any and all claims of such Grantor against any other Grantor (each an "Obligor") with respect to any "Intercompany Indebtedness" (as hereinafter defined), any endorser, obligor or any other guarantor of all or any part of the Secured Obligations, or against any of its properties shall be subordinate and subject in right of payment to the prior payment, in full and in cash, of all Secured Obligations, provided that so long as no Default has occurred and is continuing, such Grantor may make loans to and receive payments in the ordinary course of business with respect to such Intercompany Indebtedness from each such Obligor to the extent not prohibited by the terms of this Security Agreement and the other Loan Documents. Notwithstanding any right of any Grantor to ask, demand, sue for, take or receive any payment from any Obligor, all rights, liens and security interests of such Grantor, whether now or hereafter arising and howsoever existing, in any assets of any other Obligor shall be and are subordinated to the rights of the Holders of Secured Obligations and the Administrative Agent in those assets. No Grantor shall have any right to possession of any such asset or to foreclose upon any such asset, whether by judicial action or otherwise, unless and until all of the Secured Obligations (other than contingent indemnity obligations) shall have been fully paid and satisfied (in cash) and all Commitments and Facility LCs issued under the Credit Agreement have terminated or expired, provided that so long as no Default has occurred and is continuing, such

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Grantor may make loans to and receive payments in the ordinary course of business with respect to such Intercompany Indebtedness from each such Obligor to the extent not prohibited by the terms of this Security Agreement and the other Loan Documents. After the occurrence and during the continuance of a Default, if all or any part of the assets of any Obligor, or the proceeds thereof, are subject to any distribution, division or application to the creditors of such Obligor, whether partial or complete, voluntary or involuntary, and whether by reason of liquidation, bankruptcy, arrangement, receivership, assignment for the benefit of creditors or any other similar action or proceeding, then, and in any such event (such events being herein referred to as an "Insolvency Event"), any payment or distribution of any kind or character, either in cash, securities or other property, which shall be payable or deliverable upon or with respect to any indebtedness of any Obligor to any Grantor ("Intercompany Indebtedness") shall be paid or delivered directly to the Administrative Agent for application on any of the Secured Obligations, due or to become due, until such Secured Obligations (other than contingent indemnity obligations) shall have first been fully paid and satisfied (in cash). Should any payment, distribution, security or instrument or proceeds thereof be received by the applicable Grantor upon or with respect to the Intercompany Indebtedness after any Insolvency Event and prior to the satisfaction of all of the Secured Obligations (other than contingent indemnity obligations) and the termination or expiration of all Commitments of the Lenders and Facility LCs issued pursuant to the Credit Agreement, such Grantor shall receive and hold the same in trust, as trustee, for the benefit of the Holders of Secured Obligations and shall forthwith deliver the same to the Administrative Agent, for the benefit of the Holders of Secured Obligations, in precisely the form received (except for the endorsement or assignment of the Grantor where necessary), for application to any of the Secured Obligations, due or not due, and, until so delivered, the same shall be held in trust by the Grantor as the property of the Holders of Secured Obligations. If any such Grantor fails to make any such endorsement or assignment to the Administrative Agent, the Administrative Agent or any of its officers or employees is irrevocably authorized to make the same. Each Grantor agrees that until the Secured Obligations (other than the contingent indemnity obligations) have been paid in full (in cash) and satisfied and all Commitments and Facility LCs issued under the Credit Agreement have terminated or expired, no Grantor will assign or transfer to any Person (other than the Administrative Agent or the Borrower or another Grantor) any claim any such Grantor has or may have against any Obligor.

## ARTICLE IX

### NOTICES

9.1. Sending Notices. Any notice required or permitted to be given under this Security Agreement shall be sent (and deemed received) in the manner and to the addresses set forth in Article XIII of the Credit Agreement; and any such notice delivered to the Borrower shall be deemed to have been delivered to all of the Grantors.

9.2. Change in Address for Notices. Each of the Grantors, the Administrative Agent and the Lenders may change the address for service of notice upon it by a notice in writing to the other parties.

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THE ADMINISTRATIVE AGENT

JPMorgan Chase Bank, N.A. has been appointed Administrative Agent for the Holders of Secured Obligations hereunder pursuant to Article X of the Credit Agreement. It is expressly understood and agreed by the parties to this Security Agreement that any authority conferred upon the Administrative Agent hereunder is subject to the terms of the delegation of authority made by the Holders of Secured Obligations to the Administrative Agent pursuant to the Credit Agreement, and that the Administrative Agent has agreed to act (and any successor Administrative Agent shall act) as such hereunder only on the express conditions contained in such Article X. Any successor Administrative Agent appointed pursuant to Article X of the Credit Agreement shall be entitled to all the rights, interests and benefits of the Administrative Agent hereunder.

[SIGNATURE PAGES TO FOLLOW]

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IN WITNESS WHEREOF, each of the Grantors and the Administrative Agent have executed this Security Agreement as of the date first above written.

ENCORE CAPITAL GROUP, INC., as a Grantor

By: /s/ J. Brandon Black  
Name: J. Brandon Black  
Title: President & Chief Operating Officer

MIDLAND CREDIT MANAGEMENT, INC., as a Grantor

By: /s/ J. Brandon Black  
Name: J. Brandon Black  
Title: President & Chief Operating Officer

MIDLAND FUNDING NCC-2 CORPORATION, as a Grantor

By: /s/ J. Brandon Black  
Name: J. Brandon Black  
Title: President & Chief Operating Officer

MIDLAND ACQUISITION CORPORATION, as a Grantor

By: /s/ J. Brandon Black  
Name: J. Brandon Black  
Title: President & Chief Operating Officer

MIDLAND RECEIVABLES 98-1 CORPORATION, as a Grantor

By: /s/ J. Brandon Black  
Name: J. Brandon Black  
Title: President & Chief Operating Officer

MIDLAND FUNDING NCC-1 CORPORATION, as a Grantor

By: /s/ J. Brandon Black  
Name: J. Brandon Black  
Title: President & Chief Operating Officer

MIDLAND FUNDING 98-A CORPORATION, as a Grantor

By: /s/ J. Brandon Black  
Name: J. Brandon Black  
Title: President & Chief Operating Officer

MIDLAND PORTFOLIO SERVICES, INC., as a Grantor

By: /s/ J. Brandon Black  
Name: J. Brandon Black  
Title: President & Chief Operating Officer

MIDLAND RECEIVABLES 99-1 CORPORATION, as a Grantor

By: /s/ J. Brandon Black  
Name: J. Brandon Black  
Title: President & Chief Operating Officer

MIDLAND FUNDING LLC, as a Grantor

By: /s/ J. Brandon Black  
Name: J. Brandon Black  
Title: President & Chief Operating Officer

JPMORGAN CHASE BANK, N.A., as Administrative Agent

By: /s/ Steven J. Krakoski  
Name: Steven J. Krakoski  
Title: Senior Vice President

## GUARANTY

THIS GUARANTY (as the same may be amended, restated, supplemented or otherwise modified from time to time, this “Guaranty”) is made as of June 7, 2025, by each of MIDLAND CREDIT MANAGEMENT, INC., a Kansas corporation, MIDLAND FUNDING NCC-2 CORPORATION, a Delaware corporation, MIDLAND ACQUISITION CORPORATION, a Delaware corporation, MIDLAND RECEIVABLES 98-1 CORPORATION, a Delaware corporation, MIDLAND RECEIVABLES 99-1 CORPORATION, a Delaware corporation, MIDLAND FUNDING 98-A CORPORATION, a Delaware corporation, MIDLAND FUNDING NCC-1 CORPORATION, a Delaware corporation, MIDLAND PORTFOLIO SERVICES, INC., a Delaware corporation and MIDLAND FUNDING LLC, a Delaware limited liability company (each an “Initial Guarantor”, and together with any additional Domestic Subsidiaries which become parties to this Guaranty by executing a Supplement hereto in the form attached hereto as Annex I, the “Guarantors”), in favor of JPMORGAN CHASE BANK, N.A., as Administrative Agent (the “Administrative Agent”) for the benefit of the Holders of Secured Obligations under the Credit Agreement described below. Each capitalized term used herein and not defined herein shall have the meaning ascribed thereto in the Credit Agreement described below.

### WITNESSETH:

WHEREAS, Encore Capital Group, Inc., a Delaware corporation (the “Borrower”), has entered into that certain Credit Agreement, dated as of the date hereof (as the same may be amended, restated, supplemented or otherwise modified from time to time, the “Credit Agreement”), by and among the Borrower, the financial institutions from time to time parties thereto as lenders (the “Lenders”), and the Administrative Agent, which Credit Agreement provides, subject to the terms and conditions thereof, for extensions of credit and other financial accommodations by the Lenders to the Borrower;

WHEREAS, it is a condition precedent to the extensions of credit by the Lenders under the Credit Agreement that each of the Guarantors (constituting all of the Domestic Subsidiaries of the Borrower required to execute this Guaranty pursuant to Section 6.25 of the Credit Agreement) execute and deliver this Guaranty, whereby each of the Guarantors, without limitation and with full recourse, shall guarantee the payment when due of all Secured Obligations, including, without limitation, all principal, interest, letter of credit reimbursement obligations and other amounts that shall be at any time payable by the Borrower under the Credit Agreement or the other Loan Documents; and

WHEREAS, in consideration of the direct and indirect financial and other support that the Borrower has provided, and such direct and indirect financial and other support as the Borrower may in the future provide, to the Guarantors, and in order to induce the Lenders and the Administrative Agent to enter into the Credit Agreement, each of the Guarantors is willing to guarantee the Secured Obligations under the Credit Agreement and the other Loan Documents;

NOW, THEREFORE, in consideration of the foregoing premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

**Section 1. Representations, Warranties and Covenants.** In order to induce the Administrative Agent and the Lenders to enter into the Credit Agreement and to make the Loans and the other financial accommodations to the Borrower and to issue the Facility LCs described in the Credit Agreement, each of the Guarantors represents and warrants to each Lender and the Administrative Agent as of the date of this Agreement, giving effect to the consummation of the transactions contemplated by the Loan Documents on the Closing Date, and thereafter on each date as required by Section 4.2 of the Credit Agreement that:

(a) It (i) is a corporation, partnership or limited liability company, or partnership duly incorporated or organized, as the case may be, validly existing and in good standing under the laws of its jurisdiction of incorporation or organization, (ii) is duly qualified to do business as a foreign entity and is in good standing under the laws of each jurisdiction where the business by it makes such qualification necessary, and (iii) has all requisite corporate, partnership or limited liability power and authority, as the case may be, to own, operate and encumber its Property and to conduct its business in each jurisdiction in which its business is conducted.

(b) It has the requisite corporate, limited liability company or partnership, as applicable, power and authority and legal right to execute and deliver this Guaranty and to perform its obligations hereunder. The execution and delivery by it of this Guaranty and the performance by each of its obligations hereunder have been duly authorized by proper proceedings, and this Guaranty constitutes a legal, valid and binding obligation of each Guarantor, enforceable against such Guarantor, in accordance with its terms, except as enforceability may be limited by (i) bankruptcy, insolvency, fraudulent conveyances, reorganization or similar laws relating to or affecting the enforcement of creditors’ rights generally, (ii) general equitable principles (whether considered in a proceeding in equity or at law), and (iii) requirements of reasonableness, good faith and fair dealing. (c) Neither the execution and delivery by it of this Guaranty, nor the consummation by it of the transactions herein contemplated, nor compliance by it with the terms and provisions hereof, will (i) conflict with the charter or other organizational documents of such Guarantor, (ii) conflict with, result in a breach of or constitute (with or without notice or lapse of time or both) a default under any law, rule, regulation, order, writ, judgment, injunction, decree or award (including, without limitation, any environmental property transfer laws or regulations) applicable to such Guarantor or any provisions of any indenture, instrument or agreement to which such Guarantor is party or is subject or which it or its Property is bound or affected, or require termination of any such indenture, instrument or agreement, (iii) result in or require the creation or imposition of any Lien whatsoever upon any of the property or assets of such Guarantor, other than Liens permitted or created by the Loan Documents, or (iv) require any approval of such Guarantor’s board of directors or shareholders or unitholders except such as have been obtained. Except as set forth in Section 5.3 of the Credit Agreement and assuming the filing of financing statements in relevant jurisdictions as required, the execution, delivery and performance by the Guarantors of each of the Loan Documents to which such Guarantor is a party do not and will not require any registration with, consent or approval of, or notice to, or other action to, with or by any governmental authority, including under any environmental property transfer laws or regulations, except filings, consents or notices which have been made.

(d) It has no Indebtedness other than Indebtedness permitted under Section 6.14 of the Credit Agreement.

In addition to the foregoing, each of the Guarantors covenants that, so long as any Lender has any Revolving Loan Commitment and Swing Line Commitment (collectively, the “Commitments”) outstanding under the Credit Agreement or any amount payable under the Credit Agreement or any other Secured Obligations shall remain unpaid, it will, and, if necessary, will enable the Borrower to, fully comply with those covenants and agreements of the Borrower applicable to such Guarantor set forth in the Credit Agreement.

**Section 2. The Guaranty.** Each of the Guarantors hereby unconditionally guarantees, jointly and severally with the other Guarantors, the full and punctual payment and performance when due (whether at stated maturity, upon acceleration or otherwise) of the Secured Obligations, including, without limitation, (i) the

principal of and interest on each Advance made to the Borrower pursuant to the Credit Agreement, (ii) any Reimbursement Obligations of the Borrower or the performance by it of such Reimbursement Obligations, (iii) all other amounts payable by the Borrower under the Credit Agreement and the other Loan Documents, including, without limitation, all Rate Management Obligations, and (iv) the punctual and faithful performance, keeping, observance, and fulfillment by the Borrower of all of the agreements, conditions, covenants, and obligations of the Borrower contained in the Loan Documents (all of the foregoing being referred to collectively as the “Guaranteed Obligations”). Upon (x) the failure by the Borrower, or any of its Affiliates, as applicable, to pay punctually any such amount or perform such obligation, and (y) such failure continuing beyond any applicable grace or notice and cure period, each of the Guarantors agrees that it shall forthwith on demand pay such amount or perform such obligation at the place and in the manner specified in the Credit Agreement or the relevant Loan Document, as the case may be. Each of the Guarantors hereby agrees that this Guaranty is an absolute, irrevocable and unconditional guaranty of payment and is not a guaranty of collection.

**Section 3. Guaranty Unconditional.** The obligations of each of the Guarantors hereunder shall be unconditional and absolute and, without limiting the generality of the foregoing, shall not be released, discharged or otherwise affected by:

- (i) any extension, renewal, settlement, indulgence, compromise, waiver or release of or with respect to the Guaranteed Obligations or any part thereof or any agreement relating thereto, or with respect to any obligation of any other guarantor of any of the Guaranteed Obligations, whether (in any such case) by operation of law or otherwise, or any failure or omission to enforce any right, power or remedy with respect to the Guaranteed Obligations or any part thereof or any agreement relating thereto, or with respect to any obligation of any other guarantor of any of the Guaranteed Obligations;

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- (ii) any modification or amendment of or supplement to the Credit Agreement, any agreement evidencing a Rate Management Transaction or any other Loan Document, including, without limitation, any such amendment which may increase the amount of, or the interest rates applicable to, any of the Guaranteed Obligations guaranteed hereby;
- (iii) any release, surrender, compromise, settlement, waiver, subordination or modification, with or without consideration, of any collateral securing the Guaranteed Obligations or any part thereof, any other guaranties with respect to the Guaranteed Obligations or any part thereof, or any other obligation of any person or entity with respect to the Guaranteed Obligations or any part thereof, or any nonperfection or invalidity of any direct or indirect security for the Guaranteed Obligations;
- (iv) any change in the corporate, partnership or other existence, structure or ownership of the Borrower or any other guarantor of any of the Guaranteed Obligations, or any insolvency, bankruptcy, reorganization or other similar proceeding affecting the Borrower or any other guarantor of the Guaranteed Obligations, or any of their respective assets or any resulting release or discharge of any obligation of the Borrower or any other guarantor of any of the Guaranteed Obligations;
- (v) the existence of any claim, setoff or other rights which the Guarantors may have at any time against the Borrower, any other guarantor of any of the Guaranteed Obligations, the Administrative Agent, any Holder of Secured Obligations or any other Person, whether in connection herewith or in connection with any unrelated transactions, *provided* that nothing herein shall prevent the assertion of any such claim by separate suit or compulsory counterclaim;
- (vi) the enforceability or validity of the Guaranteed Obligations or any part thereof or the genuineness, enforceability or validity of any agreement relating thereto or with respect to any collateral securing the Guaranteed Obligations or any part thereof, or any other invalidity or unenforceability relating to or against the Borrower or any other guarantor of any of the Guaranteed Obligations, for any reason related to the Credit Agreement, any agreement evidencing a Rate Management Transaction or any other Loan Document, or any provision of applicable law or regulation purporting to prohibit the payment by the Borrower or any other guarantor of the Guaranteed Obligations, of any of the Guaranteed Obligations;
- (vii) the failure of the Administrative Agent to take any steps to perfect and maintain any security interest in, or to preserve any rights to, any security or collateral for the Guaranteed Obligations, if any;
- (viii) the election by, or on behalf of, any one or more of the Holders of Secured Obligations, in any proceeding instituted under Chapter 11 of Title 11 of the United States Code (11 U.S.C. 101 et seq.) (the “Bankruptcy Code”), of the application of Section 1111(b)(2) of the Bankruptcy Code;

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- (ix) any borrowing or grant of a security interest by the Borrower, as debtor-in-possession, under Section 364 of the Bankruptcy Code;
- (x) the disallowance, under Section 502 of the Bankruptcy Code, of all or any portion of the claims of the Holders of Secured Obligations or the Administrative Agent for repayment of all or any part of the Guaranteed Obligations;
- (xi) the failure of any other guarantor to sign or become party to this Guaranty or any amendment, change, or reaffirmation hereof; or
- (xii) any other act or omission to act or delay of any kind by the Borrower, any other guarantor of the Guaranteed Obligations, the Administrative Agent, any Holder of Secured Obligations or any other Person or any other circumstance whatsoever which might, but for the provisions of this Section 3, constitute a legal or equitable discharge of any Guarantor’s obligations hereunder.

**Section 4. Discharge Only Upon Payment In Full; Reinstatement In Certain Circumstances; Discharge of Guaranty Upon Sale of Guarantor.**

**(A) Discharge Only Upon Payment In Full; Reinstatement In Certain Circumstances.** Except as provided in Section 4(B) below, each of the Guarantors’ obligations hereunder shall remain in full force and effect until all Guaranteed Obligations shall have been paid in full in cash and the Commitments and all Facility LCs issued under the Credit Agreement shall have terminated or expired or, in the case of all Facility LCs, are fully collateralized on terms reasonably acceptable to the Administrative Agent. If at any time any payment of the principal of or interest on any Advance or Reimbursement Obligation or any other amount payable by the Borrower or any other party under the Credit Agreement, any agreement evidencing a Rate Management Transaction or any other Loan Document is rescinded or must be otherwise restored or returned upon the insolvency, bankruptcy or reorganization of the Borrower or otherwise, each of the Guarantors’ obligations hereunder with respect to such payment shall be reinstated as though such payment had been due but not made at such time.

**(B) Discharge of Guaranty Upon Sale of Guarantor.** If all of the stock or partnership or membership interests of a Guarantor or any of its successors in interest under this Guaranty shall be sold or otherwise disposed of (including by merger, consolidation or dissolution) in a sale or other disposition not prohibited by the Credit Agreement or that is otherwise consented to by Required Lenders, the obligations of such Guarantor or such successor in interest, as the case may be, hereunder shall automatically be discharged and released without any further action by any Credit Party or any other Person effective as of the time of such sale or other disposition.

**Section 5. General Waivers; Additional Waivers.**

**(A) General Waivers.** Each of the Guarantors irrevocably waives acceptance hereof, presentment, demand or action on delinquency, protest, the benefit of any statutes of limitations and, to the fullest extent permitted by law, any notice not provided for herein, as well as any requirement that at any time any action be taken by any Person against the Borrower, any other guarantor of the Guaranteed Obligations, or any other Person.

**(B) Additional Waivers.** Notwithstanding anything herein to the contrary, each of the Guarantors hereby absolutely, unconditionally, knowingly, and expressly waives:

- (i) any right it may have to revoke this Guaranty as to future indebtedness or notice of acceptance hereof;
- (ii) (1) notice of acceptance hereof; (2) notice of any loans or other financial accommodations made or extended under the Loan Documents or the creation or existence of any Guaranteed Obligations; (3) notice of the amount of the Guaranteed Obligations, subject, however, to each Guarantor's right to make inquiry of Administrative Agent and Holders of Secured Obligations to ascertain the amount of the Guaranteed Obligations at any reasonable time; (4) notice of any adverse change in the financial condition of the Borrower or of any other fact that might increase such Guarantor's risk hereunder; (5) notice of presentment for payment, demand, protest, and notice thereof as to any instruments among the Loan Documents; (6) notice of any Unmatured Default or Default; and (7) all other notices (except if such notice is specifically required to be given to such Guarantor hereunder or under the Loan Documents) and demands to which each Guarantor might otherwise be entitled;
- (iii) its right, if any, to require the Administrative Agent and the other Holders of Secured Obligations to institute suit against, or to exhaust any rights and remedies which the Administrative Agent and the other Holders of Secured Obligations has or may have against, the other Guarantors or any third party, or against any Collateral provided by the other Guarantors, or any third party; and each Guarantor further waives any defense arising by reason of any disability or other defense (other than the defense that the Guaranteed Obligations shall have been fully and finally performed and indefeasibly paid) of the other Guarantors or by reason of the cessation from any cause whatsoever of the liability of the other Guarantors in respect thereof;
- (iv) (a) any rights to assert against the Administrative Agent and the other Holders of Secured Obligations any defense (legal or equitable), set-off, counterclaim, or claim which such Guarantor may now or at any time hereafter have against the other Guarantors or any other party liable to the Administrative Agent and the other Holders of Secured Obligations; (b) any defense, set-off, counterclaim, or claim, of any kind or nature, arising directly or indirectly from the present or future lack of perfection, sufficiency, validity, or enforceability of the Guaranteed Obligations or any security therefor; (c) any defense such Guarantor has to performance hereunder, and any right such Guarantor has to be exonerated, arising by reason of: the impairment or suspension of the Administrative Agent's and the other Holders of Secured Obligations' rights or remedies against the other Guarantors; the alteration by the Administrative Agent and the other Holders of Secured Obligations of the Guaranteed Obligations; any discharge of the other Guarantors' obligations to the Administrative Agent and the other Holders of Secured Obligations by operation of law as a result of the Administrative Agent's and the other Holders of Secured Obligations' intervention or omission; or the acceptance by the Administrative Agent and the other Holders of Secured Obligations of anything in partial satisfaction of the Guaranteed Obligations; and (d) the benefit of any statute of limitations affecting such Guarantor's liability hereunder or the enforcement thereof, and any act which shall defer or delay the operation of any statute of limitations applicable to the Guaranteed Obligations shall similarly operate to defer or delay the operation of such statute of limitations applicable to such Guarantor's liability hereunder; and
- (v) any defense arising by reason of or deriving from (a) any claim or defense based upon an election of remedies by the Administrative Agent and the other Holders of Secured Obligations; or (b) any election by the Administrative Agent and the other Holders of Secured Obligations under Section 1111(b) of Title 11 of the United States Code entitled "Bankruptcy", as now and hereafter in effect (or any successor statute), to limit the amount of, or any collateral securing, its claim against the Guarantors:

**Section 6. Subordination of Subrogation.** Until the Guaranteed Obligations have been fully and finally performed and indefeasibly paid (other than contingent indemnity obligations) the Guarantors (i) shall have no right of subrogation with respect to such Guaranteed Obligations and (ii) waive any right to enforce any remedy which the LC Issuer, Holders of Secured Obligations or the Administrative Agent now have or may hereafter have against the Borrower, any endorser or any guarantor of all or any part of the Secured Obligations or any other Person, and until such time the Guarantors waive any benefit of, and any right to participate in, any security or collateral given to the Holders of Secured Obligations and the Administrative Agent to secure the payment or performance of all or any part of the Guaranteed Obligations or any other liability of the Borrower to the Holders of Secured Obligations. Should any Guarantor have the right, notwithstanding the foregoing, to exercise its subrogation rights, each Guarantor hereby expressly and irrevocably (A) subordinates any and all rights at law or in equity to subrogation, reimbursement, exoneration, contribution, indemnification or set off that the Guarantor may have to the payment in full in cash of the Guaranteed Obligations until the Guaranteed Obligations are paid in full in cash (other than contingent indemnity obligations) and (B) waives any and all defenses available to a surety, guarantor or accommodation co-obligor until the Guaranteed Obligations are paid in full in cash. Each Guarantor acknowledges and agrees that this subordination is intended to benefit the Administrative Agent and the Holders of Secured Obligations and shall not limit or otherwise affect such Guarantor's liability hereunder or the enforceability of this Guaranty, and that the Administrative Agent, the Holders of Secured Obligations and their respective successors and assigns are intended third party beneficiaries of the waivers and agreements set forth in this Section 6.

**Section 7. Contribution with Respect to Guaranteed Obligations.**

(a) To the extent that any Guarantor shall make a payment under this Guaranty (a "Guarantor Payment") which, taking into account all other Guarantor Payments then previously or concurrently made by any other Guarantor, exceeds the amount which otherwise would have been paid by or attributable to such Guarantor if each Guarantor had paid the aggregate Guaranteed Obligations satisfied by such Guarantor Payment in the same proportion as such Guarantor's "Allocable Amount" (as defined below) (as determined immediately prior to such Guarantor Payment) bore to the aggregate Allocable Amounts of each of the

Guarantors as determined immediately prior to the making of such Guarantor Payment, then, following payment in full in cash of the Guarantor Payment and the Guaranteed Obligations, and all Commitments and Facility LCs have terminated or expired or, in the case of all Facility LCs, are fully collateralized on terms reasonably acceptable to the Administrative Agent, such Guarantor shall be entitled to receive contribution and indemnification payments from, and be reimbursed by, each other Guarantor for the amount of such excess, pro rata based upon their respective Allocable Amounts in effect immediately prior to such Guarantor Payment.

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(b) As of any date of determination, the "Allocable Amount" of any Guarantor shall be equal to the maximum amount of the claim which could then be recovered from such Guarantor under this Guaranty without rendering such claim voidable or avoidable under Section 548 of Chapter 11 of the Bankruptcy Code or under any applicable state Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act or similar statute or common law.

(c) This Section 7 is intended only to define the relative rights of the Guarantors, and nothing set forth in this Section 7 is intended to or shall impair the obligations of the Guarantors, jointly and severally, to pay any amounts as and when the same shall become due and payable in accordance with the terms of this Guaranty.

(d) The parties hereto acknowledge that the rights of contribution and indemnification hereunder shall constitute assets of the Guarantor or Guarantors to which such contribution and indemnification is owing.

(e) The rights of the indemnifying Guarantors against other Guarantors under this Section 7 shall be exercisable upon the full and indefeasible payment of the Guaranteed Obligations in cash and the termination or expiry (or in the case of all Facility LCs full collateralization) on terms reasonably acceptable to the Administrative Agent of the Commitments and all Facility LCs issued under the Credit Agreement.

**Section 8. Stay of Acceleration.** If acceleration of the time for payment of any amount payable by the Borrower under the Credit Agreement, any counterparty to any agreement evidencing a Rate Management Transaction or any other Loan Document is stayed upon the insolvency, bankruptcy or reorganization of the Borrower or any of their Affiliates, all such amounts otherwise subject to acceleration under the terms of the Credit Agreement, any agreement evidencing a Rate Management Transaction or any other Loan Document shall nonetheless be payable by each of the Guarantors hereunder forthwith on demand by the Administrative Agent.

**Section 9. Notices.** All notices, requests and other communications to any party hereunder shall be given in the manner prescribed in Article XIII of the Credit Agreement with respect to the Administrative Agent at its notice address therein and, with respect to any Guarantor, in the care of the Borrower at the address of the Borrower set forth in the Credit Agreement, or such other address or telecopy number as such party may hereafter specify for such purpose by notice to the Administrative Agent in accordance with the provisions of such Article XIII.

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**Section 10. No Waivers.** No failure or delay by the Administrative Agent or any Holders of Secured Obligations in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies provided in this Guaranty, the Credit Agreement, any agreement evidencing a Rate Management Transaction and the other Loan Documents shall be cumulative and not exclusive of any rights or remedies provided by law.

**Section 11. Successors and Assigns.** This Guaranty is for the benefit of the Administrative Agent and the Holders of Secured Obligations and their respective successors and permitted assigns, provided, that no Guarantor shall have any right to assign its rights or obligations hereunder without the consent of all of the Lenders, and any such assignment in violation of this Section 11 shall be null and void; and in the event of an assignment of any amounts payable under the Credit Agreement, any agreement evidencing a Rate Management Transaction or the other Loan Documents in accordance with the respective terms thereof, the rights hereunder, to the extent applicable to the indebtedness so assigned, may be transferred with such indebtedness. This Guaranty shall be binding upon each of the Guarantors and their respective successors and assigns.

**Section 12. Changes in Writing.** Other than in connection with the addition of additional Subsidiaries, which become parties hereto by executing a Supplement hereto in the form attached as Annex I, neither this Guaranty nor any provision hereof may be changed, waived, discharged or terminated orally, but only in writing signed by each of the Guarantors and the Administrative Agent with the consent of the Required Lenders under the Credit Agreement (or all of the Lenders if required pursuant to the terms of Section 8.2 of the Credit Agreement).

**Section 13. CHOICE OF LAW.** THIS GUARANTY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF NEW YORK (WITHOUT REGARD TO THE CONFLICTS OF LAWS PROVISIONS) BUT GIVING EFFECT TO FEDERAL LAWS APPLICABLE TO NATIONAL BANKS.

**Section 14. CONSENT TO JURISDICTION; JURY TRIAL.**

**(A) CONSENT TO JURISDICTION.** EACH GUARANTOR HEREBY IRREVOCABLY SUBMITS TO THE NON-EXCLUSIVE JURISDICTION OF ANY UNITED STATES FEDERAL OR NEW YORK STATE COURT SITTING IN NEW YORK CITY, NEW YORK IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO ANY LOAN DOCUMENTS AND EACH GUARANTOR HEREBY IRREVOCABLY AGREES THAT ALL CLAIMS IN RESPECT OF SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN ANY SUCH COURT AND IRREVOCABLY WAIVES ANY OBJECTION IT MAY NOW OR HEREAFTER HAVE AS TO THE VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN SUCH A COURT OR THAT SUCH COURT IS AN INCONVENIENT FORUM. NOTHING HEREIN SHALL LIMIT THE RIGHT OF ANY PARTY HERETO TO BRING PROCEEDINGS IN THE COURTS OF ANY OTHER JURISDICTION.

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**(B) WAIVER OF JURY TRIAL.** EACH GUARANTOR HEREBY WAIVES TRIAL BY JURY IN ANY JUDICIAL PROCEEDING INVOLVING, DIRECTLY OR INDIRECTLY, ANY MATTER (WHETHER SOUNDING IN TORT, CONTRACT OR OTHERWISE) IN ANY WAY ARISING OUT OF, RELATED TO, OR CONNECTED WITH THIS GUARANTY OR ANY OTHER LOAN DOCUMENT OR THE RELATIONSHIP ESTABLISHED THEREUNDER.

**Section 15. No Strict Construction.** The parties hereto have participated jointly in the negotiation and drafting of this Guaranty. In the event an ambiguity or question of intent or interpretation arises, this Guaranty shall be construed as if drafted jointly by the parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provisions of this Guaranty.

**Section 16. Expenses of Enforcement, Etc.** Subject to the terms of the Credit Agreement, after the occurrence of a Default under the Credit Agreement, the Lenders shall have the right at any time to direct the Administrative Agent to commence enforcement proceedings with respect to the Guaranteed Obligations. The Guarantors agree to reimburse the Administrative Agent and the Holders of Secured Obligations for any costs and out-of-pocket expenses (including reasonable attorneys' fees and time charges of attorneys for the Administrative Agent and the Holders of Secured Obligations), paid or incurred by the Administrative Agent or any Holders of Secured Obligations in connection with the collection and enforcement of amounts due under the Loan Documents, including without limitation this Guaranty. The Administrative Agent agrees to distribute payments received from any of the Guarantors hereunder to the Holders of Secured Obligations on a pro rata basis for application in accordance with the terms of the Credit Agreement.

**Section 17. Setoff.** At any time after all or any part of the Guaranteed Obligations have become due and payable (by acceleration or otherwise), each Holder of Secured Obligations and the Administrative Agent may, without notice to any Guarantor and regardless of the acceptance of any security or collateral for the payment hereof, appropriate and apply toward the payment of all or any part of the Guaranteed Obligations (i) any indebtedness due or to become due from such Holder of Secured Obligations or the Administrative Agent to any Guarantor, and (ii) any moneys, credits or other property belonging to any Guarantor, at any time held by or coming into the possession of such Holder of Secured Obligations or the Administrative Agent or any of their respective affiliates.

**Section 18. Financial Information.** Each Guarantor hereby assumes responsibility for keeping itself informed of the financial condition of the Borrower and any and all endorsers and/or other Guarantors of all or any part of the Guaranteed Obligations, and of all other circumstances bearing upon the risk of nonpayment of the Guaranteed Obligations, or any part thereof, that diligent inquiry would reveal, and each Guarantor hereby agrees that none of the Holders of Secured Obligations or the Administrative Agent shall have any duty to advise such Guarantor of information known to any of them regarding such condition or any such circumstances. In the event any Holder of Secured Obligations or the Administrative Agent, in its sole discretion, undertakes at any time or from time to time to provide any such information to a Guarantor, such Holder of Secured Obligations or the Administrative Agent shall be under no obligation (i) to undertake any investigation not a part of its regular business routine, (ii) to disclose any information which such Holder of Secured Obligations or the Administrative Agent, pursuant to accepted or reasonable commercial finance or banking practices, wishes to maintain confidential or (iii) to make any other or future disclosures of such information or any other information to such Guarantor.

**Section 19. Severability.** Wherever possible, each provision of this Guaranty shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Guaranty shall be prohibited by or invalid under such law, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this Guaranty.

**Section 20. Merger.** This Guaranty represents the final agreement of each of the Guarantors with respect to the matters contained herein and may not be contradicted by evidence of prior or contemporaneous agreements, or subsequent oral agreements, between the Guarantor and any Holder of Secured Obligations or the Administrative Agent.

**Section 21. Headings.** Section headings in this Guaranty are for convenience of reference only and shall not govern the interpretation of any provision of this Guaranty.

[SIGNATURE PAGES TO FOLLOW]

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### Signature Page to Guaranty

IN WITNESS WHEREOF, each Initial Guarantor has caused this Guaranty to be duly executed by its authorized officer as of the day and year first above written.

MIDLAND CREDIT MANAGEMENT, INC. , as a  
Guarantor

/s/ J. Brandon Black

Name: J. Brandon Black

Title: President & Chief Operating Officer

MIDLAND FUNDING NCC-2 CORPORATION, as a  
Guarantor

/s/ J. Brandon Black

Name: J. Brandon Black

Title: President & Chief Operating Officer

MIDLAND ACQUISITION CORPORATION, as a  
Guarantor

/s/ J. Brandon Black

Name: J. Brandon Black

Title: President & Chief Operating Officer

MIDLAND RECEIVABLES 98-1 CORPORATION, as a  
Guarantor

/s/ J. Brandon Black

Name: J. Brandon Black

Title: President & Chief Operating Officer

MIDLAND RECEIVABLES 99-1 CORPORATION, as a  
Guarantor

/s/ J. Brandon Black

Name: J. Brandon Black

Title: President & Chief Operating Officer

MIDLAND FUNDING 98-A CORPORATION, as a  
Guarantor

/s/ J. Brandon Black

Name: J. Brandon Black

Title: President & Chief Operating Officer

MIDLAND FUNDING NCC-1 CORPORATION, as a  
Guarantor

/s/ J. Brandon Black

MIDLAND PORTFOLIO SERVICES, INC., as a Guarantor

/s/ J. Brandon Black

Name: J. Brandon Black  
Title: President & Chief Operating Officer

Name: J. Brandon Black  
Title: President & Chief Operating Officer

MIDLAND FUNDING LLC, as a Guarantor

/s/ J. Brandon Black

Name: J. Brandon Black  
Title: President & Chief Operating Officer

Acknowledged and Agreed to:

JPMORGAN CHASE BANK, N.A.,  
as Administrative Agent

By: /s/ Steven J. Krakoski

Name: Steven J. Krakoski  
Title: Senior Vice President

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ANNEX I TO GUARANTY

Reference is hereby made to the Guaranty (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "Guaranty"), dated as of June 7, 2005, made by each of MIDLAND CREDIT MANAGEMENT, INC., a Kansas corporation, MIDLAND FUNDING NCC-2 CORPORATION, a Delaware corporation, MIDLAND ACQUISITION CORPORATION, a Delaware corporation, MIDLAND RECEIVABLES 98-1 CORPORATION, a Delaware corporation, MIDLAND RECEIVABLES 99-1 CORPORATION, a Delaware corporation, MIDLAND FUNDING 98-A CORPORATION, a Delaware corporation, MIDLAND FUNDING NCC-1 CORPORATION, a Delaware corporation, MIDLAND PORTFOLIO SERVICES, INC., a Delaware corporation and MIDLAND FUNDING LLC, a Delaware limited liability company (each an "Initial Guarantor", and together with any additional Domestic Subsidiaries which become parties to the Guaranty by executing a Supplement thereto substantially similar in form and substance hereto, the "Guarantors"), in favor of the Administrative Agent, for the ratable benefit of the Holders of Secured Obligations, under the Credit Agreement. Each capitalized term used herein and not defined herein shall have the meaning given to it in the Guaranty. By its execution below, the undersigned, [NAME OF NEW GUARANTOR], a [corporation] [partnership] [limited liability company], agrees to become, and does hereby become, a Guarantor under the Guaranty and agrees to be bound by such Guaranty as if originally a party thereto. By its execution below, the undersigned represents and warrants as to itself that all of the representations and warranties contained in Section 1 of the Guaranty are true and correct in all respects as of the date hereof.

IN WITNESS WHEREOF, [NAME OF NEW GUARANTOR], a [corporation] [partnership] [limited liability company] has executed and delivered this Annex I counterpart to the Guaranty as of this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

[NAME OF NEW GUARANTOR]

By: \_\_\_\_\_

Title: \_\_\_\_\_

## For Immediate Release

### Encore Capital Group Announces Acquisition of \$2.9 Billion Portfolio and Collection Facility from Jefferson Capital, Plus New Forward Flow Agreement

**San Diego, CA, June 7, 2005** – Encore Capital Group, Inc. (Nasdaq: ECPG), a leading accounts receivable management firm, today announced an acquisition of assets from Jefferson Capital, a subsidiary of CompuCredit Corporation (Nasdaq: CCRT).

Encore Capital Group has acquired the following assets for a total purchase price of \$142.8 million in cash:

- A portfolio of charged-off consumer credit card debt with a face value of approximately \$2.9 billion
- An agreement to purchase an additional \$3.25 billion in face value of fresh, credit card charge-offs from Jefferson Capital over the next five years at a fixed price
- A new collection site in St. Cloud, Minnesota with approximately 120 employees, most of whom are collection staff

As part of the transaction, Encore has extended its existing agreement to sell Chapter 13 bankruptcies to Jefferson Capital for an additional two years and agreed to provide Jefferson Capital with a prescribed number of accounts on a monthly basis for its balance transfer program.

“We are very pleased to complete this agreement, which we believe will provide value to both parties and furthers each company’s strategic goals,” said Carl C. Gregory, III, Vice Chairman and CEO of Encore Capital Group. “This transaction represents a strategic shift in our approach to acquiring portfolios of receivables to deal with the market as we expect it to exist for the foreseeable future, and we believe it will help us to more effectively generate profitable growth in the current operating environment as well as in future years. Through this transaction, we have established a unique long-term partnership with a high quality company that we believe creates a significant competitive advantage and will yield excellent results for both Encore and Jefferson Capital for many years.”

“The immediate acquisition largely satisfies our purchasing goals for 2005 and will allow us to be highly selective in our purchasing for the remainder of the year,” said Brandon Black, President and COO of Encore Capital Group. “The five-year commitment will also provide the Company with a consistent flow of fresh charge-offs. This enables us to lock-in a meaningful portion of our future purchases on terms we consider attractive, and we can now focus on utilizing our sophisticated consumer level analytics to maximize collections. Importantly, as a part of this transaction, we are very pleased to add an experienced, seasoned group of collectors to our staff, and we expect their efforts will have a positive impact on the Company.”

The initial \$2.9 billion portfolio is comprised of receivables across the spectrum from active-paying accounts to accounts that are bankrupt and deceased. A large percentage of the accounts were originated by issuers from whom Encore has purchased portfolios in the past, and on which the Company has had good collection success. The anticipated collection multiple assigned to this new portfolio will be consistent with the multiples assigned to the Company’s purchases over the past two quarters.

To facilitate this transaction, Encore Capital Group entered into a new three-year, \$150 million revolving credit facility with JPMorgan Chase Bank, N.A. that includes an accordion feature for another \$50 million that will not be exercised initially. The terms of this credit facility are substantially the same as the \$75 million facility it replaces.

Additionally, Encore Capital Group also announced that it invested \$21.0 million in May to purchase another portfolio of credit card receivables from a separate issuer.

#### Financial Impact

Given the Company’s efforts to create unique purchasing opportunities such as the acquisition announced today, purchases of new portfolios of receivables have been limited through the first five months of the year. As a result of the limited purchasing volume during this period, and the timing of the acquisition of the initial \$2.9 billion portfolio being relatively late in the quarter, the Company expects earnings per share for the second quarter to be between \$0.26 and \$0.30.

The new portfolio purchases are expected to produce strong growth in collections, revenue and earnings per share in the second half of 2005. The Company believes that the strong second half will result in full year 2005 earnings per share ranging between \$1.25 and \$1.33 based upon the Company’s current collection, purchasing and expense assumptions, and the finalization of purchase price allocation for this transaction.

Although it remains the Company’s general policy not to provide earnings per share estimates, given the size, nature and timing of the transaction announced today, the Company believed it appropriate to offer the foregoing guidance.

#### Conference Call

Encore Capital Group will hold a conference call today at 5:00 P.M. Eastern Time to discuss this transaction. Members of the public are invited to listen to the conference call via a live Webcast. To listen, please log on the Investor Relations section of the Company’s website at [www.encorecapitalgroup.com](http://www.encorecapitalgroup.com). The replay of the conference call will be archived and available shortly after the call on the Company’s website at the same location.

#### About Encore Capital Group, Inc.

Encore Capital Group, Inc. is a systems-driven purchaser and manager of charged-off consumer receivables portfolios. More information on the company can be found at [www.encorecapitalgroup.com](http://www.encorecapitalgroup.com).

#### About CompuCredit Corporation

CompuCredit Corporation is a specialty finance company and marketer of branded credit cards and related financial services. CompuCredit provides these



services to consumers who are underserved by traditional financial institutions. Through corporate and affinity contributions focused on the underserved and unbanked communities, CompuCredit also uses its financial resources and volunteer efforts to address the numerous challenges affecting its customers. For more information about CompuCredit, visit [www.CompuCredit.com](http://www.CompuCredit.com).

### **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,” “believes,” “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, projections of future contingent interest expense, purchase volumes, revenues, income or loss (including our expectations regarding the current environment for and timing of portfolio purchases and the resulting effect on revenue recognition rates and profitability); plans for future operations, products or services; and financing needs or plans, as well as assumptions relating to those matters. 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. Factors that could affect the Company’s results and cause them to materially differ from those contained in the forward-looking statements include: the Company’s ability to purchase receivables portfolios on acceptable terms and in sufficient quantities; the Company’s ability to acquire and collect on portfolios consisting of new types of receivables; the Company’s ability to recover sufficient amounts on or with respect to receivables to fund operations; the Company’s ability to successfully execute acquisitions; the Company’s compliance with the restrictive covenants under its \$150 million senior credit facility, including limitations that the financial ratios may impose on its ability to acquire receivables portfolios or consummate acquisitions in the future; the Company’s continued servicing of receivables in its third party financing transactions; the Company’s ability to hire and retain qualified personnel to recover on its receivables efficiently; changes in, or failure to comply with, government regulations; the costs, uncertainties and other effects of legal and administrative proceedings; and risk factors and cautionary statements made in the Company’s Annual Report on Form 10-K as of and for the year ended December 31, 2004. Forward-looking statements speak only as of the date the statement was made. They are inherently subject to risks and uncertainties, some of which the Company cannot predict or quantify. Future events and actual results could differ materially from the forward-looking statements. The Company will not undertake and specifically declines any obligation to publicly release the result of any revisions to any forward-looking statements to reflect events or circumstances after the date of such statements or to reflect the occurrence of anticipated or unanticipated events, whether as the result of new information, future events or for any other reason. In addition, it is the Company’s policy generally not to make any specific projections as to future earnings, and the Company does not endorse any projections regarding future performance that may be made by third parties.*

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